

## **Frequently Asked Questions - Construction Regulations 2014**

Following the promulgation of CR2014 on the 7<sup>th</sup> February 2014 the Department of Labour intends to publish guidance notes to the regulations to remove uncertainty which may exist in the interpretation of the regulations.

These will be tabulated into a list of “Frequently Asked Questions” (FAQ) and model answers will be generated by DoL.

### **Question 1**

#### **CR 3 Application for construction work permit.**

CR 3 (1) (a) & (b) states that if the intended work will exceed 180 days or will involve more than 1800 person days of construction work. The definition of “person day” means one normal working shift of carrying out construction work by a person on a construction site;

An average construction site worth far less in value than R13 000 000.00 will take more than 180 days which translates basically to 8 ½ months’ work.

Where 1800 person days translates to a site with 100 people working for 18 days or 50 people working for 36 days or 1 ½ months.

This would suggest very few construction projects would not fall into the requirement for the client to apply for a permit?

#### **Answer**

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**SAFCEC:** Based on CIDB analysis of projects over the value of R13m it is evident that around 2500 projects are underway in the country at any point in time. This figure will obviously vary according to the state of the industry, the amount of exemptions applied for and the amount of high risk projects below the value of R13m.

### **Question 2**

#### **CR 3 Application for construction work permit.**

**CR 3 (1)** Application for a construction work permit. If the intended construction work is just below the threshold detailed in section 3(1) then there is no need for the client to apply for this permit and the contractor must notify DoL of the intended work (as per Section 4) – What happens if during the construction work there is a change in the scope of work (client or architect makes changes for whatever reason) and the threshold in 3(1) is now exceeded. Does the client now need to make application as per Reg.3 and if so does all work stop until a permit has been issued? **IWH**

#### **Answer**

**IWH** The client should notify the DoL of this change of scope indicating the variation to the extent of the contract and confirming that the principal contractor’s original “Annexure 2 Notification” will have to be reviewed – It

will then be up to the Provincial Director to decide the way forward. (Should the parameters be slightly exceeded – up to 25% then the Annexure 2 notification should remain in force)

**MBAN** The Client should make a written application to the DoL motivating the variations with a suggested plan of action to address additional requirements or request exemption should the variations not place excessive additional risks to the project. The DoL would then need to respond with requirements giving the client

**SAFCEC:** Unless a major hazard is introduced to the scope of the project an increase in scope that exceeds R13m can be settled with an exception. However, bearing in mind that the decision of an inspector is final.

### **Question 3**

#### **CR 3 Application for construction work permit.**

CR 3(8) states that the permit has a site specific number and that this is not transferable. In the event that the Principal contract defaults what would the procedure be for the client?

#### **Answer**

**MBAN** The Client would need to submit in writing a motivation explaining the situation with details of the “newly” appointed PC. The CHS specifications and CHS plan should remain the same as it had been approved for the original permit.

**SAFCEC:** Permits are site specific and cannot be transferred from project to project. The Client would need to update the details of the PC with the DoL. The Client should however be appointing Contractors that have the necessary skills, experience and resources to complete the project.

### **Question 4**

#### **CR 3 Application for construction work permit.**

CR 3(2) Refers to the application being done in a form similar to Annexure 1, may clients develop their own formats ensuring the stated information is presented?

#### **Answer**

**MBAN** No the format prescribed in the Regulations must be used to ensure administrative controls are consistent.

### **Question 5**

#### **CR 3 Application for construction work permit.**

CR 3(2) Refers to the application being done in a form similar to Annexure 1, detail requires the expected commencement date and expected completion date. Is there an expiry period for this permit?

**Answer**

**??**

**Question 6**

**CR 3 Application for construction work permit.**

**CR 34** Repeal of regulations and commencement (2) States that this regulation will come into effect 18 months after the commencement of these regulations;

- In this interim period must the Principal contractor continue to give notification in the form of CR 3 (2003)?
- During this 18 month period how will the DoL manage the change over to the permit system?
  - Will this permit come into force on the 1<sup>st</sup> day after the 18 months?
  - Will the DoL run pilot projects?
  - What will happen to projects running over this period, will they be expected apply for the permit come the cut-off date?

**Answer**

**MBAN** The DoL in conjunction with employer organisations should be running pilot projects with major and small projects to test the control systems. **SAFCEC: Agreed**

**Question 7**

**CR 3 Application for construction work permit. & CR 4 Notification of Construction work**

Question; Does the issued permit and then the notification of construction work cover all contractors on a particular project.

**Answer**

**MBAN** - Yes the application for a permit is applied for by the client for a particular project this includes all parts of the project and contractors working on that project. The DoL will audit the project based on the permit issued to that project.

The Notification of Construction work is made to the DoL by the Principal contractor.

**SAFCEC: Project specific**

**Question 8**

**CR 5 Client's Duties**

CR 5(1)(a)&(b) Currently there is no consistent format or content required in either a baseline risk assessment or the health and safety specification. Will the DoL provide guidelines on the format and content of these documents required for the application of the permit and for practical usage for tendering and implementation purposes?

**Answer**

**MBAN** The DoL will provide guidelines based on best practise formats.

**Question 9**

**CR 5 Duties of Client**

**CR 5(1)(a)-** A client must prepare a baseline risk assessment. What is a baseline risk assessment? **IWH**

**Answer**

**IWH** The baseline risk assessment needs to address hazards related to the non-changeable conditions, environment and health risks that will be present for the duration of the project.

