

## ICE Health & Safety Expert Panel:

### CDM 2015 Regulations Frequently Asked Questions (FAQ's)

#### Introduction

The following questions and answers have been put together in response to questions raised since the publication of the draft CDM 2015 regulations and guidance in January 2015.

The Answers are made in the light of best available information. To the best of the knowledge of the ICE Health and Safety Panel CDM 2015 working Group they accurately represent practical responses within the enacted regulations and published guidance.

Not all FAQs sit easily within a single category, therefore of the 38 core questions there are a small number which have been duplicated for ease of reference.

#### Categories of FAQs

- a) Appointments
- b) Notifications
- c) Designers and Principal Designers
- d) Contractors and Principal Contractors
- e) Information
- f) H&S File
- g) H&S Plan
- h) Transitional Arrangements
- i) Other

#### A) Appointments

**1. Q – Time of PD appointment – clarify when appointment is necessary.**

**A -** The regulations are not prescriptive, however Reg 5(2) states “*as soon as practicable, and, in any event before the construction phase begins*”. If the PD is to fulfil their duties they need to be appointed before significant decisions are made, if practicable at concept stage. Not to do so leaves clients open to the consequences of their decision to delay, remembering that until they appoint the PD they are responsible

for delivery of the PD functions. With more emphasis on clients taking on more responsibility under CDM and the Client being deemed to be PD until a PD appointed; this may encourage an early appointment of the PD

**2. Q – Can one organisation be the Principal Designer and Principal Contractor at the same time?**

**A –** Yes, this is the potential situation for D&B projects. The PD drawing up the “Employers Requirements” would hand over the role of PD upon the appointment of the D&B contractor.

**3. Q – What is the legal implication of the Client not appointing a PD or PC?**

**A –** Until an appointment is made, the Client is deemed to be the PD or PC. For domestic projects, with two or more contractors, the designer in control of the pre-construction phase becomes the PD and the contractor in control of the construction phase contractor becomes the PC by default.

**4. Q – Can the PD role be transferred?**

**A – Yes.** Consideration could possibly be given to the transfer of the PD role to ensure that it is with the most appropriate organisation. For example the PD for the pre-tender phase may not be appropriate for a design and build contract, where the contractor has control of all planning and design. Where all significant permanent works design has been completed transfer to the Principal Contractor may be appropriate where the remaining significant design is of temporary works, or specialist elements, changes etc. . .

**5. Q – Can an organisation assume that they will be the PD if no appointment made**

**A – NO,** appointment as PD must be made in writing. If no appointment is made, the Client becomes the PD by default, except for domestic projects where it is the “designer in control of the pre-construction phase”. Of course if there is only one contractor there is no requirement for a PD.

**6. Q – I am a domestic client, with no construction experience, undertaking a small Construction project on my house where there will be more than one Contractor.– what do I do if no Designer will accept the responsibility of being the Principal Designer and no Contractor will accept the responsibility of being the Principal Contractor?**

**A** – You are obviously well informed, however you have no specific responsibilities under CDM 2015, and you should explain that by doing the work your designer and contractors are automatically taking on the responsibilities.

**7. Q - I am a SME client undertaking a small Construction project on my business premises where there will be more than one Contractor – what do I do if no Designer will accept the responsibility of being the Principal Designer and no Contractor will accept the responsibility of being the Principal Contractor?**

**A** – To comply with the law you must not appoint them. Find and appoint another designer and/or contractor who has the necessary skills, etc and is prepared to accept the PD/PC appointment.

**8. Q – What is the situation with appointments on Design and Build projects?**

**A** – It is expected that the designer preparing the Employers Brief will be the PD, or that the PD has been actively involved in its preparation as they are in control of the health and safety aspects of “pre-construction” planning and design until a D&B contract is let. At this stage the PD role should be transferred to the Contractor. However different client organisations will want to implement the legislation to suit their own organisational and contractual arrangements.

**9. Q - Must there be a Principal Designer in place for the full duration of the project (like a CDMC was).**

**A** – There must be a PD appointed whenever there is pre-construction phase work being carried out. This means any planning, design etc. It would be unusual for there not to be some design underway, such as contractor or specialist design, or changes to designs including changes during commissioning, right up to completion of the works. It would therefore be normal for the PD appointment to run to the completion of the works and the handover of the health and safety file to the client.

