



*An introduction to*  
H&S (Construction) Legislation:  
clients' designers and the PSDP

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- I have been asked to outline what we are required to do in Ireland by the Irish Regulations.
- Is our position in Ireland the same as in UK?.....
- Well in some ways it is but overall there many differences.
- Our Regs were formatted much closer to EU Directive and its wording than the CDM were.

## Some examples of differences to UK:

- No 'Principal Contractor' here
- No explicit requirement on designers to “avoid foreseeable risks to H&S of construction workers and others” [CDM Reg 11(3) ]
- We just have to 'take account of the GPoP'
- No CDM Reg 11(2) – saying designers avoid risks taking due account of other relevant design considerations.
- Definition of reasonably practicable is different

# Key Relevant Legislation

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- Safety Health and Welfare at Work Act 2005
  - Safety Health and Welfare at Work (Construction) Regulations 2006
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# Guidance

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- HSA 'Guidelines on...the Requirements of the Regulations', Oct 2006  
[ It's requirements cannot go beyond those of the Regulations ]
  - Briefing Notes from the Professional Bodies [ACEI, EI, RIAI, SCS]
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# Guidance - to limited extent

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- HSA 'Guidelines' on the 1996 Regulation

[re those regs not altered]

- 'Designing for Safety in Construction'

(published by EI / ACEI / RIAI)

[in respect of taking account of the Principles of Prevention]

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Published 2006 by

EFCA (European Federation of  
Consulting Engineering  
Associations) and

ACE (Architects' Council of  
Europe)

....is essentially the ACEI/EI/RIAI  
publication of same name.



DESIGNING FOR SAFETY IN CONSTRUCTION



September 2006

# Duties of Designers: compare 1995/2001 with 2006

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2001: Take account of the General Principles of Prevention (and any safety plans and files) ... *Reg5(1)*

2006: No change... *Reg 15(1)(a)*

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2001: Cooperate with PS... *Reg 5(2)*

2006: No change... *Reg 15(2)(a)*



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2001: Provide PS with info on '*Particular Risks*' (in 2nd Schedule) and on '*nature and scope of project*', so PS can comply with his duties... *Reg 5(2)(b)*

2006: Same except particular risks are not limited to those in Schedule.. *Reg 15(3)*

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- **2006 - New:** Promptly provide PS with all info “*that is known to [you] and that is necessary to ensure, so far as is reasonably practicable, the safe construction of the design for the project*” ... *Reg 15(3)(d)*

[difficult to see what information could ‘ensure’ safe construction ! ]



2001: Take account of Directions from  
PS

2006: Comply with Directions from PS  
*Reg 15(2)(c)*



- **New:** Cooperate with other designers to enable them comply...

*Reg 15(2)(b)*

# Key issues for designers ...

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- Take account of the General Principles of Prevention.
  - Must cooperate with other designers
  - Must comply with PS Directions
  - ‘Information to be provided’ modified
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Core duty of a designer remains:

*“take account of the General Principles of Prevention”*

So, the core of ‘*Designing for Safety in Construction*’ remains valid.

# 'Structure'

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The Regs definition includes

- not only buildings but
    - roads,
    - railway lines,
    - pipelines,
    - underground and overground cables,
    - sewers
    - etc.
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# 'construction work'

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The Regs definition includes

- site investigation
  - maintenance of a structure (including cleaning with high pressure equipment)
  - work to services normally fixed within or to a structure, including telecom and computer systems
  - demolition of a structure
  - etc.
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# “Design” and designers

- “**Design**”: any “*expressions of purpose according to which a project ... is to be executed*”. [written or verbal]
- Thus, a **Designer** can be the Client’s project designer(s)...*or* :
  - Designer(s) of proprietary products
  - Specialist sub-contractors who design elements
  - Contractor’s temporary works designers
  - Client himself
  - Detailer
  - etc

## Note:

- No hierarchy of designers
- No one is '*the* designer'
- The 'design team' has no statutory recognition

# Scope of a designer's responsibility

- Your contract with client determines what elements / aspects of project you are concerned with. You have contractual design duties in respect of these
- Under the Regs, you have statutory H&S duties also in respect of such design work that you carry out under contract and in respect of any other design work you gratuitously perform.
- You don't have statutory duties in respect of other peoples' design or assessing any design by any other person on the project

[other than cooperating with the other designer]

[unless you choose to get involved – you then have duties!]

