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OCTOBER 06

Info Sheet

NEW

DUTIES

Safety, Health and Welfare at Work (Construction) Regulations, 2006

INTRODUCTION

The new Safety, Health and Welfare at Work (Construction) Regulations, 2006 were signed into law on the 28th September 2006; the main provisions of which will come into effect on the 6th November 2006.

The new regulations update the duties of key persons involved in construction work, in line with the risk management principles of the Safety, Health and Welfare at Work Act, 2005.

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COMPETENCY

The Safety, Health and Welfare at Work Act, 2005 enhanced the definition of competency.

2.—(2)(a) For the purposes of the relevant statutory provisions, a person is deemed to be a competent person where, having regard to the task he or she is required to perform and taking account of the size or hazards (or both of them) of the undertaking or establishment in which he or she undertakes work, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken.

In assessing competency it is essential that reasonable enquiries are made so as to establish that the potential duty-holder has SUFFICIENT TRAINING, SUFFICIENT EXPERIENCE and SUFFICIENT KNOWLEDGE appropriate to the nature of the design or construction work to be undertaken.

While Clients are responsible for assessing the competency and resources of the PSDP, Designers, PSCS and Contractors, the requirements also apply to anyone engaging a designer or contractor. If a design organisation engages a Sub-Consultant or a Contractor engages a Sub-Contractor they also have the responsibility to assess the health & safety competency and resources before making the appointment.



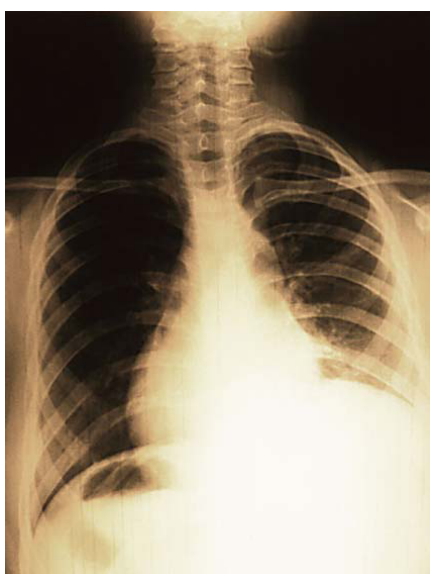
REASONABLE PRACTICABLE STANDARD

Safety, Health and Welfare at Work Act, 2005

2.—(6) For the purposes of the relevant statutory provisions, “reasonably practicable”, in relation to the duties of an employer, means that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely



to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work.



SEEKING TO REDUCE ILL-HEALTH AND INJURIES IN THE CONSTRUCTION SECTOR

GROSSLY DISPROPORTIONATE

Applying the Reasonably Practicable Standard

The first portion of the definition of reasonably practicable is positive, in that for any organisation undertaking risk assessments for the hazards that are likely to cause injury or illness, that organisation has put in place the necessary protective and preventative measures. This has particular relevance and application to the General Principles of Prevention, contained within Schedule 3 of the Safety, Health and Welfare at Work Act, 2005.

However the second portion of the definition of reasonable practicable is potentially negative, in so far as it takes effect after an accident or injury has occurred in that workplace. In such an event the organisation would need to be in a position to demonstrate that to have done anything further would be grossly disproportionate to the unusual,

unforeseeable and exceptional nature of the circumstances leading to the accident.

However in applying this to construction, you need to consider how unusual, unforeseeable and exceptional nature a particular construction accident may be on one of your projects.

The construction sector is High Risk. Accordingly there are risks associated with the realisation of construction projects, which may NOT be unusual, unforeseeable or exceptional in nature.

