

# THE PROPOSED REVISION OF THE CONSTRUCTION (SAFETY PROVISIONS)(JERSEY) REGULATIONS 1970

## CONSULTATION RESPONSE REPORT

### Executive summary

Public consultation on the proposals to replace the Construction (Safety Provisions) (Jersey) Regulations, 1970, with a new set of updated Regulations was launched on 10 June and ran for a 16 week period until 16 September 2015.

The aim of the consultation was to seek views on a revised set of draft Regulations for the construction industry which reflect current industry standards, employment arrangements and address the management of health and safety throughout the life of a project.

The draft Regulations were developed by the Health and Safety Inspectorate working with a cross-industry working party established by the industry representative body, the Jersey Construction Council.

The consultation paper (appendix 1) set out the background to the proposed revision of the Regulations and key areas where views were specifically sought, namely:-

- The structure of the draft Regulations
- The duties placed on the key parties defined within the Regulations
- The definitions of 'major construction project' and 'work at height'
- The requirements relating to notification of construction projects

11 responses were received via the on-line survey available through the States of Jersey website (one of these in hard copy). In addition 2 written responses were received via email or letter, and approximately 80 people attended a breakfast seminar, with 47 submitting their views on the key issues by completing a simple questionnaire at the end of the event.

The results showed unanimous agreement with the need for revised Regulations, and that the significant majority are supportive of the proposed structure and duties placed on key parties in the draft Regulations.

The results and feedback show that, overall, the majority of respondents supported a requirement for all work at height to be risk assessed and controlled (without incorporating a qualifying minimum fall height of 2m), and major projects to be notified to the Health and Safety Inspectorate.

The one issue where there was no clear consensus amongst the respondents, or within one specific industry sector, was the definition of a 'major project', and whether this should include a threshold of simultaneous workers at any one time on site. All the views expressed will be considered when determining the definition which will be included in the draft Regulations.

## **Section 1: The consultation process**

The consultation process has involved:

- The consultation document being issued on the 10 June 2015 requesting comment by the 16 September 2015
- A media release being issued on 10 June 2015
- A formal consultation notice being placed in the Jersey Evening Post on the 10 June 2015
- The consultation document being available on the States website, both in the Health and Safety at Work Inspectorate section and the consultation section
- As part of the consultation process through the States web site, notification of the consultation being sent to over 5000 subscribers to the States Communications database
- Notification of the consultation process being sent to a range of professional and representative bodies including the Jersey Safety Council, Jersey Chamber of Commerce, Association of Jersey Architects, Jersey Construction Council, States of Jersey Health and Safety Manager, Institute of Directors and Unite
- An on-line survey being made available on the States website (accessible via the gov.je webpage and the HSI website)
- Hard copies of the proposed draft Regulations being available from the Health and Safety Inspectorate; and
- A breakfast seminar taking place on 2 September to raise awareness to the proposals

This seminar, organised by the Jersey Safety Council in conjunction with the Health and Safety Inspectorate, took place at the Pomme D'Or Hotel and was attended by approximately 80 people, representing a wide cross section of the industry. A presentation was given by Tammy Fage, Director of Health and Safety, who explained the background to the proposed Regulations, provided an overview of the structure and requirements of the Regulations and highlighted key issues where views of the industry were being particularly sought.

## Section 2: Findings – main conclusions

The information presented below is an analysis of the results and findings from the main on-line consultation survey. It provides statistical information in relation to the closed survey questions. In addition, themes and comments have been presented from the open question sections of the survey with representative quotes presented for information. The questions set out in the survey are included as appendix 2.

Two submissions received after the closing date have been included in the consultation review.

