

REPORT ON THE PROPOSED APPROVED CODE OF PRACTICE FOR MANAGING HEALTH AND SAFETY IN CONSTRUCTION

1. SUMMARY

The Minister has previously agreed to a recommendation of the Jersey Construction Council ("JeCC") working party to introduce an Approved Code of Practice for Managing Health and Safety in Construction ("Construction ACoP").

This report sets out the consultation process that has taken place and advises on the written submissions that have been received. There has been wide support for the introduction of the Construction ACoP, with the exception of the submissions received from an individual architect and the Association of Jersey Architects ("AJA").

As a result of the consultation, changes have been made to the Construction ACoP. Comment on the response received from the AJA is also set out in this report.

It is recommended that the Minister agrees to the proposed changes, and formally approves the Construction ACoP with a coming into force date of 1st January 2015.

2. BACKGROUND

2.1 Health and safety performance of the construction industry

The construction industry has recognised the need for changes to health and safety legislation to improve the performance of the industry. A review of the industry's performance over the last 5 years has identified that:

- Work related accidents and ill health to construction workers has, on average, resulted in over 30% of all claims made each year for Short Term Incapacity Allowance ("STIA"). (In 2013 construction workers represented 9% of the working population in Jersey);
- In 2013, this percentage of claims did reduce to 24% but, even with this reduction, over 4,000 working days were lost;
- Over the last 5 years, 1174 construction workers have suffered a work related accident or from ill health which has resulted in a claim for STIA;
- Claims for STIA have resulted in over £600,000 in benefit payments;
- 20 construction companies have been prosecuted in the Courts, resulting in fines and costs approaching £500,000; and
- The Inspectorate has served 62 enforcement notices as a result of poor standards identified in the arrangements for construction work.

The JeCC working party sees that the introduction of legislation to address the management of health and safety in construction, which also involves clients and the design team at the earliest possible stage of the construction process, is a key factor in improving this performance.

There is strong support from the JeCC working party for the early introduction of new regulations to set out these requirements, with the Minister previously supporting a recommendation of the JeCC working party for regulations to be prepared. However, it is also recognised that, in view of the timescales involved in taking regulations to the States, an interim Construction ACoP, aimed at identifying the measures that the different parties are able to take to comply with their existing general duties under the Health and Safety at Work (Jersey) Law, 1989, ("the Law"), will be a step in the right direction to driving forward the improvements for management of health and safety in the industry.

2.2 Process for the introduction of an approved code of practice

Following a period of consultation with such persons as he considers necessary, the Minister is able to approve Codes of Practice under Article 10 of the Law, for the purpose of providing practical guidance on how organisations and individuals can comply with their legal requirements under health and safety at work legislation.

Approved Codes of Practice introduced under Article 10 do not introduce new legal requirements, but can be referred to by the Courts when considering the measures that may be necessary to comply with the Law.

3. CONSULTATION

3.1 Consultation process

The consultation process has involved:

- The consultation document being issued on the 12th August 2014 requesting comment by the 19th September;
- A media release being issued on the 12th August;
- A formal consultation notice, required in order to meet the consultation requirements set out under Article 10 of the Law, being placed in the Jersey Evening Post on the 12th and 13th August;
- The JeCC circulating their membership in August to advise them of the consultation on the proposed Construction ACoP. The JeCC membership is made of 109 members, including 48 Contractors, 36 Consultants, 7 Clients and 18 Suppliers/Service Providers;

- The consultation document being available on the States website, both in the Health and Safety at Work Inspectorate section and the consultation section. 166 hits were made on the Health and Safety Inspectorate at Work Inspectorate section and 114 hits on 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;
- Hard copies of the proposed ACoP being available from the Health and Safety Inspectorate; and
- 2 seminars taking place to raise awareness to the proposals:
 - The AJA organised a seminar for their members, which took place on the 16th September at the Radisson Hotel. The seminar, to which Colin Myers was invited, involved a presentation being given by Paul Bussey, an architect who is chair of the Designer Initiative on Health and Safety, and elected member of the Association for Project Safety; and
 - The second seminar was organised by the JeCC, JOSHA, (Jersey Occupational Safety and Health Association), and the CIOB, (Chartered Institute of Building). This seminar took place on the 25th September at Hotel de France and was attended by 110 persons. Presentations were given by Colin Myers who explained the background to the proposed Construction ACoP, and James Ritchie, an architect who is the Head of External Affairs and Deputy Chief Executive of the Association for Project Safety.

3.2 Responses to the consultation process

The public consultation was completed on the 19th September, but agreement was provided to representative groups to submit comments after the closing date.

A log of all contacts made with the Health and Safety Inspectorate was made. The 20 separate contacts can be grouped as follows:

- 6 persons who contacted the Inspectorate raised queries over the interpretation of sections of the Construction ACoP;
- There were 9 formal responses to the consultation including 2 from one individual. These responses, redacted where necessary, are listed below and included in Appendix A to this document;
- The Construction ACoP was discussed during 3 head office visits to contractors and 1 health and safety consultancy; and
- A meeting took place with a representative of the AJA to provide background to the proposals.

