



HSENI PROPOSALS FOR THE REPLACEMENT OF THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS (NORTHERN IRELAND) 2007

Summary of consultation responses

This is a summary report of the outcome of the HSENI's formal, statutory consultation on proposals for the replacement of the Construction (Design and Management) Regulations (Northern Ireland) 2007.

The consultation document (CD) invited responses on proposals to revoke and replace the Construction (Design and Management) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 291).

The CD was published on the HSENI website and the consultation exercise ran from 15 December 2014 to 23 March 2015. Letters were issued to approximately 500 consultees inviting comments on the proposals, costs relevant to Northern Ireland and the conclusion that the proposals would have no adverse effect on section 75 groups.

During the consultation period the website page, on which the CD was located, was viewed 2,729 times. The CD was downloaded a total of 458 times and 27 formal replies were received.

Further consultation meeting

In light of the high level of interest, all those consultees who responded to the consultation exercise were invited to meet with HSENI to enable further discussion about the proposals, and to help HSENI understand the remaining concerns.

The meeting took place on 15 June 2015 with 28 delegates from 21 organisations attending.

A summary of the outcome of the statutory consultation, along with a record of issues covered at the further consultation meeting and updates on some of the issues, is set out in **Part 1**.

Details of those responding to the consultation exercise as well as those attending the further consultation meeting is set out in **Part 2**.

HSENI PROPOSALS FOR THE REPLACEMENT OF THE CONSTRUCTION (DESIGN AND MANAGEMENT) (“CDM”) REGULATIONS (NORTHERN IRELAND) 2007

Views Sought on	Comments Received		Update since consultation
	Type	Key Points	
1. Structural simplification of the Regulations	Agree / Support	More straightforward; positive step; simpler, easier to follow; supportive of general approach and objective of improving regulation on smaller sites; approach commendable but better understanding will be dependent on guidance available to small and medium sized enterprises (“SMEs”).	Draft NI Regulations that appeared in consultation document (“CD”) have been revised in line with final GB Regulations.
	Disagree/ Oppose	Disagree that Regulations will be more easily understood by SMEs; not convinced proposals simplify regulatory package; may still be daunting to SMEs but specific tailored guidance may help; terminology used in some areas is not specific enough and could lead to confusion (e.g. in relation to client duties); a number of suggestions provided for rewording of legislation; some cross references inaccurate.	Part 2 (Client duties) has been revised and all cross references have been checked and updated as necessary.
		<p><u>Discussions during further consultation meeting included:</u></p> <ul style="list-style-type: none"> • Regulations too general/generic. • Scenario based guidance needed. • Strict liability issues are involved and need clarification. 	The “civil liability” provisions included in draft NI Regulations are carried forward from the 2007 Regulations. Due to a change in law similar provisions no longer required in GB.
2. Replacing the ACoP (“Approved Code of Practice”) with targeted guidance	Agree / Support	Satisfied with the proposal for new simplified ACOP and tailored guidance; welcome guidance which will help SME’s and domestic sector; should result in clearer industry supported guidance; should be more specific guidance – entertainment industry, projects with one contractor, appointing principal designer (“PD”) when more than one contractor and to eliminate over-interpretation/gold-plating.	GB CDM 2007 ACoP was approved for use with NI 2007 Regulations. However, the ACoP can no longer be relied on as it ceased to have effect on revocation of GB 2007 Regulations.

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	Disagree/ Oppose	ACoP should be maintained and updated; loss of quasi-legal status would be a backward step; revised ACoP preferable to separate guidance; new ACoP should be introduced at same time as Regulations; retaining ACoP and having sector specific guidance would be better; industry relies on ACoP being a driver to encourage good health and safety; tailored guidance should be regulated by HSENI or other governing body; GB guidance open to interpretation; guidance should be tailored to level of risk.	A new ACoP is under consideration in GB. Should that be introduced HSENI will give consideration to whether it should be approved for use in NI.
		<p><u>Discussions during further consultation meeting included:</u></p> <ul style="list-style-type: none"> • A total ACoP package is preferred to individual topic guidance. • Would like an ACoP, but also want consistency with GB. • Guidance seen as a compromise deal. • An ACoP does away with ambiguity. • Special legal status is considered to be important. • Removal of GB ACoP creates a dangerous vacuum – need guidance in some form. • Interim ACoP may be required when GB ACoP falls. • Interim NI ACoP could be speeded up by not having a consultation on the matter. • Could attendees create a best practice guide for industry in the interim period? • Interpretation difficulties in guidance as opposed to ACoP. • Problems with continuity and clarity • Concern users will only buy the most specific guidance (in response to this, HSENI reminded everyone that GB guidance was free to download and that each guidance note referred to duties of others) • Issue on new wording (guidance) about having a Construction Phase Plan (now “make arrangements” not “do” as was required before). <p>HSENI provided an explanation about the status of the GB ACoP that had</p>	