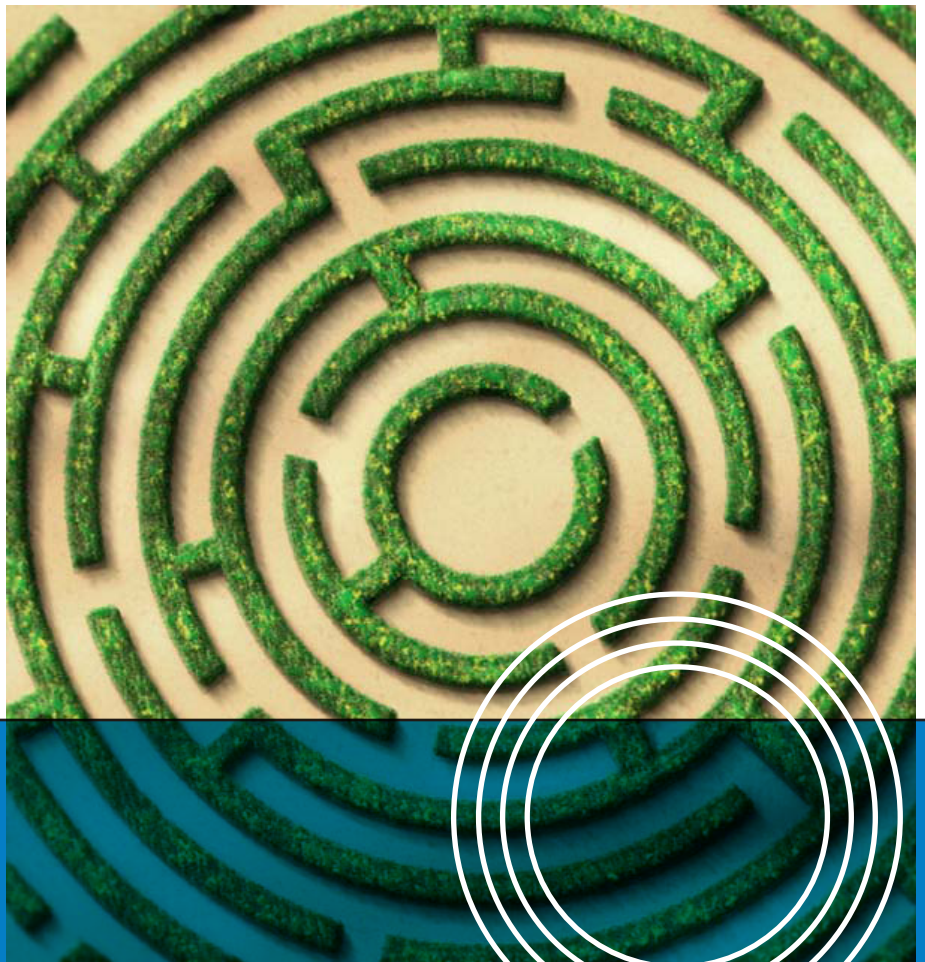
For example, if your project involves construction of a new road, then it is foreseeable that persons will be working at height during the construction of the associated structures and you need to ensure that you have put in all of the necessary control measures to mitigate these risks.

NAVIGATING THE MAZE

Not all of the “new” safety legislation is “new”

The introduction of the Safety, Health and Welfare at Work Act, 2005 paved the way for the updating of existing legislation in line with modern risk management principles.

For example the introduction of the Safety, Health and Welfare at Work (Working at Height) Regulations, 2006 allowed for this hazardous work to be better controlled on a risk assessed basis and a more concentrated examination of the provision of suitable equipment. In a similar manner, while the new Construction Regulations do contain new duties, in the main it is updating existing duties and therefore it should not take organisations long to ensure compliance with the new provisions.



If you have any queries in relation to how the new health & safety legislation affects your projects, please contact us on

 052 27630



The Safety, Health and Welfare at Work (Construction) Regulations, 2006 introduce new duties across the construction sector. However in addition it also introduces the new title of Project Supervisor for the Design Process (PSDP), to take into account that design is not restricted or limited to a stage or period of time.

CLIENTS

Dictating Higher Standards in Construction Health & Safety

The main focus of the new Construction Regulations is on the Design and Management of a project. The duties of the Client include Regulations 6 to 10 inclusive.

The Client must appoint either an INDIVIDUAL or a BODY CORPORATE as the PSDP and PSCS. Other organisations, such as Partnerships or Joint Ventures cannot be appointed as Project Supervisors. The Client is required to assess both the health & safety competency and the health & safety resources of the duty-holders being considered for construction projects. On completion of the assessment the Client is obliged to appoint in writing competent PSDP and PSCS. In turn the Client should receive written confirmation of the acceptance of the roles from the persons appointed.