**General principles** *(some of the questions have been précised or merged to provide a high level summary of common themes only. All 24 questions are included in appendix 2)*

100% of respondents to the survey answered yes to the following questions

Do you think the Construction (Safety Provisions)(Jersey) Regulations 1970 need replacing?
Do you think that the way that the proposed Regulations are structured is easy to understand?
Do you think that a client should have a responsibility to ensure that welfare facilities are provided?
Do you agree that major construction projects should be notified to the Health and Safety Inspectorate?
Do you agree that written method statements should be required for high risk construction work?
Do you think all construction workers should be provided with an equal level of protection for their health and safety, irrespective of the size of the construction project?*

*\*There were 5 specific comments given in respect of this question, primarily surrounding the need for proportionality in approach*

*Although documentation etc. must be proportionate to the scale and complexity of the project and the risks involved.*

*From an actual safety point of view yes whether a job lasts 2 days or 6 months if you are working at height say then the same protection should be afforded but if the job only lasts say less than 7 days then welfare facilities say should not be required by law*

*What does the size of a company have in relation to one's personal health and safety? The larger companies go through the motions of health and safety but in reality are only playing lip service to the regulations.*

*From our experience of operating in the industry for over 35 years it is clear that many health and safety processes on smaller projects fall short of those enforced on the larger more visual*

projects. The implementation of new legislation must be enforced on smaller projects to ensure a comprehensive approach is maintained across the industry.

How that level of protection will be met will depend on the concept of 'reasonably practicable'

<b>Survey question</b>	<b>Yes (%)</b>	<b>No (%)</b>
Do you think that all of the general requirements set out in Part 2 of the Regulations should apply to all construction projects?	80	20

Of the 10 respondents answering the above question, 2 specifically highlighted the need for proportionality

Again, it's a proportionality thing. One of the key factors is to get the definition of major project right. The SMEs will need considerable guidance to avoid everything i.e. production of documentation being outsourced and not really reflecting what is really happening or achieving buy-in from the company.

H&S should be all encompassing, but equally a sensible limit should be placed on applications of requirements. Personally, I think application of general requirements should be risk based, rather than time period based. There are some inherently risky activities (e.g. replacing flat roofing on building without guarding/parapets) which may take but a few day, but in terms of risk to health &/or safety might be more risky than activities which should be notified.

<b>Survey question</b>	<b>Yes (%)</b>	<b>No (%)</b>
Do you agree the responsibility for carrying out the duties placed on a 'domestic client' (who is exempt from the Law) should be placed on the designer, or if no designer, the relevant contractor?	60	40

Specific comments to this question included

I am not convinced designers have the necessary competency to carry out the client duties e.g. checking competency of appointees. I think the duty should rest with the principal contractor or relevant contractor if no PC. If designers are required to take on this additional role, it will simply create additional costs for the client which would be unnecessary. Historically, contractors have always recognised that they take on more duties when working on domestic property as there is no duty holder who is required to provide information etc. It therefore becomes their duty to ask the right questions. Asbestos is a clear example of this.

Yes if the designer or contractor are not liable for health & safety then you will have a reputable contractor pricing against a one man band who will not meet the health and safety requirements as they are not accountable

Where possible it should be the Designer (Architect) as in many cases they will guide the Domestic Client through the construction process.

Survey question	Yes (%)	No (%)
Do you think any of the definitions of the key duty holders defined in the Regulations are problematic?	30	70

*Of 3 comments relating to this question, 2 related to the definition of 'contractor'*

*Contractor & Principal Contractor are somewhat confusing*

*The description of a contractor may be lost on those undertaking works as a subcontractor and believe that the definition of a contractor should also include this description to avoid confusion. We have received comments from subcontractors stating that they are neither principle contractor or contractor so the legislation must not apply to them!*

Survey question	Yes (%)	No (%)
Do you think the requirements for health and safety training are proportionate and appropriate?	75	25

*Of those respondents who stated 'No', comments included:-*

*The use of the term 'occupational health and safety training' sounds very formal and contractors will think that all employees need formal training of some description. I think it needs to be more focused on being aware of risks and control measures, safe systems of work etc.*

*Because what the courses tell you and what actually goes on a site bear little relation.*

*Occupational health and safety should form a complete and separate set of regulations distinctly identified as a separate requirement from these regulations.*

*The following comments were made by respondents who responded 'yes':-*

*Consideration to the requirement within the legislation for set minimum training or awareness such as the Passport to Safety, Asbestos Awareness and manual handling to all employees in the construction industry should be considered.*

*Just a point that contractors should understand that appropriate training is not necessarily and <sic> UK National Scheme or Passport for Safety.*

### **Key issues where views were specifically sought:-**

The definitions of 'work at height' and a 'major construction project' are 2 key issues where views were specifically sought, both via the on-line survey and in a short questionnaire given out at the breakfast seminar.

