

Construction
(Design & Management)
Regulations 2015

FAME ADVICE FOR ARCHAEOLOGICAL CONTRACTORS

The *FAME Health and Safety Technical Papers* are produced by the FAME Health and Safety Working Group to provide high-level advice to its members to foster safe systems of work for development-led archaeological practice. They are not designed to replace existing, detailed guidance available from the HSE and other bodies, and must always be used in conjunction with that guidance, clearly referenced in each Paper.

FAME Health and Safety Technical Paper 1: Construction (Design and Management) Regulations 2015.

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Principal Author

Luke Brannlund (Cotswold Archaeology) with input from other members of the FAME Health and Safety Working Group

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“ HSE guidance now makes clear that stand alone archaeology projects are not subject to CDM regulations, and that where projects are part of construction, archaeologists can only act as sub-contractors to the Principal Contractor (archaeologists [should] NEVER assume the role of Principal Contractor). ”

– FAME 2015

“ Both FAME and the HSE discourage archaeologists from undertaking a role automatically, or by default, for which they may not be qualified, and which may result in significant health and safety and commercial risk. ”

– FAME 2018

1 Introduction

In 2015 the Health and Safety Executive (HSE) published the latest iteration of the Construction (Design and Management) Regulations (CDM) replacing and revoking the previous CDM 2007 regulations. The regulations specify the duties assigned to the various roles within a project, such as the client or contractors. The purpose of this guidance note is to make clear the roles that can be taken by, and exemptions available to, Archaeological Contractors under CDM 2015.

2 CDM 2015

The CDM 2015 regulations set out by the HSE are primarily designed to inform anyone working in construction of the steps they need to take to protect themselves and anyone else affected by the works from harm. They detail the duties of different roles, from client to contractor, and specify the circumstances under which the HSE needs to be informed about a project, as well as the general requirements for construction sites. The regulations are enabled by the Health and Safety at Work Act etc. 1974 (HSWA 1974) and follows the broad management cycle: Plan – Do – Check – Act laid down by HSG65 (Managing for health and safety) and ISO 45001.

3 Definitions

Before discussing the roles and exemptions applicable to archaeological contractors, it is important to define all roles and their main duties under CDM 2015. Please note the list below is not exhaustive. Please see the references at the end of this note for further guidance. Some key terms and their definitions are presented in the next three pages.

Client

Commercial or Domestic – person or organisation commissioning the works.

Must make arrangements to:

- Appoint competent designers and contractors.
- Provide pre-construction information to other duty holders and ensure that this is adequate.
- Ensure that principal contractors and designers carry out their assigned duties.
- Provide suitable welfare during the construction phase of the works.
- Notify the HSE if applicable.
- Ensure that a Construction Phase Plan and a Health and Safety File are prepared and maintained by the Principal Contractor (PC) and Principal Designer (PD) respectively.

When the Client is Domestic these duties invariably pass to the PC, PD or contractor.

Principal Designer

- Plan, manage and monitor and co-ordinate all health and safety in the pre-construction phase of the project.
- Design in such a way as to eliminate or minimise health and safety risk arising as a result of the project.
- Prepare the Health and Safety File and pass it on to the Client at the end of the project.
- Co-ordinate and communicate with all other interested parties.
- Advise the client on their duties under CDM 2015.

Designers

- Design in such a way as to eliminate or minimise health and safety risks arising as a result of the project.
- Co-ordinate and communicate with all other interested parties.
- Advise the Client on their duties under CDM 2015.
- Pass on design information to interested parties.

Principal Contractor

- Adequately plan, manage and monitor the construction phase.
- Prepare and maintain the Construction Phase Plan.
- Induct workers to the site.
- Ensure all workers have access to adequate welfare.
- Consult with workers on health and safety issues.
- Secure the site.
- Co-ordinate and communicate with all other interested parties.
- Advise the client on their duties under CDM 2015.

Contractors

- Adequately plan, manage and monitor their own work and control any risks arising.
- Be competent to complete their assigned role.
- Provide adequate training, information and supervision to their own workers.
- Co-ordinate and communicate with all other interested parties.
- Advise the Client on their duties under CDM 2015.

Workers

- Take care of themselves and those who may be affected by their work.
- Report any hazards or risks that may affect themselves or others.
- Co-ordinate and communicate with all other interested parties.

Health and Safety File

This document contains any information that is needed by the client and typically must include: descriptions of the works, hazards (residual), “as-built” plans, utility plans, information for the ongoing maintenance and cleaning of the construction, information on dismantling/demolition, hazardous materials and any other relevant information. This is the responsibility of the Principal Contractor/Designer.

