

CDM REGULATIONS 2015: GUIDANCE UPDATE

HSE CDM 2015 Q&A Briefs published on CITB website

Official published guidance for duty holders under the CDM Regulations 2015 is available on both the HSE and CITB websites. See our [Summary of CDM 2015 Guidance](#).

HSE Question and Answer (Q&A) Briefs have now been published on the [CITB website](#) with the caveat that they are:

"not formal HSE guidance and are not intended to cover every aspect of the topic or be a 'one size fits all' answer, but provide consistent and helpful answers to some of the most common questions which have arisen about CDM 2015".

Seven briefs prepared by HSE

[HSE Q&A Briefs](#) (x7) are currently available (15.09.15). Readers are advised to check regularly for any updates.

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CDM 2015 Information and Templates

We have published a great deal of further information and templates designed to support Clients, Designers, Principal Designers/Contractors and Contractors in meeting their duties under CDM Regulations 2015.

[CLICK HERE](#) to view the full range of FREE information available.

This article was posted on 15th September 2015 on the PP Construction Safety Website.

SEE SEVEN HSE Q&A BRIEFS BELOW

Maintenance work

Q1. Does CDM 2015 apply to all maintenance work?

- A.** The definition of maintenance work has not changed. If the task in hand looks like construction work, requires construction skills and uses construction materials, it is construction work. General maintenance of fixed plant which mainly involves mechanical adjustments, replacing parts or lubrication is unlikely to be construction work.

If the maintenance work is construction work, and there is only one contractor, no PC or PD appointment is required. If more contractors are brought in, then a PC and PD need to be appointed for that particular project.

All construction work under CDM 2015 requires planning, but the plan for smaller jobs should be simple, short and proportionate to the risks.

Further Information

HSE Construction webpages

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

HSE legal series guidance

[Managing health and safety in construction: Construction \(Design and Management\) Regulations 2015 \(L153\)](#)

Maintenance – Term contract with a maintenance provider

Q1. I have a term contract with a maintenance or FM contractor (Typically 1-3 years). Do I need to notify this as a project under CDM 2015?

A. A term appointment by contract does not in itself trigger notification. CDM 2015 requires 'projects' to be notified. If the term contract includes work which is deemed to be a single project, and the project lasts more than 30 days, and at any time during that period there are more than 20 workers on site at one time, or lasts 500 person days, then the project becomes notifiable. Separate maintenance tasks carried out at separate locations, on separate buildings, do not automatically accumulate to form a single project. Note that notification is now a stand-alone duty; it does not trigger any other duties.

Whether the project is notifiable, or not, as above, a PC is required for those projects where more than one contractor is, or is likely to be, involved. In these cases a PD should also be appointed, but a contractor (probably the PC) may well have the necessary skills knowledge and experience to act as PD in those cases where the design work, or pre-construction planning, is straightforward.

A PC on smaller jobs needs to have a coordinating, planning, and managing role, but does not need to be on site or in close supervision, all the time. The emphasis we expect is on management, not on direct supervision. It is the contractors' duty to provide supervision.

A term-contractor may act as PC, if they have the skills, knowledge and experience, or the role can be given to a suitably qualified contractor who is brought in. This decision is in the gift of the client, who needs to take into account the risks of the work involved and the capabilities of his or her term contractor.

Further Information

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Self Build projects

Q1. How does CDM 2015 apply to Self Build projects?

- A. There are a number of potential scenarios. In all these scenarios the self builder is a 'domestic client' *if* the structure they are building will be a residential home they will live in, and is *not* constructed as part of a business. If the self builder is carrying out the work for a business purpose, or to sell the property directly, then the self builder is not a domestic client and the whole of CDM 2015 applies.

