ICE Health & Safety Expert Panel:

**CDM 2015 Regulations Frequently Asked Questions (FAQ’s)** (Last updated January 2016)

**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 publication of final regulations, L153 and Industry Guidance, and subsequent statements by the HSE in print and in conference sessions.

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. They were updated in December 2015.

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
- j) CDM Advisers – information published by HSE

**A) Appointments**

Note: Appointments are made by the client, and cannot be sub-let.

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. This would ensure that the D&B contractor remains in control of the full scope of the works for which they have been contracted.

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 have the necessary skills, etc. and are 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

12. Q – Do PDs and PCs have to be appointed on FM or term contracts?
   A - The HSE state: Whether the project is notifiable, or not, 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 co-ordinating, planning, and managing role, but does not need to be on site or in close supervision, all the time. The emphasis HSE expects 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 their term contractor.

B) Notifications

13. Q - Does the client have to re-notify a project already notified under CDM2007?
   A - YES, if the threshold for notification for CDM2015 is met, because a project still running after 5th October 2015 is required to have a PD and no CDM-C,

14. Q – What happens with notification if a project which has been notified under CDM2007 continues to run after 5th October 2015 (so the CDM-C has ceased to exist)?
A – If the project is notifiable under CDM 2015, and the threshold for notification under CDM 2015 is met, the client should update the notification naming the PD, as this is a significant change.

15. 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.

16. 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.

17. 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.

18. 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.
Further detail provided by HSE: 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.

The HSE have publicly stated the view that it would be prudent for a client awarding a term contract which will include construction activities to make a single notification covering the scope of the works. (This does, however, suggest that a “project” is in existence, and if there are two or more contractors a PD and a PC will have to be appointed)

19. 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 & Principal Designers

20. Q – Who can be a Principal Designer (PD)?

A – The PD must be a designer, and must be in control of the pre-construction phase of the works. That includes co-ordination of design, exchange of information etc. They do not have to be the lead designer, but they do have to be in a position to identify risks and ensure that they are properly managed by the design team. Designers include those who manage design (e.g. the main contractor on D&B contracts).

21. Q – Does a PD have to be a named individual?

A – The PD should (except in exceptional circumstances), be an organisation with appropriate resources, organisational ability, skills, knowledge and experience. Clients should NOT seek to appoint individuals, however it is good practice to name a lead individual as the principal point of contact.
22. Q – What if a designer does not adequately manage significant risk? Is the liability transferred to the PD?
   A – Each designer remains responsible for the consequences of their actions, however if a PD fails to identify a significant risk which is reasonably apparent this may attract a liability to the PD. This does not take away any of the designers' liabilities.

23. Q – Can a PD pass on their responsibilities to another organisation?
   A – No, however the PD can bring in additional resources, for example a specialist in an aspect of work, planners, BIM experts or advisers (see section j below). They will be responsible for their work, and liable for their actions, however the PD remains responsible as PD.

24. 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)

25. 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.

26. 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).

27. 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).

28. 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.

29. Q – How can a 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 Principal Contractors
30. Q – As the Principal Contractor how far do I have to go in supervising sub-contractors?
A - Contractors do not have to undertake detailed supervision of contractor’s work

E) Information
31. Q - Does pre-construction information prepared under CDM2007 have to be re-issued?
A – No, however any further relevant information should continue to be provided to those who require it.

32. 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.

33. 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
34. 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.

35. 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.

36. 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.

G) Health & Safety Plan
37. Q - Does the Construction Phase H&S Plan prepared under CDM2007 have to be re-written / re-issued?
   A – With the passing of time since the implementation of CDM2015 and the associated removal of the CDM-C, the requirement for appointment of PD, along with changing responsibilities, and project developments, the Plan will need to be reviewed and updated. A wholesale re-write should not be required if regular reviews and revisions have been taking place.

38. 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.
39. 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
These ended on 5th October 2015

40. 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. From 5th October any reference to CDM Co-ordinator should have been removed and the project re-notified by the client, if not already done. (see Q13 above)

41. Q – What happens with notification if a project which has been notified under CDM2007 continues to run after 5th 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. This must be done by 5th October to reflect the change in appointments (see Q14 above)

42. 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. From 5th October any plan referring to CDM Co-ordinators will be out of date and need revising to reflect the new appointments.

43. Q - Does pre-construction information prepared under CDM2007 have to be re-issued?
   A – No, and from 5th October there is no requirement to re-issue information.

44. 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. From
45. 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. *From 5th October this remains the responsibility of the client.*

46. 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.

47. Q - Do we have to use BIM?
   A – BIM is not a requirement under CDM 2015, however the Industry Guidance indicates that BIM may be used as a management tool, also it will depends on client requirements and the contract. Level 2 BIM for Government contracts as a minimum, for example

48. 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.

49. 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
expose do 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.).

50. 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).

51. 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.

52. Q - Maintenance & Facilities Management (FM). Does CDM 2015 apply to all maintenance work?
A. The HSE state: 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 Principal Contractor (PC) or Principal Designer (PD) appointment is required. If more contractors are brought in, then a PC and PD need to be appointed for that particular project.

53. 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.

54. 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.

55. 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.

J) CDM Advisors

Information published by HSE (source www.hse.gov.org.uk)

Q1. Are ‘CDM Advisers’ required by CDM 2015?
   A. No. CDM 2015 makes no mention of a role or duty holder 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 requisites? 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 duty holders 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 duty holders**

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.
<table>
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<th>Further Reading</th>
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| **1** CDM 2015: Questions and Answers, 3rd edition  
Pat Perry  
[CDM2015:QuestionsandAnswers](#) |
| **2** CDM Regulations 2015 Explained  
Raymond Joyce  
[CDMRegulations2015Explained](#) |
| **3** Practical Guide to Using the CDM Regulations 2015: Teamwork not Paperwork  
Tony Putsman and Paul McArthur  
[PracticalGuidetoUsingtheCDMRegulations2015](#) |
| **4** In addition, the HSE have published Guidance L153 at:  
[HSEGuidanceL153](#) |
These FAQs have been prepared under the guidance of the HSE Health and Safety Expert Panel. Originally published in April 2015 they have been updated as follows:

- Updated information on Principal Designer roles, liability and resourcing
- Material published by HSE relating to CDM Advisers, Term Contracts and FM works
- Clarification on end of transition period.
- Additional clarification following end of transitional period
- Additional link to latest HSE information

Any comments on the FAQs should be addressed to the ICE at health&safety@ice.org.uk