**MBAN** The DoL will provide guidelines based on best practise formats.

**Question 10**

**CR 5 Duties of Client**

**CR 5(1)(a)-** Who develops the actual baseline risk assessment keeping in mind that most clients are financial / corporate institutions with limited knowledge of matters relating to the construction of buildings? **IWH**

**Answer**

**IWH** The client's professional team (Agent, Architect, Geo engineers, Environmentalist Green Council advisors, Traffic / city planners etc) must agree to the content of the baseline risk assessment.

**MBAN** The baseline risk assessment is developed by a person appointed by the client with the necessary competencies to identify the risks and in consultation with other stakeholders draft a project specific baseline risk assessment which can be used for developing the H&S specifications.

**SAFCEC:** The Client appoints a CHSA to handle all health and safety on behalf of the Client.

**Question 11**

**CR 5 Duties of Client**

**CR 5(1)(b)-** requires that the client prepares a health and safety specification for the intended construction work and then pass this onto the designer to do the design.

What should be the content of the "Suitable, sufficiently documented and coherent H&S Specification? **IWH**

**Answer**

**IWH** This should be a performance specification and not a technical specification - It should broadly list the client's requirements and should not go into finer technical details. Thus the content should consist of a statement covering the client's desired outcomes for H&S on the project.

**MBAN** The H&S specification must give indication to the prospective contractors any H&S requirement which is above what is required under any relevant legislation.

Where there are hazards specific to this project and should the client

require additional or specific controls.

The cost of compliance with legislation is for the contractors account, where the client requires additional or project specific controls which may add costs to the contractor these additional requirements must be stated.

**SAFCEC:** Is this document a working document that evolves as the project evolves, will the version that the designers use be the same version that the smallest sub-contractor on site uses?

## Question 12

### **CR 5 Duties of Client**

**CR 5(1)(b)-** How can the client prepare a site specific, coherent health and safety specification before getting input from “The Designer” of the project? It is the designs that will lead to buildability and safety issues which must then be addressed in the health and safety specification? **IWH**

### **Answer**

**IWH** By preparing the H&S specification based on broadly defined desired outcomes (as in answer #1 above) the broad philosophy of safety pertaining to the site will allow Designers to address its objectives during design stage.

**MBAN** The initial baseline risk assessment supplied by the client’s appointed agent will address anticipated “baseline” risks. It would be then the designers responsibility to give indication to the client should, due to the design, elements must be added to the baseline risk assessment before it is issued for final inclusion into H&S specifications.

**SAFCEC:** This documentation should start out at a high level and become more and more specific as the project evolves. The CHSA would manage this as part of the professional team the project progresses ensuring relevance, inclusion of input from other specialists and covering all identified risks and hazards.

## Question 13

### **CR 5 Duties of Client**

**CR 5(1)(n)-** States “take reasonable steps to ensure that each\* contractor’s health and safety plan contemplated in 7(1)(a) is implemented and maintained;” Furthermore, 5(1)(o) stipulates that “periodic H&S audits and document verifications are conducted at interval mutually agreed upon between the principal contractor and any contractor but at least once every 30 days”

Note \* “each” contractor stated in this clause means only principal contractors due to the reference to 7(1)(a)

Question:- 5(1)(n) requires implementation and maintenance of the Principal contractors H&S Plan but does not stipulate that this requires a periodic audit which is required of other contractors. Furthermore Reg. 7(1)(a) concludes that this plan “must be reviewed and updated by the principal contractor as work progresses”

Is the principal contractors H&S plan subject to monthly, external / third party audits? **IWH**

**Answer**

**IWH** No - The Principal Contractor’s Health and safety plan does not need monthly audits but the client “must take reasonable steps” to ensure that the Principal’s H&S Plan remains up to date and is used on the site.

**MBAN** Requirements may differ depending on the project criteria. Where a permit is required for construction project and an agent is appointed by implication CR5(10(o) requires periodic audits.

Where a notification of construction is required then the PC is required to perform the monthly audits.

**Question 14**

**CR 5 Duties of Client**

**CR 5(1)(g)-** instructs the client to “stop any contractor from executing a construction activity which poses a threat to the H&S of persons.....” Also refer to Reg. 6(1)(h) which stipulates that the Mandated Designer (or if not mandated ) then the appointed Agent must stop construction work if it does not meet with the design’s H&S aspects.

Question: Can the Principal Contractor stop work for H&S reasons without the knowledge or approval of the client/ designer/agent? **IWH**

**Answer**

**IWH** No - Otherwise a contractor that is running late on the contract can use this as an excuse for being late. Only the Principal Agent(including the Designer under the principal Agents control), The Client or an Inspector from DoL has the authority to stop work.

**MBAN** Considering persons appointed by the client should be “competent” and that the definition suggests that a “competent” person must be familiar with the Act and the applicable regulations then it must be expected that the person would use this knowledge to identify a life threatening situation which requires immediate action.

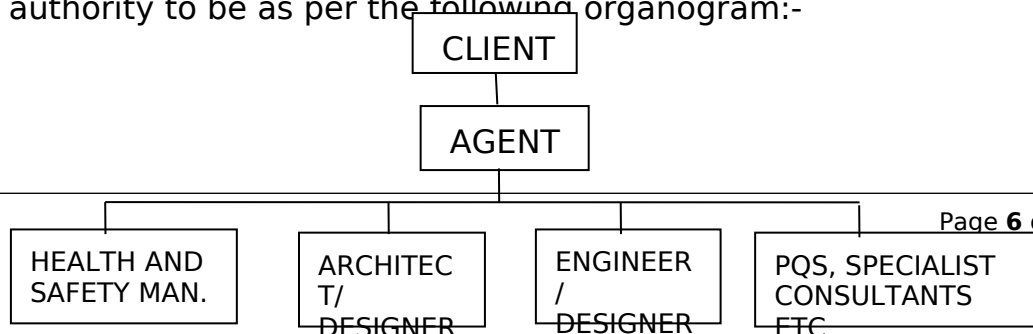
Where the situation may not be life threatening then a reasonable chain of command would be expected to be followed.

