

# Consultation on replacement of the Management of Health and Safety in Construction Approved Code of Practice 1996

This consultative document is issued by the Health and Safety Executive.

## Comments should be sent to:

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To reach there no later than **Friday the 28<sup>th</sup> AUGUST 2020**

The Executive tries to make its consultation procedure as thorough and open as possible. Responses to this consultation document will be held on file and may be published on our website after the close of the consultation period where they can be inspected by members of the public.

Information provided in response to this consultation, including personal information will be processed in accordance with Data Protection (Bailiwick of Guernsey) Law 2017 this means that personal data will not normally be disclosed to third parties and any such disclosures will only be made in accordance with the Act.

**The closing date for replies to this public consultation is Friday the 28<sup>th</sup> August 2020.**

## Consultation Document (CD820)

**Consultation on replacement of the Management of Health and Safety in Construction Approved Code of practice (ACOP) 1996**

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## **Consultation by the Health and Safety Executive (HSE)**

HSE in Guernsey will consult stakeholders to seek their views on its proposals where necessary. It believes that public consultation provides an open and transparent approach to decision-making which is necessary if policies and decisions are to reflect the needs and aspirations of the people they will affect. Following this consultation, HSE will analyse the feedback and results to make recommendations to the Board on the best way to proceed.

### **How to respond**

Our preferred method for receiving comments is online at [www.surveymonkey.com/](http://www.surveymonkey.com/) a link can be found at [www.gov.gg/hse](http://www.gov.gg/hse) Following this structure helps us to consider and analyse the responses in a coordinated way and gives you the opportunity to review the documents first.

However, you can also email general responses directly to [matthew.coggins@gov.gg](mailto:matthew.coggins@gov.gg) with the subject line GCDM2020.

If either of the above options is not possible please forward any questions or comments to:

#### **Matthew Coggins**

Health and Safety Executive  
Raymond Falla House  
PO Box 459  
Longue Rue  
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If you do provide a written response we would be grateful if you can include your email address so that we can inform you when HSE intends to publish information concerning the consultation responses on its website.

NB. Responses to this consultation must be received by **Friday the 28<sup>th</sup> of August 2020**.

If you require a more accessible format of this document please send details to [matthew.coggins@gov.gg](mailto:matthew.coggins@gov.gg) and your request will be considered.

### **What happens next?**

HSE will acknowledge all responses and give full consideration to the substance of views expressed towards the proposals. We may also contact stakeholders again if, for example, we have a query in respect of your response.

We will tell stakeholders when HSE will publish information concerning the consultation responses. We will provide a summary of those who responded to this consultation and we will produce a summary of the views expressed to each question. All this information will be placed on HSE's website. We will also place information on the website which will explain how the HSE will proceed with the arrangements.

### **Queries and Complaints**

HSE follows the States of Guernsey Consultation Guidelines. These can be found at <https://www.gov.gg>

## Summary

- 1 This Consultation Document sets out HSE’s proposals to replace the Management of Health and Safety in Construction Approved Code of Practice (ACoP) 1996.
- 2 The Draft Approved Code of Practice *The Guernsey Construction (Design and Management) 2020* are in draft form and may be subject to change. The policy objectives behind the proposed Guernsey Construction (Design and Management) 2020 Approved Code of Practice are to:
  - maintain or improve worker protection;
  - clarify dutyholder responsibility and expectation;
  - improve health and safety standards on small construction sites;
  - discourage bureaucracy;
  - encourage positive stakeholder engagement on projects of any size; and
  - better meet regulation principles.
- 3 In developing this proposed Approved Code of Practice, HSE has considered a broad range of evidence. This has included the evaluation of the existing Management of Health and Safety in Construction ACoP 1996 against UK CDM 2007 and the current CDM 2015 regulations, as well as the Management in Construction (Jersey) Regulations 2016, along with evidence through HSE’s general engagement with the construction industry.
- 4 There has been significant improvement in the industry’s performance on health and safety over recent years. However, the construction industry continues to be a high risk industry sector which accounts for a large number of work related accidents and ill health reported to the HSE 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.
- 5 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 clarify how all those involved with construction work can contribute to these improvements.

