

Policy Update - July 2012



CDM 2014

CIC is running a workshop on the afternoon of 17 September 2012 which will seek to identify the key issues for the health and safety professions in relation to the proposed updating of the Construction Design and Management Regulations which is due to take place in 2014.

The Construction Design and Management Regulations were first introduced in 1994, then revised in 2007. Earlier this year, the HSE commissioned Frontline Consultants to produce a [report](#) evaluating the current Construction (Design and Management) Regulations 2007, pending replacement of these regulations in 2014.

One of the basic issues highlighted in this report was that it is the interpretation of the Associated Code of Practice (ACOP) rather than the regulations themselves that can cause problems. While the overall conclusion is that CDM 2007 has gone a long way to meeting its objectives and in clarifying duty holders' roles and responsibilities, there are still concerns within the construction industry. For instance, some argue that the current economic climate has led to the perception of price being of overriding importance rather than competence, early starts on site or timescales.

The overall context in revising the regulations will be to simplify them to improve clarity, to maximise flexibility with the emphasis on active management and on minimising bureaucracy. Problems which have emerged with the existing regulations include the fact that some organisations do not appreciate the applicability of CDM and confuse 'not notifiable' with 'not applicable'. Another major problem is that the requirement to appoint duty holders early is not always complied with.

This workshop represents a major opportunity for designers to provide valuable input about any deficiencies they perceive in the existing regulations and also to act as a sounding board in the run-up to the Construction Design and Management Regulations 2014.

Posting of Workers Directive

CIC was represented at a roundtable event to consider the [Posting of Workers Enforcement Directive](#) which proposes to introduce a system of joint and several liability in the construction sector across all member states. This would mean that

if a sub-contractor failed to pay its posted workers the correct amount, those workers would be able to hold liable both the sub-contractor and the contractor who employs that sub-contractor. Whilst the Commission's proposal only refers to "posted" workers, both to and from the UK, there are widespread calls in Europe to extend joint and several liability to all workers in construction and to posted workers in other sectors.

The original Posting of Workers Directive dating from 1996 guarantees that the rights and working conditions of a posted worker are protected throughout the European Union. In seeking to avoid "social dumping" whereby foreign service providers can undercut local service providers because their labour standards are lower, the European Community law has established a core of mandatory rules regarding the terms and conditions of employment to be applied to an employee posted to work in another Member State. These rules will reflect the standards of local workers in the host Member State (that is, where the employee is sent to work).

A new Directive to improve the enforcement of the existing postings directive would not only extend joint and several liability but would also include measures to improve co-operation and the sharing of information between inspection and enforcement agencies in different member states. This involves the sharing of information between countries and limits the information that member states can ask for when posting workers.

While it was conceded that this is a hard issue to quantify, discussion of the measure brought through some interesting points which included the following.

- The allegation that the UK had not transposed the original directive correctly.
- The fear that if liability is widened there may be a perverse incentive for a sub-contractor to "pass on" responsibility.
- The fact that widespread bogus unemployment may in fact mean that posted workers are unprotected in any case.
- The effectiveness of a due diligence defence.
- That the resultant costs may be disproportionate to the problem.

The BIM Protocol and the Insurance initiative

BIS has funded two initiatives which are being overseen by CIC. One is in relation to insurance and Building Information Modelling (BIM), while the second involves the creation of a CIC BIM Protocol.

In drafting the BIM Protocol, one of the guiding principles has been that the Protocol will make the minimum changes necessary to the pre-existing contractual arrangements on construction projects. The Protocol would however ensure that there is an obligation on parties to provide their works/services in the

form of a model. This Protocol, which is flexible and suitable for use on all projects, will take precedence over existing agreements.

The Protocol is to be incorporated into direct appointments between the employer and the project team only. Whether or not those contracting parties pass the protocol down the contractual chain is a matter for them but they cannot be forced to do so by the head of the contractual chain.

Use of the Protocol will aim to remove the need for Electronic Data Exchange Agreements by covering any risks associated with the provision of electronic data. It should also be noted that the Protocol does not incorporate the PAS document 1192-2 which is currently being drafted.

The basic format of the CIC BIM Protocol will be the protocol document together with two appendices: the Model Delivery Table (MDT) and the Information Plan (IP). The MDT will determine *what* must be developed, by *whom* while the Information Plan defines *how* the model is developed. This protocol covers BIM development to level 2. Plans are that the completed protocol will be in place by September 2012.

The main activity in relation to the insurance project is the preparation of a briefing for underwriters and the demonstration of some BIM projects to the industry which does not, at the moment, understand the concept.

The Liability Panel BIM Sub-group

The Liability Panel sub-group on BIM has been highly active in recent months with four meetings since January.

Under the enthusiastic guidance of David King, this diverse group of lawyers, architects and engineering specialists have examined documentation in use on current projects with the view to develop a pan-professional view of the legal, contractual and insurance issues which the implementation of BIM may pose for the current procurement processes and working practices within the UK construction industry.

Latterly, one of the main tasks of the group has been to prepare a response on behalf of CIC to the BSI consultation in respect to PAS 1192-2. In time, this Publically Available Specification (PAS) will become a full-fledged British Standard covering Building Information Modelling.

David King due to work pressures has now had to relinquish the role of chairman of this sub-committee. His role is being taken over by Mark Castellino who is a professional support lawyer for DLA Piper, and also chairman of the Construction and Projects Knowledge Management Association.

