

Construction (Design and Management) Regulations 2015 (CDM2015)

ARE THE CLIENTS READY?

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HEALTH AND SAFETY ADVICE AND TRAINING TO THE
CONSTRUCTION INDUSTRY AND OTHERS**







CDM2015

Construction (Design and Management) Regulations 2015 Are the Clients Ready?

The Construction (Design and Management) Regulations 2015 (CDM2015) received Parliamentary approval on 29th January 2015, and will come into force on 6th April 2015; the question must be asked of large and small construction client organisations and the persons such as facilities managers, are you ready?

On Friday, 9th January 2015, the Health and Safety Executive (HSE) issued the draft text of L153 (draft), Guidance on the Construction (Design and Management) Regulations 2015, including the draft regulations, which can be downloaded from:

www.hse.gov.uk/pubns/priced/draft-l153.pdf

On the same date, the guidances produced for the five duty holders under CDM2015, plus the workers, were published in draft. The guidances set out, in practical terms, what actions are required of them to deliver a safe and healthy construction project. These documents have been written by the Construction Industry Advisory Committee (CONIAC). These six 'Industry Guidances' are available for free download, as follows:

CDM15/1 Industry guidance for Clients

www.citb.co.uk/documents/cdm%20regs/industry-guidance-clients.pdf

CDM15/2 Industry guidance for Principal Designers

www.citb.co.uk/documents/cdm%20regs/industry-guidance-principal-designer.pdf

CDM15/3 Industry guidance for Contractors

www.citb.co.uk/documents/cdm%20regs/industry-guidance-contractors.pdf

CDM15/4 Industry guidance for Designers

www.citb.co.uk/documents/cdm%20regs/industry-guidance-designers.pdf

CDM15/5 Industry guidance for Principal Contractors

www.citb.co.uk/documents/cdm%20regs/industry-guidance-principal-contractors.pdf

CDM15/6 Industry guidance for Workers

www.citb.co.uk/documents/cdm%20regs/industry-guidance-workers.pdf

At this date, 2nd March 2015, the above guidance documents are still in draft.

The Approved Code of Practice (ACoP) for CDM2015 has yet to commence development, and so is unlikely to be available until late in 2015 at the earliest.

What work does CDM2015 apply to?

CDM2015 applies to ALL construction work, no matter who the client is, how long the work will take or how many workers will be involved, including where the work is performed by client employees.

The definition of construction contained within CDM2015 regulation 2(1) is:

"construction work" means the carrying out of any building, civil engineering or engineering construction work and includes:

- (a) the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of corrosive or toxic substances), decommissioning, demolition or dismantling of a structure;*
- (b) the preparation for an intended structure, including site clearance, exploration, investigation (but not site survey) and excavation (but not pre-construction archaeological investigations), and the clearance or preparation of the site or structure for use or occupation at its conclusion;*
- (c) the assembly on site of prefabricated elements to form a structure or the disassembly on site of the prefabricated elements which, immediately before such disassembly, formed a structure;*
- (d) the removal of a structure or of any product or waste resulting from demolition or dismantling of a structure or from disassembly of prefabricated elements which immediately before such disassembly formed such a structure;*
- (e) the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure,*

but does not include the exploration for or extraction of mineral resources or preparatory activities carried out at a place where such exploration or extraction is carried out;

To remove any doubt as to whether CDM2015 applies to the work, regulation 2(1) also contains the definition of a structure, as follows:

"structure" means:

- (a) any building, timber, masonry, metal or reinforced concrete structure, railway line or siding, tramway line, dock, harbour, inland navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipe-line, cable, aqueduct, sewer, sewage works, gasholder, road, airfield, sea defence works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure or structure designed to preserve or alter any natural feature, and fixed plant;*
- (b) any structure similar to anything specified in paragraph (a);*
- (c) any formwork, falsework, scaffold or other structure designed or used to provide support or means of access during construction work,*

and any reference to a structure includes part of a structure;

This then extends the normally understood definition of construction from new build and major refurbishment work to ongoing maintenance and repair of buildings, building services and other fixed plant and systems.