**SAFCEC:** The final decision must lie with the Client (who could potentially devolve the responsibility to the Agent), however the Agent (who is influenced by the reporting of the professional team) should advise the Client accordingly and the Client should make the call on stopping work. In the event of an imminent life threatening scenario it could be negligent for the Agent not to step in, however adequate supporting information would need to be associated.

**Question 15**

**CR 5 Duties of Client**

**CR 5(5)(5)-** appointment of an Agent is compulsory - We understand the lines of authority to be as per the following organogram:-



Note that the Agent is the 5(5) compulsory appointee for work permit projects (and in the above organogram has line management control over the professional team) but for smaller projects where notification of construction work is required, the client may decide to appoint such a person although it's not mandatory.

Question:- is this so-called **Agent** the Health and Safety Manager/Agent/Officer or is it someone else? Also refer Reg. 5(7). **IWH**

### **Answer**

**IWH** No- The Client appoints a Professional Project Management Agent (The Principal Agent) - there is no requirement for the client to appoint an H&S person. That appointment rests with the Principal Contractor

**MBAN** The definition of an "agent" means a competent person who acts as a representative for a client. The intention is to have a person who is capable of managing the project which includes the management of health and safety; it may not be a specialist. The Principal contractor would still be required to manage on site health and safety.

### **Question 16**

#### **CR 5 Duties of Client**

**CR 5(7) and CR 5(8)(a)-** requires that the client appointed Agent manages H&S on the site and must be registered with the SACPCMP. From now on all H&S Agents are also to be registered with the SACPCMP.

Question: Does this mean that H&S Agents can be appointed as the Principal Agent? **IWH**

### **Answer**

**IWH Definitely Not-** Safety agents are not competent construction management professionals and cannot sit in a line management function over professional persons such as Architects and Engineers

**MBAN** The Regulations require that "competent" persons are appointed to manage and supervise construction work, which requires competencies in the work being, performed i.e. construction activities. This would exclude the CHS Agent, unless they had specific knowledge, experience and/or qualifications and were appointed into a management or supervisory position in addition to their CHS duties.

### **Question 17**

#### **CR 6 Duties of Designer**

**CR 6(1)(a)** and various other regulations require compliance with OHS Act section 44 "incorporated safety standards". No such incorporated standards are listed in the regulations or in an annexure or in a schedule.

Question: which standards are thus incorporated and how does this meet the requirements of Section 44 of the Act? **IWH**

### **Answer**

**IWH** No safety standards are incorporated thus the concept of “Reasonably Practicable” as defined in the Act must prevail (section “b” of the definition talks of the state of knowledge reasonably available concerning hazards and the means to remove/ mitigate these hazards. DoL should state this in the guidelines

**MBAN** There are continuously changes and/or additions to the list. The DoL will include explanations in the guidelines and follow other expected protocols to inform stakeholders of relevant codes and standards.

### Question 18

#### **CR 6 Duties of Designer**

**CR 6(1)(c)(i) and (ii)** The role of the structural engineer (designer) is one almost akin to a sub contract to the principal designer. It is the principal designer who will typically deal with client and have privy to the “health & safety specification submitted by the client”.

The structural designer will not necessarily have access to the H&S spec and as contracts are often done, the contract is put out to tender long before completion of the design (usually in such cases just a bill of quantities and minimal drawings if any)

So it is almost impossible to conform with 6 (1) (c) (i) and (iii)

How does this get handled in practical terms? SAISC

#### **Answer**

**MBAN** The definition of “designer” means a competent person who -

(b) an architect or engineer contributing to, or having overall responsibility for a design;

(e) a contractor carrying out design work as part of a design and building project,

This would suggest that by definition the designer would include all contributors to the design. The legislator would expect the “agent” so appointed by the client to ensure proper and full cooperation of the professional team including the design team.

### Question 19

#### **CR 6 Duties of Designer**

**CR 6(1)(d)** As the “sub-contract” structural designer, will he have to inform the Principal designer of dangers and risks envisaged in (d) and so he should be familiar with these issues relating to the structural work but not any other work envisaged? SAISC

#### **Answer**

**MBAN** Yes see question 17 above

### Question 20

#### **CR 6 Duties of Designer**

**CR 6(1)(e)** was far more clear in the old regulations than this, that the



designer could be called on to design out unsafe (as in buildable) designs. Does this mean that this will not be the case in future? SAISC

**Answer**

**MBAN** No the regulation states “refrain from including anything in the design...”the previous version (2003) stated “the designer of a structure shall not include anything in the design.....”. The intentions remain the same, the designer is still responsible to design out unsafe (as in buildable) designs.

**Question 21**

**CR 6 Duties of Designer**

**CR 6(1)(h)** refers. Once again clarity is required between the principal designer and a “sub-contract” designer, i.e. can a “structural designer” stop any contractor from doing work not in accordance with the safety plan? SAISC

**Answer**

**MBAN** The intention of the legislator is to spread the burden of responsibility for functional operational health and safety in construction. Every stakeholder is expected to take and act responsible in every phase of construction. The intention would not be to stop work unnecessarily but as an appointed competent person to act responsibly when life threatening situations are identified.

