

Safety, Health and Welfare at Work (Construction) Regulations 2013 The Changes

The Safety, Health and Welfare at Work (Construction) Regulations 2013 were signed by Richard Bruton, Minister for Jobs, Enterprise and Innovation on 29th July 2013. These regulations come into effect on 1st August 2013.

Why Change?

The Irish Government has been facing legal proceedings from the European Commission for the past year for a breach of the Temporary and Mobile Sites Directive EC 92/57. This Directive sets the minimum standard of Construction Safety and Health Legislation that must apply across the European Union. Each member state is entitled to go beyond the minimum standard, but obviously cannot fall below it.

The Safety, Health and Welfare at Work (Construction) Regulations 2006, were found to fall below the minimum standard set by the directive primarily, in terms of the exemption to appoint Project Supervisors for Domestic projects and secondarily, in relation to some technical equipment restrictions.

The Interim Solution

As Ireland were in breach of a directive a fine was payable for every day the breach was not remedied. Therefore it was essential the legislation be enacted immediately and the Safety Health and Welfare at Work (Construction) Regulations 2012 were enacted on 23rd November 2012 to come into effect on 1st June 2013, but was deferred to 1st August. As these Regulations were drafted in haste, there was no public consultation and the Regulations were totally unworkable. However they were sufficient to stop the dripping tap and close off the fine by the commission.



Consultation

The Health and Safety Authority then set about drafting new Regulations to adequately address the breach in a workable manner. Draft Regulations were issued in September 2012 and went to public consultation. A substantial number of submissions were made by the professional bodies and other interested parties. Garland lead the preparation of the submission from the Association of Consulting Engineers of Ireland. The Health and Safety Authority were very open to the submissions received and substantially revised the Regulations accordingly.

Inclusion of the “Domestic Client”

The main change in the 2013 Regulations is the inclusion of domestic homeowners in the definition of “client”. For the purpose of the Regulations there are now two types of clients;

- Clients for construction work on private domestic dwellings and
- Clients for construction work in furtherance of a trade, business or undertaking

Slightly different responsibilities are imposed on each different type of client. It is important to note that anyone who carries out works on a domestic house, for the purpose of rental or sale is considered to be a client for construction work in furtherance of a trade, business or undertaking.

What appointments are required?

Clients for certain types of projects need to make the following statutory appointments;

- Appoint a competent Project Supervisor Design Process (PSDP) in writing, at or before the commencement of the design process
- Appoint a competent Project Supervisor Construction Stage (PSCS) in writing, at or before the commencement of the construction stage



Types of projects that require those certain appointments

A PSDP and PSCS must be appointed if **any** of the following criteria apply;

- If construction work is planned to last longer than 30 working days
- If the volume of work is scheduled to exceed 500 person days
- The work involves a particular risk including but not limited to a risk referred to in *Schedule 1*,
- More than one contractor is involved

There is now no longer a requirement to appoint a PSDP and PSCS for every construction project. Under the 2006 Regulations a client had to appoint a PSDP and PSCS for any project that was “*more than routine maintenance decoration and repair*” i.e. Construction Work. (See item 5 on Appendix B1).

For clarity appendix A & B1 and B2 outline the difference between the appointment of a PSDP and PSCS in the 2006 Regulations and 2013 Regulations.

Effective Date

The Regulations come into effect on 1st August 2013, however if prior to the effective date;

- The design process for a domestic dwelling, not in relation to trade business or undertaking, has commenced or
- The construction stage for a domestic dwelling, not in relation to trade business or undertaking has commenced

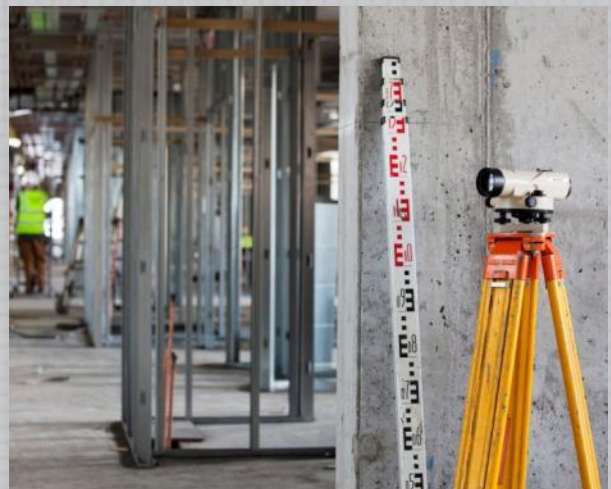
The duties of the client in these circumstances, in relation to appointment of a project supervisor for the design process and appointment of project supervisor for the construction stage do not apply for a period of 12 months.

New Responsibilities on Project Supervisors, Designers & Contractors

Where a client appoints for construction work on their domestic dwelling, project supervisors, designers or contractors, those project supervisors, designers or contractors must demonstrate to the client;

- That they are competent and
- Have allocated or will allocate adequate resources to enable them to perform their duties imposed under these Regulations or under other relevant statutory provisions.

Where the client is carrying out the work in furtherance of a trade, business or undertaking, the client, as before, is responsible for determining the competence of the project supervisors, designers and contractors. The client must also be satisfied that each of these parties has or will allocate sufficient resources for the project.