The results from both the on-line survey and completed breakfast seminar questionnaires are therefore presented.

## Work at height

A number of questions were included to seek views on the definition of 'work at height' set out in the draft Regulations, which restricts the requirements imposed by Regulation 27 to work where a person could fall a height of 2 metres or more.

**Do you think the Regulations should include a minimum height for when the additional control measures, set out in Regulation 27 of the proposed Regulations, are required?**

	Yes	No	Skipped question
On-line survey (11 responses)	3	7	1
Written responses - other than via the on-line survey (2 responses)	0	0	2
Questionnaire completed at breakfast seminar (47 responses)	15	27	5
<b>Total</b>	<b>18</b>	<b>34</b>	<b>8</b>

Therefore of the 52 respondents who answered the question, 65% felt that the requirements set out in Regulation 27 should apply to all work at height where persons are at risk of suffering personal injury, ie not be restricted to a fall of 2 metres or more. Specific comments included:-

*As serious injuries are caused from a small height. It should all come down to risk assessment. However, I do think you need to include a definition of what you mean by work at height, such as that in the UK Regs. Probably best contained within Regulations 7 rather than the 'interpretation' section.*

*Should be risk assessed.*

*Think we should follow UK in this respect. 3 comments in this respect:- 1. If this was adopted common sense is also required, we can't have guard rails for kerbs and the like. 2. If we don't follow UK regs would the difference leave a company liable to best practice prosecution. (E.g. a worker is injured falling from 1.5m (say), in the UK this should have been assessed, here under the 2m limit it needn't be, could you be still be prosecuted for not following (UK) best practice?) 3. I think the same should be applied to excavations too (the UK requires all excavations, irrespective of depth to be assessed).*

*Work at height should be defined as "Any distance where a fall is likely to cause personal injury" to harmonise the risk management approach set out in the proposed regulations and avoid confusion with proposed Regulation 27, (4) and (5) and as the proposed regulations seek to provide risk based management it is inconsistent to be prescriptive in the proposed regulations.*

*All access and working at height provisions should be fully assessed along with registers for equipment such as ladders and steps maintained.*

Respondents supporting the inclusion of a minimum height other than 2m, suggested various heights of 0.5 metres, 1metre and1.75metres.

## Definition of a 'major construction project'

Several questions were posed about the definition of a major project which, when met, imposes additional duties on the key parties under the Regulations.

The definition in the existing 'Managing Health and Safety in Construction: Approved Code of Practice' is '*construction work which will last more than 30 working days or involves more than 500 person days of construction work*'

The definition in the draft Regulations is '*construction work which will last more than 30 working days and have more than 20 workers working simultaneously at any point in the project; or involves more than 500 person days of construction work*'

### Do you think it is appropriate to include a threshold of simultaneous workers at any one time into the definition?

	Yes	No	Skipped question
On-line survey (11 responses)	4	4	3
Written responses - other than via the on-line survey (2 responses)	0	1	1
Questionnaire completed at breakfast seminar (47 responses)	25	15	7
<b>Total</b>	29	20	11

Supplementary comments made in response to this group of questions highlighted a level of uncertainty and/or agreement over the issue

*Yes - I like the idea but I think it allows for a bit of manipulation by the PC if it is too high. Without a worker number limit, it gets silly as small projects are included which really don't need the additional requirements such as HSPC (clients are unwilling to appoint internally so are incurring additional costs). The main thing is to identify the additional requirements for a major project which primarily are the appointment of HSPC (not necessarily external). HSPCs are only really required on large projects where the design process and the H&S file is critical. (I appreciate a H&S file is required to be prepared by the PC for major projects). I would suggest that the project length needs to be reconsidered and will comment further on this later.*

*Unsure (I'm not in position to understand how this would change the number of project that fall into the major project definition).*

*Yes because you can have a high value contract as in say shop fitting where there is a lot of labour involved for a shorter period against a 60 day job with 5 men*

*No - What has the number of people on a site have to do with in relation to health and safety? or is this more an economic issue?*

