

CIC Policy Update

September/October 2008



Chief Construction Officer

The construction industry is still awaiting clarification of the role of the Chief Construction Officer. It is known that this will be a civil service position but the potential terms and scope of the role have yet to be confirmed. The Department for Business, Enterprise and Regulatory Reform (BERR) has however announced an intention to consult on this new position. Questioned as to the nature of these consultations, sources within BERR said that there was an active dialogue taking place between Government departments but it was also intended to take soundings within the construction industry.

The creation of this new post is the central recommendation in the “Construction Matters” report published by the Business and Enterprise Committee of the House of Commons in July (see below). It is understood that no appointment is likely to be made until the formal response to the full range of recommendations contained in this report is published. Although a formal response had been expected at the end of October, there may be some delay as a new minister for Construction, Iain Pearson has just been appointed. Iain Pearson is the seventh minister in this role since 2001.

Nick Raynsford, deputy chairman of the Construction Industry Council (CIC) says that given the short tenure of recent construction ministers the creation of the new post of Chief Construction Officer “is the way forward”.

“Construction Matters” Report – CIC input

CIC made an important contribution to the “Construction Matters” report <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmberr/127/127i.pdf> (published in July 2008). This report is the result of the first major enquiry into the UK’s construction industry by the Business and Enterprise Committee of the House of Commons.

Covering a wide range of topics, including: public procurement, integrated working, health and safety, skills shortages and issues surrounding self employment; this report makes a large number of recommendations, the main one of which is the appointment of a new Chief Construction Officer, a civil service position with a role equivalent to that of the chief scientific advisor.

Nick Raynsford MP, then chairman of CIC gave oral evidence to the Business and Enterprise Committee which produced this report on October 23 2007. He

presented an overview of the work of CIC and sketched in the importance of the industry in the economic life of the nation.

The main written CIC submission was presented as part of a joint paper along with two of the other leading umbrella bodies - the Construction Confederation and the Construction Products Association. Although the economic outlook has changed radically in the intervening period, the CIC submission highlights many of challenges which the industry must deal with. These include the following.

- CIC set out the fragmented nature of the Government interface with the construction industry. Although BERR leads on legislation and payment practices, Communities and Local Government (CLG) is in charge of the Building Regulations while the Department for Environment, Food and Rural Affairs (DEFRA) deals with environmental matters and the Office of Government Commerce (OGC) has the lead in procurement. CIC is quoted as saying that although BERR is the leading department, it is hard “to ensure really effective integration across central Government”. The effectiveness of that message about the lack of integration is shown by the willingness to appoint a Chief Construction Officer who will have a co-ordinating role. CIC is campaigning to ensure that this post will function as an effective point of engagement between industry and Government.
- In their oral submission, CIC promoted the adoption of collaborative and integrated working across the construction industry. All the umbrella bodies feel that this integration is vital. One aspect which CIC champions and which is quoted in the report is the necessity of early engagement of the supply chain – a fundamental feature of integrated working which ultimately benefits the client.
- The written submission to “Construction Matters” advocated use of CIC’s Design Quality Indicator (DQI) <http://www.dqi.org.uk/DQI/default.htm> as a means of providing an objective assessment of the design of a building. This initiative was highly commended in the final report which contains a detailed explanation of how DQI is used at different stages of the construction process and how variants have been developed for particular types of building (i.e schools). The report also notes that the importance of DQI can be gauged by the fact that the Strategic Forum for Construction has set a target of a 10% year on year increase in the proportion of civic, housing and educational projects using DQI.
- In relation to specific initiatives, the forthcoming amendments to the Construction Act in respect to adjudication and payment procedures are noted. Since the original written submission to the Business and Enterprise Committee, a consultation document on these amendments has been produced. CIC has submitted a response to this and also co-ordinated action through the Construction Umbrella Bodies Adjudication

Task Group (CUBATG). Meetings with the BERR have resulted from this activity and further clarifications presented.

- Areas of skill shortages in the building professions are an aspect of the industry which was highlighted in the joint submission to the committee. This contribution was noted in the final report - particularly shortages of skills in relation to mechanical and electrical engineers, project managers, building control operatives, specialist tradesmen and assessors and quantity surveyors. On a wider level, the CIC comment that positive perception of the final result of construction activity is not matched by a similar perception of the industry and people who produced them is also mentioned.
- Not surprisingly, health and safety featured as a major area of concern in the joint written submission. It was noted in the report that the CDM regulations had been broadly welcomed by industry and once again the importance of these regulations in factoring in health and safety into the planning and design process was underlined.
- Currently CIC focus in relation to climate change centres on the issue of carbon. The report picked up on several issues in relation to this, particularly the concern that the Government's focus is on new build rather than existing stock. Building on the model of the existing Code for Sustainable Homes, CIC is active in creating the impetus towards a greater integration of effort in providing low carbon building and design solutions and promoting these ideas within the building professions.
- The other main regulatory area which featured in the CIC submission to the report concerns the Building Regulations. The overriding problem of complexity, the notice period for changes to the Regulations and lack of a long term vision on the part of Government were among the issues raised to the Committee and these aspects were noted in the final report.

