



APL Guidance Note

Construction (Design & Management) Regulations 2015

Other guidance available at

<https://www.hse.gov.uk/pubns/cis80.pdf>

Introduction

The Construction (Design & Management) Regulations (CDM) were first introduced in the UK during 1994. They were subsequently amended as CDM 2007 and now as CDM 2015.

The CDM Regulations cover the management of health, safety and welfare when carrying out construction projects and are intended to focus attention on the planning and management of health and safety throughout the complete entirety of the construction project, from earliest design and planning onwards to construction.

Subject to some transitional provisions, CDM 2015 comes into effect from 6 April 2015.

Does CDM apply to APL members?

CDM 2015 applies to all “construction” projects in Great Britain, irrespective of the duration of the project or the number of workers engaged in the work.

The first consideration to make therefore should be “is what we do classed as construction work?” Obviously, if the work is not classed as “construction work” then the regulations will not apply.

Whilst the CDM 2015 regulations define what is meant by construction work the current guidance does not elaborate further and an Approved Code of Practice (ACOP) is not yet available. Interestingly, CDM2007 and its attendant ACOP specifically excluded tree planting and general horticultural work from CDM so it is a fair assumption that the same criteria and approach applies to the 2015 regulations.

In essence, the recommended approach to this would be to exclude ‘soft landscaping’ from CDM but apply it to ‘hard’ landscaping works.

If 'hard landscaping' is involved then typically this could involve elements of "construction work". Construction work is defined as meaning the carrying out of any building, civil engineering or engineering construction work e.g. building retaining walls, drainage channels, structures such as a patio, conservatories and garden rooms, driveways etc. A full definition of "construction work" can be found within the Construction (Design and Management) Regulations 2015 –Regulation 2 Interpretation by following the link below;

<http://www.hse.gov.uk/pubns/books/l153.htm>

Some construction projects will include operations which are not themselves construction work e.g. soft landscaping within a new housing development. Where this is the case, the overlap between the construction and non-construction work should be addressed in the management arrangements for the site and the principal contractor's construction phase plan. For example, you may well be asked to provide risk assessments and method statements (RAMS) under the general health and safety arrangements for the site. This will be as part of the general "co-operation and co-ordination" requirements contained within the Management of Health and Safety at Work Regulations (MHSW) and not specifically CDM.

Key Changes to CDM 2015

Fewer Notifiable Projects to HSE

The 'thresholds' for notifying the HSE of "construction projects" on the F10 form has now changed. This will result in fewer notifications having to be made to the HSE.

The previous clause appertaining to "30 working days of construction activity" now has the added requirement ofand have more than 20 workers simultaneously at any point in the project. This being the case, the project becomes notifiable to the HSE.

The 500 person days of "construction work" clause is still included. For example, 20 workers on site simultaneously for 25 days of construction work equals 500 person days and thus becomes a 'notifiable' project.

Domestic Client Duties now included

The regulations now include 'domestic client' duties and differentiate between 'commercial clients' and 'domestic clients'.

A 'domestic client' is classed as a client for whom a construction project is carried out which is not done in connection with a business. A domestic client therefore is someone who has construction work done on their own home, or the home of a family member, which is not

done in connection with a business. If the work is in connection with a business attached to domestic premises, such as a shop, the client is not a domestic client.

‘Commercial clients’ are organisations or individuals for whom a construction project is carried out in connection with a business, whether the business operates for profit or not. Local authorities, housing associations, charities, landlords and other businesses may own domestic properties, but they are not a domestic client for the purposes of CDM 2015.

The Regulations apply in full to commercial clients. For domestic clients, the effect of regulation 7 is to pass the ‘domestic client’ duties on to other dutyholders e.g. contractor.

The CDM-C has been replaced by the new role of principal Designer (PD).

The CDM-Coordinator (CDM-C) under the 2007 regulations has now gone. The new appointment of Principal Designer will now effectively deliver the functions that were previously delivered by the CDM-C e.g. helping the client compile the pre-construction information, developing and delivering the health and safety file, coordinating H&S during the pre-construction phase.

