

THE CONSTRUCTION (DESIGN AND MANAGEMENT) (CDM) REGULATIONS 2015 – KEY CHANGES

The Construction (Design and Management) Regulations 2015 (“CDM 2015”) come into force on 6 April 2015. With effect from that date, the current Construction (Design and Management) Regulations 2007 (“CDM 2007”) are being repealed and will no longer apply. It is essential for everyone in the construction industry to be aware of the significant changes which CDM 2015 will introduce.

No more CDM co-ordinators

Perhaps the biggest change in CDM 2015 is that the role of CDM co-ordinator has been abolished. Clients must instead appoint a “principal designer” on any project involving, or anticipated to involve, more than one contractor. Since the definition of “contractor” includes sub-contractors, the vast majority of projects will require a principal designer.

The principal designer must be the designer with control over the pre-construction phase of the project. In many cases, the principal designer will be an architect or project manager (the definition of “designer” is wide enough to potentially include a project manager). It will be for clients to ensure that the principal designer is competent to fulfil the role of both principal designer and architect, project manager or other relevant specialism.

The role of the principal designer is set out in regulation 11 of CDM 2015 and includes planning, managing and monitoring the pre-construction phase and assisting the client in the provision of pre-construction information under regulation 4(4). The principal designer is responsible under regulation 12 for preparing and

maintaining the health and safety file, and will almost certainly also have separate duties as a designer under regulation 9.

CDM applies to domestic projects

Another important change is that CDM 2015 applies to domestic clients i.e. any client for whom a project is being carried out not in the course of business. This will mean that compliance with CDM becomes relevant on small domestic extension and refurbishment projects which were previously exempt.

Importantly, under regulation 7 of CDM 2015, the role of the client on domestic projects is to be fulfilled by the contractor (on a single contractor project), the principal contractor (on a multiple contractor project) or the principal designer (where he has agreed to do so in writing). This will minimise the burden on domestic clients who cannot reasonably be expected to have the knowledge or experience to carry out their CDM responsibilities. However, small contractors who work on domestic projects will need to ensure they are familiar with the duties of the client because they may be required to fulfil this role.

Changes to notification requirements

Whereas under CDM 2007 the CDM co-ordinator was responsible for notifying the project to the HSE, under CDM 2015, notification is the client’s responsibility.

The requirements for notification have also changed. Under CDM 2007, a project was notifiable if the construction phase was likely to involve more than 30 days or 500 person days of construction work. Under regulation 6 of CDM 2015 a project is notifiable if the construction work on site is scheduled to:

- last longer than 30 working days and have more than 20 workers working

simultaneously at any point during the project; or

- exceed 500 person days.

The changed criteria are likely to reduce the number of notifiable projects. However, notification is also no longer significant for the purposes of triggering additional CDM duties. For example, under CDM 2007, a principal contractor was required to be appointed if the project was notifiable. Under CDM 2015, the trigger for appointing a principal contractor is whether the project involves more than one contractor (including sub-contractors).

Construction phase plan always required

Under CDM 2007, a construction phase plan was only required for a notifiable project. Under CDM 2015, a construction phase plan is always required. Where a project involves only one contractor, and therefore no principal contractor has been appointed, the construction phase plan must be drawn up by the contractor.

Approved Code of Practice repealed

The Approved Code of Practice (“ACOP”) which accompanies CDM 2007 is also being revoked with effect from 6 April 2015 and is to be replaced with HSE Legal (L) Series Guidance. The HSE consultation conducted prior to the introduction of CDM 2015 found that the ACOP was too lengthy and difficult to follow.

Transitional arrangements

For live projects, there will be a transition period running from 6 April 2015 until 6 October 2015. Full details of this period are set out in Schedule 4 to CDM 2015, with the key points being as follows:

- On projects where a CDM co-ordinator has already been appointed, the client has until 6 October 2015 to replace its CDM co-ordinator with a principal designer (unless the construction phase will complete before that date).
- During the transition phase, CDM co-ordinators will have revised duties in order to comply with CDM 2015.
- For projects where a CDM co-ordinator has not yet been appointed and where

there will be more than one contractor, a principal designer must be appointed instead.