**Question 22**

**CR 6 Duties of Designer**

**CR 6(1)(j)** refers. Presumably the structural designer will issue a certificate to the principal designer who will ultimately issue the comprehensive all-embracing certificate to the client? SAISC

**Answer**

**MBAN** Yes, the principal designer would be ultimately accountable to the client.

**Question 23**

**CR 7 Duties of principal contractor and contractor**

**CR 7(1)(b)** addresses the content requirement of the health and safety file and stipulates that it must inter alia “include all documentation required in terms of the Act and these regulations” This clause is often read together with General Administrative Regulations of 25 June 2003 – Regulation# 4 which states that an employer must have a copy of the ACT at the work place. The term “workplace” is defined under section 1 of the Act and is expanded on in section 7(3) “... in the workplace where his employees normally report for service”

It is understood that a construction site is handed over to the principal contractor by the client and thus the site becomes “the workplace” for the principal contractor. All environmental, sanitary facilities, general fire fighting and medical/ first aid station etc. must therefore be provided by

the principal contractor unless mutually agreed to between affected parties.

Contractors appointed by the principal contractor that do not have “permanent” site offices i.e. their employees are brought to site from their normal workplace on a daily basis for the duration of their part of the project cannot define the site as their workplace.

Question 1: As the principal contractor already keeps a copy of the Act (as required by GAR 4) and all its regulations on site, why must all the other contractors also keep copies of the same Act and Construction Regulations in their respective safety files at the cost of many thousands of pages of “wasted” paper? **IWH**

### **Answer**

**IWH** One set of statutory documents (those of the Principal Contractor) are on site, prominently displayed for all to see. Therefore all persons working on the site need to be made aware of the location of these documents during principal’s site induction training {Regulation 7(5)} thus no additional copies in the safety files are required as this is simply a waste of paper as these files are locked up in the safety officers cabinet most of the time and are not readily accessible by workers.

**MBAN** The definition of a “workplace” within the OHS Act states that it “means any premises *or place where a person performs work in the course of their employment*”. Which would suggest that person working away from the “premises” of the employer but on a construction site which is in the course of their employment is at their workplace.

GAR 4 requires the employer, contractor in this instance, who has more than five people in their employ to have a copy of the Act at the “workplace”. Where the contractor’s site teams are more than five people the law suggests a copy of the act should be available.

On a construction site where the Principal contractor is ultimately responsible the H&S plan there could be allowances made if so stated in the plan and agreed between parties. The Emergency plan is for the construction site and should be facilitated and coordinated by the Principal contract, the contractors plan should be integrated into this plan.

The Contractor as an employer in their own right must have systems in place which ensure compliance with the OHS Act and relevant regulations.

### **Question 24**

#### **CR 7 Duties of principal contractor and contractor**

**CR 7(1)(b)** Question 2: According to section 7 of the Act the chief inspector may direct any employer in writing to prepare a health and safety policy which must be displayed on site. It is assumed that such written instruction has been forwarded to the Principal Contractor and therefore such a policy (including an HIV policy) is already in place on site and “prominently displayed”.

Why must all contractors that report to the principal contractor keep a copy of their HIV policy in the safety file which policy might be in conflict with the principal contractor’s policy? Surely the principal contractor’s policy is applicable on the site (it is his/ her workplace) and should be

adopted by all contractors working on that site? **IWH**

**Answer**

**IWH** To ensure a coherent safety conscious environment on a site all persons on that site must comply with one standard HIV policy – The individual contractors must acknowledge in writing that they know, understand and agree to implement and maintain the Site Policy on HIV

**MBAN** An HIV policy is not a requirement under the OHS Act or Construction regulations. The policy may be required as good practise or a test of the contractor’s management policies. This policy would be part of the companies’ broader management policies but is not required under OHS legislation. This requirement should be stated in the H&S specification if required on the site.

**SAFCEC:** The HIV policy is not a requirement through the OSH Act nor Construction regulations. However it must be remembered that legislation is set at minimum compliance, pro-active clients have the jurisdiction to implement their own requirements that align to best practices.

**Question 25**

**CR 7 Duties of principal contractor and contractor**

**CR 7(1)(c)(i)** requires that contractors appointed by the Principal Contractor be provided with the relevant sections of the client’s H&S specification to allow the contractor to prepare its H&S Plan during tender stage.

Question: Who determines which sections of the H&S Specification is relevant and how can this be determined before the scope of work is quantified by the tenderers unless they receive a very detailed bill of quantities and tender specification keeping in mind that a lot of such work is undertaken on a “Design and Supply” basis? **IWH**

**Answer**

**IWH** The Principal Contractor must avoid giving the complete H&S Specification to prospective specialist contractors and must find a way to extract the relevant sections of the H& S Spec and provide all persons tendering on a specific, specialist package with that information. If additional H&S expenses are incurred later as a result of insufficient information then the contractor must be allowed to ask for reasonable compensation.

**MBAN** The Principal contractor must, base on the scope of work determine the relevant sections of the H&S specification. Every specification should have general basic requirements for controls on the project. Specialist work would be referenced e.g. Excavations, refer to geo technical reports and site specific requirements. Working at height, referenced to site specific controls.

The project H&S plan could be the main point of reference if generated in a project stages format identifying the project risk profile in relation to the project stage. General requirements along with the stage specific or programme progress specific sections could be issued to the contractor.

## Question 26

### **CR 7 Duties of principal contractor and contractor**

**CR 7(1)(c)(viii)** instructs the Principal Contractor to stop any contractor for executing work which is not in accordance with the Clients H&S specification and the principal contractor's H&S Plan . The second document (Principal H&S Plan) is not issued to the Contractor only the Relevant Sections of the Client's H&S Specification.