Preparation of Preliminary Safety & Health Plan

The Regulations differentiate between private domestic clients and clients carrying out work in furtherance of a trade, business or undertaking when it comes to the stage the preliminary Safety and Health Plan is issued.

Client: Private Domestic Dwellings	Preliminary Safety and Health Plan issued to appointed PSCS
Client: In furtherance of a trade, business or undertaking	Preliminary Safety and Health Plan issued to all those tendering for the role of PSCS

The idea behind this differentiation is to reduce the administrative burden on the private domestic client. However, we believe that unless the preliminary Health and Safety Plan is included in the tender information supplied to each contractor and PSCS tendering for the project, then any costs associated with the plan are not included in the tender. This therefore leaves the Private Domestic Client vulnerable to a lack of cost certainty for their project.

Although this relaxation is in place for the private domestic client, it is not necessary to avail of it. Garland recommends issuing a preliminary Safety and Health Plan to all contractors and PSCS's tendering for private domestic projects.

It is worth noting that the as the parent act of these Regulations only applies to the "safety and health of workers at work", these regulations do not apply in the case of DIY or non-paid occupational work.

Further queries?

If you have any further queries please contact one of the Garland Safety Management Team.



Brian Lahiff

E- Mail:
brian.lahiff@garlandconsultancy.com

Mobile: +353 86 7733655



Kevin Rudden

E-mail:
kevin.rudden@garlandconsultancy.com

Mobile: +353 86 232 7947



Michael Fleming

E-mail:
michael.fleming@garlandconsultancy.com

Mobile: +353 86 021 0084

Further information is also available on our website: www.garlandconsultancy.com

© Copyright GARLAND. This note is based on our current understanding of the Regulations and is intended for those clients and professionals familiar with the Safety Health and Welfare at Work (Construction) Regulations 2006.

APPENDIX A: WHEN TO APPOINT A PSDP / PSCS CURRENT POSITION UNDER 2006 REGULATIONS?

1. Is there a client?

☐ No

☐ Yes

Is the person for whom the project is being carried out, doing so in the course or furtherance of a trade business or undertaking. Note: If a person commissions a project in relation to their domestic dwelling which is not in furtherance of a trade, business or undertaking, they are not considered to be clients.

2. Is the Work to last longer than 30 working days?

☐ Yes

☐ No

Appoint a PSDP and PSCS
Notify HSA (AF1)
Preliminary safety and health plan is required

3. Is the Work to last longer than 500 persons days?

☐ Yes

☐ No

Appoint a PSDP and PSCS
Notify HSA (AF1)
Preliminary safety and health plan is required

4. Does the work involve a particular risk?

☐ Yes

☐ No

Appoint a PSDP and PSCS
Preliminary safety and health plan is required

What is the particular risk? **SEE FORM 3**

5. Is the Work more than routine maintenance, cleaning, decoration or repair?

☐ Yes

☐ No

Appoint a PSDP and PSCS

6. Is there more than one contractor?

☐ Yes

☐ No

Appoint a PSDP and PSCS

No PSDP or PSCS is required

APPENDIX B1: WHEN TO APPOINT A PSDP / PSCS CHANGES UNDER 2013 REGULATIONS?

1. Is there a client?

☐ No Is the project being carried out, doing so in the trade business or undertaking. Note: If a person is not in relation to their domestic dwelling which is not in the course of a trade, business or undertaking, they are not considered to be clients.

☐ Yes

2. Is the Work to last longer than 30 working days?

☐ Yes → **Appoint a PSDP and PSCS
Notify HSA (AF1)
Preliminary safety and health plan is required**

☐ No

3. Is the Work to last longer than 500 persons days?

☐ Yes → **Appoint a PSDP and PSCS
Notify HSA (AF1)
Preliminary safety and health plan is required**

☐ No

4. Does the work involve a particular risk?

☐ Yes → **Appoint a PSDP and PSCS
Preliminary safety and health plan is required**

What is the particular risk? **SEE FORM 3**

☐ No

5. Is the Work more than routine maintenance, cleaning, decoration or repair?

☐ Yes → **Appoint a PSDP and PSCS**

☐ No

6. Is there more than one contractor?

☐ Yes → **Appoint a PSDP and PSCS**

☐ No

No PSDP or PSCS is required

APPENDIX B2: WHEN TO APPOINT A PSDP / PSCS UNDER 2013 REGULATIONS?

1. Is the Work to last longer than 30 working days?

- ☐ Yes
☐ No

Appoint a PSDP and PSCS
Notify HSA (AF1)
Preliminary safety and health plan is required

2. Is the Work to last longer than 500 persons days?

- ☐ Yes
☐ No

Appoint a PSDP and PSCS
Notify HSA (AF1)
Preliminary safety and health plan is required

3. Does the work involve a particular risk?

- ☐ Yes

Appoint a PSDP and PSCS
Preliminary safety and health plan is required

What is the particular risk? **SEE FORM 3**

- ☐ No

4. Is there more than one contractor?

- ☐ Yes
☐ No

Appoint a PSDP and PSCS

No PSDP or PSCS is required