Introducing a statutory register of lobbyists

As part of the coalition agreement, the Government is committed to introducing a statutory register of lobbyists.

One of the ideas advanced in the consultation document first launched in January was that those defined as lobbyists would only include any organization or person who undertakes activity on behalf of a third party client, rather than on their own behalf. If this is the definition which is finally adopted it would mean that CIC members for the most part would not be affected by the new proposals but it is possible that CIC itself may be.

Under one scenario, the proposed register of lobbyists would be updated quarterly. This register would be self-funded, with revenue coming from those who would be required to register.

A summary of [responses](#) to the initial consultation was published earlier this month. These responses will be taken into consideration when the Government publishes a White Paper on the subject. Government officials intend to meet with a number of respondents to clarify the points they have made during the consultation process. A draft Bill on the subject will be introduced during this session of Parliament.

Government Construction Strategy – One year on

In reviewing progress in relation to the [Government Construction Strategy](#) which was launched one year ago, the Government has said that they have achieved £72m in cost reductions in the past year. “Whole life” project cost reductions of £279m have been identified on new contracts awarded and projects registered during 2011-12.

Within the overarching aim of reducing the cost of Government Construction projects by 15-20%, key priorities within the strategy continue to be:

- unlocking innovation and growth by using Government’s purchasing power to drive change (e.g through BIM);
- procurement reform and supporting SMEs; and
- equipping Government to function as an intelligent client.

Progress has been noted particularly in promoting the use of project bank accounts, in the commitment to embrace BIM, in the production of cost benchmarking data by the seven main purchasing departments and in the publication of three iterations of the construction and infrastructure pipeline.

Heseltine Review

CIC through the Strategic Forum for Construction is contributing to the [review of Lord Heseltine](#) which is examining how spending departments and other public sector bodies interact with the private sector. The other aim of the review is to assess the capacity of these bodies to deliver pro-growth policies. It will include a benchmarking exercise comparing how other competing economies implement their industrial strategies.

CIC is promoting the view that there are three major components to the construction industry: contracting supply chains; professional design teams and; materials products suppliers. While CIC is keen to promote the need for an integrated voice, the notion that there can be a single voice for such a complex industry is an impossible aim.

Current ONS data only includes output for contractors. It does not include the vital contribution from professional consultants. This is something which CIC is keen to change.

Above all else, CIC is seeking to highlight the need for effective integration and more collaborative working as exemplified in the use of BIM as a mechanism for promoting this agenda.

The Pensions Infrastructure Platform

In the last budget, the Chancellor declared that it was his aim to encourage pension fund investment in infrastructure. January 2013 will see the launch of the new Pensions Infrastructure Platform. This is a venture launched by the National Association of Pension Funds (NAPF) to facilitate investment by pension funds in the development of infrastructure in the UK. A Memorandum of Understanding was signed by the NAPF with the Government last November to promote this initiative.

The NAPF represents 1,200 pension funds with £800bn in assets. The new platform would allow funds to pool their resources in a new way thus facilitating investment in UK infrastructure. The infrastructure fund will invest in brownfield projects, assets that are already built and earning income or projects where the government will take on some of the construction risk with aim of achieving returns of 2-5 percent above inflation. The National Infrastructure Plan 2011 has identified that the UK needs over £200bn of new infrastructure investment in the next five years.

Alan Rubinstein CEO of the Pension Protection Fund, a leading pension fund, will discuss the proposed Pensions Infrastructure Platform at the next meeting of the CIC Economic and Policy Forum which takes place in the Building Centre, 26 Store Street, London between 10 – 12.00 on 11 September 2012.

Community Land Trusts

The meeting of the Economic and Policy Forum on 10 October 2012 will feature a presentation on community land trusts (CLTs). These are non-profit community based organisations run by volunteers which develop housing, workplaces and community facilities which are available at affordable rates. First developed in the United States, CLTs have been established in the UK since 2008 and are being developed partly through funding from CLG.

On 18 July Boris Johnson announced the formation of the first London CLT on the site of the former St Clements Hospital in Mile End.

Catherine Harrington, Co-ordinator of the National CLT Network which was set up in September 2010 will give a presentation on Community Land Trusts to the CIC Economic and Policy Forum on 10 October 2012.

APPG report

The report of the All Party Group for Excellence in the Built Environment, entitled “A better deal for public building” will be launched on 10 September 2012. This report is the product of a six month long APPG inquiry into achieving best value in the procurement of construction work.

Led by Sir Tony Baldry MP, the Commission of Inquiry consisted of members of both Houses of Parliament as well as senior members of the construction industry including: Sir John Armitt CBE, Peter Bonfield OBE, Oliver Colvile MP, Alan Crane CBE, The Earl of Lytton, Gordon Masterton OBE, Jack Pringle, The Rt Hon Nick Raynsford MP, Simon Rawlinson and The Earl of Mar & Kellie.

Drawing on a wide range of evidence submitted by members, together with five open sessions where oral evidence was presented between January and March 2012, the report puts forward a 13 point plan for making the public sector a better client.

Construction Trial Projects

Following on from the [Trial Projects](#) report issued in February 2012, the Government Construction team have been identifying further projects to provide “proof of concept” for the various initiatives in the Government Construction Strategy. Projects using lean procurement principles feature in the new list as does a project which uses Integrated Project Insurance.