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		been approved for use in NI; the resource and expertise deficits and technical issues around reproducing the GB ACoP text as a NI ACoP; and affects on the future management of changes, including the introduction of a new GB ACoP	
3. Replacing the CDM co-ordinator (CDM-c) role with the principal designer (PD)	Agree / Support	Support in principle; cautious welcome if PD has sufficient skill, knowledge and experience; proposal sound but raises some issues; designers duties remain well defined; support for proposals iro PD, contractor and designer appointments and duties.	Regulations dealing with duties of PD and Principal Contractor have been revised.
	Disagree/ Oppose	<p>Most designers will be reluctant and/or unqualified to fulfil PD role; smaller companies may struggle; structured co-ordination of project could be lost; definition of PD needs greater clarification; possible PD conflict of interest; client will lose a source of independent advice; ability of PD to enforce provision of good information from contractors will be limited or nil; PD cannot 'ensure' the compliance of other designers; "strict" duty on the PD does not recognise the limitations on the powers PDs have; designers do not have specialist knowledge and rely on CDM-c; regulation iro PD and the Principal Contractor is excessive and will increase 'red tape' and costs; puts more responsibility on Principal Contractor; change will result in significant costs relating to termination of CDM-c appointments.</p> <p>Transitory provisions unclear; transitional period should be lengthened for NI (e.g. 12 months); a number of construction professionals will be unable to work both sides of the border.</p>	<p>GB Guidance on Regulations (L 153) has been published and is available to download free of charge - http://www.hse.gov.uk/pubns/priced/l153.pdf</p> <p>Transitional provisions clarified and put into Schedule 5 in revised NI Regulations. The GB transitional period was 6 months and same was initially proposed for NI. However, in light of further industry representations on the issue, the NI transitional period will be 12 months.</p>

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			Guidance on transitional arrangements is contained in guidance document L 153 (paragraphs 181 – 186) - http://www.hse.gov.uk/pubns/priced/l153.pdf
		<p><u>Discussions during further consultation meeting included:</u></p> <ul style="list-style-type: none"> • Architects unwilling to fill PD role (as currently carried out by CDMC). • PD not qualified to fill CDMC role. • Lack of clarity on who PD should be and what the PD should do – HSE guidance is not helpful – Solicitors now involved in (GB) meetings. • Causes problems for small architectural practices. • Causes problems for domestic clients and self build projects. • Is a cost saving measure only – not health and safety. • Possible conflict of interest in designer / contractor roles. • Costs in IA flawed – no relevance to NI (<i>NB - specific costs were not identified in discussion</i>). • Ownership of health and safety plan changes too many times (validation issue). • Possibility of being handed an unsafe design with no opportunity to influence. 	

