

Design and Build Contract

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Amendment 1 Issued April 2007

CDM Regulations

Clause number and heading	Action
Article 5 heading	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'
Article 5	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator' (twice); Delete '6(5)' and insert '14(1)'
Article 6	Delete '6(5)' and insert '14(2)'
Footnote [6]	Delete existing text and insert : 'Insert the name of the CDM Co-ordinator only where the Contractor is not to fulfil that role, and that of the Principal Contractor only if that is to be a person other than the Contractor. If the project is not notifiable under the CDM Regulations 2007 (i.e. a project which is not likely to involve more than 30 days, or 500 person days, of construction work or which is being carried out for a homeowner as a purely domestic project), delete Articles 5 and 6 in their entirety.'
Contract Particulars, 1-1	<p>Insert new entry:</p> <p>'CDM Planning Period'^[1] shall mean the period of _____ * days/weeks</p> <p>* ending on the Date of Possession/ * beginning/ending on _____ 20 _____'</p> <p>Insert new footnote text for ^[1]: 'Under the CDM Regulations 2007 every client is expressly required to allocate sufficient time (the CDM Planning Period) prior to the commencement of construction to enable contractors and others to carry out necessary CDM planning and preparation. There may be cases where that planning and preparation needs to be completed earlier than the Date of Possession and adaptation of the entries may be needed where there are Sections.'</p>
Clause 1-1	<p>'CDM Regulations': Delete '1994' and insert '2007'; Delete the definitions of 'Health and Safety Plan' and 'Planning Supervisor'; Insert the following new definitions:</p> <p>'CDM Co-ordinator: the Contractor or other person named in Article 5 or any successor appointed by the Employer.</p> <p>CDM Planning Period: the minimum amount of time referred to in regulation 10(2)(c) of the CDM Regulations, as specified in the Contract Particulars (against the reference to clause 1-1).</p> <p>Construction Phase Plan: the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.'</p>
Clause 2-1	Delete 'Health and Safety' and insert 'Construction Phase'; After 'Plan and' delete 'the' and insert 'other'

Clause number and heading	Action
Clause 2-7-2	After 'of the Contract Documents' insert ', together with any pre-construction information required for the purposes of regulation 10 of the CDM Regulations'
Clause 2-27	Delete '3-18-4' and insert '3-18-5'
Clause 3-4-2	Insert new sub-clause as 3-4-2-3: 'that each party undertakes to the other in relation to the Works and the site duly to comply with the CDM Regulations;'; Renumber existing sub-clauses -3,-4 and -5 as -4,-5 and -6 respectively
Clause 3-9-4	Delete 'Where the Contractor is and while he remains the Planning Supervisor, he' and insert 'The Contractor'; Delete 'regulation 14' and insert 'regulation 20 (if he is the CDM Co-ordinator) or regulation 22'; Delete 'If he has such objection' and insert 'If the Contractor has any reasonable objection'
Clause 3-14	Delete 'Health and Safety' and insert 'Construction Phase'
Clause 3-18	Delete existing text and insert : 'Each Party acknowledges that he is aware of and undertakes to the other that in relation to the Works and site he will duly comply with the CDM Regulations. Without limitation, where the project that comprises or includes the Works is notifiable: -1 where the Contractor is not the CDM Co-ordinator, the Employer shall ensure both that the CDM Co-ordinator carries out all his duties and, where the Contractor is not the Principal Contractor, that the Principal Contractor carries out all his duties under those regulations; -2 where the Contractor is and while he remains the CDM Co-ordinator, he shall comply with all the duties of a CDM Co-ordinator and shall without charge prepare, and deliver to the Employer, the health and safety file; -3 where the Contractor is and while he remains the Principal Contractor, he shall ensure that: -1 the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, and that any subsequent amendment to it by the Contractor is notified to the Employer and the CDM Co-ordinator; and -2 welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase ¹ ; -4 where the Contractor is not the Principal Contractor, he shall promptly inform the Principal Contractor of the identity of each sub-contractor that he appoints and each sub-subcontractor appointment notified to him; -5 where the Contractor is not or ceases to be the CDM Co-ordinator, promptly upon the written request of the CDM Co-ordinator, the Contractor shall provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the CDM Co-ordinator (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.' Insert new footnote text for ¹ 1: 'There is a duty on contractors to ensure compliance with Schedule 2 of the CDM Regulations so far as is reasonably practicable, whether or not the project is notifiable and whether or not the contractor is the Principal Contractor.'
Clause 3-19	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'