*No. By introducing thresholds on the time or quantity of working activities there is a risk of poor interpretation and the associated health and safety implications. We believe that the 500 man days should be reduced to 300 and the project duration to 15 days as any high risk projects would fall below the proposed criteria.*

*Yes – but 20 workers potentially too much*

*Yes – but depends on the complexity of the work and also if it falls within a high risk category*

*No - May be difficult to predict, or may change during the course of a project in cases where number of workers may be close to 20*

*No - 20 workers at one point too difficult to predict*

*Don't know – both are too arbitrary and do not take into account level of complexity of a project or degree of hazardous work involved*

*Yes – but maybe 15 workers working simultaneously*

*Neither yes nor no - A project that lasts longer than 90 days*

*Neither yes nor no - Every project is a major project. Very draconian concept*

*I think proving this could be difficult unless contractors are legally required to record who is on site when.*

*The quantity of people working should be removed as it provides an ambiguous threshold which can be misinterpreted or abused*

*As previously stated, I think this is far too short. I would prefer to see something more like 60 or 90 days. This would limit the number of notifications and may enable you to remove the worker number altogether. It does not mean that smaller jobs are required to be less well planned and managed, the emphasis to do certain things just shifts back onto the PC more e.g. prepare a H&S file for the client etc. If you are going to keep the worker number in also, I think it would be better to reduce it to 10.*

*No - We feel it may be hard to manage – at the end of a project there might be more pressure to meet a deadline and more men could be drafted in at a time of lower risk but going over the '20 workers working simultaneously at any point in the project' threshold*

## **Other issues raised during the consultation**

There were additional general comments made during the consultation process relating to

- timing of appointments, particularly of the Principal Contractor and Health and Safety Project Co-ordinator
- site security and protection of the public
- excavation into a hillside or re-profiling of an existing slope be included within the definition of 'high risk work'



### **Section 3: Conclusions**

It is clear from the response to the consultation that there is very significant support (unanimous amongst respondents) for the Construction (Safety Provisions)(Jersey) Regulations 1970 to be replaced by an updated set of Regulations.

It is also clear that the draft Regulations, developed in conjunction with a cross-industry representative working party are, in the main, supported by the wider industry.

The key area where there was notable differences in opinion relates to the definition of a 'major construction project', and whether this should include an additional qualifying criteria to that set out in ACoP11 relating to a threshold of simultaneous workers working on the project at any one time.

### **Section 4: Next steps**

The feedback gathered from this consultation and the view of the Working Party will be considered during the development of the final draft Regulations, with the intention of these being lodged for debate by the States before the end of 2015.

## **Appendix 1 : Consultation paper**

### **Consultation on the proposed revision of the Construction (Safety Provisions) (Jersey) Regulations 1970**

#### **Summary**

The Health and Safety Inspectorate (HSI) is seeking views on the proposal to replace the Construction (Safety Provisions) (Jersey) Regulations 1970 with a new set of Regulations which reflect current industry standards, employment relationships and address health and safety throughout the life of the construction process, from initial concept and design through to eventual demolition of a building or structure.

In developing the proposed Regulations, the HSI has actively engaged with, and sought feedback from, a cross-industry working group established by the Jersey Construction Council. A detailed review of the approach to managing health and safety in the construction industry by the UK and other national regulatory agencies has also been undertaken to ensure that the proposed draft Regulations reflect best practice whilst being tailored, where appropriate, to meet the needs of the local industry.

We are now inviting any interested stakeholders to comment on the draft Regulations. All responses will be fully considered and taken into account by the Minister for Social Security when deciding on the best way to proceed.

**Date published:** 1 June 2015  
2015

**Closing date:** 11 September

#### **Supporting documents**

The draft Regulations and a questionnaire are attached as Annex 1.

Whilst you are not obliged to use the questionnaire in your response, following this structure will help us consider and analyse all the responses received.

#### **Ways to respond**

Email: [hsi@gov.je](mailto:hsi@gov.je)

Write to: Health and Safety Inspectorate, Social Security Department, PO Box 55, La Motte Street, St Helier, JE4 8PB

We aim for a full and open consultation and aim to publish consultation submissions on-line. If you do not want your response, including your name and contact details, to be published, please state this clearly in writing when you submit your response together with a brief explanation. We will respect your wish for confidentiality as far as possible, but if we receive a request under the Freedom of Information Law for the information you have provided we will take into account your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

A summary of the comments received and final decisions will be published within 3 months of the consultation closing.

