



JCLI PRACTICE NOTE No. 8: Revision 1: June 2012
Practice Notes for JCLI LWC 2012 and JCLI LWCD 2012

Amendment 1: CDM Regulations and Landscape Works

June 2015

Notes:

This Amendment to JCLI PN8 Revision 1 of June 2012 provides guidance on the application of the CDM Regulations 2015 to landscape works and explains the CDM options in the JCLI Amendment 1 April 2015 documents for JCLI LWC 2012 and JCLI LWCD 2012.

See Amendment 1 (June 2015) for JCLI Practice Note No 9 (June 2012) for guidance on the application of the CDM Regulations 2015 to landscape maintenance works and to JCLI LMWC (2012 with appropriate Amendment 1 document)

The Health and Safety Executive have agreed the revised text below.

Amendments:

Delete item 3 CDM Regulations, including the number, title and text.

Insert:

'3. CDM Regulations (Fifth Recital in JCLI LWC – Sixth Recital in JCLI LWCD)

The following advice is based on the Construction (Design and Management) Regulations 2015 (CDM Regulations 2015), the associated document "Managing Health and Safety in Construction: Construction (Design and Management) Regulations 2015: Guidance on Regulations L153" published by the Health and Safety Executive and written advice from the Health and Safety Executive (HSE).

The CDM Regulations 2015 apply to "construction work" as defined in the Regulations. Additionally, HSE has advised that planting and general horticultural work are not "construction work".

The HSE has advised that "construction work" as defined in the CDM Regulations 2015 includes earthworks, all hard landscape works, installation of pipes and pipelines, demolition, dismantling, and preparation for such works (including site clearance and excavation) and the maintenance of such works. Demolition,

dismantling and site clearance are “construction work” when the items concerned are within the scope of the “construction work” definition in the CDM Regulations, even when undertaken in preparation for planting and general horticultural work.

The HSE has advised that planting and general horticultural work includes topsoiling, grading, amelioration, planting, grassing, agricultural fencing, tree work, soft landscape maintenance and associated preparation (including excavation and site clearance but excluding site clearance of “construction work”). These works are therefore not “construction work” and the CDM Regulations 2015 do not apply to them.

However, even if the CDM Regulations do not apply, the Health and Safety at Work Act (HASAW Act) and other Health and Safety Regulations made under the HASAW Act (e.g. the Management of Health and Safety at Work Regulations) will still apply. The requirements of the HASAW Act and the other Regulations are very similar to those of the CDM Regulations, except for the specific appointments made under the CDM Regulations. The HSE has advised that where good health and safety practice is being followed the differences between a project where the CDM Regulations apply and one where they do not are likely to be minimal.

When soft landscape work is part of a construction project, unless the soft landscape work can be segregated from the “construction work” physically or by time, it will be part of the construction project. Therefore, although there will be no duties under the CDM Regulations associated with the soft landscape work, there will be duties relating to health and safety on the construction site.

Therefore, for example, in circumstances when another contractor (or contractors) who is carrying out “construction work” as defined in the Regulations is using the same (or adjoining) areas or the same access as a landscape contractor who is undertaking work to which the Regulations do not apply, the landscape contractor would need to comply with health and safety instructions from the Principal Contractor appointed for the “construction work”. Wherever possible the landscape contractor should be advised in the tender documents of any particular situation where it is expected this may occur. Additionally, the “designers” responsible for preparing the tender documents for the “construction work” should minimise the conflicts with other contractors (e.g. landscape and/or maintenance contractors) by the segregation of sites, accesses, etc. Also in these circumstances the “designer” for the landscape contract would need to cooperate and coordinate with the Principal Designer appointed for the other project in order to minimise and manage health and safety risks.

The CDM Regulations 2015 have special arrangements concerning domestic clients, i.e. clients who have work done on their own home (or garden) or the home of a family member, which is not done in connection with a business. However, without modification the JCLI Landscape Works Contract (JCLI LWC) and JCLI Landscape Works Contract with Contractor’s Design (JCLI LWCD) are not appropriate for projects for domestic clients. The JCLI Homeowner contracts are appropriate for projects for domestic clients.

In the JCLI LWC and LWCD, the extent to which the CDM Regulations apply to the project is to be stated in the Contract Particulars. The Amendment 1 (March 2015) documents for the JCT Minor Building Works Contracts 2011 include two options, which are whether the project is notifiable to HSE or not. The Amendment 1 (April

2015) documents for JCLI LWC 2012 and LWCD 2012 include three different options:

- a. The CDM Regulations do not apply, is for projects where none of the work is "construction work" as defined in the CDM Regulations 2015.

See the guidance above concerning the definition of "construction work".

The wording in the Contract Particulars, Articles 4 and 5 and clause 3.9 (and 2.1.4 in JCLI LWCD) allows for the possibility that circumstances may change (for example the addition of work to which the CDM Regulations apply). Hence Articles 4 and 5 and clause 3.9 (and 2.1.4 in JCLI LWCD) should not be deleted.

- b. The CDM Regulations apply but only one contractor will be required on site at any one time, is for projects which include "construction work" as defined in the CDM Regulations 2015, but where there will be only one contractor on site undertaking "construction work" at any one time. Sub-contractors are counted as contractors for this assessment.

This means that if there will be two (or more) contractors only one of whom is doing "construction work" then there is only one contractor in terms of the CDM Regulations, whether one is a sub-contractor to the other or not.

See the guidance above concerning the definition of "construction work".

The wording in the Contract Particulars, Articles 4 and 5 and clause 3.9 allows for the possibility that circumstances may change (for example an instruction for additional "construction work" which necessitates the use of a sub-contractor). Hence Articles 4 and 5 should not be deleted.

A Principal Designer, Principal Contractor, and a Health and Safety File are not required for projects with only one contractor. However, a Construction Phase (Health and Safety) Plan is required.

- c. The CDM Regulations apply and there will be more than one contractor on site, is for projects which include "construction work" and at some time during construction there will be more than one contractor undertaking "construction work". Sub-contractors are counted as contractors for this assessment.

See the guidance above concerning the definition of "construction work".

A Principal Designer, Principal Contractor, a Construction Phase (Health and Safety) Plan and a Health and Safety File are all required for projects with more than one contractor.

Regardless of how many contractors are involved doing "construction work", a project is notifiable to HSE if it involves:

either, more than 30 days of "construction work" and more than 20 persons carrying out "construction work" simultaneously at any time during the project;
or, more than 500 person days of "construction work".

Items of work in the project which are not "construction work" should not be counted in the assessment of whether the project is notifiable.

Since notification of a project to HSE might apply to both options b and c above, the Amendment 1 documents for JCLI LWC and LWCD also include an item to indicate whether the project is notifiable to HSE or not. ’

For information only

This document is issued by the **JCLI Contracts Forum** comprising:

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