Question: Should the tendering contractor not also receive the relevant sections of the principal contractor's H&S plan to ensure that when the principal contractor evaluates and approves the contractor's H&S plan it is not repugnant to the relevant sections of this Plan? **IWH**

### **Answer**

**IWH** Yes - The tendering contractor should get the relevant section of the principal contractors plan.

**MBAN** Yes. The project H&S plan could be the main point of reference if generated in a project stages format identifying the project risk profile in relation to the project stage. General requirements along with the stage specific or programme progress specific sections could be issued to the contractor.

## Question 27

### **CR 7 Duties of principal contractor and contractor**

#### **CR 7(1)(c) and CR 7(3)**

The contractors confuse the Hire Companies as Contractors and 99% of sites insist on appointing the Plant Hire Company as a "Contractor" in terms of 7(1)(c) or 7(3). The reality is that the machine is hired to the Contractor with or without an operator and they must assume responsibility because they are executing the work! The Hire Company's responsibilities lie in compliance with certain points in Section 23. The Labour Inspectors also take this stance and legally they are incorrect.

**CPHA**

### **Answer**

**MBAN** When plant is hired to a contractor with no operator then it is the responsibility of the Plant Hire company to supply "safe" equipment and instruction on the safe use of the equipment. Once the contractor takes delivery of the plant then the "safe" operation of the plant becomes contractors' responsibility.

Where the plant hire company supplies plant and "competent" operator then the safe operation of the machine is the responsibility of the operator who is an employee of the Plant hire company, all COIDA requirements must be in place. A full safety file is not necessary but proof of operators, competency, medicals, plant inspections tests etc. must be supplied.

**SAFCEC:** The easiest way to trace this is by following the money trail. The plant hire company will be paying the operators salary and is therefore responsible.

### **Question 28**

#### **CR 8 Management and supervision of construction work**

A contractor provides specialist services to numerous sites, on each site the crews vary in size from 2 people to 10 people. These crews are run by managers, the managers are not on site full time and the crews may not spend a full “person day” on site;

CR 8(1) requires a full time “construction manager” on site. How would the company structure their appointments?

#### **Answer**

**MBAN** CR 8(8) provides for this appointment. The legislator requires that there is a person able to take responsibility for supervising construction work safely. Where a contractor has a small crew working there should be a “responsible” person who assumes responsibility for the operation which includes having the competence to ensure health and safety. The legislator requires that a single person is identified who would take responsibility to identify unsafe situations and be able to take appropriate action. In the event of an incident or an inspection who is the contact person.

### **Question 29**

#### **CR 8 Management and supervision of construction work**

A contractor provides maintenance, repairs, small project and call out services to a client, these services fall within the definition of construction work. The contractor provides small crews who are supervised by a chargehand or similar level person. Must the contractor appoint the chargehand as the “Construction Manager”?

#### **Answer**

**MBAN** CR 8(8) provides for this appointment. The legislator requires that there is a person able to take responsibility for supervising construction work safely. Where a contractor has a small crew working there should be a “responsible” person who assumes responsibility for the operation which includes having the competence to ensure health and safety. The legislator requires that a single person is identified who would take responsibility to identify unsafe situations and be able to take appropriate action. In the event of an incident or an inspection who is the contact person.

### **Question 30**

#### **CR 8 Management and supervision of construction work**

A contractor working on a number of different projects with small crews supervised by foreman / charge-hands and overseen by a contracts manager;

- The contracts manager does not remain on site permanently but performs the functions as per the definition of the contracts manager.
- The foreman/ charge hand performs the functions as per the definition of a construction supervisor.

Does the contracts manager appoint the foremen/ chargehand under CR 8(8)?

**Answer**

**MBAN** Yes. The legislator requires that there is a person able to take responsibility for supervising construction work safely. Where a contractor has a small crew working there should be a “responsible” person who assumes responsibility for the operation which includes having the competence to ensure health and safety. The legislator requires that a single person is identified who would take responsibility to identify unsafe situations and be able to take appropriate action. In the event of an incident or an inspection who is the contact person.

**Question 31**

**CR 8 Management and supervision of construction work**

**CR 8(1)** requires that the Principal Contractor appoints “one full-time competent person as the construction manager....”

Question: How is “competence” measured in this case – Must this person be registered with the South African Council for Project and Construction Management Professions? **IWH**

**Answer**

**IWH** Yes - Who is better placed than the South African Council for Construction and Project Management Professionals (SACPCMP) to certify a construction manager competent?

**MBAN** The Construction regulations do not require that the Construction Manager is registered with the SACPCMP however best practise and associated legislation requires registration of persons at relevant built environment councils. Registration would then be a measure of competence.

**SAFCEC:** Competence = required knowledge, training and experience and where applicable qualifications specific to the task. Although not set out as a requirement the registration of an 8(1) at the SACPCMP is a sure fire way to ensure a level of competence is established in the event of this ever being questioned. It is therefore recommended but not a requirement.

**Question 32**

**CR 8 Management and supervision of construction work**

**CR 8(2)** States that the “Principal Contractor” must appoint one or more assistant construction managers. Does this allow the appointed Construction Manager for that site to appoint the assistant construction manager or must the appointment be made by the companies appointed Sec. 16(2)?

**Answer**

**MBAN** The Construction Manager is the person with the most control over the running of the construction project. This person should then be in a position of authority which would include making appointments of persons best positioned and with the necessary competencies and qualities to provide health and safety controls. The Contracts manager could make the

appointment.

Companies may have internal management system which requires the Sec. 16(2) to make the appointments. The test would be the competency of the person appointed in that position.