**10. Q – In what circumstances could a PD appointment be terminated before the end of the project Construction Phase?**

**A** – Where there is no “pre-construction” activity, such as planning and design, the Client can terminate the PD appointment. This could be where there is a lengthy commissioning or hand-over period, or where contractual arrangements require a proving period before the construction phase is contractually complete (practical completion)

**11. Q – What happens if the PD role is terminated before construction is complete.**

**A –** The Client is placed at risk in the event of any changes or contractor design which may take place as there must be a PD appointed. Additionally, the PD responsibility to prepare the H&S File is transferred by the regulations to the PC. The PD cannot, however expect the PC to prepare the file to the point which the PD was in a position to. Remember the PD will be required to plan, manage and monitor and co-ordinate the Temporary Works designs

## **B) Notifications**

**12. Q - Does the client have to re-notify a project already notified under CDM2007?**

**A - No**, but if updates are required to the existing notification the responsibility falls to the client.

**13. Q – What happens with notification if a project which has been notified under CDM2007 continues to run after 5<sup>th</sup> October 2015 (so the CDM-C has ceased to exist)?**

**A –** If the project is notifiable under CDM 2015 the client should update the notification naming the PD, as this is a significant change.

**14. Q – Are domestic Projects notifiable?**

**A – Yes**, when the notification criteria in Reg 6 are met, however the notification has to be made by the PC, the contractor if only one contractor or the PD if there is a written agreement with the client.

**15. Q – Notifying HSE: Form F (10) – Contact details - If I am named on the F10 will I be the person responsible for fulfilling the statutory duty.**

**A –** It is the organisation which should be noted as the PD, or PC. The contact details requested by the enforcing authority are so they have someone they can contact if the need arises.

**16. Q – A client has arranged a facilities management (FM) contract (a term contract) which includes preventative planned and responsive maintenance. Is this notifiable, and would a single construction phase plan be appropriate to cover all the construction activity.**

**A –** If the construction work is part of the FM contract, for example services maintenance, building maintenance works etc., it would be reasonable to consider the

whole as a “construction project”, to which the notification criteria apply (regulation 6), and an all-encompassing construction phase plan would be appropriate provided that it includes the relevant arrangements for the separate elements of work, which would need to be managed in ways which are proportionate to the risks. The plan should be clear where specific works should be considered as separate projects.

**17. Q – A utilities provider has arranged a term contract which includes responsive maintenance. Is this notifiable, and would a single construction phase plan be appropriate to cover all the construction activity?**

**A –** All the work falls within the definition of construction, therefore the notification criteria apply (regulation 6). A single construction phase plan would be appropriate provided that it includes the relevant arrangements for responsive maintenance, which would need to be managed in ways which are proportionate to the risks.

**18. Q – Following damage to a domestic house the insurance company has agreed to works requiring design and more than one contractor. Is this domestic work?**

**A –** This is an interesting question, which is yet to be tested. However if the work is being carried out for the insurance company, with the insurers appointing designers and contractors it this is “in the course or furtherance of a business” which means that there is no domestic client.

### **C) Designers & Principle Designers**

**19. Q - Is a manufacturer of a component a designer under CDM?**

**A - Yes**, but only if the component is purpose-built for the project (e.g. a kitchen assembly) or they develop a detailed design (e.g. for the fabrication of steelwork components specific to the project)

**20. Q - Can the PD dictate to the PC how work shall be done?**

**A - No**, but they should ensure that appropriate and relevant information is provided, liaise with the PC and if they are aware of anything which may contribute to risk reduction they should make it known.

**21. Q – Can the PD instruct contractors on how to carry out their work?**

**A –** Yes, but only in respect to the areas within the responsibility of the PD, that is the health and safety aspects of the pre-construction phase (planning and design), and the

obtaining of information for the H&S file (which should be clearly defined in the pre-construction information or contractual arrangements).

**22. Q – Can the PD instruct designers on how to carry out their work?**

**A –** Yes, but only in respect to the areas within the responsibility of the PD, that is the health and safety aspects of the pre-construction phase (planning and design), the and the obtaining of information for the H&S file (which should be clearly defined in the pre-construction information or contractual arrangements).

**23. Q – What is meant by “design finished”, what is the duration of the PD role?**

**A –** “design finished” can be deemed to be “ready for construction to start” however , further additional design, such as detail design, fabrication design, specialist design, Temporary Works Designs and design arising from changes may still be required, and these are also within the PD’s responsibility.

**24. Q – How can pre-construction Phase be carrying on at the same time as the Construction Phase?**

**A –** The pre-construction phase is the planning, design etc. associated with any construction work. This is related to both the overall construction, and also to elements (e.g. Temporary Works, detail design, specialist/contractor design), Overall construction may therefore be underway while designs etc. (pre-construction phase) of elements are underway.