The CDM2007 ACoP, L144, paragraph 13, amended the definition of construction by listing work types that the HSE considered not to be construction, as below:

Construction work is defined in the Regulations. The following are not construction work as defined:

- (b) general maintenance of fixed plant, except when this is done as part of other construction work, or it involves substantial dismantling or alteration of fixed plant which is large enough to be a structure in its own right, for example structural alteration of a large silo; complex chemical plant; power station generator or large boiler;*

As the above ACoP is revoked at the same time as CDM2015 comes into force, there will be no exclusion as noted above, so all maintenance work will be included in the definition of construction.

The majority of the CDM2015 regulations apply to all construction work, including the preparation of a "construction phase plan" by the contractor. The definition of the contractor is also contained in CDM2015 regulation 2(1):

"contractor" means any person (including a non-domestic client) who, in the course or furtherance of a business, carries out, manages or controls construction work;

Any construction project that may include more than one contractor also requires:

- the client to select, appoint and monitor a capable principal designer as soon as practicable
- the client to select, appoint and monitor a capable principal contractor as soon as practicable
- a health and safety file to be produced by the principal designer/principal contractor, and the client to maintain it post-construction

It should be noted that the notification requirements, that under CDM2007 caused the additional requirements to apply, under CDM2015 are a standalone requirement and do not cause any additional requirements.

What are the CDM2015 client duties?

The client duties are contained within regulations 4, 5, 6 and 8:

Client duties for managing projects

- 4.(1) *A client must make suitable arrangements for managing a project, including the allocation of sufficient time and other resources.*
- 4.(2) *Arrangements are suitable if they ensure that—*
 - (a) the construction work can be carried out, so far as is reasonably practicable, without risk to the health and safety of any person affected by the project; and*

- (b) the facilities required by Schedule 2 are provided in respect of any person carrying out construction work.*

- 4.(3) *A client must ensure that these arrangements are maintained and reviewed throughout the project.*
- 4.(4) *A client must provide pre-construction information as soon as is practicable to every designer and contractor appointed, or being considered for appointment, to the project.*
- 4.(5) *A client must ensure that—*
 - (a) before the construction phase begins, a construction phase plan is drawn up by the contractor if there is only one contractor, or by the principal contractor, and*
 - (b) the principal designer prepares a health and safety file for the project, which—*
 - (i) complies with the requirements of regulation 12(5);*
 - (ii) is revised from time to time as appropriate to incorporate any relevant new information; and is kept available for inspection by any person who may need it to comply with the relevant legal requirements.*
- 4.(6) *A client must take reasonable steps to ensure that—*
 - (a) the principal designer complies with the duties in regulations 11 and 12; and*
 - (b) the principal contractor complies with the duties in regulations 12 to 14;*
- 4.(7) *If a client disposes of the client's interest in the structure, the client will comply with the duty in paragraph 5(b)(iii) by providing the health and safety file to the person who acquires the client's interest in it and ensuring that that person is aware of the nature and purpose of the file.*
- 4.(8) *Where there is more than one client in relation to a project—*
 - (a) one or more of the clients may elect in writing to be treated for the purposes of these Regulations as the only client or clients;*
 - (b) except for the duties specified in subparagraph (c) only the client or clients agreed in paragraph (a) are subject to the duties owed by a client under these Regulations;*
 - (c) the duties in the following provisions are owed by all clients—*
 - (i) regulation 8(4); and*
 - (ii) paragraph (4) and regulation 8(6) to the extent that those duties relate to information in the possession of the client.*

Appointment of the principal designer and the principal contractor

- 5.(1) *Where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time, the client must appoint in writing—*
 - (a) a designer with control over the pre-construction phase as principal designer; and*
 - (b) a contractor as principal contractor.*
- 5.(2) *The appointments must be made as soon as*

is practicable, and, in any event, before the construction phase begins.

- 5.(3) *If the client fails to appoint a principal designer, the client must fulfil the duties of the principal designer in regulations 11 and 12.*
- 5.(4) *If the client fails to appoint a principal contractor, the client must fulfil the duties of the principal contractor in regulations 12 to 14.*