### **Question 33**

#### **CR 8 Management and supervision of construction work**

CR 8(1) requires that the Principal contractor must “in the absence” of the appointed construction manager appoint an “alternative”. In the light of the same sub regulation requiring that “one full-time competent person” is appointed to manage a “single site” what is the objective of this appointment?

#### **Answer**

**MBAN** Where the appointed construction manager takes an extended leave of absence this appointment is required. Where operational requirements enforce the absence of the construction manager this appointment must be in place. The legislator requires that there should always be a specifically identified person who is in control of the construction site.

### **Question 34**

#### **CR 8 Management and supervision of construction work**

**CR 8(5)** instructs contractors (principal and sub-ordinate) to appoint construction H&S officers – “After consultation with the client and having considered the size of the project .....” But where there is a dispute then the decision of an Inspector is decisive.

Question: What are the parameters by which the Inspector decides the appointment of a CHS officer? **IWH**

#### **Answer**

**IWH** The DoL must draft these parameters but more importantly:- No exemption (extension of time) has been given for the appointment of these safety officers that must be registered with SACPCMP – thus smaller contractors that were appointed after 7th Feb this year must get their safety officers registered with the SACPCMP before 7th August!! This is simply not possible as the SACPCMP cannot do this in time. Can this please be extended for a few months?

**MBAN** The guideline document must have a broad guideline based on both international and local best practise. Indicating number CHSO's on project versus number of persons on the project. Risk profiles must be included.

### **Question 35**

#### **CR 8 Management and supervision of construction work**

CR 8(8) Where the Principal contractor or a client appoints a contractor onto a site may the appointed principal contractor's appointed CR8(1) Construction Manager appoint the contractor's CR 8(8) construction supervisor?

## **Answer**

**MBAN** The legislator requires that, under normal circumstances, the employer should make the appointments. Where on a construction project there are labour only subcontractors then the Principal Contractors' appointed construction manager may and should make these appointments.

The appointed construction manager as the person ultimately responsible for the project may have input into the appointments to ensure persons appointed have the necessary competencies.

## **Question 36**

### **CR 8 Management and supervision of construction work**

CR 8 and exemption notice published in March 2014 all construction health and safety officers must be registered with the SACPCMP by 7 August 2014 for new projects. This would be applicable to most sub-contractors as most have short duration contracts and are appointed just a few weeks before they need to do work.

Question: How is the SACPCMP going to register several thousand CHSO's before 7 August 2014?

**SACPCMP** The exemption notice does not specify the CHSO and CHSM grace period directly however this may appear to be the intention. It would be unreasonable to expect that this registration period should be completed for all categories within the given time frame.

**MBAN** Registration of persons into a professional or in this case CHSO and CHSM category is a process. It can never be given a cut off time as there will always be new candidates entering into the profession who will need to be registered. The Construction regulation requirement for registration is intended to ensure persons operating in this field have the necessary competencies. The regulation stating registration and the subsequent exemption notice must be seen to be recognising both the need for registration and the process involved in registration. Individuals and or companies will be required to display that they are part of this process.

**SAFCEC:** intention is for an 18 month adjustment (although not currently worded as such). 18 months is far more reasonable for the expected amount of registrations.

## **Question 37**

### **CR 9 Risk assessment for construction work**

**CR 9(3)** Contractors are to ensure that employees are informed, instructed and trained regarding the site hazards and related work procedures.....

Question: What from/ method is the most efficient for the presentation of information relating to current hazards and safe work procedures? **IWH**

## **Answer**

**IWH** The best, most effective and relevant information regarding current hazards and work procedures comes from tool box talks. These should be formalised and should be one of the most important sets of documents



placed in the safety file rather than all the obscure and mostly irrelevant so-called “compliance” documents that the overzealous safety officers dream up.

**MBAN** Best practise on construction sites requires that employees are addressed before the task commences and there is a formal record of the address. A number of methods are used all based on the original “tool box” talk format. The format must firstly not take on the form of a generic series of instructions but must be tailored to the task at hand. The format must include;

- Scope of work / method statement
- Identified hazards
  - Job site access
  - Machinery
  - Materials
- Identified controls
  - Permit controls / PPE what and how to use
  - Operator competencies
  - MSDS etc.
- Acknowledgement of understanding.

### Question 38

#### **CR 9 Risk assessment for construction work**

**CR 9(1) (a) to (e)** suggests elements which must be included into a risk assessment. Will the DoL produce a guideline on the format for a construction work risk assessment?

#### **Answer**

**MBAN** Yes based on international and local best practise.

### Question 39

#### **CR 10 Fall Protection**

**CR 10(1) (a)** the designations of a Competent person responsible for the preparation of a fall protection plan.

Question: What knowledge, training, experience and NQF registered qualification determines competence applicable to this designation? **IWH**

#### **Answer**

**IWH** SAQA has registered a professional designation called “Fall Protection Planner” - The Institute for Work at Height Professional Body (recognised by SAQA) is the custodian of that designation.

**MBAN** The definition of “**competent person**” must apply where there are registered SAQA qualifications then these apply.

### Question 40

#### **CR 10 Fall Protection**

**CR 10(2) (c)** The programme of training for working in a fall risk position and records thereof.

Question: The Designated Fall Protection Planner is responsible for

stipulating the “programme of training” What are the accepted skills programmes for persons;

- i. In a “Fall Prevented” \*environment ,
- ii. In a “Fall Arrest” \*environment?

Note \* Fall prevention and Fall arrest is covered by the relevant definitions under Regulation 1 of these regulations.

