

# **ASSOCIATION FOR PROJECT SAFETY (IOM)**

## **INTERPRETATION OF THE CDM REGULATIONS 2003**

### **Association for Project Safety (Isle of Man Branch) Minutes of the APS (Isle of Man Branch) meeting dated 16 August 2013**

#### **Attendees**

Mr Stan Yellop  
Dr Peter Slinger  
Mr Gordon Clarke

Mr Peter Preece  
Mr Paul Bergin

Mr Nick Dernie  
Mr John Sullivan

#### **Apologies**

Mr Martin Jolly  
Mr Bob Brown  
Mr John Edwin

Mr Chris Bridson  
Mr Darren Cain

Mr Steven Morley  
Mr Charlie Park

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#### **Introduction**

Due to concerns expressed by Planning Supervisors in relation to the increasing expectations of Clients, Dutyholders and Government Agencies, the Association for Project Safety (Isle of Man Branch)(APS) met on the 16 August 2013 to discuss and review these concerns. All APS members in the Isle of Man were invited to attend. During the meeting, there was a general view expressed by APS Members that Planning Supervisors were increasingly being asked or expected to accept duties and responsibilities that are outside the duties of the Planning Supervisor, as stated within the Construction (Design & Management) Regulations 2003. The APS members were also of the view that the role and responsibility of the Planning Supervisor is becoming increasingly open to interpretation and this raises important issues in relation to legal and insurance matters.

Taking the above into account, the APS members met to consider the interpretation of the CDM Regulations 2003 so that the duties and responsibilities of the Planning Supervisor could be clearly defined and understood, not only by APS members, but also by Clients, other Dutyholders and Government Agencies.

The notes below record the formal responses of the APS Isle of Man Branch.

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## **Relevant Guidance on the Isle of Man**

Q1. What status does the HSE Approved Code of Practice “Managing Health and Safety in Construction” HSG224 have on the Isle of Man? Whilst this may have been replaced in the UK by L144 following a new set of regulations in the UK, is HSG224 still relevant to the Isle of Man CDM Regulations 2003?

### **Answer**

*The Isle of Man Construction (Design & Management) Regulations 2003 have their origins taken from the UK Construction (Design & Management) Regulations 1994. HSG224 was issued by the UK Health and Safety Commission (HSC) in 2001 as the Approved Code of Practice for these Regulations with the Consent of the Secretary of State and as such, HSG224 is regarded as the most appropriate standard to be adopted in relation to the Isle of Man CDM Regulations 2003.*

*Planning Supervisors may also make reference to other documents such as CDM Sheets produced by the Isle of Man HSWI and advice issued by the Construction Industry Research & Information Association (CIRIA) within their document entitled “CDM Regulations, Practical Advice for Planning Supervisors Taking Account of HSG224” (CIRIA, C603). HSG224 is considered to be the most appropriate benchmark, as it gives practical advice on how to comply with the law. If Planning Supervisors follow this advice they will be complying with the law in respect of those specific matters on which the Code gives advice.*

## **Health & Safety Plan (Regulation 15)**

Q2. Is it agreed that Regulations 15(1)(2)(3) relate to the Pre-Tender Health & Safety Plan?

### **Answer**

*“The APS members note that the CDM Regulations 2003 do not differentiate between the Pre-tender Health and Safety Plan and the Construction Phase Health and Safety Plan. The Regulations refer to the “Health and Safety Plan”.*

*Notwithstanding the above, the APS members note that HSG224 makes the distinction between the Health and Safety Plan before construction (Regulation 15(3) para 229 onwards)(The Pre-Tender Plan) and the Health and Safety Plan in the Construction Phase (Regulation 15(4) para 240 onwards)(The Construction Phase Plan). Hence, it was agreed that Regulations 15(1),(2) & (3) refer to the Pre-Tender Health & Safety Plan (HSG224, para 229 refers).*

*The APS members recognised the distinctions noted above and acknowledged that in normal standard practice the Health and Safety Plan is developed in two stages. The Planning Supervisor produces a Pre-Tender or Pre-Construction Health & Safety Plan and the Principal Contractor produces a Construction Phase Health and Safety Plan.*

*The two plans serve separate purposes. The Pre-Tender Health and Safety Plan must address key health and safety issues, in particular those that contractors could not reasonably be expected to identify. Its purpose is to ensure that these can be taken into account when preparing a tender or bid to the Client (HSG224, Para 230).*

*The Construction Phase Health and Safety Plan builds on the information contained within the Pre-Tender Health and Safety Plan and sets out the arrangements for managing the Project (including monitoring). The Construction Phase Health and Safety Plan usually needs to be developed by the Principal Contractor as the work progresses (HSG224, para 231).*

Q3. Is it agreed that Regulation 15(2) requires the Pre-Tender Health & Safety Plan to be prepared and issued at tender stage?

**Answer**

*The APS members agreed that the standard practice is to issue the Pre-Tender or Initial Health and Safety Plan at tender stage of a project to ensure it is provided to any contractor before arrangements are made to carry out construction work.*

*Where a project is not being tendered, the Pre-Tender or Initial Health and Safety Plan should be issued "in good time" to ensure it is provided to any contractor before arrangements are made to carry out construction work.*

Q4. Is it agreed that Regulation 15(4) relates to the Construction Phase Health & Safety Plan?