Self Build scenarios

1. The self builder does it all himself, employs no contractors, and uses the structure constructed as a home to live in afterwards. This will be a DIY project because no-one involved is 'at work' in the meaning of the Health and Safety at Work etc Act 1974.
2. The self builder appoints an architect or designer as Designer or Principal Designer, (Principal Designer where there is likely to be more than one contractor engaged on the project) and appoints that person or business to take on the client duties on behalf of the self builder. In this instance the Principal Designer may also be appointed as Principal Contractor, for the purpose of coordinating the construction phase, if that person or business has the skills, knowledge and experience to do the job. It is likely that many traditional architects will have the necessary project management skills and experience to carry out this role. In this case the self builder has no legal duties beyond the appointment of Principal Designer (PD) and Principal Contractor (PC).
3. The self builder employs a contractor to carry out construction work, and then appoints that contractor as PC for the duration of the project, because there is, or is likely to be, more than one contractor involved in the project. The emphasis will be on the coordination and management of the construction phase. In this case the self builder again has no legal duties beyond the initial appointments of PD and PC.
4. The self builder acts as their own project manager, employing individual trades at different times. In this instance the self builder steps out of the DIY arena, because they are taking control of construction work. Where a self builder controls the way in which construction work is carried out, by a person at work, they must comply with all the matters outlined in Part 4 of CDM 2015. This requirement is set out in Regulation 16 of CDM 2015, (which effectively replaces Reg 26 in CDM 2007). This is not a new requirement. In this scenario the self builder will in effect become a contractor. In this case HSE will expect self builders to demonstrate sufficient health and safety capability to meet the requirements of Part 4 of CDM 2015. Individual contractors will be expected to be able to advise the self builder on any specialist matters within their own work activities. HSE's expectation of a self builder in this position will be one of coordination and management, not of direct supervision of contractors on site. The self builder is entitled to expect contractors to plan, manage and monitor their own work in compliance with CDM 2015.

Further information

[The Self Build Portal](#)

Notification under CDM 2015

Q1. What is the threshold for notification and what implications does it have for other duties under CDM 2015?

- A.** The notification threshold for projects has changed. A project becomes notifiable where it lasts longer than 30 days AND has more than 20 workers, working simultaneously at any one point OR exceeds 500 person days. Increasing the notification threshold will reduce the number of projects required to be notified significantly, and thus reduce the burden on business.

Notification is a stand-alone requirement and does not give rise to any additional duties.

Q2. Can duty holders other than the client notify the project?

- A.** The duty to notify is placed upon the client. It will be acceptable common practice for others, particularly the PD, to notify the project on BEHALF of the client – but the duty is not delegable.

Q3. Why does the F10 have no facility for identifying persons other than the client as notifier?

- A.** Because the duty is the client's. If A. N. Other is notifying on behalf of the client they still have to complete it as if they were the client.

Key message for dutyholders/HSE field staff

There is a continued and disproportionate interest in the requirements of notification. CD Sector believe that this results from the culture that prevailed in much of the construction industry under CDM 2007 that the law only applied if a project was notifiable (*CDM job, CDM-able*). Of course that was wrong then and it is wrong now.

We must reiterate that CDM 2015 applies to ALL construction projects irrespective of size, duration or complexity and that whether a project is notifiable or not has no bearing on the duties to be discharged.

Further Information

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CDM Advisers

Q1. Are ‘CDM Advisers’ required by CDM 2015?

- A. No. CDM 2015 makes no mention of a role or dutyholder called a CDM Adviser. A CDM Adviser is not required by law.

CDM 2015 requires the client to appoint a Principal Designer (PD) and Principal Contractor (PC) where there is, or is likely to be, more than one contractor working on a project.

As with any appointment a client must ensure that the appointee has the requisite skills, knowledge and experience (SKE) to undertake the role of PD or PC.

In the majority of cases, PDs are likely to already have most of the required SKEs, and are capable of developing them, probably without realising it.

Q2. What if a prospective Principal Designer does not possess all the requisite skills, knowledge and experience (SKE) to undertake health and safety coordination?