3.3 Summary of responses received

The responses that were received are included in Appendix A. A summary of the responses and action taken as a result are provided in the following table:

Ref No	Respondent	Summary of response	Action taken
1	Individual (engineer)	Commented on wording and recommended some clarification. <i>Supportive of proposals.</i>	Changes proposed to Construction ACoP to take into account comments. References will be provided to information that is available on the HSI website, enabling this list to be updated as necessary
2	Individual (architect) 2 separate comments.	The individual made comment in respect of the status of an ACoP, justification for the ACoP and application to residential developments. He also expressed concern at additional costs and suggested a focused approach to identified problem areas. <i>Opposed to introduction of ACoP.</i>	A response was made to the respondent providing him with advice on: The legal status of an ACoP; its application to residential developments; information on performance on the industry; and background to the development of the proposed construction ACoP.
3	Individual	Queried application of role of commercial client to share transfer ownership.	Changes proposed to Construction ACoP clarifying that the definition of a commercial client did not extend to share transfer ownership.
4	Representative. Patrick Guyomard on behalf of JOSHA	Suggested introduction of notification requirement to the Inspectorate for major projects. Commented on trigger point for major projects.	Advised that notification was not a legal requirement and therefore could not be addressed within the Construction ACoP.

		Supportive of proposals.	Changes proposed to Construction ACoP to seek improved controls over the management of health and safety in smaller projects. See section 4.
5	Representative. Alison Horton on behalf of AJA	In summary, the AJA is supportive of the proposals for new construction regulations but feels that it is counterproductive to introduce a new ACoP based on UK legislation which is to be replaced. The AJA therefore seeks to delay and possibly halt the introduction of the ACoP. The AJA also believes that the industry needs more time and training ahead of the proposed new updated Health and Safety Regulations for Construction work. Opposed to introduction of ACoP.	See comments made in section 3.4.
6	Representative. Paul Richardson on behalf of Jersey Safety Council	Queried provision of training. Supportive of proposals.	Contacted to advise on availability of training for Construction Design Management Co-ordinators. ("CDM-c")
7	Representative. Bill Dark on behalf of Senior Manager H & S Co-ordinators Group	Queried availability of persons to carry out the role of CDM-c. Supportive of proposals.	Contacted to discuss proposals for training.
8	Representative. Nigel Blandin on behalf of JeCC Health and Safety Sub-Committee	Advised that the industry and JeCC supported the introduction of the Construction ACoP. Mirroring the UK Construction Design and Management Regulations ("CDM") was a tried and tested approach. Advised	Changes proposed to Construction ACoP to seek improved controls over management of health and safety in smaller projects. See section

		<p>that all projects should be included.</p> <p>Adoption of approach set out in the revision to the CDM regulations which are to be introduced in 2015 and removal of CDM-c may not be prudent to introduce at this stage.</p> <p>Role of CDM-c is viable and should be welcomed locally to improve communication and management of the construction process.</p> <p>The definition of major works is a bone of contention. Use of a CDM-c on smaller works would be beneficial. As ACoP is interim device consideration given to this point in the proposed regulations. Workability of notification is uncertain but maybe the best way forward.</p> <p><i>Supportive of proposals.</i></p>	4.
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3.4 Response made by the AJA

The AJA represents architectural practices in Jersey. Architects are a key member of the design team and their comments are considered to provide a valuable contribution to the debate on the way forward. It is for this reason that an architect was included as a member of the JeCC working party.

Status of an ACoP

The AJA supports the proposals for changes to the health and safety regulations but is not supportive of the proposed Construction ACoP.

It is considered that this position reflects a misunderstanding on the stepped approach that is being taken to seek improvements in the management of health and safety in the industry, with the Construction ACoP being an interim stage in seeking these changes. It is also felt that the AJA has not fully appreciated the status of an ACoP in providing practical guidance on how compliance with the existing legal requirements can be met.

Effectiveness of CDM2007

In respect of basing the proposed Construction ACoP on the current UK Construction (Design and Management) Regulations, 2007, ("CDM 2007"), the AJA expresses the view that it would be wrong to adopt this approach as CDM2007 is "flawed" and a "discredited system". As a result it advocates basing the new health and safety regulations on the proposed replacement UK CDM regulations, ("CDM2015").

It is not the case that CDM2007 is a flawed and discredited system. Research undertaken by the UK Health and Safety Executive ("HSE"), 'RR920 Evaluation of the Construction (Design and Management) Regulations, 2007', as part of a review undertaken of CDM2007, found that:

- CDM2007 had gone a long way to meeting its objectives, but some concerns remain within the industry;
- Construction design, management and site practices have improved between 2006 and 2010;
- A cost impact was associated with CDM2007, but respondents rated the benefits obtained were higher than costs; and
- Industry practice was found to have a significant influence on how CDM2007 is implemented.