- On projects with no principal contractor appointed, a principal contractor must be appointed as soon as practicable if the project involves more than one contractor.
- A principal contractor already appointed under CDM 2007 will remain principal contractor for the purposes of CDM 2015.
- On a project involving only one contractor, the contractor must draw up a construction phase plan as soon as reasonably practicable.
- Any pre-construction information, construction phase plan or health and safety file produced under CDM 2007 will be deemed to have been provided under CDM 2015.
- Notifications to the HSE under CDM 2007 will still be valid for the purposes of CDM 2015.

Contractual changes

Due to the transitional arrangements, there is no real need to amend existing contracts to refer to CDM 2015 once it comes into force, but contracts which have not yet been entered into and where work will start after 6 April 2015 should be amended to refer to CDM 2015.

On the consultant side, CDM co-ordinator appointment documents will no longer be required and standard design consultant appointments will need to be amended to cater for the possibility of a designer being appointed as a “principal designer”.

Neither the current RIBA Standard Conditions of Appointment nor the ACE Agreements expressly refer to CDM 2007, but the template schedules of services which accompany them do, so are likely to require amendment.

As for building contracts, JCT have confirmed that they will shortly be issuing a supplementary amendment for CDM 2015, which will need to be incorporated into all contracts where work will start after 6 April 2015.

The NEC3 Engineering and Construction Contract does not require amendment as

it does not refer expressly to CDM 2007, although standard Z clauses and Works Information documents should be checked to see if they contain any references to CDM 2007 which need updating.

The Infrastructure Conditions of Contract standard forms contain a specific clause relating to CDM 2007 which will need to be updated. It is unclear whether the ICC publishers will issue an official update covering this.

The MF/1 Model Form of Contract Revision 6 and the FIDIC forms of contract do not expressly refer to CDM 2007, although standard schedules of bespoke amendments to these contracts may do so, in which case they would need updating.

Where a contract has not yet been entered into but work will start before 6 April 2015 (and will therefore initially fall under CDM 2007), the parties may wish to add wording to the contract acknowledging that CDM 2015 will come into force during the course of the project and that they will comply with it.

CHANGES TO CITB GRANTS SCHEME

Following the changes to the way in which CITB Levy is calculated, the CITB Grants Scheme has now been revised and the categories of employee that employers can claim grant for will change from **1 August 2015**.

The changes to the CITB Levy will make it more closely aligned to the HMRC Construction Industry Scheme (CIS) and on their 2016 Levy return employers will be required to declare payments made to NET CIS Sub-Contractors between 6 April 2015 and 5 April 2016. There will be a short transition period from 6 April 2015 until 31 July 2015 when employers will be able to claim grant for training undertaken by NET CIS Sub-Contractors as well as PAYE employees and Labour Only Sub-Contractors (LOSC). However, from the new CITB Grants Scheme year on 1 August 2015, employers will no longer be

able to claim grant for Labour Only Sub-Contractors.

The grant day rate will remain at £50 per employee per day for the new 2015/16 Grants Scheme year; however, the Supplementary Payment made to employers who submit their Levy returns on time will return to its original rate of 10% from 1 August 2015, after having been at an increased rate of 22% for the last few years.

NSCC Training Manager Sarah Wicks said: *“As we build up the industry’s skills capabilities, it is vital that the CITB Levy and Grant system is used to support the training and qualifications that the industry needs. Employers should ensure that they submit their Levy Return on time so they can claim the grants available and there is advice and support available from CITB and NSCC.”* Further information on the changes to the CITB Levy is available on the **CITB website**.

AT A GLANCE CURRENT AND FORTHCOMING CHANGES TO EMPLOYMENT LAW

April sees a number of significant Employment Law developments. Whilst Shared Parental Leave has attracted all the publicity, there are other changes that will also take effect.