The Client is required to take a more pro-active role in the management of health & safety on their projects; for example the Client has to ensure that the Preliminary Safety & Health Plan is made available to all persons being considered for the role of PSCS. In addition the Client must cooperate with the PSDP and PSCS in providing information which is “either in the Client’s possession or could be obtained by the Client making enquires which it is reasonable for a person in the Client’s position to make.”

The Client is now required to notify the Health & Safety Authority of the appointment of PSDP and Designers, if the project is expected to last more than 30 working days or the volume of work is scheduled to exceed 500 person days. The Client may include the details of the PSCS and Contractor if these are known at the time of making the notification.



DESIGN

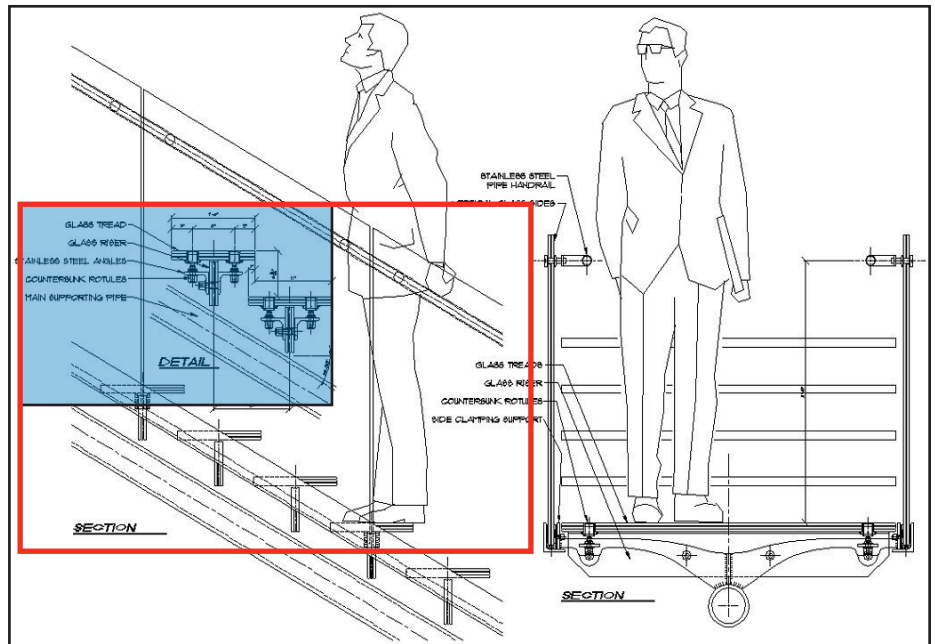
Designers

There are different types of Designers on any particular project and their involvement may change as the project develops. However the PSDP has a significant duty to coordinate the activities of ALL Designers, irrespective of who engages the Designer. The PSDP has the duty to "organise co-operation between designers on the same project and, so far as is reasonably practicable, ensure co-ordination of their activities in relation to the design of the project with a view to protecting the safety, health and welfare of persons involved in construction work."

For example, in the case where a Contractor engages a Temporary Works Designers, then the Contractor and PSCS should make the PSDP aware of this, so as to allow the PSDP to coordinate the design activity of the Temporary Works Designer with that of the appropriate member of the Permanent Works Design Team.

This allows for the assumptions made by both Designers to be fully communicated and taken into account in their designs, so that the temporary works design is fully compliant with the original design assumptions.

While the PSDP is now responsible for coordinating the design activity of the Temporary Works Designer with that of the Permanent Works Designers, the PSCS is still responsible for the coordination of the safe implementation of the temporary works on site.



Design is not limited to the permanent works design. Design includes elements that may be undertaken by the Contractor or by specialist providers engaged by the Contractor.

As in the previous regulations. Designers have to take account of the General Principles of Prevention, which are contained within schedule 3 of the Safety, Health and Welfare at Work Act, 2005. However the new regulations are more explicit in that Designers have to provide information in WRITING to the PSDP and/or PSCS to allow them to discharge their duties. The information to be provided in writing is not limited to the particular risks detailed in schedule 1 of the regulations and therefore will require a project specific approach to risk management.

