



**JCLI PRACTICE NOTE No. 9: Revision 1: June 2012**  
**Practice Notes for JCLI LMWC 2012**

**Amendment 1: CDM Regulations and Landscape Maintenance**

**June 2015**

**Notes:**

This Amendment to JCLI PN9 Revision 1 of June 2012 provides guidance on the application of the CDM Regulations 2015 to landscape maintenance works and explains the CDM options in the JCLI Amendment 1 April 2015 document for JCLI LMWC 2012.

See Amendment 1 (June 2015) for JCLI Practice Note No 8 (June 2012) for guidance on the application of the CDM Regulations 2015 to landscape works and to JCLI LWC and LWCD (2012 editions with appropriate Amendment 1 documents)

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 (Fourth Recital)**

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 maintenance work is part of a construction project, unless the soft landscape maintenance 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 maintenance 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 maintenance contractor who is undertaking work to which the Regulations do not apply, the landscape maintenance contractor would need to comply with health and safety instructions from the Principal Contractor appointed for the “construction work”. Wherever possible the landscape maintenance 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 maintenance 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 Maintenance Works Contract (JCLI LMWC) is not appropriate for projects for domestic clients.

The interpretation of the extent to which the Regulations apply to maintenance contracts which include “construction work” (e.g. the maintenance of hard landscape, drainage or buildings) depends on whether the maintenance contract is considered as a project or whether different elements of work are considered as 'projects'. The current interpretation is that the Regulations do not apply to the

contact as a whole but that items of "construction work" or maintenance of "construction work" included in a landscape maintenance contract (e.g. a small new footpath, resurfacing footpaths, painting the tractor shed, clearing out drainage system) should be considered as 'projects' in themselves for the purposes of the Regulations. If only one contractor will be involved with an item of "construction work" then option b below applies, but if more than one contractor is required to do the item then option c below applies. These individual items of "construction work" will normally not exceed the criteria for notification (see below).

A construction project should not be split up and absorbed into a maintenance contract in order to avoid the CDM Regulations 2015 because the Regulations will apply. Also the Conditions of Contract in JCLI LMWC do not include adequate provisions for construction work (for example: no start or completion dates, liquidated damages, insurance of the works, rectification period or retention).

In the JCLI LMWC, the extent to which the CDM Regulations apply to the project is to be stated in the Contract Particulars. Amendment 1 (March 2015) for the JCT Minor Building Works Contract 2011 includes two options, which are whether the project is notifiable to HSE or not. The Amendment 1 (April 2015) document for JCLI LMWC 2012 includes 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. This option will only apply to projects which only include the maintenance of soft landscape (i.e. do not include the maintenance of any "construction work").

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 the addition of work to which the CDM Regulations apply). Hence Articles 4 and 5 and clause 3.9 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" and the application of the Regulations to landscape maintenance contracts.

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 items of "construction work" requiring only one contractor.

However, a Construction Phase (Health and Safety) Plan is required for each item of “construction work”.

- c. The CDM Regulations apply and there will be more than one contractor on site, is for projects which include one or more items of "construction work" and at least one of these items will require more than one contractor. Sub-contractors are counted as contractors for this assessment.

See the guidance above concerning the definition of “construction work” and the application of the Regulations to landscape maintenance contracts.

A Principal Designer, Principal Contractor, a Construction Phase (Health and Safety) Plan and a Health and Safety File are all required for items of “construction work” requiring more than one contractor.

Regardless of how many contractors are involved doing an item of “construction work”, the item of work 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”.

Since notification of one or more items of “construction work” to HSE might apply to both options b and c above, Amendment 1 for JCLI LMWC also includes an item to indicate whether the project is notifiable to HSE or not. Any items of “construction work” for which notification is envisaged should be listed in the specification preliminaries. ’

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

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