- A. Usually an organisation will be appointed as PD. Only in the smallest projects is the PD likely to be an individual. As the PD function is new and will usually be taken on by a design organisation or project management team, it is anticipated that in the short term the PD may find that they lack *some* SKE.

There is nothing in CDM 2015 which prevents a PD from bringing in or buying in the services of specialists in a particular field to ensure their organisation is equipped with all the necessary SKE to undertake the role, and satisfy the client of their organisational capability.

Former CDM-Cs and other health and safety professionals may be in a position to offer these services.

The law does not allow the PD to delegate their responsibilities elsewhere. HSE expects that the adviser’s role is to provide a temporary mechanism of support for the PD while the necessary skills and knowledge are developed.

Q3. What should a construction client do if a prospective PD appointee intends to buy in health & safety coordination advice?

- A. Clients have responsibilities to appoint those in the role of PD who have the requisite SKE. Clients should therefore assure themselves of the reasons and arguments put forward by the PD for the inclusion of any brought or bought in advisory or support role, before accepting the arrangements and if necessary the client should review their selection of the PD.

Q4. What if a construction client wishes to get CDM advice?

- A. Some clients are seeking to appoint advisers to support them in the discharge of their client duties. This is not required by CDM 2015.

Any external advisor cannot assume the legal duties, responsibilities and/or functions of the client. The law does not allow the client to delegate their responsibilities elsewhere.

Q5. Is independent health and safety advice prohibited under CDM 2015?

- A.** No. One of the main drivers for the change in CDM, is to remove the cost and bureaucracy of dutyholders ‘contracting out’ their responsibilities to a third party and to ensure that those who actually control and lead construction projects are accountable for doing so – in short those who create the risk are responsible for managing it.

As has always been the case, some dutyholders may feel that they do require independent health and safety advice to supplement their own SKE. Specialist advice is not prohibited by CDM 2015. Indeed the procurement of specialist expertise to support the delivery of quality construction projects may be both necessary and effective, particularly in the short term while further expertise is developed within organisations.

Messages for dutyholders

1. The PD and PC have the responsibility to control and coordinate health and safety in the pre-construction and construction phases and this cannot be contracted out to a third party.
2. CDM advisers are not required under CDM 2015. CDM 2015 does not require a client to have an advisor – it requires the client to appoint those with the right skills, knowledge and experience for the PD and PC coordination functions.
3. The design professions should be providing designers with the skills to discharge the PD role for the future, to be able to deliver the health and safety outcomes of CDM 2015.
4. For many projects the steps required by the client and PD to comply with their legal requirements will only require straightforward actions. In most cases, those involved in small projects are not expected to do more than they currently are.

Further Information

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Principal Designer (PD) Appointment

Q1. What is the purpose of the principal designer?

- A. The PD function is provided, primarily to project manage and control the design stages (including design changes and modifications) of a construction project from concept to completion to ensure health and safety risks are properly identified, considered and controlled.

Q2. Who can carry out the role of the principal designer?

- A. The PD must be a designer - an architect, consulting engineer or quantity surveyor, or anyone who specifies and alters designs as part of their work. They can also be clients, contractors and tradespeople if they carry out design work or arrange for or instruct persons under their control to do so. They must have the right mix of skills, knowledge and experience (SKE) or organisational capability to carry out all the functions and responsibilities assigned to them in Regulations 11 and 12 and have **control** over the pre-construction phase.

Commonly, the PD is likely to be:

- **for larger projects** - a design practice or a technical department of a principal contractor e.g. a principal contractor doing design and build;
- **for smaller projects** - a self-employed architect/technician, small design practice, a project management company, a client's internal estates management team, or even a specialist tradesperson such as an electrician where they lead on the design function;

so long as they meet the criteria of;

- i. being a designer;
- ii. having the relevant SKE or organisational capability, and;
- iii. being in control of the pre-construction phase.

Q3. Does CDM 2015 require the principal designer to be a member of the project design team?