Whereas a CDM-C was required to be appointed previously for all ‘notifiable projects’ under CDM2007 this has now changed. A PD must be appointed for all projects that involve more than one contractor at any time on site. This will effectively ensure that a formal coordinator function is provided for the vast majority of “construction projects” and not only ‘notifiable’ ones as previously.

Construction Phase Plans for every project

Every “construction project” will now require a construction phase health and safety plan (CPHSP). Previously, this was provided by the Principal Contractor and was required only for notifiable projects.

Where only one contractor is appointed for the project then the CPHSP will be produced by that contractor. Where two or more contractors are engaged on the project, this will necessitate the appointment of a principal contractor (PC). The PC will produce the CPHSP in this instance.

Transitional Arrangements

The CDM 2015 regulations recognise that some “construction projects” will have started before CDM 2015 came into force on 6th April 2015 and will continue beyond this date. For these projects, transitional arrangements apply.

These transitional arrangements are summarised as follows;

- For projects involving more than one contractor which started before 6 April 2015, where by that date the client has not appointed a CDM co-ordinator, the client:
 - (a) must appoint a principal designer, as soon as practicable, if the construction phase has not started;
 - (b) is not required to appoint a principal designer if the construction phase has started, but may do so if they wish.
- Where on 6 April 2015 the client has appointed a CDM co-ordinator, they must appoint a principal designer within six months – i.e. by 6 October 2015.
- Any pre-construction information, construction phase plan or health and safety file provided in accordance with the requirements of CDM 2007 are recognised as meeting the requirements of the equivalent provisions in CDM 2015;
- Notification of a project in accordance with CDM 2007 is recognised as a notification for the purposes of CDM 2015; and
- A principal contractor appointed under CDM 2007 will be considered to be a principal contractor for the purposes of CDM 2015.

Who is the Principal Contractor and what are the Contractors Duties?

Anyone who directly employs or engages construction workers or manages construction is a **contractor**.

Contractors include sub-contractors, any individual, sole trader, self-employed worker, or business that carries out, manages or controls construction work as part of their business. The duties on contractors apply whether the workers under their control are employees, self-employed or agency workers.

So, if you are engaged in “construction work” e.g. building a retaining wall then you will be classed as a contractor for the purposes of CDM 2015. Furthermore, if you design the said retaining wall you will also be classed as a ‘designer’ for the purposes of CDM 2015.

Where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on the project at any one time then the client must appoint in writing a contractor as **principal contractor**.

A **principal contractor** is the organisation or person that coordinates the work of the construction phase of a project so that it is carried out in a way that secures health and safety.

If you are a **contractor** (on single contractor projects) or appointed as **principal contractor** (on projects involving more than one contractor) then you will have the following general duties;

- Making the client aware of their duties under CDM 2015 or being satisfied that the client is aware of the duties the client has under CDM 2015;
- Contractors are required to plan, manage and monitor the construction work under their control in a way that controls the risks to health and safety;
- For single contractor projects, the contractor must ensure a construction phase health and safety plan (CPHSP) is drawn up as soon as is practicable before the construction site is set up and the work commences; Where a principal contractor is appointed then this is the duty of the principal contractor;
- For projects involving more than one contractor, the contractor is required to comply with the directions to secure health and safety given to them by the principal designer and/or principal contractor;
- When employing or appointing an individual to work on a construction site then you should make enquiries to make sure the individual has the necessary skills, knowledge, training and experience to carry out the work they will do in a way that secures health and safety for everyone working on the site;
- A contractor who employs workers or manages workers under their control must ensure that appropriate supervision is provided;
- Provide suitable site inductions;
- Prevent unauthorised access to the site;
- Provide welfare facilities that meet with the minimum requirements set out in schedule 2 of the regulations.

Construction Phase Plans

The construction phase plan must set out the arrangements for securing health and safety during the period construction work is carried out. These arrangements include site rules and any specific measures put in place where work involves one or more of the risks listed in Schedule 3 to the regulations.

For projects involving more than one contractor, the principal contractor must ensure the plan is drawn up during the pre-construction phase and before the construction site is set up. For single contractor projects this is the responsibility of that contractor.