# “Design Risk Assessments” (DRAs)

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- HSA [pg 31]:

DRA is a written risk assessment and is one method of evaluating risk.

[not a very helpful description]

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cf. UK

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- HSE (UK): “... *the concept [of ‘design risk assessments’] can be misleading as designers are not in a position to control risks on site anyway – that will always be the Principal Contractor’s responsibility*”
  - *‘Most would recognise the need to move away from the paper-trail exemplified by the [DRA].’* J Carpenter [The Struct Eng 7Aug 07]:
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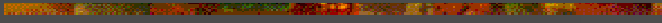
- and cf. HSA 1995 Guidelines (pg 23):

*...for most projects a simple intuitive [risk] assessment will normally be appropriate.*



- ACEI/EI/RIAI Briefing Note 2, Q&A 7:

*‘If the PSDP requests DRAs, one method for a designer to comply would be to issue their Designer’s Assessment Sheets [from *Designing for Safety in Construction*] to the PSDP.’*



# *'Designing for Safety'* on risk assessment

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- In construction, risk evaluation procedures are relatively unsophisticated
  - Alternatives are 'compared' in a subjective, simple, common sense, qualitative way
  - Matrix method : deceptive attraction due to quasi-scientific appearance and production of paperwork.
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# So, basically

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1. Try to ameliorate existing site constraints/hazards.
  2. Identify 'red / green list' items – 'current practice within the design community' (eg no non-parapet roofs; no fragile rooflights).
  3. Use your own intuition / experience to 'compare' design alternatives (as in HSA Guidelines examples)
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# Recording H&S Design Decisions

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- Briefing Note 2: No explicit duty to record but advisable. Use DSC Appendix 4 proforma (as modified)
  - avoid generic stuff and unnecessary bureaucracy - record only key information and decisions
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# Project Supervisor Design Process

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Two notable differences between PSDP and Designers:

- The company, and only the company, is the PSDP - not the individual [unless an individual agrees to be nominated – unwise].
  - No obligation on any designer to act as PSDP - it's designer's choice
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PSDP duties not same as PSDS, e.g.....

- PSDP is now as involved in coordinating temporary works (TW) design as in permanent works (PW) design, and
- TWs design includes trench shoring, propping, platforms, gangways, access stairs etc.
- Prepares Safety File

PSDP appointed by Client, but ...

- Duties not defined by client but by statute
- Is not the client's representative
- Is not accountable to client
- Does not report to client
- Is not part of the 'design team'
- As PSDP, has no role in the main contract.

[in respect of Regulation duties at least – there are also optional PSDP duties under the Act s.17(1) where the situation may not be the same.]

HSA says PSDP *per se* isn't a designer, but says PSDP

- must identify hazards arising from design and try to eliminate or reduce the risk.


[is this not 'design' activity?]

- '*...has key role ...to assess if any gaps have been left in the assessment process*'.

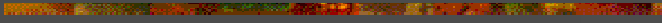
[Must PSDP determine that every hazard is being assessed by some 'designer' – i.e. that there are no 'gaps'?]

## Legal comment on this:

- *'In so far as the [HSA] Guidelines suggest – and the examples given go a long way to making such a case – that the PSDP's role extends to designing out gaps or conflicts between the designs proposed by the designers, I believe that the Guidelines go too far.'*

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- PSDP must '*identify hazards arising from ... the technical, organisational, planning, or time related aspects of the project*' and must eliminate the hazards or reduce the risk.

[Does this go beyond designers activity and into contractor's planning etc.?)



# In brief - key points for designers...

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- Clarity of brief is crucial...and don't stray outside it accidentally.
  - Read the Regulations, Briefing Notes, etc.
  - Don't sign certs, give assurances, etc. just because you're asked.
  - Remember cost of compliance when quoting
  - And, always make sure you comply with procedural requirements...
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...e.g.

- Do write to your client, before you start any design, to say he must appoint a PSDP in writing
- Do ask is there a Safety File (to take a/c of)
- Do keep concise records of trying to reduce construction risks
- Do pass on info. to contractors and designers
- Do cooperate with other designers (incl. TWs)
- Do look for a copy of the Safety Plan
- Do c.c. the PSDP as a matter of routine.