## **D) Contractors and Principle Contractors**

So far there are no FAQs in this section

## **E) Information**

**25. Q -Does pre-construction information prepared under CDM2007 have to be re-issued?**

**A –** No

**26. Q - What should designers, or contractors, do if they consider that the pre-construction information is inadequate?**

**A -** Inform the PD, explaining why it is considered inadequate. This may be an opportunity to obtain better information in an appropriate format.

**27. Q: We carry out 'design and build' contracts, in which the information we get at tender stage from main contractors is sometimes very limited and we generally have no communication route to the client. How does or how will this affect our compliance with CDM 2015?**

**A:** The requirement for the Client (and where there are two or more contractors, the PD) to pass pre-construction information to designers could improve this situation, as it provides the avenue for you as a supply chain designer to check with the PD that you have the relevant, available pre-construction information.

## **F) Health & Safety File**

**28. Q - Does the H&S file being prepared have to satisfy the requirements of the 2015 regulations?**

**A – Yes,** however if it is being prepared in accordance with CDM 2007 it will be compliant, but it does need to be passed to the PD when appointed for completion.

**29. Q - Does an existing H&S file (prepared under CDM 2007 or CDM 1994) have to be reviewed and revised?**

**A – No,** however it does need to be made available to anyone who may need to use it.

**30. Q – Health and Safety File – handover seems to be the responsibility of both the PD and the PC, how does that work?**

**A –** The PD has the responsibility to prepare and hand over the Health and Safety File. If the PD commission is terminated before completion of the construction phase, this responsibility is transferred under the regulations to the Principal Contractor. The main area to be carefully managed is the contractual arrangements to compile the health and safety file.

**31. Q – What happens to the H&S File if the PD role is terminated before construction is complete?**

**A –** The PD responsibility to prepare the H&S File is transferred by the regulations to the PC. The PD cannot, however expect the PC to prepare the file to the point which the PD was in a position to.

## G) Health & Safety Plan

**32. Q - Does the Construction Phase H&S Plan prepared under CDM2007 have to be re-written / re-issued?**

**A - No**, however the requirements for review and updating must be followed

**33. Q - If a geotechnical investigation is being carried out, does there need to be a H&S Plan?**

**A - Yes.** The work is “construction work” and the contractor must draw up a plan. This should be proportionate to the complexity and risks involved in carrying out the investigation.

**34. Q - Does an asbestos survey need a H&S plan?**

**A - Possibly.** Although the regulations state that surveys are excluded from the scope of CDM compliance, investigations are included. The list of particular risks identified in Schedule 3 includes risk from chemical and biological substances, so it can be argued that because the construction phase plan must include specific measures to deal with the risks set out in schedule 3 an intrusive asbestos survey should be considered an investigation and therefore within the scope of CDM. There is no HSE guidance on this yet. (although it has been raised with HSE).

## H) Transitional Arrangements

**35. Q - Does the client have to re-notify a project already notified under CDM2007?**

**A - No**, but if updates are required to the existing notification the responsibility falls to the client.

**36. Q – What happens with notification if a project which has been notified under CDM2007 continues to run after 5<sup>th</sup> October 2015 (so the CDM-C has ceased to exist)?**

**A –** If the project is notifiable under CDM 2015 the client should update the notification naming the PD, as this is a significant change.

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**38. Q - Does pre-construction information prepared under CDM2007 have to be re-issued?**

**A – No**

**39. Q - Does the H&S file being prepared have to satisfy the requirements of the 2015 regulations?**

**A – Yes**, however if it is being prepared in accordance with CDM 2007 it will be compliant, but it does need to be passed to the PD when appointed for completion.

**40. Q - Does an existing H&S file (prepared under CDM 2007 or CDM 1994) have to be reviewed and revised?**

**A – No**, however it does need to be made available to anyone who may need to use it

## **I) Other**

**41. Q - Does a Risk register have to be produced?**

**A - No**, but it is a good way of managing, recording and tracking risk management considerations and actions.

**42. Q - Do we have to use BIM?**

**A - Depends on the contract.** Level 2 for Government contracts as a minimum, for example

**43. Q – How can pre-construction Phase be carrying on at the same time as the Construction Phase?**

**A –** The pre-construction phase is the planning, design etc. associated with any construction work. This is related to both the overall construction, and also to elements (e.g. Temporary Works, detail design, specialist/contractor design), Overall construction may therefore be underway while designs etc. (pre-construction phase) of elements are underway.