The new construction regulations dovetail with the requirements of Section 17 of the Safety, Health and Welfare at Work Act, 2005. In particular, Designers need to ensure (as far as reasonably practicable) that their designs:

- Are designed to be safe and without risk to health;
- Are capable of being constructed to be safe and without risk to health;
- Can be maintained safely and without risk to health during subsequent use; and
- Comply in all respects, as appropriate, with the relevant statutory provisions.

Both the PSDP and Designers are required to take account of the General Principles of Prevention, the second principle of which encompasses Risk Assessment: "Evaluation of unavoidable risk". In taking account of the General Principles of Prevention, the PSDP and Designers need to identify all of the hazards that exist on their project. Having identified the hazards, the PSDP and Designers need to assess the associated risks and control these using the principles of prevention and protection. Having assessed the risks the Designers and PSDP need to communicate the identified control measures to the PSCS and Contractors.

As part of this process the Designers now have to provide all relevant information in writing to the PSDP, to allow the PSDP prepare the Preliminary Safety & Health Plan and to comply with the duties of the PSDP. Relevant Information would include particular risks to the safety, health and welfare of persons including but not limited to the risks referred to in Schedule 1 of the Construction Regulations. Other relevant information known to the Designer would include issues such as safe construction and safe maintenance of the project.



A new feature of the Safety, Health and Welfare at Work (Construction) Regulations, 2006 is that the PSDP may give directions to Designers, Contractors or any other relevant person, so as to allow the PSDP to discharge their duties. Initially the directions may be verbal; however if they are not complied with then the PSDP must confirm the directions in writing. If at this stage the person to whom the directions have been issued to, has failed to comply with the written directions, the PSDP shall inform the Health & Safety Authority and the Client in writing.

It would be preferable if any difficulties in relation to the management of health & safety during the design process were resolved through normal contractual routes and that directions were only considered as a last resort. However if directions are issued, then they should be treated with due respect and complied with, as required under the regulations.



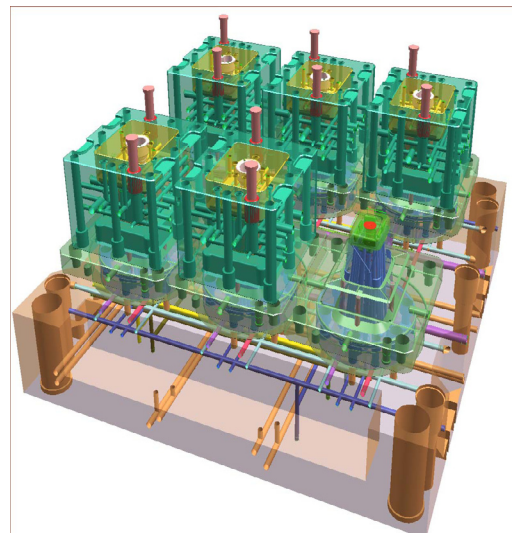
The Client is required to appoint a competent PSDP at or before the start of the design process. In the event that the Designer is not aware of the appointment of a PSDP, then the Designer has the responsibility to promptly inform the Client of its duties under Regulation 6. In any event, if a PSDP has not been appointed, the Designer should provide the information, that would normally be submitted to the PSDP, directly to the relevant Contractor.

As part of the management of health & safety during the design process the PSDP and Designers need to Communicate, Coordinate, Cooperate, Check compliance and take Corrective action if necessary. They need to record design decisions and risk assessments and forward the full design outputs to the Contractor and PSCS.

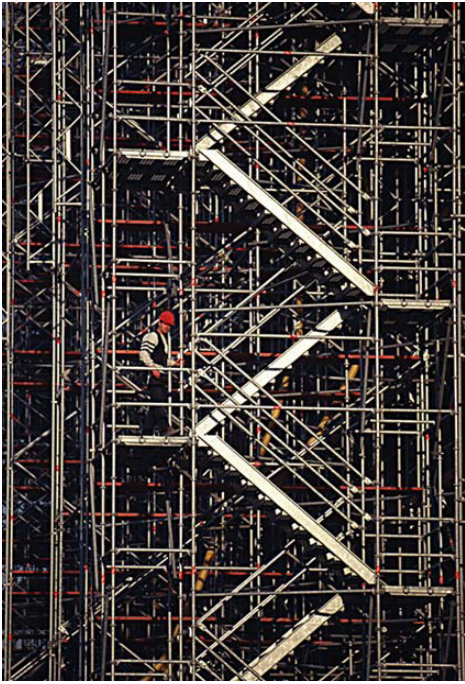


"What we have here, is failure to communicate!" One of the most fundamental elements for a successful project out-turn is **COMMUNICATION**.

