

Managing health and safety in construction

**Managing Health and Safety in Construction
Approved Code of Practice
Health and Safety at Work (Jersey) Law, 1989**

ACoP 11

**Managing Health and Safety in
Construction**

Approved Code of Practice

Notice of Approval

By virtue of Article 10 of the Health and Safety at Work (Jersey) Law, 1989, (“the HSW Law”), this Code of Practice, entitled “Managing Health and Safety In Construction”, has been approved by the States of Jersey Minister for Social Security.

This Code provides practical guidance for all persons who have duties under Part 2 of the HSW Law and are involved with construction work.

ACoP 11

This Code of Practice shall come into force on

Senator F Le Gresley

Minister for Social Security

Date to be inserted

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Legal status of this ACoP

1. An Approved Code of Practice (“ACoP”) provides practical guidance on how you can comply with the standards required under the Health and Safety at Work (Jersey) Law, 1989 (“HSW Law”). If you follow the advice set out in the ACoP you will be doing enough to comply with the HSW Law in respect of the specific matters to which the ACoP applies.
2. ACoPs have a special legal status and are admissible in legal proceedings under the HSW Law. The Court may regard an ACoP as evidence in determining whether the requirements of the HSW Law have been met in the circumstances to which the ACoP relates.
3. Compliance with the HSW Law may be achieved by following an alternative method to that set out in an ACoP, but any alternative method must be seen to be providing an equivalent or higher standard than the ACoP.

Preface

4. In 2013, a working party of the Jersey Construction Council considered proposals for draft regulations which are intended to replace the existing prescriptive health and safety regulations for construction work, the Construction (Safety Provisions) (Jersey) Regulations, 1970.
5. Much has changed in the way in which construction work is organised since the 1970s, and the working party recommended that the existing regulations should be replaced with regulations which:
 - Reflect the employment relationships within the industry;
 - Seek improvements in the health and safety management of construction projects;
 - Introduce specific requirements on clients and those in the design team to address health and safety as part of the construction project; and
 - Align the titles of the key parties identified in the management of construction projects with those in place in the UK Construction, Design and Management Regulations 2007.
6. The Minister for Social Security, Senator Francis Le Gresley, agreed with the recommendations of the working party and proposals for new health and safety regulations, based on the proposed draft regulations.
7. The call for these proposals to include specific requirements on clients, designers and those involved with the management of construction projects, also reflected the requirements set out on key parties in the construction process which are contained in the general duties set out under Part 2 of the HSW Law.
8. The working party therefore recommended that, in the interim period, until new health and safety regulations for construction are approved by the States, an approved code of practice should be introduced in order to provide guidance to those key parties on their duties set out under the Law.
9. This ACoP has therefore been approved by the Minister for Social Security with the intention of assisting persons involved in the construction, design and management of construction projects, in meeting the legal requirements placed on them under the general duties set out under Part 2 of the HSW Law.

Introduction

10. The construction industry continues to be the industry sector which accounts for the highest number of work related accidents and ill health reported to the Social Security Department each year. This is perhaps not surprising given the nature and type of work which is undertaken by the construction industry. But, these factors do not reduce the need to seek continual improvements in achieving the aim of providing a safer workplace for construction workers and controlling the risks to other persons who could be affected by the work which is being carried out.
11. It is recognised that an essential aspect of achieving improvements in the management of risks posed by construction work is by focusing on the planning and management of construction work right from the very start of the project. This ACoP therefore sets out to establish how all those involved with construction work can contribute to these improvements.

Application and interpretation

12. This ACoP applies to all building operations and works of engineering construction as defined in the Construction (Safety Provisions) (Jersey) Regulations, 1970.

“Building operation” means the construction, structural alteration, repair or maintenance of a buildings or any appurtenance thereof (including repointing, redecoration and external cleaning of the structure), the demolition of a building or any appurtenance thereof, and the preparation for, and laying of the foundation of, an intended building or any appurtenance thereof;

“Works of engineering construction” means the construction, structural alteration or repair (including repointing and repainting) or the demolition of -

- a) *any bridge, gas-holder, harbour pipeline, reservoir, sewer, sewage works, watercourse or waterworks;*
- b) *any steel or reinforced concrete structure, other than a building;*
- c) *any road, airfield or sea defence works; and*
- d) *such other works as may be prescribed.*

13. For ease of reference in the ACoP, the term construction work is intended to include all types of building operations and works of engineering construction.

14. In this ACoP:

“commercial client” is someone who is having construction work carried out, unless they are a domestic client. A domestic client is someone who lives, or will live in the premises where the work is carried out. The premises must not relate to any trade, business or undertaking. Although a domestic client does not have duties under this ACoP, those who work for them on construction projects will.