**44. Q – Who is responsible for fulfilling the Welfare Requirement?**

A – This is no change from the CDM 2007 regulations, the PC must supply suitable facilities and the Client has to ensure they are in place. Where there is only one contractor that contractor must supply the welfare. Each contractor is responsible for making sure that the welfare is in place as far as it will affect their employees, before going to work

Although the welfare is the responsibility of the PC, the PD should give thought to the proposed layout / arrangement as it is part of the “pre-construction” planning. The planning should cover the identification of a suitable location to accommodate proposed compound / welfare facilities. The PD could identify locations such that users will not be exposed to dangers from the surrounding environment (e.g. gas tanks, vehicles moving off the public highway and running into the site compound / welfare facilities etc) or on site activities (e.g. vehicle and plant movements, lifting, chemical stores etc)..

**45. Q – There are no references to the requirements for competence, how can I be satisfied that those I appoint are competent?**

A – The regulations require that those engaged have sufficient information, instruction and experience, and organisational arrangements in the case of organisations. L153 sections 58-62 and 162-168 provide further details. There are references to competent persons in Part 4 (site conditions).

**46. Q – How can I be satisfied that the PD has sufficient information, instruction and experience, and organisational arrangements in the case of organisations?**

A - One way to be satisfied is for the PD team to have at least one member who meets the criteria for individuals contained within the old CDM 2007 ACoP L144, Appendix 4 (organisational) and 5 (more advanced individual criteria for complex projects) and also meets the ICE Register Attribute criteria.

**47. Q – A client has arranged a facilities management (FM) contract (a term contract) which includes preventative planned and responsive maintenance. Is this notifiable, and would a single construction phase plan be appropriate to cover all the construction activity.**

A – If the construction work is part of the FM contract, for example services maintenance, building maintenance works etc., it would be reasonable to consider the whole as a “construction project”, to which the notification criteria apply (regulation 6), and an all-encompassing construction phase plan would be appropriate provided that it includes the relevant arrangements for the separate elements of work, which would

need to be managed in ways which are proportionate to the risks. The plan should be clear where specific works should be considered as separate projects.

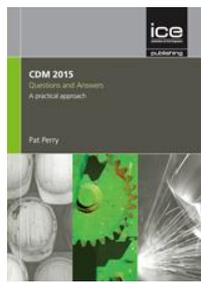
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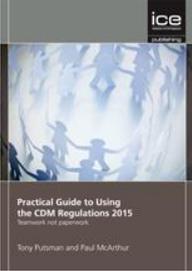
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**49. Q – Following damage to a domestic house the insurance company has agreed to works requiring design and more than one contractor. Is this domestic work?**

A – This is an interesting question, which is yet to be tested. However if the work is being carried out for the insurance company, with the insurers appointing designers and contractors it this is “in the course or furtherance of a business” which means that there is no domestic client.

The following publications from Thomas Telford Ltd. go into more detail and provide useful guidance to the interpretation and application of the Regulations.

Further Reading		
1	<p><b>CDM 2015: Questions and Answers, 3rd edition</b> Pat Perry</p> <p><a href="#">CDM2015:QuestionsandAnswers</a></p>	
2	<p><b>CDM Regulations 2015 Explained</b> Raymond Joyce</p> <p><a href="#">CDMRegulations2015Explained</a></p>	

3	<p><b>Practical Guide to Using the CDM Regulations 2015: Teamwork not Paperwork</b>  <b>Tony Putsman and Paul McArthur</b></p> <p><a href="#"><u>PracticalGuideUsingtheCDMRegultions2015</u></a></p>	
4	<p>In addition, the HSE have published Guidance L153 at:  <a href="#"><u>HSEGuidanceL153</u></a></p>	
5	<p><b>Additional Useful Links:</b></p> <p>Further HSE and CITB documents and links are available as follows:</p> <p><a href="#"><u>Need building work done? Short guide for clients on CDM 2015 INDG411</u></a> (for small clients)</p> <p><a href="#"><u>Construction Phase Plan (CDM 2015) CIS80</u></a> (simplified)</p> <p>HSE webpages</p> <p><a href="#"><u>CDM 2015</u></a>  <a href="#"><u>What do I need to do?</u></a>  <a href="#"><u>Transitional arrangements</u></a>  <a href="#"><u>Legal requirements</u></a>  <a href="#"><u>Notification of a construction project</u></a></p> <p>Industry Guidance documents – aimed at Small and Medium Enterprises (SMEs), but scalable.</p> <p><a href="#"><u>Clients</u></a>  <a href="#"><u>Principal Designers</u></a>  <a href="#"><u>Principal Contractors</u></a>  <a href="#"><u>Designers</u></a>  <a href="#"><u>Contractors</u></a>  <a href="#"><u>Workers</u></a></p> <p><a href="#"><u>CDM wizard app for a construction phase plan</u></a> -aimed at SMEs</p>	