This consultation paper has been sent to the Public Consultation Register.

#### **Background to the proposals**

The current prescriptive health and safety Regulations for the construction industry were made in 1970.

These Regulations are considered to be outdated as they no longer reflect industry standards, employment relationships in the industry, or address the management of health and safety from the commencement of the project, through the whole life of a building/ structure to its eventual demolition.

The construction industry, as a whole, also continues to be a poor performer in health and safety terms. Over the last 5 years:

- Over 30% of work related accidents and ill health reported to Social Security being made by construction workers. Construction workers make up approximately 9% of the working population.
- 1,174 construction workers making a claim as a result of suffering a work related accident or illness. These claims have resulted in over £600,000 in benefit payments.
- 20 construction companies being prosecuted in the Courts, resulting in fines and costs approaching £500,000.
- The Inspectorate taking action to immediately stop work or require improvements to be made by the issue of formal legal notices on 62 separate occasions.

There are a number of companies and organisations in the industry who seek to improve the image and performance of their industry. Calls for new Regulations aimed at improving health and safety were made a number of years ago, and the HSI has worked with a working party of the industry representative body, the Jersey Construction Council (JeCC), on proposals for new Regulations since that time.

In line with the recommendations made by the working party, and following public consultation, the 'Managing Health and Safety in Construction: Approved Code of Practice' (ACoP) was introduced on 1 January 2015. The ACoP was intended to provide interim authoritative guidance on the requirement to address the management of health and safety at the earliest possible stage of the construction process, recognised as a key factor in improving health and safety performance, whilst the proposed draft Regulations were being developed.

As the revised Regulations incorporate the principles set out in the ACoP, it is proposed that the ACoP be revoked when the new Regulations come into force. Tailored guidance will, however, be published on the revised Regulations.

### **The proposed Health and Safety (Management in Construction) (Jersey) Regulations 200-**

The draft Regulations are divided into 4 parts:-

- Part 1** contains the various definitions that apply for the purposes of the Regulations  
**Part 2** sets out the general requirements imposed by the Regulations, including the duties placed on various parties involved with a construction project (with some exceptions, these largely reflect the requirements of the 'Managing health and safety in Construction: Approved Code of Practice'  
**Part 3** sets out the specific requirements of the Regulations (these broadly reflect the requirements of the existing 1970 Construction Regulations)  
**Part 4** contains the closing provisions.

**What the consultation seeks**

This consultation seeks views on the following areas:-

- Structure of the draft Regulations
- The duties placed on the key parties defined within the Regulations
- The specified dimensions incorporated into the definitions of 'major construction project' and 'work at height'
- The requirements relating to notification of construction projects

## Appendix 2 : On-line consultation survey questions

To assist with the review and analysis of the consultation responses, please confirm if your response is being made in your capacity as:-

An employer	A Health and safety professional
An employee	A training provider
Self-employed	A Client
An official representative on behalf of a professional body ( <i>please specify</i> )	Other ( <i>please specify</i> )

If you a duty-holder under the 'Managing Health and Safety in Construction: Approved Code of Practice', 2015, which role best describes you (*choose one option*):-

Commercial client	Health and Safety project co-ordinator
Designer	Principal contractor
Contractor	A construction worker

### Questions

1. Do you think that the Construction (Safety Provisions) (Jersey) Regulations 1970 need replacing?

Please provide comments if you wish

2. Do you think that the way the proposed Regulations are structured – in 4 separate parts - is easy to understand?

Please provide comments if you wish

3. Do you think that all construction workers should be provided with an equal level of protection for their health and safety, irrespective of the size of the construction project?

Please provide comments if you wish

4. Do you think that all of the general requirements set out in Part 2 of the Regulations should apply to all construction projects?

Please provide comments if you wish

The following questions relate to Part 1 of the Regulations:-

5. The definition of a Client addresses the situation where work is carried out for a 'domestic client' (a domestic client is defined under 'interpretation'). Domestic clients do not have duties under any health and safety at work legislation as they are not at work. Do you think that where work is carried out for a domestic client, the responsibility for carrying out the duties placed on a 'client' should be placed on the designer, or if not the designer, the relevant contractor?