Notification

- 6.(1) *A project is notifiable if the construction work on a construction site is scheduled to—*
 - (a) *last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project; or*
 - (b) *exceed 500 person days.*
- 6.(2) *Subject to paragraph (4), where a project is notifiable, the client must give notice to the Executive as soon as is practicable before the construction phase begins.*
- 6.(3) *The notice must—*
 - (a) *contain the particulars specified in Schedule 1; and*
 - (b) *be clearly displayed on site in a comprehensible form where it can be read by any worker engaged in the construction work and, if necessary, periodically updated.*
- 6.(4) *Where a project includes construction work of a description for which the Office of Rail Regulation is the enforcing authority by virtue of regulation 3 of the Health and Safety (Enforcing Authority or Railways and Other Guided Transport Systems) Regulations 2006, the client must give notice under paragraph (2) to the Office of Rail Regulation instead of to the Executive.*
- 6.(5) *Where a project includes construction work on premises which are or are on—*
 - (a) *a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013(b));*
 - (b) *an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998(c)); or*
 - (c) *a new nuclear build site (within the meaning given in regulation 2A of those Regulations),*

the client must give notice to the Office for Nuclear Regulation instead of the Executive.

General Duties

- 8.(1) *A designer (including a principal designer) or contractor (including a principal contractor) appointed to work on a project must have the skills, knowledge and experience, and, if they are an organisation, the organisational capability, necessary to fulfil the role that they are appointed to undertake, in a manner that secures the health and safety of any person affected by the project.*
- 8(2) *A designer or contractor must not accept an appointment to a project unless they fulfil the conditions in paragraph (1).*

- 8(3) *A person who is responsible for appointing a designer or contractor to carry out work on a project must take reasonable steps to satisfy themselves that the designer or contractor fulfils the conditions in paragraph (1).*
- 8.(4) *A person with a duty or function under these Regulations must cooperate with any other 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 to fulfil that duty or function.*
- 8.(5) *A person working on a project under the control of another must 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.*
- 8.(6) *Any person who is required to provide information or instruction by these Regulations must ensure the information is comprehensible and provided as soon as is practicable.*

The duties required of “domestic client” contained in CDM2015 regulation 4 are not included above, but these duties will automatically be carried out by the contractor or principal contractor, unless the “domestic client” decides to appoint a principal designer to perform their duties.

What should be checked to confirm capability?

CDM2015 regulation 8(1) contains the requirements for anyone, including the client, to verify that anyone considered for working on the project have the necessary skills, knowledge and experience to fulfil their duties, and that their employer has the necessary organisational capability. For principal designer and principal contractor appointments, it is the client’s responsibility to perform the checks. These checks must also be performed internally by the client if the client proposes to perform the duties of designer, contractor, principal designer and/or principal contractor.

The draft CDM15/1 Industry guidance for Clients, and L153 (draft), Guidance on the Construction (Design and Management) Regulations 2015, further explain the requirements regarding the checks a client should perform:

- For smaller jobs, the client should look for straightforward evidence from previous construction work.
- The Public Available Specification (PAS 91:2013) provides a set of health and safety questions that can be asked by construction clients and those who appoint designers and contractors as part of the pre-qualification process.
- The client could also decide to use a Safety Schemes in Procurement (SSIP) member-assessed scheme to find designers or contractors who have been assessed and confirmed by a SSIP Forum member as meeting acceptable health and safety standards.

The health and safety part of the PAS91 prequalification states that the detailed questions do not need to be answered if any of the following criteria are achieved and supporting evidence is provided, as specified in questionnaire C4.

C4-Q1-1a) Have you, within the last twelve months, successfully completed a prequalification application undertaken by an assessment provider able to demonstrate that its information gathering process conforms to PAS 91;

C4-Q1-1b) Have you, within the last twelve months, successfully met the assessment requirements of a construction-related scheme in registered membership of the Safety Schemes in Procurement (SSIP) forum; or

C4-Q1-1c) Do you hold a UKAS or equivalent, accredited independent third party certificate of compliance with BS OHSAS 18001.

If the duty holder being prequalified has not achieved one of the above criteria for the role/duty being proposed, the detailed questions, as follows, need to be responded to.

The CDM co-ordinator questions are those that a principal designer should respond to.