- A. **No.** The PD must be appointed by the client as soon as it is established that more than one contractor is or is likely to be working on the project to plan, manage, monitor and control the design stages.

If the client gets it right and appoints the PD early at the concept stage, then the appointment should commonly take place before the project design team has been fully identified or assembled. The PD may provide their own design team, appoint a team or manage and control any team appointed by others.

Whatever the model, which provides maximum flexibility for the client, - the PD must be able to prove to the client that they have the SKE or organisational capability to fulfil all the functions - proportionate to the nature, size, complexity and risk profile of the project. Once in place, the PD should

be in control of the design team so that they, and the design team, can carry out their roles effectively.

Q4. Can a client carry out the role of the principal designer?

- A. Yes.** If a client fails to, or decides not to appoint a PD the law provides that the PD role is automatically assigned to the client.

Many clients will choose to take on the PD role themselves but irrespective of whether by choice or otherwise, the client must have the SKE or organisational capability to fulfil all the PD functions and responsibilities effectively.

Q5. What if a domestic client fails to appoint a principal designer?

- A.** It is recognised that a domestic client is unlikely to know that they are required to do this. Should this be the case, the role of PD will automatically be carried out by the designer 'in control'. In most cases this is likely to be an architect or architectural technician.

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Principal designers on design and build projects

Q1. Is there a requirement to appoint a principal designer (PD) on a design and build (D&B) project?

- A.** Where there is more than one contractor working on any type of project, then the client must appoint in writing a PD to plan, manage, monitor and coordinate health and safety in the pre-construction phase.

Where this is the case, a PD should be appointed as early as possible in the design process.

It will be common for the D&B contractor to be appointed as both PD and principal contractor (PC).

Q2. What if the D&B contractor is the only contractor involved on the project?

- A.** If a D&B contractor undertakes all of the works and is the only contractor involved in the project, then there is no requirement to appoint a PD.

However, the D&B contractor will still need to ensure planning, managing, monitoring and coordination of the construction project (both the construction and pre-construction phases).

Q3. Are there situations where there could be more than one PD appointed during a D&B project's life?

- A.** **Yes.** But there should never be more than one PD appointed at any one time. For example, if a designer or architect has been given a design function which is separate to the D&B contractor e.g. concept design or taking a project through the planning approval process, then the initial designer could be appointed as PD for the time that their function on the project continues. When the initial PD appointment comes to an end, the D&B contractor is likely to then be appointed both PD and PC for the development of detailed design.

Q4. If a D&B contractor takes over the PD role from A.N. Other, would they be responsible for ensuring the initial PD had met their duties under CDM?

- A.** **No.** This would remain with the initially appointed PD - but some design review may be needed along with liaison with the original PD to ensure provision of design risk health and safety information.

Q5. Can a D&B contractor meet the requirements to be appointed as both PD and PC?

- A. Yes.** Irrespective of the project arrangements, the requirements for both the PD and PC role remain the same.

Any individual or organisation appointed to D&B for a client must have the skills, knowledge and experience (SKE), and if an organisation, the organisational capability, to carry out all the functions of both the PD and PC set out in regulations 11, 12, 13 and 14, throughout the life of the project.

The D&B contractor must demonstrate to the client that they have the necessary capabilities. The client must take reasonable steps to satisfy themselves that this is the case.

Q6. What if the D&B contractor refuses to take on the PD or PC role?

- A.** Firstly, the client should review their selection of contractor as refusal or reluctance may indicate insufficient SKE or organisational capability for the client to be able to appoint.

It may be that the buying or bringing in of additional expertise in specific areas will allow the D&B contractor to meet the requirements for appointment and allow the client to be satisfied that they have the right contractor for their project.

Where the D&B contractor does not take on the role of PD or PC, the client must appoint another party to take on those roles or take it upon themselves.

Where the client is a domestic client and fails to appoint a PD and / or PC, the contractor and designer in control (more than likely the D&B contractor) will automatically assume the functions of the PD and PC.