## Legal status of ACoPs

- 6 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 (General) (Guernsey) Ordinance, 1987 (“HSWO”). 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.

- 7 ACoPs have a special legal status and are admissible in legal proceedings under the Health and Safety at Work (General) (Guernsey) Ordinance 1987. The Court may regard an ACoP as evidence in determining whether the requirements of the 1987 Ordinance have been met in the circumstances to which the ACoP relates.
- 8 Compliance with the HSW Ordinance 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. It is for the dutyholder to demonstrated

## **Background to the proposals**

### ***The Organisation and Management of Health and Safety in Construction 1996 Approved Code of Practice (ACoP)***

- 9 CDM was first introduced in the UK in 1994 following publication of the 1992 European Directive 92/57/EEC on minimum safety and health standards for temporary or mobile construction sites<sup>1</sup>.
- 10 On the 11th July 1996, the Code of Practice entitled, 'The Organisation and Management of Health and Safety in Construction', was approved in Guernsey. This Code was written in response to the construction industries request for clarification of the duties required of them by the Health and Safety at Work (General) (Guernsey) Ordinance, 1987.
- 11 In common with the UK Construction, Design and Management Regulations, the Code outlined management arrangements for safety and health on construction projects, placing responsibilities on those who procure and design construction projects as well as those managing sites.
- 12 However, in the UK CDM 1994 was considered structurally complex, and many in the UK industry struggled with its systematic approach and concepts. Concerns developed that the Regulations were not delivering what was intended, but instead drove bureaucratic behaviours.
- 13 In 2000/01, 105 fatal injuries were recorded to UK construction workers – the highest for more than a decade. The then UK Government called the industry to account at a high-level summit, challenging the industry to improve its health and safety performance or face further regulation.
- 14 At the summit the industry made a number of commitments to improve health and safety performance through stronger leadership, worker engagement and taking ownership of the issues. The industry also set a series of tough industry targets.
- 15 Following the summit and consultation, the UK HSE published a revised regulations and ACOP in 2007.

- 16 The aim of this revision was to:
- simplify the Regulations, to make them easier to apply to the diverse range of contractual arrangements;
  - improve co-ordination by creating a 'client advisor' role of the CDM co-ordinator (CDM-c);
  - improve client focus;
  - increase the focus on competence assessment; and bear down on bureaucracy.
17. CDM 2007 came into force on 6 April 2007, supported by an extensive Approved Code of Practice (ACoP), which had originally been written as guidance.
18. At the time CDM 2007 was introduced the Regulations were debated in Parliament<sup>2</sup> and a commitment was given by the then Government to carry out an early review. This was agreed to mean after three years instead of five.

#### ***Evaluation of CDM 2007 and release of CDM 2015***

19. The evaluation of CDM 2007 was one of the largest post-implementation evaluations undertaken by HSE, reflecting the more than two million workers subject to its requirements. A pilot exercise was undertaken in 2009 to develop a question set and methodology, and the main evaluation started in 2010.
20. Ultimately this led to a further revision of the regulations and ACoP published in 2015

#### **The Position in Jersey**

21. In 2016 the Health and Safety Inspectorate in Jersey published the *Management in Construction (Jersey) Regulations 2016* and associated Guidance.
22. This reflected aspects of the UK CDM regulations from both 2007 and 2015 deemed relevant to the construction industry on an island community.
23. While resulting in a hybrid document the safety standards reflected the most modern standards, with more procedural background processes coming from the 2007 CDM regulations.
24. This resulted in a set of Regulations and Guidance suited to the needs of the construction industry in Jersey.