On publication of the report, CIC Chairman, Keith Clarke wrote to both the Minister of Construction and Brian Bender, Permanent Secretary to the BERR expressing support for this exercise. CIC Chief Executive Officer, Graham Watts has also met Denis Walker, Director of the Construction Sector Unit at BERR.

The official response to the report is expected in late October or early November.

CIC calls for redrafting of Construction Contracts Bill

The Construction Industry Council (CIC) has called for major redrafting in relation to the Construction Contracts Bill which is currently in the final stages of parliamentary process.

The new Bill which seeks to change current practice particularly in relation to payment and adjudication, would amend Part 2 of the Housing Grants, Construction and Regeneration Bill 1996. Although CIC supports many of the aims of the Bill, there is concern that if it passes as it is currently drafted, it will create more problems than it solves. In their submission to the BERR submitted as the part of the consultation exercise on the Bill, the CIC highlighted problems in relation to:

- The suggested amendments in relation to the requirement that a contract be in writing. Once it is accepted that contracts which are partly or wholly oral are within the scope of the Act, it is difficult to see the need any further definition.
- The CIC also disagreed with the proposed introduction of a new clause to introduce a “statutory slip rule” which would allow corrections to be made under this statutory provision only in relations to adjudication in Scotland. It would be more straightforward to introduce this statutory enactment which would apply to all jurisdictions.
- While the CIC endorses the aim of the Bill in seeking to abolish “Tolent” clauses which state that the referring party must pay both parties costs regardless of the outcome, the drafting of the new sections is unclear.
- Another area of concern for the CIC relates to the issue of interim payment decisions. The CIC feel that the current wording referring to “binding” decisions should be amended to “final and binding”.
- Proposed amendments in relation to the notices relating to payment are probably too complex. The end result may involve more administration increasing costs and in some circumstances delaying payment.

Following submission of the CIC response, further clarification of the CIC position was sought by BERR. A productive meeting took place at CIC offices and CIC then presented an additional response. The final legislation is awaited with interest.

Carbon Criticality

Following the decision last May, to make carbon emissions reduction the key issue in relation to the drive towards sustainability within the construction industry, as a first step CIC engaged Marion Bowman (past Chief Executive of the Landscape Institute) to carry out an audit of members’ activities in relation to carbon. She carried out in depth research into the activities of ten members in

relation to the awareness of carbon emissions within the construction professional institutes.

On October 1 CIC held a workshop to explore ideas within the wider membership on their work and aspirations in this area. CIC has also established a leadership group chaired by Keith Clarke which bring together individual work strands being set up under the carbon critical banner. The ICE has agreed to set up a carbon critical group looking at infrastructure; the RIBA has offered to run a group on reducing carbon through building design and the RICS has agreed to run a work stream on carbon pricing. This leadership group has already held a meeting.

Later in the year a meeting is scheduled to take place with the Secretary of State at DEFRA to make him aware of the work being done in this field.

New Health and Safety Offences Bill

The new Health and Safety Offences Bill is a private members bill which seeks to amend the penalty framework in the Health and Safety at Work Act, Section 33. This measure is currently well advanced and as it has Government (and cross-party support) it is quite likely to become law although several similar attempts have already failed.

The main effect of the new Bill will be to increase penalties for health and safety offences by enabling higher fines in the Magistrates Court. There is also the possibility of prison sentences for a wide range of health and safety offences which can be imposed in both lower and higher courts. Another effect of the Bill is that it makes some offences triable in both the higher or lower courts.

At present the maximum fine which *magistrates* can impose for breaches of health and safety regulations is £5,000. If this Bill is enacted, this limit is raised to £20,000 putting these regulations on a par with breaches of the Health and Safety at Work act 1974, where the £20,000 limit has always been in force. (Note that where sentencing takes place in the Crown Court, there is no maximum fine).

The Bill extends to England, Scotland and Wales. If it receives Royal Assent it will become law after three months (probably in April 2009). CIC is maintaining a close watch on this piece of legislation. If it becomes law, CIC will produce a policy briefing outlining the effect of this Bill.

For more information on any item in this update please email : cmolloy@cic.org.uk.