It is often applied to other areas such as technical, quality and financial, but it is also critical in relation to health & safety. The PSDP should ensure that the design intent, assumptions and risk control measures are adequately communicated to the construction team.



The PSDP must prepare the Safety File on completion of the project and promptly deliver this to the Client. The Designers have a duty to provide information to the PSDP to allow for the preparation of the Safety File. In a similar way, the PSCS and Contractors also have to provide all relevant information in writing to the PSDP.



CONSTRUCTION

While the Safety, Health and Welfare at Work (Construction) Regulations, 2006 focus on the Design & Management section, there are significant amendments to the duties of the PSCS and Contractors.

The duty of the Client to appoint competent Contractors is carried forward and any person engaging a Contractor firstly needs to assess that the intended Contractor is competent and has adequate health & safety resources for the work to be undertaken. For example where the Main Contractor is intending to sub-let a portion of the works to a Sub-Contractor, then a full assessment of competency and resources must be completed.

The new requirements also focus on the communication of health and safety. In particular each Contractor will be required

to provide a site specific induction to all workers under their control. In addition where there are normally more than 100 workers on a site, the PSCS is required to appoint a full time Safety Adviser on site. This is separate and in addition to the requirement

“The main provisions of the new Construction Regulations come into effect on the 6th November 2006”

for a Contractor to appoint a Safety Officer where there are either more than 20 persons on a construction site under their direct control or where they have more than 30 persons engaged in construction work. The Safety & Health Plan must now include any rules, in writing, for the safe execution of the works and the PSCS must ensure that these rules are brought to the attention of all relevant persons; including Sub-Contractors.

The PSCS also has the ability under the regulations to issue directions to Contractors, Designers or any other relevant person. Initially the directions may be verbal; however if they are not complied with then the PSCS must confirm the directions in writing. If at this stage the person to whom the directions have been issued to, has failed to comply with the written directions, the PSCS shall inform the Health & Safety Authority and the Client in writing of the failure to comply.

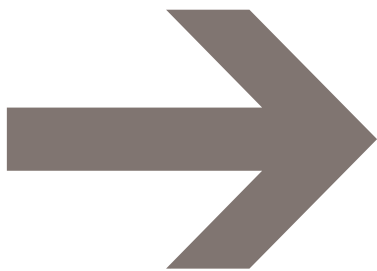
In the event of issuing written directions, the PSCS shall ensure that a copy of the direction and any notification of failure to comply are retained in the Safety & Health Plan.

ASSURE

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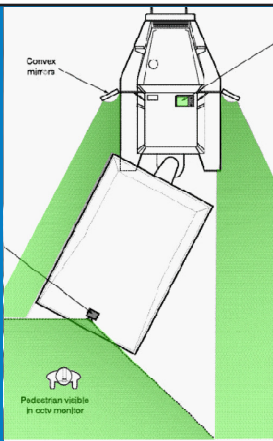
NEW CSCS REQUIREMENTS

Construction Skills Certificate Scheme

The range of operations that require FÁS Construction Skills Certification Scheme (CSCS) qualifications has been extended to include such activities as Mobile Tower Scaffolding; Self-erecting Tower Crane Operation; Mini-digger Operation; Signing, Lighting & Guarding on Roads; Locating Under-ground Services; and Shotfiring.

There is an 18 month lead-in period for this training, with the requirement to have a valid CSCS card for the above activities coming into effect in May 2008.

Contractors need to ensure that the original FÁS Safe Pass and CSCS cards are given to site operatives. The Contractor may retain a photocopy of the cards for record purposes.