**Answer**

*The APS members agreed that Regulation 15(4) refers to the Construction Phase Health and Safety Plan. HSG224 para 240 onwards states that under Regulation 3 of Management of Health and Safety at Work Regulations the Principal Contractor and other contractors must identify the hazards and assess the risks related to their work. Using this information the Principal Contractor must develop a plan suitable for the construction phase.*

Q5. What is the interpretation of Regulation 15(3)(e)? What type of design information should be provided and when should this be made available?

**Answer**

*The APS members agreed that Regulation 15(3)(e) requires the Planning Supervisor to ensure that sufficient design information is made available at the tender stage of projects. Typical information would include drawings, specifications, survey reports etc. The Planning supervisor has continuing duties to ensure that designers cooperate with each other to meet the requirements of the Regulations (ACOP 146-149 refers).*

*The APS members also agreed that the Isle of Man Government Capital Procedure Notes provided useful guidance on the type of information that should be made available at tender stage.*

Q6. Does the Planning Supervisor have a statutory duty to ensure the Health & Safety Plan is prepared under Regulation 15(4)?

**Answer**

*The APS members were clear on the point that the Planning Supervisor does not have a statutory duty to ensure the Health & Safety Plan is prepared under Regulation 15(4). This duty is placed solely on the Principal Contractor (HSG224, para 240 onwards refers) and Client (HSG224, para 88 refers).*

Q7. When assessing if the Construction Phase Health & Safety Plan is suitable to commence work on-site is the Guidance provided in HSG224 (para 243) the relevant benchmark?

**Answer**

*The APS members agreed that there were a number of guidance documents that give advice on the suitability of the Construction Phase Health and Safety Plan, including CDM sheet number 5 issued by the HSWI. However, if Planning Supervisors are requested to assess if the Health and Safety Plan for the Construction Phase is suitable, they should refer to HSG224, para 243, as this sets out the minimum requirements of the Health and Safety Plan for the start of the Construction Phase.*

*The Planning Supervisor should also consider if the Construction Phase Health and Safety Plan recognises the hazards and risks identified in the Pre-Tender Health and Safety Plan. Recognition of such hazards and risks within the Construction Phase Health and Safety Plan gives confidence that the Principal Contractor will assess and control such risks in the construction phase.*

Q8. If a project requires the Principal Contractor to undertake 2 months of work before other contractors arrive on-site, does the Construction Phase Health & Safety Plan need to detail the arrangements for managing such contractors before a start can be made on-site?

**Answer**

*The APS members were of the view that the Construction Phase Health and Safety Plan should detail arrangements for the management of contractors as soon as possible. However, specific contractors may not need to be nominated within the Construction Phase Plan. It would be sufficient for the Construction Phase Plan to record the general arrangements for the management of contractors (including monitoring) and including details of arrangements for welfare facilities. The APS members were of the opinion that HSG224, para 243 would be the minimum requirement and acknowledge that the Construction Phase Health and Safety Plan usually needs to be developed as the work progresses (HSG224, para 231 refers).*

Q9. If a Planning Supervisor is requested to advise on the suitability of the Construction Phase Health & Safety Plan at the start of the Construction Phase under Regulation 10, does this statutory duty extend into the Construction Phase?

**Answer**

*The APS members were of the clear opinion that the Planning Supervisor does not have a continuing duty to advise on the suitability of the Construction Phase Health and Safety Plan in the construction phase of a project. The updating of the Construction Phase Health and Safety Plan is the sole responsibility of the Principal Contractor (HSG224, para 90 refers).*

Q10. Does the Planning Supervisor have a statutory duty to ensure the Health & Safety Plan is updated under Regulation 15(4)?

**Answer**

*The APS members were of the clear opinion that the Planning Supervisor does not have a statutory duty to ensure the Health and Safety Plan is updated under Regulation 15(4). The updating of the Health and Safety Plan under Regulation 15(4) is the sole responsibility of the Principal Contractor.*

*Also Proxy comment provided via email from former HSWI Inspector dated 13 August 2013 as follows:*

*"I have clear views on the role of the Planning Supervisor during the construction phase as required by the Regulations. These are completely in line with the extract from the CIRIA 603 document. In particular I would refer to Para 1.2.2 "Other Services". This makes it clear that monitoring the continuing evolution of the Construction Phase Plan is not a requirement under the CDM Regulations".*

Q11. If the Principal Contractor and a sub-contractor negotiate between themselves on-site to undertake work in a different location to reduce risk, does the Planning Supervisor have a statutory duty to ensure the Construction Phase Health & Safety Plan is updated? Or indeed, does the Plan need to be updated if this change in location can be covered by RAMS?

**Answer**

*The APS members were of the opinion that if the Principal Contractor and a sub-contractor negotiate between themselves on-site to undertake work in a different location to reduce risk, this is not a matter for the Planning Supervisor. The Planning Supervisor is not responsible for the management of site safety.*

*The Planning Supervisor is not responsible for ensuring the Construction Phase Health & Safety Plan is updated. The APS members were of the view that the development of suitable risk assessments and method statements should cover a revised location of work. The re-issue of RAMS would effectively update the Construction Phase Plan.*

*The APS members were also of the clear opinion that it is not their statutory duty to comment upon contractor risk assessments and method statements (RAMS) during the construction phase of projects. Whilst many planning supervisors are increasingly receiving RAMS it must be clearly understood that planning supervisors do not carry statutory duties in relation to such site based documents.*

Association for Project Safety  
Isle of Man Branch

Workshop dated 16 August 2013