Statistical information produced by the HSE also identifies that there has been a reduction in work-related fatal and other accidents in construction since the introduction of CDM2007.

The objective behind CDM2015 is therefore to seek further improvements, and not to revoke CDM2007 because it is not seen to be working.

Replacement of role of CDM-c with principal designer in CDM2015

One of the proposals in CDM2015 is to replace the CDM-c role with that of the principal designer. The AJA interpret this as resulting in architects taking on the current tasks assigned to the CDM-c. However, this proposal has come in for significant levels of concern and criticism in the UK.

The HSE is committed to this approach in the attempt to bring the co-ordination role back into the design function, despite the concerns made by the Royal Institute of British Architects, the representative organisation of architects, over the appetite of architects to want to carry out the role and other concerns which have been made over the ability of designers to discharge the co-ordination role effectively. It is considered that these concerns, over the ability of architects to carry out the co-ordination role, are reflected in the desire of the AJA to seek delays in the introduction of the Construction ACoP in order for its members to be trained to be able to carry out the role of the principal designer.

Although the HSE is currently still going forward with the proposal to replace the CDM-c with that of principal designer, it is recognised that the transition is likely to take some time, with the suggestion that the CDM-c will continue to carry out the co-ordination function for the first two years after the introduction of CDM2015. There will however, no doubt, be continued discussion and uncertainty over who is best placed to undertake this co-ordination role.

It is therefore recommended that the role of co-ordination on major projects remain with the CDM-c in the proposed Construction ACoP, with this position reviewed in the future.

As noted, it is recognised that architects are key members of the design team. Following discussions which have taken place with the member of the JeCC working party who is an architect, it is therefore proposed that a dialogue will take place with the AJA in order to improve their understanding on the background to the development of the Construction ACoP, and to clarify the existing legal duty that is placed on architects under the Law.

3.5 Change of title of CDM-c

It is thought that, in the light of the change of title of the co-ordination role in CDM2015, from CDM-c to principal designer, it would be prudent to change the title of the co-ordination role in the Construction ACoP to avoid association with the defunct title. This proposal has received the support of the JeCC working party. The title of CDM-c is therefore recommended to be changed to that of Health and Safety Project co-ordinator.

4.0 APPLICATION TO PROJECTS INVOLVING 2 OR MORE CONTRACTORS

Comment was made by respondents to the consultation which expressed some concern that smaller projects were not captured by the arrangements set out in the Construction ACoP. In the consultation document, the arrangements set out for co-ordinating the management of health and safety for the construction project, do not apply until the project becomes a major project, defined as one where the work would take longer than 30 working days or involve more than 500 person days of construction work.

Consideration has therefore been given to the means by which a proportionate approach to co-ordinating the approach to managing health and safety on a smaller project, below the definition of a major project, could be achieved.

Discussion has also been taking place with the JeCC health and safety sub-committee, on producing a guide to health and safety on construction sites. This guide, based on an HSE publication, "*The absolutely essential health and safety toolkit*", is aimed at small contractors and identifies key topics which they should consider when carrying out their work.

It is therefore proposed to extend the application of the proposed Construction ACoP to incorporate reference to this guidance in order to provide assistance to smaller contractors in meeting their legal requirements under the Law.

The revised proposals to the Construction ACoP require commercial clients to appoint a principal contractor where they engage 2 or more contractors to carry out the work. In such situations the role of the principal contractor would be to plan and manage health and safety for the project by reference to a written health and safety checklist which is included as an appendix to the Construction ACoP. In addition the principal contractor is required to prepare a health and safety file for the contract.

The trigger point for implementing the requirements for a major project has not been changed.

The members of the JeCC working party agree with the proposals to include arrangements for managing health and safety on smaller contracts.

The revised, proposed Construction ACoP is included as Appendix B to this report.

5.0 RECOMMENDATION OF THE JeCC WORKING PARTY

All members of the JeCC working party have considered the responses which have been made to the consultation.

With the exception of Mr Andrew Morris, who as an architect and member of the AJA working party, found himself in a difficult position and has not made a recommendation, the JeCC working party has recommended the introduction of the Construction ACoP.

6. RECOMMENDATION

It is recommended that the Minister agree to the changes made to the proposed Construction ACoP as a result of the consultation and formally approve the Construction ACoP under Article 10 of the Health and Safety at Work (Jersey) Law, 1989, with a coming into force date of 1st January 2015.

The formal Notice of Approval to be signed by the Minister is included as Appendix C.

It is also recommended that the Minister agree to the Director of Health and Safety writing to the respondents on his behalf thanking them for their contribution to the consultation.

Colin Myers
Health and Safety Inspector

21st October 2014