Assignment, Third Party Rights and Collateral Warranties

Clause number and heading	Action
Contract Particulars, 7-2	Delete '(where Sections do not apply)' and insert '(If neither entry is deleted, clause 7-2 will apply.)' Delete existing bracketed text under Sections and insert : '(If clause 7-2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)'
Part 2 (E), middle column heading	Delete 'State whether clause 7E and/or clause 7F applies' and insert 'Type(s) of warranty required' and after ^[31] insert '(SCWa/P&T, SCWa/F, SCWa/E) limited to'
Part 2 (E) Notes, item (i)	Delete 'where clause 7E is stated to apply ^[31] ,'; After '(A) above' delete 'and' and insert comma; After '(C) above' insert 'and the Employer'; After 'clause 7E' delete ^[33] ,'; After 'identified sub-contractor' insert ^[31] ,
Part 2 (E) Notes, item (ii)	Delete item number and text; Renumber existing items (iii), (iv) and (v) as (ii), (iii) and (iv) respectively
Part 2 (E) Notes, item (v)	After 'Collateral Warranty' delete '-' and insert 'SCWa/E and'
Footnote [31]	Delete existing text and insert : 'Where a sub-contractor is required to grant only a particular type or types of the Collateral Warranties referred to in clause 7E (i.e. the Sub-Contractor Collateral Warranty for a Purchaser or Tenant (SCWa/P&T), for a Funder (SCWa/F) and for the Employer (SCWa/E)), state the particular type(s). All three Collateral Warranties are documents prepared by JCT.'
Footnote [32]	Delete 'and sub-contractors who maintain Product Guarantee cover only'
Footnote [33]	Delete footnote number and text
Clause 7E heading	Delete '- Purchasers and Tenants/Funder'
Clause 7E	After 'to a Purchaser, Tenant or Funder' insert 'or to the Employer'; After 'SCWa/P&T' delete 'or' and insert comma; After 'SCWa/F' insert 'or SCWa/E'
Clause 7F	Delete clause heading, number and text

Guidance Notes to Amendment 1

CDM Regulations

General

The Construction (Design and Management) Regulations 2007 replace the 1994 Regulations with effect from 6 April 2007. They also incorporate the provisions of the Construction (Health, Safety and Welfare) Regulations 1996 not incorporated in the Work at Height Regulations 2005, i.e. health and safety duties on site, welfare facilities and inspection report particulars. The latter provisions are contained in Part 4 and Schedules 2 and 3 respectively.

As a result, the 2007 Regulations impose on clients, designers, contractors (including sub-contractors at all levels), and on others controlling the way in which any construction work is carried out (e.g. construction or project managers and contract administrators), a wider and more coherent set of health, safety and welfare duties.

As part of the greater emphasis placed on the need to plan and on communication and co-ordination, the functions of the Planning Supervisor are replaced by those of a CDM co-ordinator, and a 'construction phase plan' replaces the Health and Safety Plan; the Health and Safety file provisions remain. Amendment 1 incorporates the changed terms. The 2007

Regulations also eliminate the distinction in the 1994 Regulations between the notification requirements and applicability provisions for particular regulations. While the Regulations maintain the basic 1994 criteria as to notifiability, i.e. 30 days or 500 person days of construction work, there are now only two types of project – notifiable and non-notifiable. The ‘five or more workers’ requirements of the 1994 Regulations have been omitted.

Domestic clients, i.e. those not acting in the course or furtherance of a business, are exempt from duties under the 2007 Regulations in relation to purely domestic projects, which in turn are treated as non-notifiable.

Part 2 – General duties

Part 2 of the 2007 Regulations (regulations 4 to 13) sets out the duties that apply to all projects, whether or not notifiable, commencing with duties that apply to clients, designers and contractors alike. These include the requirement of competence and the duty to check appointees, a general duty to co-operate and seek co-operation with others concerned (now expressly extended to adjoining construction sites) and duties for all, so far as reasonably practicable, both to co-ordinate their activities with others and to ensure the application of general principles of prevention (specified in the Management of Health and Safety at Work Regulations 1998).

Part 2 then sets out specific duties for clients, designers and contractors respectively. In the case of clients, these include a duty to ensure that suitable arrangements are in place for the management of health, safety and welfare aspects of the project, including the allocation of sufficient time for construction phase planning and preparation for health and safety purposes. This is coupled with obligations to supply information on the site and its proposed use and to specify the minimum period to be allowed to contractors for planning and preparation before construction starts (referred to in the Amendment as the ‘CDM Planning Period’).

Main contractors are under similar obligations with respect to their sub-contractors and so on down the chain; provisions are being inserted in the JCT sub-contracts and sub-subcontract. Part 2 also sets out in detail contractors’ information and training obligations with respect to their workers and an obligation, so far as is practicable, to make Schedule 2 welfare provision. The commencement of work by any contractor is conditional (inter alia) upon reasonable steps having been taken to prevent unauthorised site access.

Part 3 – Notifiable Project duties

Part 3 (regulations 14 to 24) relates to notifiable projects. The client is required to appoint the CDM co-ordinator as soon as is practicable after initial design work or other preparation has begun – further design work is conditional on that appointment, as is construction, which (in addition to access restrictions) is also conditional on the appointment of the principal contractor, production of the construction phase plan and notification to the Health and Safety Executive.

The duties of the CDM co-ordinator and principal contractor are slightly more widely drawn than in the 1994 Regulations and the principal contractor’s responsibilities now include ensuring the provision of Schedule 2 welfare facilities. Part 3 imposes certain additional duties on each participant both with respect to these appointees and generally. These in general follow naturally from the Part 2 obligations and the functions and duties of the two appointees but there is now a duty on all contractors promptly to supply to the principal contractor any information relevant to health and safety, as well as that identified for inclusion in the Health and Safety file.

Assignment, Third Party Rights and Collateral Warranties

The Contract Particulars associated with clause 7.2 have been revised to make clear that clause 7.2 applies unless otherwise stated. They have also been revised so that where clause 7.2 applies it will apply to each Section of the Works unless the relevant entry is amended.

Clause 7E now additionally provides for a warranty for Employer (previously clause 7F) and incorporates specific reference to the recently published Sub-Contractor Collateral Warranty for Employer (SCWa/E). Consequential changes have been made to Part 2(E) of the Contract Particulars and clause 7F deleted.