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		<ul style="list-style-type: none"> Need for clarity on when NI regulations are going to change (for Contractors and Designers thinking of tendering for contracts). 	
4. Replacing the explicit requirement for individual competence with new regulation 8 and removing CDM's explicit requirement for corporate competence	Agree / Support	Substitution of the term 'competence' with the term 'skills, knowledge and experience' welcomed; agree with the aim of reducing bureaucracy through the removal of competence criteria; welcome replacing explicit requirement for individual competence with a new regulation 8 and removal of CDM's explicit requirement for corporate competence; professional bodies delivering H&S training is positive; support for the promotion of competence within the industry and overseeing of competence by professional bodies; formal and specific competence based H&S qualifications recommended for PDs; 'common sense' approach to competency reduces bureaucracy but current mind-set is one of 'civil and criminal reality'.	GB Guidance on Regulations (L 153) deals with the need to have skills, knowledge and experience - http://www.hse.gov.uk/pubns/priced/l153.pdf
	Disagree/ Oppose	Backward step; could create a vacuum; "a general requirement" may result in more subjective assessments; requirements need to be detailed in guidance/ACOP; move to risk based approach more difficult to interpret and implement; site based training is good in theory but there are issues; competency standards should not be set by industry; self-regulation will lead to a decrease in worker protection; not all clients fully aware of their duties and may be vulnerable; disagree that competence is most effectively promoted through cultural change and industry leadership rather than regulation; clarity needed in relation to the development of competency; current system for 3rd party assessment/monitoring of companies works and should be retained as evidence of competence; should be some form of explicit requirement for clients to check the capability of those they are appointing.	
		<p><u>Discussions during further consultation meeting included:</u></p> <ul style="list-style-type: none"> No substantive comments received – one contributor felt that the principle was unchanged. 	

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		<ul style="list-style-type: none"> BM mentioned that this arrangement would be in line with other sectors. 	
5. Client's duties including domestic clients	Agree / Support	Support for the removal of the exemption of duties for domestic clients; client duties better placed upon the PD for domestic projects; agree with approach in relation to client duties including domestic clients; satisfied with clients', contractors' and designers' duties.	Draft NI Regulations, Part 2 (Client duties) has been revised.
	Disagree/ Oppose	Domestic client responsibilities could be more clearly expressed; client duties require further clear guidance; domestic clients will not know their responsibilities; not good in reducing red tape; removal of exemption difficult to manage; smaller contractors often not fully trained in H&S application in construction; ambiguities exist in regulations; threshold targeted at risk should be introduced to protect small [architectural] practices; current approach is for generic plans, low compliance and no increase in safety; default position of PD and PC roles in domestic projects is unfair and should be omitted; clients could accelerate matters without reasonable preparation; clients could rely on the contractor to provide a construction plan without a co-ordinators input. guidance required to avoid disproportionate or over-compliant responses - danger of confusion over domestic clients having duties	<p>GB Guidance on Regulations (L 153) includes guidance on clients, including domestic clients, duties - http://www.hse.gov.uk/pubns/priced/l153.pdf</p> <p>GB has also produced a leaflet/short guide for clients (INDG 411 (rev1)) - http://www.hse.gov.uk/pubns/indg411.pdf</p>
		<p><u>Discussions during further consultation meeting included:</u></p> <ul style="list-style-type: none"> Regulations completely misunderstand what happens in reality. Too confusing and would be unable to advise domestic clients. Different regime for self build and planning in NI will cause specific domestic client issues in NI which might need fleshed out. 20% compliance rate (<i>NB this was an estimate in the Impact assessment</i>) seen as a disincentive – why bother? No expectation that Health and Safety would improve as a result of inclusion of domestic clients. 	

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		HSENI re-iterated that they have no room to manoeuvre on this issue – domestic clients can no longer be exempted.	
6. Threshold for appointment of co-ordinators	Agree / Support	Do not oppose the changes to the threshold for appointment of co-ordinators, but, has the potential to cause confusion particularly as terms are contrary to common usage within the industry.	GB Guidance on Regulations (L 153) includes guidance on appointment of co-ordinators - http://www.hse.gov.uk/pubns/priced/l153.pdf
	Disagree/ Oppose	Disagree with statement that “For the vast majority of these projects we would expect little more than is currently carried out for these duties to be discharged appropriately”; changes have the potential to cause widespread confusion – need for clear communication;	
		<p><u>Discussions during further consultation meeting included:</u></p> <ul style="list-style-type: none"> • Very odd – why only when there is more than 1 contractor on site? Difficult to understand the reasoning. • HSENI re-iterated that this was a requirement to bring us in line with the Directive. <p>There was brief discussion on changes proposed to the notification threshold, with HSENI explaining that the proposal would remove the current ‘gold plating’ of the Directive’s requirements. No other substantive comments were made on this issue.</p>	
7. Notification	Agree / Support	Supports the notification threshold changes – will avoid placing the burden of notification on most domestic projects.	GB Guidance on Regulations (L 153) deals with notification requirements - http://www.hse.gov.uk/pubns/priced/l153.pdf
	Disagree/ Oppose	Alarmed by proposal; reject the proposal to lower the notification threshold; changes could mean fewer small high risk projects being notified to	