Auxiliary Devices & Visual Aids For Vehicles

A range of construction vehicles will require auxiliary devices and visual aids, such as reversing alarms, flashing beacons, CCTV and convex mirrors. This will apply to new plant from May 2007 and for existing plant from May 2008. The requirements apply to where there is restricted visibility and not solely reversing.



Safety Adviser Advice & Supervision On Site

Where there are normally more than 100 persons on a construction project, the PSCS shall appoint in writing a Safety Adviser for that site. The Safety Adviser will provide advice to the PSCS and Contractors. In addition the Safety Adviser will exercise a general supervision and promote safe conduct of work.



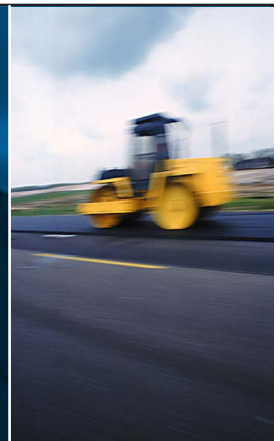
Site Specific Induction For Workers

Every Contractor is required to provide site specific induction and instruction to all workers under their control on site. The provision of the site specific induction allows for the communication of the relevant parts of the Safety & Health Plan and to introduce the Site Safety Representative to operatives new to a construction site.



Site Specific Safety Statement For Each Contractor

The Contractor is required to provide the PSCS with their Safety Statement, as prepared in accordance with Section 20 of the Safety, Health and Welfare at Work Act, 2005. This should be included in the Safety & Health Plan for that particular site.



Works on Roads Footpaths & cycle tracks New Part 13

New provisions have been made for works on roads, footpaths and cycle tracks. Particular requirements in relation to the provision of adequate guarding & lighting come into effect on the 6th November 2006. Remaining provisions in relation to CSCS will come into effect in May 2008.

KEEPING RECORDS:

1. ARE KEPT ON THE SITE TO WHICH THEY ARE RELEVANT;
2. UNLESS WORK IS NOT IN PROGRESS
3. RECORDS CAN BE STORED ELECTRONICALLY;
4. AVAILABLE FOR INSPECTION

The requirement to keep records applies to the PSCS and Contractor, as well as applying to the PSDP and Designers.

The contractor must keep all records, reports, certificates and other documents on the relevant site. Where there is no work taking place at the site the records may be kept at the contractor's office

Any Persons who hold records, reports, certificates and other documents must make

them available for inspection by an inspector of the Health and Safety Authority.

Records, reports, certificates and other documents may be entered in an approved form in a computer and should be authenticated as soon as possible after their entry.

Where a designer is required to make and keep records, reports, certificates and other documents they may be kept in a computer.

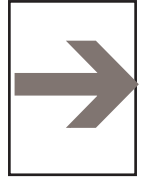
Essential Five "C's"

- COORDINATE
- COOPERATE
- COMMUNICATE
- CHECKING & CORRECTIVE ACTION



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KEY DATES

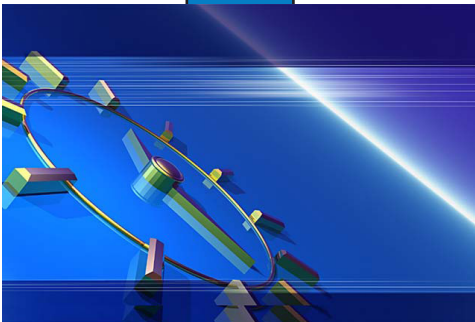
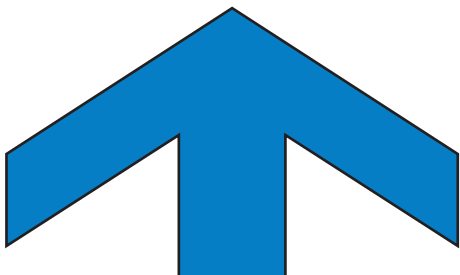
- NOV. 06** Main provisions of the Safety, Health and Welfare at Work (Construction) Regulations, 2006 come into effect.
- MAY. 08** CSCS requirements for Mobile Tower Scaffolding; Self-erecting Tower Crane Operation; Mini-digger Operation; Signing, Lighting & Guarding on Roads; Locating Underground Services; and Shotfiring come into effect 18 months after the 6th November 2006.