APRIL 2015

- For dismissals that take effect on or after 6 April 2015, the maximum compensatory award for unfair dismissal has increased to £78,335 or is capped at 52 weeks' pay if the employee's annual salary is less than £78,335.
- A "week's pay" for calculating the basic award for unfair dismissal and for statutory redundancy purposes has increased to £475.
- Shared Parental Leave (SPL) is now available to parents of children due to be born or placed for adoption on or after 5 April 2015.
- Additional Paternity Leave is being replaced by SPL and will not be

available where the expected week of childbirth starts on or after 5 April 2015.

- There is the annual increase to Statutory Maternity, Paternity, Adoption and Shared Parental Pay: this has been increased to £139.58 per week.
- Adoptive parents no longer need to have 26 weeks' service in order to benefit from Adoption Leave and Pay.
- New rights for the primary adopter to take paid time off for up to five adoption appointments and for the secondary adopter to take unpaid time off for up to two adoption appointments.
- The right to unpaid Parental Leave has been extended to parents of any child under the age of 18.

- Surrogate parents (who meet the eligibility criteria) can now take Ordinary Paternity Leave and Pay, Adoption Leave and Pay and Shared Parental Leave and Pay.

MAY 2015

- The 'Fit for Work' service which will provide occupational health assessments and assist employees who have been absent for four weeks or more to return to work is expected to be fully operational throughout the UK by the end of May 2015.

JULY 2015

- From 1 July, the two year cap on backdated holiday pay claims raised in the Employment Tribunal will come into force. This cap will apply only to claims raised on or after 1 July 2015.

Monthly Bulletin of Indices

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
2005	711	713	713	713	713	714	769	769	769	768	769	770
2006	769	770	770	769	769	769	793	794	793	793	793	793
2007	793	795	795	795	795	795	824	825	825	825	826	826
2008	826	827	827	831	831	832	874	874	874	873	873	874
2009	874	875	874	874	875	875	875	875	875	876	876	876
2010	876	878	878	878	879	879	879	879	879	879	880	880
2011	880	885	885	885	888	889	898	898	909	908	908	911
2012	910	911	913	912	910	912	912	914	915	915	924	924
2013	939	940	943	942	941	938	937	937	938	937	937	937
2014	941	941	942	941	941	941	961	961	961	960	960	962
2015	961	961*	961*	960*								

*Provisional

If your operatives carry SCORE cards and experience difficulties in accessing sites because they don't carry a competitor's card please show the contractor this letter and if the problem persists contact the Federation office. Please note however that the Federation is in discussions with CITB regarding inclusion of the CSCS logo on SCORE cards



Dear Member

SCOTTISH CONSTRUCTION OPERATIVES REGISTRATION EXECUTIVE (SCORE)

As you will be aware we, as a Federation and as an industry in Scotland, only support the Scottish Construction Operatives Registration Executive (SCORE) card.

There are many reasons for this with one of the main issues being the health and safety testing criteria.

SCORE demands that all candidates as a very minimum undergo and pass a one day health and safety awareness training day with a test for retained knowledge at the day's conclusion. We do not subscribe to the touch screen test as used by other schemes as we judge this method inferior and does not encompass elements of our craft.

We also believe that our SVQ level 3 requirements are higher than other schemes, which means overall that a SCORE card holder is better prepared and qualified for the workplace, whether that workplace is working with other contractors or indeed within the private sector.

You may be interested to learn that we have received a letter from the First Minister advising that SCORE is now enshrined within Scottish Procurement Documentation.

Should you have difficulty in your operatives being excluded from site on the grounds of holding a SCORE card and will not be allowed access to such sites until they have obtained a competitor's card, we would be pleased if you could advise the Federation to enable us to discuss this with the contractor concerned to bring the situation to a speedy conclusion.

Yours faithfully

Ian H Rogers

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Chief Executive