



What's in a name:

DEFINING YOUR 'PROJECT' FOR THE PURPOSES OF THE SAFETY, HEALTH AND WELFARE AT WORK (CONSTRUCTION) REGULATIONS 2013.

Under the Safety, Health and Welfare at Work (Construction) Regulations (the "Construction Regulations") a 'Client' commissioning construction work is obliged to appoint certain construction duty holders.

UNDER the Construction Regulations a 'Client' means a person for whom a project is carried out. A 'project' means an activity which includes or is intended to include construction work. 'Construction' for the purposes of the Construction Regulations is very broadly defined and includes: repair, redecoration, fitting out, maintenance of a structure, and alteration, as well as civil engineering and engineering construction work. Project supervisors (project supervisor for the design process and project supervisor for the construction stage) are to be appointed in respect of a 'project.'

Project Supervisor Construction Stage

The role of the project supervisor construction stage ("PSCS") (as one such construction duty holder to be appointed by the Client under the Construction Regulations) is well established in Ireland. The role of the PSCS is to manage and co-ordinate health and safety matters during the construction stage of a project. In light of that role, the PSCS is appointed before construction work commences and remains in place until all

construction work on a project is completed.

On each project, the PSCS is charged with developing a construction stage Safety and Health Plan. The plan provides a roadmap for the co-ordination and management of health and safety during construction and should set out how key health and safety issues will be managed. The Safety and Health Plan is not a static document, and should be kept up to date, including being modified / updated as appropriate to address changing circumstances on a project as it progresses.

It is important to note however, that the presence of a PSCS does not relieve other contractors and employers of their obligation to comply with their statutory safety and health obligations (for example those derived from the Safety, Health and Welfare at Work Act 2005).

Defining your Project

The definition of the 'Project' for the purposes of the Construction Regulations is integral in defining the scope and parameters of the PSCS role.

For some construction projects (for example greenfield construction, where all activity for a project is confined to a single, segregated geographical site) the appropriate definition of 'the Project' may be obvious. However, for many construction projects, the appropriate definition of 'the Project' can be less apparent and requires the Client's careful consideration.

'Offsite' activity

Although many construction projects can be principally confined to a single geographical site, there will often be activities undertaken in support of and forming part of a project which are performed in a different or ancillary geographical area. Linking the definition of 'the Project' to activities at a single worksite will therefore, in many cases, be too narrow. In light of this, Clients should be mindful of ensuring that the definition of any project is sufficiently broad to capture those elements of 'the Project' which are carried out at locations other than the primary worksite.

Defining the Project by reference to contractor's scope

In many cases, the main contractor will also be the appropriate entity to be engaged as PSCS on a project. For ease of contractual documentation, this can often lead to a scenario where the appointment of the contractor as PSCS is included within the relevant building contract. Where this occurs, the parties should ensure that 'the Project' for the purposes of the appointment of the PSCS is appropriately defined and is not necessarily limited to the contractor's scope (qua contractor). Too narrow a definition of 'the Project', by reference to the contractor's scope of works, will mean that elements of the project not being undertaken by the contractor will not be captured. This will be an obvious consideration for Clients where a multi-prime contracting model is being utilised, but will equally be important to consider where there is a single main contractor, as on many construction projects there may be various other / specialist contractors engaged directly by the Client outside of the arrangement with the main contractor.

Maintenance programmes

As 'Construction' for the purposes of the Construction Regulations includes maintenance work, the obligation to appoint a PSCS will generally apply for Clients (for example in the industrial manufacturing and pharmaceutical space) in respect of ongoing maintenance programmes in their facilities. Often these maintenance programmes are carried out on a rolling basis, involving works in live facilities (and therefore not undertaken on a segregated site), and can involve multiple contractors.

"The principal duty of the Client is to appoint a competent and adequately resourced PSCS."

This gives rise to two challenges:

(1) the first is the identification of the appropriate (and competent party) to undertake the role of the PSCS and

(2) the second is how 'the Project' is defined, for the purposes of compliance with the Construction Regulations.

In respect of the appropriate party to be appointed as PSCS, this will typically be the main contractor, another contractor or the Client (who may elect to self-perform the role). **The principal duty of the Client is to appoint a competent and adequately resourced PSCS.** Where there are multiple contractors engaged on a project (rather than a main contractor with various subcontractors) the appropriate party to be engaged as PSCS may be less apparent. However, Clients should always consider the question of who to appoint as PSCS (even where the choice may seem obvious) by reference to principle set out in the Construction Regulations - the requirement to appoint a PSCS who is competent and adequately resourced. In relation to maintenance programmes, it can be common for an entity in a 'construction management' role to be appointed as PSCS, or some Clients may appoint themselves as PSCS - which is permissible under the Construction Regulations provided again that the Client is competent and adequately resourced to carry out the role.

In relation to the appropriate definition of 'the Project', this will require careful consideration of the proposed maintenance programme, but one approach commonly seen is for 'the Project' to be defined on an annual basis, capturing all maintenance works being undertaken (for example within a facility, or within a designated part / building of a facility) during the year.

So?

The definition of the 'Project' for the purposes of the Construction Regulations is integral in defining the parameters of the PSCS role. As such, it is crucially important that Clients give proper consideration to how 'the Project' should be defined, particularly with a view to ensuring that any such definition is not inappropriately narrow. Even where the definition of 'the Project' may appear obvious (for example greenfield construction confined to a single, segregated works site), it is a worthwhile exercise for Clients to consider a suitable definition of their Project, and ensure that all elements are appropriately captured. ■



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