If no, please specify who you think should take on this role and please provide comments if you wish

6. Do you think any of the definitions of 'contractor', 'designer', 'health and safety project co-ordinator', 'principal contractor' or 'relevant contractor' are problematic?

Please provide any reasons for your answer

7. Work at height is defined as work at a height of 2 metres or more. In the UK, the 2 metre rule has been removed from legislation and replaced by a requirement for all work at height to be risk assessed and controlled. Do you think the Regulations should include a minimum height for when the additional control measures, set out in Regulation 27 of the proposed Regulations, are required?
8. If yes, do you think 2 metres is an appropriate height to be included in the definition?
9. If no, what height, if any, do you think should be incorporated into the definition?

Please provide comments if you wish

The definition of a 'major construction project' includes an additional criterion to that used in the 'Managing Health and Safety in Construction ACoP'. This criterion is to include work where the work is scheduled to last more than 30 days AND have more than 20 workers working simultaneously at any point in the project, or involve more than 500 man days. This follows the revised approach adopted by the UK.

- 10.** Do you think it is appropriate to include a threshold of simultaneous workers at any one time into the definition

Please provide comments if you wish.

- 11.** Do you think there may be practical difficulties including reference to a defined number of people working simultaneously in order to determine whether a project falls within the definition of a major project?

Please provide comments if you wish.

- 12.** Do you think the 30 day and/ or 500 man day thresholds are appropriate for the definition of a major construction project?

If no, please state why

- 13.** Please provide further comments you have on the 30 day and/ or 500 man-day thresholds

- 14.** Please let us know if there are any other aspects of the Regulations set out in Part 1 which you think are problematic

The following questions relate to Part 2 of the Regulations:-

- 15.** Regulation 7 sets out the requirements placed on the client. These mirror those set out in the 'Managing Health and Safety in Construction ACoP'. In the UK there is an additional requirement placed on clients to ensure that welfare facilities are provided (*this does not necessarily mean they must provide them directly, rather, be satisfied that they have been planned for by the principal contractor*). Do you think a similar requirement relating to welfare facilities should be included in the proposed Regulations?

Please provide comments if you wish.

- 16.** Regulation 9 sets out the requirements for notification of major construction projects. This will enable the HSI to make enquiries about the arrangements for health and safety management before work starts on site. Do you agree that major projects should be notified to the HSI?

Please provide further comments if you wish

**17.** Please indicate your 1<sup>st</sup> and 2<sup>nd</sup> preferred means of notification, if these were all available

Electronic on-line form	Post
Email	Fax

**18.** Where high risk construction work, as defined in Regulation 4, is involved, written safe work method statements must be prepared and enforced (Regulation 19). Do you think this is a proportionate and appropriate approach to controlling the risks associated with high risk work?

Please provide comments if you wish.

**19.** Regulation 20 sets out the requirements for health and safety training. Do you think these requirements are proportionate and appropriate?

If no, please explain why not.

**20.** Please comment on any Regulations set out in Part 2 which you think are problematic

The following questions relate to Part 3 of the Regulations:-

**21.** Regulation 27 sets out the general requirements relating to work at height, with Schedules 1 – 7 setting out specific requirements for the control measures taken to address the risks. This has been based upon the UK equivalent in order to provide a consistency of approach to that adopted in the UK. Do you find this approach helpful to understand?

Please provide comments if you wish.

**22.** The Regulations will be supported by guidance, but are there any specific Regulations in Part 3 where you think additional guidance would be helpful?

**23.** Please comment on any Regulations set out in Part 3 which you think are problematic.

Part 4 of the Regulations simply sets out the administrative arrangements to enable the existing Regulations to be revoked, ensure other Regulations which impose additional requirements on matters included in the draft construction Regulations remain applicable (ie the use of cranes and electricity) and to provide for the States to identify a date on which the new Regulations come into force.



## Other comments

- 24.** If you have any other comments on the proposed revision of the 1970 Construction Regulations, or questions/ comments covered by this consultation document, please provide comments below. Should you wish to make further comments, please continue on a separate sheet.