FOR EXISTING PROJECTS PSDS KEY DATES

- MAY. 08** If appointed as PSDS prior to the 6th November 2006, then at Client's discretion, the PSDS can continue on that project for 18 months.
- MAY. 09** If after 18 months the project is not complete, the Client must apply to the Health & Safety Authority for a further 12 month extension to the PSDS role.

PSCS KEY DATES

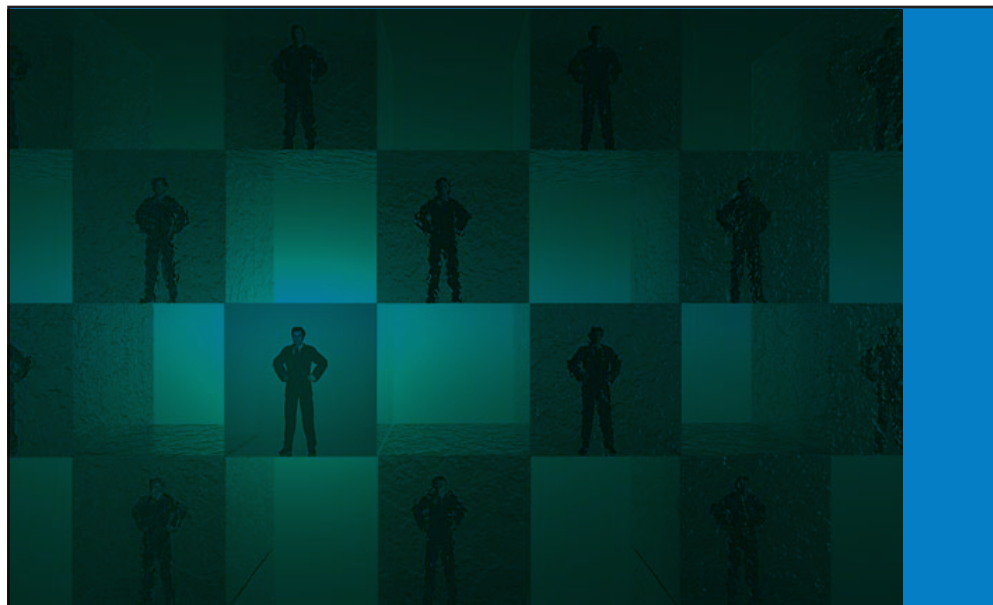
- MAY. 08** if appointed as PSCS prior to the 6th November 2006, then at Client's discretion, the PSCS can continue on that project for 18 months.



This guidance document provides a summary of the main duties of Clients, PSDP, Designers, PSCS and Contractors under the Safety, Health and Welfare at Work Act, 2005 and the Safety, Health and Welfare at Work (Construction) Regulations, 2006. The aim is to give guidance on the management of safety, health and welfare on construction projects and is not a legal interpretation of the statutory duties imposed under the Act or Regulations.

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ECONOMIC IMPACT OF:

Safety, Health and Welfare at Work Legislation

In August 2006 the Department of Enterprise, Trade and Employment published the Indecon Report on the economic impact of safety, health and welfare at work legislation on Irish firms. The estimated costs of accidents and illness in Ireland are estimated to be €3.6M; approximately 2.5% of national income. Of the respondents in the construction sector approximately 52% expressed a view that health & safety legislation was a net benefit to their business. 35% expressed that it was a net cost; whereas 13% did not know. Within construction, nearly 20% of respondents expressed the view that health

& safety legislation had a very positive overall impact on their business and 53% stated that it had a positive overall impact.

"Overall the majority of firms believe that there has been a net benefit for their

business arising from Health and Safety legislation. The legislation certainly imposes a cost but it also brings substantial benefits in terms of a reduction in the cost of accidents and insurance costs."

"The view that Health and Safety legislation may be a net benefit to firms is confirmed by recent evidence from surveys undertaken for this study." Indecon Report

The Indecon Report is available to download at: <http://www.entemp.ie/publications/corporate/2006/finalindeconreport.pdf>