Questionnaire C4 - Contractors

- Q3** A copy of the health and safety policy;
- Q4** Detailed health and safety arrangements;
- Q5** Competent health and safety advice;
- Q6** Safety training records;
- Q7** Evidence of competence of individuals, such as managers and supervisors;
- Q8** How the health and safety management system and standards are monitored;
- Q9** Submit evidence of consultation arrangements with the workforce;
- Q10** Records of accidents & enforcement actions;
- Q11** Evidence of assessment and monitoring of sub-contractors and sub-consultants;
- Q12** Evidence of work risk assessments and safe systems of work;
- Q13** Arrangements for cooperation & coordination;
- Q14** Evidence of considering the welfare provisions;

Questionnaire C4 - Designers

- Q15** Evidence of competence of individuals, such as managers and supervisors;
- Q16-1** Evidence of cooperation and coordination to reduce risks by design with other designers & internally;
- Q16-2** Evidence of hazard elimination and identifying how remaining risks will be managed;
- Q16-3** Evidence of design compliance with the Workplace (Health, Safety and Welfare) Regulations 1992;
- Q16-4** Evidence of effective management of design changes;

Questionnaire C4 – CDM Coordinator/ Principal Designer

- Q17** Evidence of performance reviews during and on completion of design;
- Q18** Evidence of knowledge and experience of design and construction (professionally qualified and membership of construction institution);
- Q19** Evidence of knowledge and experience of H&S in construction (NEBOSH, APS, ICS, ICE);
- Q20** Evidence of performance reviews during the project and on project completion.

PAS 91 also provides supplementary/optional questions regarding health and safety, as follows:

Questionnaire S1 – Supplementary/ Additional Questions

- Q1** Evidence of technical abilities to carry out the work;
- Q2** Provide a list of similar work carried out over past 5 years;
- Q3** Provide a statement of principle goods and services provided in the past 3 years;
- Q4** Provide a statement on the professional qualifications of staff who may perform the work;
- Q5** Provide a statement on the average annual number of managerial, staff and disciplines for the past 3 years.

PAS 91 also has a series of optional questions regarding Building Information Modelling (BIM), which can be found in PAS 91, Table 8, Optional Question Module O4.

The HSE had stated that one of their primary objectives of revising CDM was to reduce the bureaucracy that is associated with the performance of competence checks. Unfortunately, even though they have changed the word to skills, knowledge, experience and capability, the referred to methods for pre-qualification are essentially the same as those prescribed by CDM2007 and Appendix 4 of the ACoP (L144).

How will the client make the management arrangements for the project?

The client must make suitable arrangements to ensure that, throughout the planning, design and construction of a project, adequate consideration is given to the health, safety and welfare of all those affected and involved in the construction work.

The most important action is to clearly allocate key tasks and ensure everyone understands what they have to do and when.

These arrangements should be appropriate to the nature of the work and enable other duty holders to

carry out their work without risk to themselves or anyone else who may be affected.

The management arrangements should, as a minimum:

- include requirements for how the project is to be run, taking into account any risks to the public and any other stakeholders;
- explain how designers and contractors will be selected and appointed to ensure they have the necessary capabilities for the work they are required to do;
- allocate sufficient time and resources to each stage of the project, from concept through to completion; and
- ensure suitable welfare facilities are in place before works start.

For projects involving more complex work and significant risks, the management arrangements will also need to cover:

- what is expected of the design team to ensure that they consider health and safety risks for the construction phase, as well as when maintaining and using the building once it is built;
- the contractual arrangements for procuring the design and construction team, including establishing that designers and contractors are adequately trained, and have the right skills and experience of health and safety;
- ensuring effective mechanisms are in place for members of the project team to communicate and cooperate with each other and to coordinate their activities;
- the arrangements for monitoring designers' and contractors' performance, for example by arranging progress meetings with the principal designer and principal contractor to ensure that the project runs in line with your expectations and meets legal requirements. The meetings also provide an opportunity to take action where that is not the case. This should also include verifying the performance of their duties by the principal designer and principal contractor; and
- the format and content for the health and safety file or a building manual that incorporates the health and safety file, including responsibilities for the provision of information and a delivery schedule.

Clients should take ownership of these arrangements and ensure they communicate them clearly to other duty holders. The guidances state that clients could prepare a clear "client's brief" as a way of setting out the arrangements. The client brief normally:

- sets out the main function and operational requirements of the finished project;
- outlines how the project is expected to be managed including its health and safety risks;
- sets a realistic timeframe and budget; and
- covers other relevant matters such as establishing design direction and a single point of contact in the client's organisation.

The guidances state that if clients need help in making the arrangements, they could draw on the competent advice they are required to have under the Management of Health and Safety at Work Regulations 1999 (the MHSW Regulations).

Alternatively, the client may wish to engage for the project an external CDM/health and safety advisor to assist them with the performance of their duties. Probably an individual or organisation that had previously performed the duties of CDM coordinator under CDM2007.