### **Answer**

**IWH** There is several fall arrest / fall prevention training programmes registered with the Institute for Work at Height Professional Body. The Fall Protection Planner needs to evaluate the risks on site and then specify which programme is necessary.

**MBAN** SAQA has registered the Institute for Work at Height Professional Body as the authority for this element; the Fall Protection Planner must identify relevant programmes which must be in accordance with the professional bodies’ guidelines.

### **Question 41**

#### **CR 10 Fall Protection**

**CR 10(4)(c)(i)** Fall Prevention / Fall Arrest equipment are “approved as suitable .....”

Question: The competent designated Fall Protection Planner is mandated with the quality control of the fall protection equipment (see sub- Reg 2(d)) does this include the approval of the equipment? **IWH**

### **Answer**

**IWH** Yes - the competent person should have the authority to verify suitability of PPE.

**MBAN** - Yes provided accepted standards are used.

### **Question 42**

#### **CR 13 Excavation**

**CR 13(2) (f)** Access to excavations in which persons are required to work is required within 6m of where the person is working.

Question: The depth of these excavations is not defined and could be as shallow as 200mm - At what depth of excavation are access / egress ladders or other means required and is this also applicable to sub-regulation (j)? **IWH**

### **Answer**

**IWH** A depth/width matrix should be provided thus for narrow trenches (up to 0,8m) in width as measured at the surface the maximum depth before escape ladders are needed should be 1,0m. For width wider than 0,8m the depth can be increased to 1,5m. Obviously conventional access ladders / steps are still required but not necessarily at 6m intervals.

**MBAN** Safe access is required at 6m intervals the access is not necessarily only intended as an escape ladder but a means to ensure workers are not exposed to injuries while accessing or exiting the

excavation.

### Question 43

#### **CR 17 Suspended Platforms**

**CR 17(1)** requires that contractors appoint a competent person to supervise “all suspended platform work operations”

Question: Is the contractor mentioned here the contractor that uses the equipment or the supplier / lessor of the equipment? **IWH**

#### **Answer**

**IWH** The user contractor must appoint such a person and the installer/ supplier must appoint a separate supervisor for the duration of the installation / dismantling work.

### Question 44

#### **CR 17 Suspended Platforms**

**CR 17(12)(c)** requires that all employees using the suspended platform are properly trained.

Question: Must this training be done by a competent person and must such training be registered training? **IWH**

#### **Answer**

**IWH** Training must be done by a competent person – either at a formal training venue under the control of a Professional Body recognised training provider or on site by the Erection / User supervisor provided that such a supervisor has been found competent by a Professional Body recognised training provider to perform this training.

### Question 45

#### **Omission - Boatswain Chair (CR2003 - Regulation 16)**

This regulation was omitted and/or replaced by CR 18 Rope Access. This equipment is still used extensively in the industry and is considered high risk. There are now no regulations to govern the use of this equipment.

#### **Answer**

**MBAN** This equipment will be included into Driven Machinery Regulations, until such time a notice should be published stating that the regulations as stated in CR 2003 Regulation 16 apply.

### Question 46

#### **CR 18 Rope Access**

**CR 18(1)(c)** requires that all rope access operators are licensed to carry out their work.

Question: Licence to operate is normally issued by SAQA registered professional bodies. Which organisation / body certify the Rope Access operators as competent and issues licences? **IWH**

#### **Answer**

**IWH** The Institute for Work at Height Professional Body is the custodian of the professional designations – Rope Access Technician, Rope Access

Practitioner and Rope Access Supervisor thus it issues licences to the rope access industry

#### **Question 47**

##### **CR 19 Material hoists**

**CR 19(1)** requires that material hoists be constructed to a generally accepted technical standard but fails to link these hoists to the requirements of Driven Machinery Regulations.

Question:- Should material hoists comply with this regulation “in addition to compliance with the Driven Machinery Regulations promulgated by Government Notice No R295 of 26 February 1988”? **IWH**

##### **Answer**

**IWH** Yes. It is important to link DMR requirements to any type of hoisting machine.

**MBAN** Yes

#### **Question 48**

##### **CR 23 Construction vehicles and mobile plant**

**CR 23(1)(d)(i)** Who are the “certified trainers” and issuers of these Competence Certificates because to my knowledge there are only a few accredited entities.

##### **Answer**

**MBAN** The guidelines must refer to the relevant standards, where SAQA have approved bodies or qualifications then these must be referred to.

#### **Question 49**

##### **CR 23 Construction vehicles and mobile plant**

**CR 23(1)(d)(ii)** there is definite clarity required on an occupational practitioner

##### **Answer**

**MBAN** Relevant bodies SASOM and SASHON must be consulted to provide clarity and guidance to this requirement.

#### **Question 50**

##### **CR 23 Construction vehicles and mobile plant**

**CR 23(1)(h)** Requires contractors that use mobile plant (and this includes Mobile Elevating Work Platforms – MEWPs) be fitted with structures designed to protect the operator from falling materials or from being crushed should the mobile plant overturn.

Do these two interventions apply to MEWPS? **IWH**

##### **Answer**

**IWH** The very nature of the design and operation of MEWPS militate against having an overhead structure (roof) to shield the operator against falling materials and this also applies to “roll over protection” which would

be inappropriate and create a false sense of security for the operator.

**MBAN** Guideline must list or refer to types of equipment and identify equipment which is excluded. International and local best practise standards must apply.

### **Question 51**

#### **CR 23 Construction vehicles and mobile plant**

**CR 23(1)(j)** There is still an issue with excavators. The machines are able to slew and sometimes the operator is facing the wrong direction and he has to go forward to actually reverse, then the reverse buzzer is of no consequence.