### **The position in Guernsey.**

25. Over the course of this progression in the UK, and Jersey, the Guernsey ACoP and Guidance remained as the 1996 version. Progress in improving safety standards in the UK, Jersey, and Europe were no longer reflected in the 1996 document.
26. Additional UK guidance, often referred to by the HSE Guernsey as evidence of the acceptable standards is now higher than that required by the 1996 ACoP.
27. While large to medium size businesses are aware of the document, over time other, more modern standards and guidance, for example working at height or indeed the UK CDM regulations 2015, created confusion and misunderstanding within the industry. Essentially the question became “What guidance are we supposed to be following?”
28. Further it was often the case that the 1996 ACoP was no longer in the forefront of people’s minds when planning construction work.
29. In summary the 1996 ACoP has dated, promoting standards that are no longer acceptable in Guernsey’s modern and progressive construction industry.
30. The need for change was recognised by the Health and Safety Executive (Guernsey) and an internal review was undertaken in 2014.
31. As a result of this the proposal to draft a new, or amend the existing, ACoP was written into our business plan for delivery early in 2020.
32. In March 2020, following work throughout 2019, and just as consultation was about to begin Guernsey was placed into Lockdown following detection of COVID-19 on the island. This has led to a delay in proceedings of around three months
33. However, suppression of the disease, resulting in lifting of lockdown in June 2020 has meant the process can now continue.

### ***Small sites***

34. In the UK the balance of where serious and fatal injuries occur has shifted dramatically in the past 10-15 years. Two thirds or more of fatalities now occur on small sites – sites where fewer than 15 people work – which is the reverse of the historical picture. This picture, in general terms, is arguably reflected in Guernsey.
35. The larger, more structured part of the industry has made progress in improving its management of health and safety risks over this timeframe. Its motivation for achieving higher standards is often one of continuous improvement and innovation leading to best practice, rather than just meeting regulatory requirements.
36. A more pronounced two-tier industry has arguably emerged in Guernsey as well, and the challenge is to provide an effective regulatory framework which is more applicable to

smaller construction sites, and to appear more relevant to their needs. To deliver this, a radical rethink is needed on the length, complexity and accessibility of the package and the value that the current ACoP provides to those who run such sites.

### ***Implications for developing GCDM ACoP 2020***

37. Given the various background considerations, the desire to improve standards in the small to medium industry sector and reduce bureaucracy across the industry is clear. The argument made is that this revision is essential to securing and maintain health and safety standards in Guernsey.

### **The proposals**

38. The draft ACoP therefore propose changes in the following areas. Each of these is then considered in detail:

- Significant structural simplification of the ACoP;
- Introduction of the Health and Safety Coordinator role
- Elucidation of individual and introduction of corporate competence requirements detailing appropriate skills ;
- Addressing areas relating to small construction projects, frequently encountered in Guernsey for example domestic clients; and
- The threshold for notification

39. The public consultation will be run in accordance with the States of Guernsey consultation guidance. Nothing is set in stone at this time, but we need to present current thinking. The proposed regulatory package is subject to amendment in the light of consultation and HSE's final proposals will be subject to approval by the HSE Board and Ministers.

### **Timetable**

40. It is proposed, subject to Board approval, that the revised ACoP will come into force no later than October 2020.

### **Structural simplification of the ACoP**

41. The scope of GCDM 2020 is broad, covering a large industry across many sub-sectors with a wide range of approaches to delivering projects. The ACoP applies to all construction work from major infrastructure and civil engineering projects to small scale works at domestic premises, e.g. replacing guttering. Therefore the definition of construction work is broad and rightly reflects the diverse nature of the industry.
42. HSE proposes a substantial simplification of the structure of the ACoP to make it more straightforward, linear and easier to navigate and understand. There will be less duplication and the structure aims to follow the process of a project more logically. This will make the ACoP significantly more accessible and relevant to those involved in small projects.

43. Significant changes are proposed to what is currently Part III, which set out the specific technical requirements relating to health and safety on construction sites, as these have not progressed in line with current best practice.
44. The primary purpose of an ACoP is to assist dutyholders with the standards expected of them in complying with the law. This ACoP is one piece of guidance supporting health and safety regulations. It attempts to define a system of management arrangements which applies to the entire breadth of the industry from minor refurbishment works to major infrastructure projects.
45. The reality is that those who would most benefit from the 1996 ACoP now find it inaccessible and do not read it because it is too long, complex or does not appear relevant by today's standards.
46. Those who have the specialist resources to manage construction health and safety find aspects of the 1996 ACoP difficult to apply in a proportionate manner and often over-interpret it, or seek other guidance.
47. One argument put forward for the revision of the ACoP is that the status of ACoPs gives power to health and safety professionals and others in persuading senior managers and Boards that a particular course of action is needed. The HSE's position is that businesses should be focused on what outcomes they want to deliver.