“designer” is someone who has a profession, trade or business that involves them in the preparation of designs for construction work, including variations. This includes the preparation drawings, design details, specification, bills of quantities and the specification (or prohibition) of articles and substances, as well as the related analysis, calculations, and preparatory work, and includes those who arrange for employees or other people under their control to prepare designs relating to construction work.

“major project” means construction work which will last more than 30 working days or involves more than 500 person days of construction work, for example 50 people working more than 10 days.

“CDM co-ordinator” is someone who is a key project advisor appointed by a commercial client where construction work falls within the definition of a major project.

“principal contractor” is someone who is appointed by a commercial client for a major project, to properly plan, manage and co-ordinate construction work in order to ensure that risks are properly controlled.

“contractor” is someone who directly employs, engages construction workers or manages construction work.

“construction worker” is someone who carries out construction work, including employees and self-employed individuals.

“construction phase plan” is prepared by the principal contractor, for major works, to outline the arrangements for managing health and safety on site during construction work.

“health and safety file” is prepared or revised by the CDM co-ordinator, for major works. It will require the CDM co-ordinator to liaise with the commercial client, designer, principal contractor and contractors. The file will contain information necessary for future construction, maintenance, refurbishment or demolition to be carried out safely, and is retained by the commercial client or any future owner of the property. The health and safety file should be a useful and valuable document for the commercial client and other key parties who may carry out future construction work on the premises.

“key parties” refers to commercial clients, designers, CDM co-ordinators, principal contractors, contractors and construction workers.

General duties set out under the Health and Safety at Work (Jersey) Law, 1989

15. **Part 2 of the HSW Law** sets out general duties on all those involved with work activities. These general duties, contained in Articles 3 to 8, apply to construction work.
16. **Article 3(1)** places a duty on employers to ensure, so far as is reasonably practicable, the health, safety and welfare of all of their employees. More specifically, **Article 3(2)** sets out the general duties of employers to their employees. Those duties include:
 - (a) the identification and assessment of risks to health and safety to which the employer's employees are exposed at work.
 - (b) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health.
 - (c) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances.
 - (d) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of the employer's employees.
 - (e) so far as is reasonably practicable, as regards any place of work under the employer's control, the maintenance of it in such a condition that is safe and without risks to health and the provision and maintenance of access to and egress from it that are safe and without such risks.
 - (f) the provision and maintenance of a working environment for the employer's employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangement for their welfare at work.
17. **Article 3(3)** sets out further duties of employers employing 5 persons or more –
 - (a) to prepare and, as often as is appropriate, revise a written statement of –
 - (i) the employer's general policy with respect to the health and safety of the employer's employees;
 - (ii) the organisation of responsibilities with respect to that policy;

- (iii) the arrangements in force and measures taken by the employer to implement that policy;
 - (iv) the significant risks identified by the employer and the employer's assessment of them; and,
 - (v) any arrangements in force and any measures taken by the employer to eliminate or reduce the significant risks to health and safety identified.
18. **Article 4** sets out the general duties of employees at work. All employees are required to take reasonable care for their health and safety and any other persons who may be affected by what they do or do not do. In addition, employees must cooperate with their employer or other person who is legally responsible for health and safety.
19. **Article 5** requires employers and self-employed persons to consider individuals other than their employees who could be affected by their work activities, including members of the public and other groups of workers.
20. **Article 6** requires persons in control of premises, which are used as a place of work by other individuals, (other than their employees), to ensure that areas under their control do not pose risk to persons using them.
21. **Article 7** requires designers, manufacturers, importers and suppliers to ensure that products intended for use at a place of work can be used safely and without a risk of harm to health. This consideration must be made for the entire life of products, right through from design stage to decommissioning and disposal, and information relating to, or affecting safety, must be supplied to the end user.
22. **Article 8** requires that no person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare as required by law.

Legal meaning of the term “so far as is reasonably practicable”

23. Requirements set out in the duties contained in Part 2 of the HSW Law include reference to the qualifying term “so far as is reasonably practicable” which has been interpreted by the courts in a consistent manner whenever they are used in health and safety legislation.
24. The term “reasonably practicable” is a narrower term than physically possible and allows economic considerations to be taken into account as one factor, with, for example, time or trouble, to be set against the risk. Where it is shown that the risk is insignificant compared to the costs involved, the measures required to overcome the risk may not be considered to be “reasonably practicable”.

Application of the HSW Law to key parties involved in construction work

25. The following table provides an indication of the legal requirements, set out under Part 2 of the Law, which are likely to be placed on the key parties involved in construction work. The precise legal requirements placed on an individual key party will depend on the role that they undertake and the specific nature of the work involved. For example, a principal contractor or contractor may take on the responsibilities of a designer if they carry out the design of formwork.