Provision of information

As with CDM2007, CDM2015 requires the client to provide information regarding the project, site and other relevant issues to the designers and contractors on all projects. This information will be included within the 'pre-construction information'.

The client must make this information available early enough for the designers to assess the information for the elimination and reduction of risk by design.

On projects with more than one contractor, the 'pre-construction information' must also be made available to the principal designer, who should assist the client in the identification, collection and dissemination of this information.

The client must provide all the information in his/her possession that pertains to the site and any other information that could be reasonably obtained. This information should be supplied as soon as possible in the project to enable the designers to take the information into account when making their design and planning decisions. Some of this information would also be supplied to tendering contractors so that they can take this into account when tendering for the work, or allow the construction team, in a situation where tenders are not required, to effectively plan the construction work.

The pre-construction information may be discrete pieces of information in the form of drawings, reports, surveys, etc, either in electronic or hard copy format, with an index provided to all of the project team so that the information available is known to all.

Appoint the principal designer and the principal contractor

A key part of the client's role on projects involving more than one contractor is to appoint a skilled, knowledgeable, experienced and capable principal designer and principal contractor. The principal designer will manage the design and planning of a project. The principal contractor is responsible for managing the health and safety aspects of the construction.



The principal designer must be appointed as soon as possible after commencement of the initial design, preferably before any design is commenced. The principal contractor should be appointed as soon as the client knows enough about the project to select a suitable contractor, so that they can make contributions to the health and safety of the design. Only one principal designer and one principal contractor may be appointed to the project at any one time, although the appointments may be changed.

The construction phase plan

The client must ensure that the construction phase plan is developed by the principal contractor, or contractor where only one contractor will work on the project, prior to allowing the construction to commence.

The regulations do not, specifically, require the client to ensure that the construction phase plan is sufficient and adequate, however, given that client must make suitable management arrangements and must ensure that the principal contractor is correctly performing his/her duties, it is likely that these verifications will be expected by the HSE and the Courts.

Welfare facilities

On all projects the client must ensure that the contractors provide suitable arrangements for the site welfare facilities, taking into account the numbers of workers expected to work on the site, the site conditions and the project tasks.

The health and safety file (HSF)

A new HSF is only required to be produced for the structures involved in projects with more than one contractor, however, pre-existing HSFs will still need to be amended on projects with only one contractor.

The HSF should contain as-built records, with any inaccuracies being the responsibility of the record producer.

The HSF or HSFs can be in any format, but it is most important that it is convenient to the client. To achieve this, the principal designer should, in consultation with the client, determine the format and content of the HSF or HSFs, and any important data requiring verification at a very early stage of the project.

Once the HSF or HSFs have been handed over to the client at the end of construction, it or they must be maintained in an up to date condition, and provided to anyone who needs the information for health and safety purposes by the client.

If ownership or control of a structure is transferred to a new owner/controller, the original client must pass over the HSF to the new owner/controller, and they will then be responsible for its maintenance.

Notification to HSE

The regulations require the client to notify the HSE of all construction projects expected to last more than 30 working days and more than 20 workers simultaneously on site at any time during the construction phase, or is expected to involve more than 500 person days in construction work.

The notification should be made as soon as practicable, but no later than construction commencement. Further notifications would be required by changes in the information required on the notification. This notification may be performed using the HSE Form 10(rev) or by other means, including electronic, providing it contains the information specified by Schedule 1 of CDM2015. The HSE preferred, and easiest method, is to notify using the HSE on-line system.

Summary

CDM2015 requires more of the client than was required under CDM2007. The client must be an integral part of the project delivery team, providing proactive and effective leadership with regards to the health and safety performance of the project.

Are you sure that you understand the duties and requirements of CDM2015 and/or other health and safety requirements?

Have you amended your policies and procedures to reflect the current legislation and practice?

Are your employees competent to perform their duties?

Do you select competent organisations to work with you?

Do you manage your organisation and projects without copious amounts of paper?

If the answer to any of the above questions is no, you need to consider training and advice to achieve legal compliance and develop best practices.

Contact the experts

David Carr, PgD, FIIRSM, DipSM, RFaPS
Managing Director

Callsafe Services Limited
Yardley House
11 Horsefair
Rugeley
Staffordshire
WS15 2EJ

Tel: 01889 577701

Email: enquiries@callsafe-services.co.uk

Web: www.callsafe-services.co.uk