

Intermediate Building Contract
Intermediate Sub-Contract with sub-contractor's design
 (ICSub/D/A and ICSub/D/C)

Amendment 1
Issued April 2007

CDM Regulations

Clause number and heading	Action
ICSub/D/A	
Article 2	Delete 'regulation 13' and insert 'regulations 11, 12 and 18'
Sub-Contract Particulars, item 5-4	<p>Delete existing entry and insert:</p> <p>'4 The Sub-Contractor's CDM Planning Period^[1] is _____ weeks</p> <p>'5 The period of notice to commence work on site required to enable a start to be made to *the Sub-Contract Works/each Section (inclusive of the Sub-Contractor's CDM Planning Period) is _____ weeks'</p> <p>Insert new footnote text for ^[1]: 'The minimum amount of time for CDM planning and preparation, as referred to in regulation 13(3) of the CDM Regulations, to be allowed to the Sub-Contractor before he begins his construction work.'</p> <p>Renumber existing items '5 and '6 as '6 and '7 respectively</p>
Sub-Contract Particulars, item 5-5	After 'commence work (see item' delete '5-4' and insert '5-5'
Sub-Contract Particulars, item 6-1	<p>First bullet, after 'for work over 3.30 metres' insert ^[1];</p> <p>Insert new bullet: 'provision of reasonable measures to prevent access by unauthorised persons;';</p> <p>Insert new footnote text for ^[1]: 'Consideration should be given to the Work at Height Regulations 2005 and the item amended as appropriate.'</p>
Schedule of Information, item 1-3	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'
Footnote [24]	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'
Schedule of Information, item 2	Delete 'Health and Safety' and insert 'Construction Phase' (twice)
Footnote [28]	<p>Delete existing footnote text and insert: 'Delete if the project is not notifiable under the CDM Regulations 2007.'</p>
Notes on Annexures to the Schedule of Information, 2	Delete 'Health and Safety' and insert 'Construction Phase'

Clause number and heading

Action

ICSub/D/C

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 person named as such in the Schedule of Information or any successor appointed by the Employer.</p> <p>Construction Phase Plan: where the project is notifiable under the CDM Regulations, those parts of the construction phase plan for the Main Contract applicable to the Sub-Contract Works and annexed to the Schedule of Information, together with any updates and revisions of it by the Principal Contractor notified to the Sub-Contractor before or during the progress of the Sub-Contract Works.</p> <p>Sub-Contractor's CDM Planning Period: the minimum amount of time referred to in regulation 13(3) of the CDM Regulations, as specified in the Sub-Contract Particulars (item 5-4).</p>
Clause 2-1	<p>Delete 'Health and Safety' and insert 'Construction Phase'; After 'Plan and' delete 'the' and insert 'other'</p>
Clause 2-1-3	<p>Delete 'regulation 13' and insert 'regulations 11, 12 and 18'; Delete ', including cooperation with the Planning Supervisor and others as required by regulation 13(2)(c)'</p>
Clause 2-5-3	<p>Delete 'regulation 13' and insert 'regulations 11, 12 and 18'</p>
Clause 2-9-2	<p>Delete 'regulation 13' and insert 'regulations 11, 12 and 18'</p>
Clause 3-3-2	<p>Delete existing text and insert:</p> <p>'the sub-subcontract shall provide that:</p> <ul style="list-style-type: none">.1 each party undertakes to the other in relation to the Main Contract Works and the site duly to comply with the CDM Regulations;.2 if by the final date for its payment stated in the sub-subcontract the Sub-Contractor fails properly to pay any amount, or any part of it, due to the sub-subcontractor, the Sub-Contractor shall pay to the sub-subcontractor in addition to the amount not properly paid simple interest thereon at the Interest Rate for the period until such payment is made; such payment of interest to be on and subject to terms equivalent to those of clauses 4-12-4 and 4-14-4.'
Clause 3-5-2	<p>Delete 'regulation 13' and insert 'regulations 11, 12 and 18'</p>
Clause 3-18	<p>Delete 'Where the Main Contract Particulars state that all the CDM Regulations apply:' and insert:</p> <p>'Each Party undertakes to the other in relation to the Main Contract Works and the site duly to comply with the CDM Regulations. Without limitation, where the Main Contract Particulars state that the project that comprises or includes those works is notifiable under the CDM Regulations:'</p>
Clause 3-18-1	<p>Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'</p>
Clause 3-18-2	<p>Delete 'development' and insert 'updates or revisions'; Delete 'Health and Safety' and insert 'Construction Phase'</p>
Clause 3-18-4	<p>Delete '3-18-3' and insert '3-18-4'</p>

Guidance Notes to Amendment 1

CDM Regulations

General

The Construction (Design and Management) Regulations 2007 impose on clients, designers, construction/project managers, contractors and sub-contractors at all levels, a wider and more coherent set of health, safety and welfare duties than the previous (1994) Regulations. A sub-contractor has the same duties as a contractor and, where he designs, will also have the obligations of a designer.

Under the 2007 Regulations, 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. JCT 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 2007 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.

Part 2 of the Regulations (regulations 4 to 13) sets out duties that apply to all projects, Part 3 those that apply to notifiable projects (regulations 14 to 24).

Amendments

In terms of CDM Regulations, JCT Amendment 1 makes strictly limited amendments to the Sub-Contract itself. Changes in terminology and cross-references apart, they consist of:

- the insertion in clause 3-18 of the Sub-Contract Conditions of express cross-undertakings to comply;
- a requirement in clause 3-3 that similar undertakings be included in sub-subcontracts; and
- at item 5-4 of the Sub-Contract Particulars (contained in the Sub-Contract Agreement), the insertion of an entry specifying the Sub-Contractor's minimum CDM Planning Period.

By regulation 13(3) every contractor at every level is required to specify the minimum period available to his sub-contractors for that purpose. Even if it subsequently becomes apparent that part of the commencement on site notice period could otherwise be waived, there should be no requirement for the sub-contractor to start site work until he has had proper opportunity to plan and prepare.

Other duties and preconditions

Under the Regulations each sub-contractor on every project, like the main/principal contractor, has a wide variety of duties, starting with requirements of competence (both of himself and those he engages), the general duties of co-operation, co-ordination, prevention, provision of welfare facilities and monitoring, and the preconditions to commencing construction work, e.g. secure site, CDM Planning Period and ensuring the training, site induction (where not provided by the principal contractor) and supply of information to workers (regulations 4 to 7 and 13).

Where the project is notifiable, there are additional preconditions to construction work which sub-contractors should check (naming of CDM co-ordinator and principal contractor, supply to the sub-contractor of relevant parts of the construction phase plan and notice of the project being given to the Health and Safety Executive by the CDM co-ordinator), various duties to supply information to the principal contractor (risks, identity of (sub-)sub-contractors and injuries etc.) and other duties such as compliance with directions from the principal contractor (regulation 19).

Where there is sub-contractor's design, there are also the duties of a designer in each case, e.g. avoidance of foreseeable health and safety risks and supply of sufficient information (regulations 11, 12 and, if notifiable, 18).

Health and Safety

The contractor will need to agree with his sub-contractors how Health and Safety issues will be dealt with. This will involve compliance with the Construction (Design and Management) Regulations 2007 and the Work at Height Regulations 2005, and the development of, for example, Risk Assessments, Method Statements, and the Control of Substances Hazardous to Health (COSHH) assessments.