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		HSENI; better to use monetary value like the Australian system; lighter touch by regulators and reduction in H&S standards; notification threshold should be maintained for intelligence it produces; duty to notify a project would be better placed with the PD who is more likely to notify than the client; concerned that small builders and contractors will now need to produce construction phase plans for every project; HSENI should be clear about proportionate approach and encourage the use of template CPP and other resources to ensure easy and proportional implementation by small contractors on small projects; a better system would be welcomed; major domestic contracts that don't have to be notified make a mockery of the Regulations - this loophole needs to be covered.	been brought into line with European Directive. It should be noted that the requirements of the Regulations apply whether or not the project is notifiable.
8. Impact Assessment	Agree / Support	Satisfied with Impact Assessment (IA).	Final GB IA was used in NI CD - http://www.legislation.gov.uk/uk/si/2015/51/impacts
	Disagree/ Oppose	Concerns about various figures used in the CD and extrapolated figures for NI; not producing a NI impact assessment is fundamental flaw; assuming the GB costs can be applied proportionally to NI is unacceptable; perceived savings to industry and government assembled without reference to commercial cost data for consultants and contractors; does not truly reflect costs to RSUA members; failed to address the financial and administrative burdens on the entertainment industry; the effect on small architectural practices will be far greater in NI than GB; changes will lead to worsening H&S standards and economic consequences of this have not been considered.	HSENI has considered the comments received but does not believe that the position will be significantly different in NI.

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LIST OF CONSULTATION RESPONDENTS

Northern Ireland Fire and Rescue Service
Police Federation for Northern Ireland
Department of Finance and Personnel – Central Procurement Directorate
Dixons Contractors
Northern Ireland Safety Group
Law Society of Northern Ireland
Society of London Theatre
Northern Ireland Public Service Alliance
Ards Borough Council
Association for Project Safety Northern Ireland
Association for Project Safety
JNP Architects
Northern Ireland Water
Construction Employers Federation
Association for Project Safety (Northern Regional Committee)
McAdam Design Ltd (S Magill (CDM-c))
McAdam Design Ltd (T Robb (CDM-c))
Irish Congress of Trade Unions
WYG Management Services Ltd
Federation of Master Builders
Waddington–McClure Architects
Royal Society of Ulster Architects
Quarry Products Association Northern Ireland
McAdam Design Ltd (B Hewitt (CDM-c))
South Eastern Health & Social Care Trust
TransportNI
Association for Project Safety Northern Ireland (G Miller (CDM-c))

CDM-c = CDM Co-ordinator

LIST OF ATTENDEES AT FURTHER CONSULTATION MEETING

Name	Company
Michael Murray	DFP – Central Procurement Directorate
Eleanor Forrest	Dixons Contractors
Ernie Spence	NI Safety Group (NISG)
Jim Leith	Farrans
Alastair Lambe	McLaughlin & Harvey
Andrew Cooke	Grahams
Darren McClean	Lagan Construction
David Wallace	Henry Brothers
John McGerty	Gilbert Ash
Geraldine Alexander	NIPSA
Raymond Dornan	Association for Project Safety NI (APS(NI))
John Murray	JNP Architects (APS registered)
John McCullagh	NI Water
Jonathan Caughey	Construction Employers Federation (CEF)
Paul Cheyne	Association for Project Safety (Northern Regional Committee)
Syd Magill	McAdam Design Ltd
Tim Robb	McAdam Design Ltd
Clare Moore	Irish Congress of Trade Unions (ICTU)
Joanne Corr	WYG Management Services Ltd
Louise Ward	Federation of Master Builders (FMB)
Angus Waddington	Waddington–McClure Architects
Ciaran Fox (RSUA Director)	Royal Society of Ulster Architects (RSUA)
Nicola Waddington	Royal Society of Ulster Architects (RSUA)
Joan McCoy	Royal Society of Ulster Architects (RSUA)
Michael Kelly	Quarry Products Association NI (QPANI)
Brent Hewitt	McAdam Design Ltd
Gerry Millar	Association for Project Safety NI (APS (NI))
Sarah Kennedy	Association for Project Safety NI (APS (NI))