	Article 3	Article 4	Article 5	Article 6	Article 7	Article 8
Commercial Client	*		*	*		*
CDM Co-ordinator	*		*			*
Designer	*		*		*	*
Principal Contractor	*		*		*	*
Contractor	*		*		*	*
Construction Worker		*				*
Self-employed Construction Worker			*			*

Requirements, under this ACoP, placed on key parties involved in construction work

26. Guidance on specific duties, which should be addressed by the key parties in order to ensure that they are fulfilling their legal requirements set out under Part 2 of the HSW Law is summarised in the following table of duties and how they are applied.

	All construction projects	Additional duties for major projects
Commercial Client	<ul style="list-style-type: none"> • Check competence and resources of all appointees • Ensure that there are suitable management arrangements for the work, including welfare facilities • Allow sufficient time and resources for all stages • Provide pre-construction information to designers and contractors 	<ul style="list-style-type: none"> • Appoint CDM co-ordinator • Appoint principal contractor • Make sure the work doesn't start unless there are suitable welfare facilities and a construction phase plan in place • Provide information relating to the health and safety file to the CDM co-ordinator • Retain and provide access to the health and safety file
CDM co-ordinator		<ul style="list-style-type: none"> • Advise and assist the commercial client with their duties • Co-ordinate health and safety aspects of design work and co-operate with others involved with the project • Facilitate good communication between client, designers and contractors • Liaise with principal contractor regarding the ongoing design • Identify collect and pass on pre-construction information • Prepare/update the health and safety file
Designer	<ul style="list-style-type: none"> • Check commercial client is aware of their duties • Eliminate hazards and reduce risks during design • Provide information about remaining risks 	<ul style="list-style-type: none"> • Check CDM co-ordinator has been appointed • Provide any information needed for the health and safety file

	All construction projects	Additional duties for major projects
Principal Contractor		<ul style="list-style-type: none"> • Plan, manage and monitor construction phase of the work in liaison with contractors • Prepare, develop and implement a written plan and site rules (initial plan completed before the construction phase begins) • Give contractors relevant parts of plan • Make sure suitable welfare facilities are provided and maintained throughout the construction phase of the work • Check competence of all appointees • Ensure that all construction workers have site induction and any further information and training needed for the work • Consult with the construction workers • Liaise with CDM co-ordinator regarding ongoing design • Secure the site
Contractor	<ul style="list-style-type: none"> • Check commercial client is aware of their duties • Plan, manage and monitor own work and that of workers • Check competence of all their appointees and workers • Train own employees • Provide information to their construction workers • Comply with the requirements of the Construction (Safety Provisions) (Jersey) Regulations, 1970 • Ensure there are adequate welfare facilities for their workers 	<ul style="list-style-type: none"> • Check a CDM co-ordinator and a principal contractor have been appointed • Cooperate with principal contractor in planning and managing work, including reasonable directions and site rules • Provide details to the principal contractor of any contractor whom he engages in connection with carrying out the work • Provide any information needed for the health and safety file • Inform principal contractor of problem with the plan • Inform principle contractor of any work related accident/illness or dangerous occurrence

	All construction projects	Additional duties for major projects
Construction Worker Self-employed Construction Worker	<ul style="list-style-type: none"> • Check own competence • Cooperate with others and co-ordinate work so as to ensure the health and safety of construction workers and others who may be affected by their work • Report obvious risks • Comply with the requirements of the Construction (Safety Provisions) (Jersey) Regulations, 1970 • Take account of and apply the general principles or risk reduction when carrying out work 	

References

27. Key parties can obtain further detailed guidance on how they can meet their duties by referring to information produced by the UK Health and Safety Executive (HSE), "Managing health and safety in construction, Construction (Design and Management) Regulations, 2007, Approved Code of Practice, L 144, which can be freely downloaded from the HSE website
<http://www.hse.gov.uk/pubns/books/l144.htm>
28. The CDM section of the HSE website also contains additional guidance which key parties will find helpful
<http://www.hse.gov.uk/construction/cdm.htm>
29. Acknowledgement is given to the use of information in this ACoP which has been obtained from HSE publication L 144.

Further Information

30. Further information on the application of this ACoP, or advice on the guidance set out in this publication, may be obtained by contacting the Health and Safety at Work Inspectorate, Social Security Department, PO Box 55, Philip Le Feuvre House, La Motte Street, St Helier, Jersey JE4 8PE.

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This ACoP may be viewed online and downloaded at www.gov.je/hsi

Further copies of this publication can be obtained from the Health and Safety at Work Inspectorate.

Consultation document