The plan must record the arrangements for managing the significant health and safety risks associated with the construction phase of a project. It is the basis for communicating these arrangements to all those involved in the construction phase, so it should be easy to understand and as simple as possible.

The following list of topics should be considered when drawing up the plan:

(a) a description of the project such as key dates and details of key members of the project team;

(b) the management of the work including:

(i) the health and safety aims for the project;

(ii) the site rules;

(iii) arrangements to ensure cooperation between project team members and coordination of their work, e.g. regular site meetings;

(iv) arrangements for involving workers;

(v) site induction;

(vi) welfare facilities; and

(vii) fire and emergency procedures;

(c) the control of any of the specific site risks listed in Schedule 3 where they are relevant to the work involved.

A **simple plan** before the work starts is usually enough to show that you have thought about health and safety. An example provided by the HSE can be found by following the link below;

<http://www.hse.gov.uk/pubns/cis80.pdf>

If the job will last longer than 500 person days or 30 working days (with more than 20 people working at the same time) it will need to be notified to HSE and it is likely to be too complex for this simple plan format.

Health and Safety Files

Health and safety files are only required where a **principal designer** has been appointed (that is projects involving more than one contractor on site at any one time).

The file must contain relevant information about the project which should be taken into account when any construction work is carried out after the current project has finished. Information included should only be that which is needed to plan and carry out future work safely and without risks to health.

The **principal designer** must prepare the file, and review, update and revise it as the project progresses. If their appointment continues to the end of the project they must also pass the completed file to the client to keep. If the principal designer's appointment finishes before the end of the project, the file must be passed to the **principal contractor** for the remainder

of the project. The **principal contractor** must then take responsibility for reviewing, updating and revising it and passing it to the client when the project finishes.

The file must contain information about the current project likely to be needed to ensure health and safety during any subsequent work, such as maintenance, cleaning, refurbishment or demolition. When preparing the health and safety file, information on the following should be considered for inclusion:

- (a) a brief description of the work carried out;
- (b) any hazards that have not been eliminated through the design and construction processes, and how they have been addressed (e.g. surveys or other information concerning contaminated land);
- (c) key structural principles (e.g. bracing, sources of substantial stored energy – including pre- or post-tensioned members) and safe working loads for floors and roofs of any structures;
- (d) hazardous materials used (e.g. paints, insecticides etc.);
- (e) information regarding the removal or dismantling of installed plant and equipment (e.g. large pumps for water features, any special arrangements for lifting such equipment);
- (f) health and safety information about equipment provided for cleaning or maintaining the structure;
- (g) the nature, location and markings of significant services, including underground cables; gas supply equipment; etc;
- (h) information and as-built drawings of the structure, its plant and equipment.

Even if you do not have the specific responsibility for creating the file, as a contractor or organisation engaged on a construction project, you may have responsibility to provide information for inclusion within the health and safety file. The principal designer or principal contractor will inform you of the information requirements for the file.

Scenarios

The following examples have been developed in order to demonstrate the approach to CDM 2015 by APL members;

Member contacted by domestic client who needs a patio re-landscaped and a driveway installed

This work is 'hard' landscaping and by definition would be classed as "construction work" and therefore the regulations would apply.

The member would be responsible for developing a Construction Phase Health and Safety Plan and would attract the duties of the 'domestic client' also. A simple plan, such as the example provided by the HSE (above) would suffice. The member would be required to implement the duties of the contractor (above).

Given the scope of the work it is unlikely to last more than 30 working days or involve more than 20 workers so it would not be required to be notified to the HSE.

An assumption has been made that only the member is engaged as a 'single' contractor. No health and safety file is required.

Member contacted by an architect who is in charge of a domestic new build with associated landscaping works including contouring, turfing and a driveway installation.

On a project of this nature it is to be assumed that there will be more than one contractor and as such the architect will normally be the appointed principal designer (where there is more than one contractor engaged on the project) and a principal contractor will also have been appointed.

Again, the member will be carrying out 'hard' landscaping activities i.e. driveway installation and this element will be classed as "construction works". The member is therefore a construction contractor and the contractor duties will apply (above).