Construction Phase Plan (CPP)

The CPP is the health and safety management plan for the construction phase of a project which is produced and maintained by the Principal Contractor. It will typically include key information such as on the site induction, specific or dynamic risk assessments and site rules/procedures. It is important to remember that the CPP is a plan rather than a repository for multiple health and safety related documents. As stated in HSE's Guidance document L153 Managing health and safety in construction it 'should not include documents that get in the way of a clear understanding of what is needed to manage the construction phase, such as generic risk assessments, records of how decisions were reached or detailed safety method statements.

4 Archaeological Investigations and CDM

4.1 Pre-construction Archaeological Investigations

Archaeological investigations often fall into the pre-construction phase of a project and therefore are specifically exempt from CDM regulations. It is important to note that this includes all works done in the design or preparatory phase of a project but may also extend into the construction phase, for example, during a multi-phase development. This sort of work could include evaluations, excavation, topographic surveys or fieldwalking surveys. This exemption does not extend to other works within the preparatory phase such as site clearance or ground investigation. Should archaeological works be sub-contracted as part of these then they will fall under CDM.

Whilst archaeological investigations carried out in this phase are exempt from the duties laid down by CDM, archaeological contractors must still comply with all other legislation such as the HSWA 1974 and Management of Health and Safety at Work Regulations 1999. In essence this means that many of the obligations of CDM must still be fulfilled.

4.2 Construction Phase Archaeological Investigations

During the construction phase of a project archaeological contractors are not exempt from CDM 2015 regulations and must comply with them. In most cases this means that archaeological contractors will have the duties of a contractor as specified above. You will need to be advised of the arrangements pertaining to this by the PC or PD.

4.3 Archaeological Contractors as Principal Contractor/Principal Designers

While it is not illegal for an archaeological contractor to take the role of PC or PD, both FAME and the HSE actively discourage archaeological contractors from taking on this role. The reason for this is that as a specialist contractor, commercial archaeological contractors are unlikely to have the range of skills, knowledge, experience or organisational capabilities or capacity to discharge the functions of a PC or PD, which could expose them to considerable risk. For example, as PC the archaeological contractor would be responsible for managing and monitoring a diverse range of other workers, such as gas engineers or electricians, the skills, knowledge and competencies of which they are unlikely to have. As noted by FAME 2015 this should not be seen as a “diminution of the requirement for archaeologists to plan, manage, monitor and undertake their work safely”.

4.4 Risk Management

Further to the above it is important to be aware that failure to comply with the duties outlined above could result in prosecution by the HSE. For example, if an archaeological contractor agreed to take on the role of PC without the necessary competencies, both they and the client, who is legally obliged to ensure the competency of the PC they appoint, could be found in breach for failing to discharge their assigned roles in accordance with the regulations and be subject to an improvement notice, prohibition notice or prosecution.

4.5 Questions & Answers

Q. When do CDM rules apply?

A. CDM will apply during all archaeological work during the construction phase of a project but not during preparatory works.

Q. If our project is pre-construction, do we have to follow CDM rules?

A. Archaeological investigation during the preparatory phase of a construction project are exempt from CDM but, as CDM details, the best practice (for example provision of welfare) CDM guidance should be followed to ensure compliance.

Q. We have been asked to act as Principal Contractor/Principal Designer on a project. Can we do this?

A. It is not illegal to do this, however would likely result in an archaeological contractor being exposed to considerable risk as you are unlikely to have the knowledge and capacity to fulfil the duties outlined in the regulations.

Q. There is no Principal Contractor for our site. Does that mean we should assume the role?

A. In cases where a Principal Contractor has not been appointed the duties are legally assumed by the Client. It would be your duty to ensure they are aware of this. The only exception is if the Client is a private individual and the works are domestic, in which case the contractor must assume the duties of a Principal Contractor.

5 Additional information and caveat

The above seeks to offer broad guidance of Archaeological Contractors' engagement with CDM, however does not cover all eventuality and circumstances that may be encountered. For further advice please contact your internal or external competent source of health and safety advice.

6 Further Reading

The Construction (Design and Management) Regulations 2015

<http://www.legislation.gov.uk/uksi/2015/51/contents/made?view=plain>

FAME (Federation of Archaeological Managers and Employers) 2015 *CDM*

Revisions and Archaeology

<https://famearchaeology.co.uk/cdm-2015-revisions-and-archaeology/>

FAME 2018 *FAME advice on archaeological organisations acting in the role of Principal Contractor (PC)*

<http://famearchaeology.co.uk/wp-content/uploads/2018/10/FAME-CDM.pdf>

HSE (Health and Safety Executive) 2015 *Managing health and safety in construction – Construction (Design and Management) Regulations 2015, Guidance on Regulations L153*

<https://www.hse.gov.uk/publications/priced/l153.pdf>