#### **Introducing the Health and Safety Project co-ordinator (HSPC) role**

48. HSE proposes to introduce the Health and Safety Project co-ordinator role, similar to the Jersey model.
49. Following early consultation feedback in 2019 the view for this requirement has been clearly voiced in discussions with industry stakeholders.
50. Pre-construction co-ordination is required by the proposed ACoP. We therefore aim to introduce the HSPC. The responsibility for discharging the function will rest with an individual or business in control of the pre-construction phase. It is this element of control and influence over the project which are fundamental to the successful delivery of a healthy and safe working environment as the project evolves from planning to execution. The HSPC will be responsible for planning, managing and monitoring the pre-construction phase of a project in the same way that the Principal Contractor (PC) is responsible for planning, managing and monitoring the construction phase. In summary, the HSPC will be responsible for:
  - planning, managing and monitoring the pre-construction phase; ensuring that where reasonably practicable, risks are eliminated or controlled through design work;
  - passing information on to the PC;
  - ensuring co-operation and co-ordination;
  - ensuring designers comply with their duties;
  - assisting the client in preparing the pre-construction information; and

preparing the health and safety file.

51. The duties of the HSPC (and of the Principle Contractor) make reference to the 'general principles of prevention' which establish a hierarchy of control of risk which are entirely consistent with effective management of risk on construction sites.
52. In short, we want to realign the way in which a project is coordinated, and we want it to be an integral business function. It should not be seen as a separate externalised add-on. Ultimately the role should bridge, and secure, health and safety matters for the whole project and those interacting with the HSPC role should interact accordingly in an open, flexible and progressive way.

### **Elucidation of the explicit requirement for individual competence, and introduction of corporate competence**

53. Promoting competence within the construction industry remains a key priority for the HSE, and developing individual competence is crucial to reducing accidents and ill health. HSE's vision for competence in the construction industry is one where:
  - competence is seen by employers as a long-term issue, building on the basics of selection, training, management of experience and life-long learning. Supervision is vital, but is not a substitute for competence;
  - small contractors should only have to complete the minimum amount of paperwork possible to demonstrate their health and safety arrangements at the prequalification stage;
  - third party schemes all use the standards for prequalification in health and safety set out in Publicly Available Standard 91 ('PAS91'). Where clients require higher standards this must be explicitly recognised;
  - third party schemes all belong to a common framework of accountability e.g. Safety Schemes In Procurement ('SSIP') Forum;
  - clients do not insist, at the prequalification stage, on a contractor filling in their own in-house questionnaires, where similar paperwork has already been completed for another client or procurement scheme;
  - clients take seriously their responsibility, at the award stage, to ensure that contractors have the capacity in terms of time, resources, managerial and supervisory capability to deliver the project;
  - the site-based workforce is demonstrably qualified through qualifications based on agreed national, international or bailiwick wide standards;
54. The requirements of the detailed framework of competence assessment supporting it at within the ACoP should not promote a costly and bureaucratic response from industry. Rather it should focus attention in improving standards across the whole industry, and all that it encompasses, the delivery of competent businesses and workers to the processes involved rather than the outcomes.
55. HSE considers that competence is most effectively promoted through cultural change and leadership in the industry. This ACoP introduces the concepts of 'individual' and 'corporate' competence.

56. We fully anticipate that Client will take advantage of schemes under the banner of the SSIP Forum and encourage its promotion as a positive progression within the construction industry.
57. HSE believes that the competence of construction industry professionals should be overseen by, and be the responsibility of, the relevant professional bodies and institutions.