The member will also have to comply with the directions to secure health and safety given to them by the principal designer and/or principal contractor and comply with the parts of the construction phase health and safety plan (CPHSP) produced by the principal contractor that apply to them.

As there is a principal designer then this implies that a health and safety file will be produced for the project. As a contractor, the member organisation will be obligated to provide such information as is required for inclusion within the health and safety file.

Member contacted by a construction company to tender for soft landscaping with a new housing development.

Some construction projects will include operations which are not themselves construction work e.g. soft landscaping within a new housing development.

Where this is the case, the overlap between the construction and non-construction work should be addressed in the management arrangements for the site and the principal contractors' construction phase plan. For example, the member may well be asked to

provide risk assessments and method statements (RAMS) under the general health and safety arrangements for the site. This will be as part of the general “co-operation and co-ordination” requirements contained within the Management of Health and Safety at Work Regulations (MHSW) and not specifically CDM.

The member and their employees (workers) will normally be required to attend relevant site inductions (normally provided by the principal contractor) and comply with any site rules e.g. wearing of personal protective equipment.

Member approached by pub landlord who wants a kid’s playground installed in the beer garden.

The landlord of the pub will be classed as a ‘commercial client’ for the purposes of CDM.

If the installation just involves siting, erecting and fixing of playground equipment e.g. climbing frames etc. then this will not be classed as “construction work” and therefore CDM will not apply.

If however, the installation involves digging out and creating sub base and top course for a playground then this [potentially will be classed as “construction work” and CDM will apply. In this case, the member would be responsible for developing a Construction Phase Health and Safety Plan. A simple plan, such as the example provided by the HSE (above) would suffice. The member would be required to implement the duties of the contractor (above).

Given the scope of the work it is unlikely to last more than 30 working days or involve more than 20 workers so it would not be required to be notified to the HSE.

An assumption has been made that only the member is engaged as a ‘single’ contractor. No health and safety file is required.

Member approached by a ‘domestic client’ who wants a garden tidy up with a view to putting the house on the market

This is ‘soft landscaping’ and as such does not constitute “construction work” and is therefore outside of the scope of the CDM regulations.

Member carries out a patio job as a sole contractor. On completing the job, the customer then asks him to undertake some electrical work to install lighting in the garden. The member does not do this type of work and wishes to sub contract an electrician to carry out the work.

It has been assumed that this is a 'domestic client' project.

On this basis, this work is 'hard' landscaping and by definition would be classed as "construction work" and therefore the regulations would apply.

The member would be responsible for developing a Construction Phase Health and Safety Plan and would attract the duties of the 'domestic client' also. A simple plan, such as the example provided by the HSE (above) would suffice. The member would be required to implement the duties of the contractor (above).

The 'domestic client' duties are passed across to the contractor and in practice, this should involve doing little more to manage the work to ensure health and safety. Given the scope of the work it is unlikely to last more than 30 working days or involve more than 20 workers so it would not be required to be notified to the HSE.

As the original scope of work involved only a 'single' contractor then no health and safety file is required.

At the completion of the original 'scope of work' within the project the 'domestic client' now wishes for additional work to be carried out i.e. the design and installation of electrical lighting in the garden. The member chooses to appoint a subcontractor to undertake the works.

This then creates a project of "construction work" that involves more than one contractor, which necessitates the appointment of a principal designer and principal contractor. As this is a 'domestic client' scenario, the designer in control of the pre-construction phase of the project (i.e. the electrical contractor) is the principal designer and the contractor in control of the construction phase of the project (i.e. the member) is the principal contractor.

The original construction phase health and safety plan (CPHSP) developed for the patio works now needs to be amended to include the additional works i.e. the electrical installation. This is the responsibility of the member as the principal contractor. There is now also a requirement to provide a health and safety file at the end of the project to the client. This would be the responsibility of the electrical contractor, as principal designer.

Further Information and Advice

You can contact the "Alcumus Advice Line" on

Tel 01484 439930 and quote code HTA1591

Written and produced by;

Tim Meese
Senior Health & Safety Consultant
Alcumus SM &MS