#### **Answer**

**MBAN** Guideline must list or refer to types of equipment and identify equipment which is excluded. International and local best practise standards must apply.

### **Question 52**

#### **CR 29 Fire precautions on construction sites**

**CR 29(I)** requires that a contractor must have an effective evacuation plan and elaborates on its requirements.

Question: Only the principal contractor is aware of all the activities that are planned for the site. Such activities could from time to time require a change in the evacuation plan (escape routes, assembly points, lock-out / shut down procedures etc.) which need to be conveyed to all persons on the site. Contractors might not be fully aware of changes that affect these matters and therefore should there not be just one evacuation plan on site which is managed and implemented by the Principal Contractor? **IWH**

#### **Answer**

**IWH** As with the AIDS policy, general firefighting, showers (rest rooms) and the First Aid station all of these should be specified in the client's H&S policy as being supplied by and managed by the principal contractor so as to avoid confusion and potential contradictions to the site H&S policy. If the evacuation routes or procedures are changed due to the dynamics of the construction activity then the Principal Contractor's Safety Officer should convey this information to all the contractors operating on the site.

**MBAN** A project should have one evacuation plan which is specific to project requirements. Contractors on site must comply with this plan and integrate their plan into this plan. Where a contractor may have specific elements these must be identified and compiled into their plan but integrated into the project emergency plan.

### **SAFCEC**

**Q)** In the event of a change in a projects value from below R13m to exceeding R13m, would the application for a permit result in standing time on the project? What is the protocol in such an event?

- How will permits be retro issued?
- Is there a scenario where the 30 days referred to in the regulation

will be exceeded?
<b>A)</b>
<b>Q)</b> 5(3) has created confusion by putting the onus of reporting a fatality on the Contractor. With the current Act placing the onus of reporting a fatality on the user, there is a concern that the introduction of CR 5(3) could potentially create duplicate fatal reporting.
<b>A)</b> Something to be considered so that double reporting is avoided.
<b>Q)</b> 7(8), more clarity on the frequency of medicals is requested. <ul style="list-style-type: none"> <li>○ On short duration projects (6-8 months) employees either sit more medicals than required or the cost of medicals is levied from multiple projects over the course of a year.</li> <li>○ Clarity is also needed on who conducts a medical exam (Occupational practitioners, nurses or Doctors?)</li> </ul>
<b>A)</b> Current practice is for a baseline followed by annual progress medicals, is this the expected frequencies?
<b>Q)</b> 9(2), more clarity is requested on the requirements and expectations of an Ergonomics Risk Assessment.
<b>A)</b>
<b>Q)</b> 9(7) refers to a review of Risk Assessments following an 'incident'. To avoid a scenario of constant revisions of risk assessments the definition of an 'incident' requires more clarity.
<b>A)</b>
<b>Q)</b> 31(3) (b) refers to the appointment of a designated person to investigate systems and records of companies with high incident rates. <ul style="list-style-type: none"> <li>○ What is deemed a 'high incident rate'?</li> <li>○ Who is this designated/appointed person likely to be? There is a potential for conflict here.</li> </ul>
<b>A)</b>
<b>Q)</b> Section 34(2) makes provision for an adjustment period for CHS Agent registration, however there does not appear to be an adjustment for CHS Officer registration. <ul style="list-style-type: none"> <li>○ The Construction Regulations make no reference to requirements for registration of Construction Managers, is there an intention or requirement for registration of Construction Managers?</li> <li>○ There is also concern over the inability of current CHS Officers not being able to make the grade for registration and thus not being able to operate in a profession they have been in operating in for years. There are concerns over CCMA cases in this event.</li> </ul>
<b>A)</b> <b>IWH - The Agent referred to in 5(5), 5(6) and 5(7) is not the CHS Agent but the Principal Agent that has line management responsibility and accountability over the complete professional team (which might or might not include a CHS manager )</b>
<b>Q)</b> There seems to be inconsistency between the definition of a Health and Safety Plan / Specification which in the definition talks to being site, activity and project specific, while in the Regulation talks to only being project specific. Clarity is needed as this could be read and interpreted differently by different parties.
<b>A)</b>
<b>Q)</b> 7(1) (c) (iii) calls for a Principal Contractor to appoint Contractors with the necessary competencies and resources to perform the work safely. However, there are cases where Clients prescribe Contractors that must

be appointed by the Principal Contractor. This situation removes control of compliance from the Principal Contractor, surely the associated risk should be transferred to the Client in situations such as this.

**A)**

**Q)** The Definition for 'Fall Risk' refers to a fall 'from'. The addition of 'from' without clarity is likely to force work at height training to be applicable to everyone.

**A)**

**Q)** What is to happen in a situation where Construction work is carried out in a Mining environment? Are the Construction Regulations 2014 applicable in this scenario and will Health and Safety Personnel need to be registered?

**A)**

**Q)** Sometimes the regulations require the Contractor to appoint persons and sometimes the Construction Manager. Can the appointed Construction Manager make all site appointments?

**A)**

**Q)** Does the 8(1) from the Principal Contractor have the duty to make all appointments for Contractors under the PC on that project?

**A)** The Construction Manager from each employer on a project should make the necessary appointments. The Construction Manager from the Principal Contractor should not be making appointments for sub-contractors personal.

**Q)** The current exemption received from the DoL does not include the exemption for safety officers to be registered with SACPCMP. Does this mean they must be registered now?

**A)** Current wording only exempts CHSO registration for 6 months, however it is the intention that 18 months is allowed for for CHSO's to register. This thinking is confirmed by the SACPCMP.