#### **Clients' duties including domestic clients**

58. Clients remain central to the success or otherwise of construction projects. The proposed Regulations seek to maintain a strong focus on clients and encourage them to take an active role in ensuring that construction work being carried out on their behalf is planned and managed in the right way.
59. We recognise that there are smaller projects on island, which may not meet certain criteria within this ACoP and therefore to follow every aspect of it, to the letter, would introduce an unnecessary burden on all involved in the project.
60. As such the default position is one whereby duties in a domestic project that would, in other circumstance fall to the client, instead fall to the contractor (or PC where there is more than one contractor).
61. HSE wants to ensure that effective co-ordination of health and safety is carried out on all projects regardless of whether they are carried out for domestic clients. We are also clear that we expect these requirements to be discharged in a sensible and proportionate manner. For the majority of small, domestic projects this will mean no change to how these projects should currently be managed for health and safety. As part of the proposed ACoP we will make this clear, as well as, the associated enforcement expectations.

#### **Threshold for notification**

62. The threshold for notification remains the same as the 1996 ACoP, however it was felt that other tiers of construction projects existed without ever being acknowledged. To rectify this the HSE has introduced a three level system consisting of :-
  - i. Notifiable Projects
  - ii. Non-Notifiable Projects; and
  - iii. Domestic Projects
63. The intention is to enable dutyholder to identify the type of project and therefore plan and deliver health and safety requirements in a proportionate way. We aim to set out clearly the sensible and proportionate arrangements for co-ordination on smaller projects which fall outside the scope of notification. For the vast majority of these projects we would expect little more than is currently carried out for these duties to be discharged appropriately.

64. Domestic clients will not be expected to know about the Guernsey Construction (Design and Management) ACoP 2020. However we do expect that Designers, Principle contractors and Contractors are and that they act accordingly. Overall we believe that there should be more effective co-ordination, particularly of smaller and poorly managed projects involving significant health and safety risks.

### What the consultation seeks

66 This consultation therefore seeks views on the following areas:

- consideration of withdrawal of 1996 ACoP – Proposes that the 1996 ACoP be withdrawn and replaced by the Guernsey Construction (Design and Management) Approved Code of Practice 2020;
- structure of the draft ACoP – The proposals adopt a more straightforward structure that follows the progression of a construction project;
- clients’ duties including domestic clients – The proposals remove the exemption for domestic clients from client responsibilities. Domestic clients procuring work can assume the appointments to the co-ordination roles will happen automatically;
- co-ordination roles (Health and Safety Project Co-ordinator and Principal Contractor) – The proposals introduce the HSPC role whereby the client appoints (where there is more than one contractor) a HSPC at the pre-construction stage;
- contractors’ duties – Expanded from 1996 ACoP yet retain simple explanation;
- designers’ duties – The proposals retain explicit duties on designers since their role is crucial in considering and reducing risks during project design and beyond;
- competence – The concept of competence remains central to the rationale behind the proposed new ACoP, with a general requirement for information, instruction, training and supervision;
- notification – Remains the same;
- Impact – We ask for your comments on the financial impact the changes may have to your business.

If you have any comments or complaints about the way this consultation has been conducted, please contact the HSE Consultation Co-ordinator by writing to:

**Matthew Coggins at:**

Health and Safety Executive  
Raymond Falla House  
PO Box 459  
Longue Rue  
St. Martin  
GY1 6AF

Or send an e-mail to: [matthew.coggins@gov.gg](mailto:matthew.coggins@gov.gg)

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome you can raise the matter with HSE’s Chief Inspector, Robin Gonard, at Health and Safety Executive, Raymond Falla House, PO Box459, Longue Rue, St. Martin GY1 6AF.

The consultation survey:

Where possible this should be completed online at [www.surveymonkey.com/](http://www.surveymonkey.com/) and a link will be available by Friday the 10<sup>th</sup> of July [www.hse.gov.gg/hse](http://www.hse.gov.gg/hse)

I will also ensure that the link is forwarded to those of you who I have already emailed.

We have chosen to do it this way to give stakeholders the opportunity to read and digest the ACoP and information.

The survey is confidential and information you provide will be treated in the strictest confidence. It will be used for research purposes only and it will not be possible to identify any particular individuals/organisations in the results.

It will take around 15 minutes to complete.

The States of Guernsey will process any personal data that you submit using this form in accordance with the Data Protection (Bailiwick of Guernsey) Law 2017.