

# Client Obligations in Ground Investigation Contracts

## Introduction

This note has been written to provide general advice and guidance to the Clients of members of the AGS on the CDM regulations with particular regard to Ground Investigation. It is not intended to be an exhaustive set of rules, or to replace the role of professional advisors in relation to Health and Safety issues in general and the CDM regulations in particular. It is intended to assist Clients with the proper implementation of the CDM regulations. It should also be noted that, even where CDM does not formally apply, the procedures and philosophy represent good practice and should be encouraged.

The Client is the person for whom the project is carried out. The Client has ultimate responsibility for a project and will have instigated the ground investigation. This is the case even where this is planned, and/or, procured by a third party. If you are in control of a project, are paying, or will pay, for the activities that form the project, and are the person who has initiated the project, then you are the Client under CDM.

## Application of the CDM regulations

There are two general criteria associated with the implementation of the Regulations:

- Applicability of CDM to a project
- Statutory notification

The CDM regulations do not apply to site work, except in the case of demolition and dismantling, when the largest number of persons at work on the site including visitors at any one time is less than 5 and the Project is not notifiable. The duties of Designers, defined under Regulation 13, still apply.

For a project to be notifiable it should fulfil either of the following conditions:

- There are, or are likely to be, more than 500 person days of construction work involved in the project, or
- Construction activity lasts, or is likely to last, at least 30 project working days.

Construction is specifically defined as including investigatory works for the purpose of the CDM Regulations.

## Client Obligations

The Client has various obligations under the CDM regulations. These are statutory obligations and must be complied with. It is possible for the Client to appoint an Agent to act on his behalf. In that case the Agent must have the appropriate capability, and must be properly notified to the Health and Safety Executive.

The Client's key responsibility is to establish the health and safety regime. He does this by undertaking the following:

- Accepting that CDM applies and that it is implemented (see above)
- Appointing a Planning Supervisor, including checking to ensure that the appointed person is competent and adequately resourced to do the job
- Appointing a Principal Contractor, including checking to ensure that the appointed person is competent and adequately resourced to do the job.
- Appointing Designers, and ensuring that they are aware of their role under CDM, and checking to ensure that the appointed person is competent and adequately resourced to do the job
- Providing sufficient information on Health and Safety issues to the Planning Supervisor to allow hazards to be identified
- Ensuring the competency and adequacy of appointees
- Ensuring a health and safety plan has been prepared by the Principal Contractor prior to the commencement of construction work
- Keeping and maintaining the completed Health and Safety file and providing it to the Planning Supervisor.

It should be noted that under Regulation 13 a Designer has an obligation to take reasonable steps to ensure that the client is aware of the duties to which the client is subject by virtue of the CDM Regulations.

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## Issues in Relation to Ground Investigation

The key issues in relation to Ground Investigation are whether the CDM regulations apply and if so whether the Ground Investigation Contractor should be appointed as the Principal Contractor. Often for significant construction projects for which the CDM regulations apply, there is still confusion as to whether CDM applies to the ground investigation work.

In general, based on the regulations, it is the size of the Project as a whole that determines whether CDM applies, not the size of the individual packages that may go into the project. Thus, even though the ground investigation phase may be small (less than 5 people on site); this of itself does not exclude the ground investigation from CDM. If there is any doubt the Health and Safety executive should be consulted.

If the ground investigation is for general feasibility studies, and no specific development is planned, then, subject to the rules on staff levels, CDM would be considered not to apply. If the ground investigation is sufficiently in advance of the development phase to be considered as a stand-alone project, and if the maximum numbers of staff on site are less than five it may be that the site work for this phase of the project can be excluded from the CDM Regulations. Note: it is the Health and Safety Executive that determines this, not the Client.

The exclusion of a project from the CDM regulations does not remove the project from the operation of any other aspect of Health and Safety legislation.

## Advice to Clients

employing Geotechnical  
Specialists and Ground  
Investigation Contractors

- For each project confirm positively whether CDM applies to the ground investigation. If in doubt do this by reference to the Health and Safety Executive
- If CDM applies, instigate the appropriate regime as soon as possible, but in any case before the ground investigation starts.
- Insist that Ground Investigation Contractors and Geotechnical Specialists demonstrate a commitment to, and a capability in, the management of health and safety.
- Do not use tendering of Contractors as a means of determining whether the CDM regulations apply, ie do not make the Contractor choose. The Client must decide and make the appropriate appointments.
- Remember that exemption from the CDM Regulations is not an exemption from the need to comply with all relevant health and safety legislation and to assist any Contractor or Specialist in maintaining a safe site.

## Further Information & References

For further information you should contact the Health and Safety Executive, and/or, your specialist health and safety advisor. A list of HSE offices and other information is available on the HSE website [www.hse.gov.uk](http://www.hse.gov.uk)

There is an Approved Code of Practice (ACOP) and guidance published by the Health and Safety Executive on Managing health and safety in construction with particular reference to the CDM regulations. This has a reference number HSG 224, and may be obtained from HMSO, and their Agents. It may also be obtained from HSE Books — orderline: 01787 881165.