

DACB's 2020 Construction look ahead

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National Infrastructure Strategy bill

1. In the Queen's speeches in October and December 2019, government aims for domestic reform were laid out, to "level up" opportunities across the UK through better infrastructure.
2. The National Infrastructure Strategy bill sets out the Government's ambitions across all areas of infrastructure including transport and local growth. This includes major investments in the (i) railways including the High Speed Two (HS2) line between the West Midlands and Crewe, and Crossrail (ii) Heathrow redevelopment (iii) roads and motorway upgrades. We also need to wait and see what, if any, replacement there will be to the Private Finance Initiatives.

Building Regulations

3. Support to home ownership is also a priority, encouraging first-time buyers to buy homes at a discount. We can expect to see planning reforms and transport reforms as a result, now that the Conservative Party are in a position to progress their manifesto aims. A consultation is currently open relating to The Future Homes Standard that proposes changes to Part L and Part F of Building Regulations promoting carbon friendly construction practice.
4. It also remains to be seen how the industry will respond and here some predictions relating to Modern Methods of Construction and Insurance premiums: <https://insurance.dacbeachcroft.com/predictions/construction-and-engineering/>
5. The Government Consultation paper; "Building for a Safer Future" closed for responses on 31 July 2019. It remains to be seen what the Government will propose in terms of legislation following this and various other reviews of industry practice. The best indication we have comes from the two Queen's Speeches (October and December 2019) which said that the Government would "...put in place new and enhanced regulatory regimes for building safety and construction products, and ensure residents have a stronger voice in the system...".
6. We will need to wait and see what is proposed, how it will interact with current legislation and what the final format of any legislation will be. However a radical overhaul of all legislation/Regulations, best practice and the responsibilities of any party involved with the construction process are expected. Together with the introduction of a new Regulator to oversee the changes. On 22 January 2020 the Housing Secretary, speaking in Parliament announced the creation of a "Building Safety Regulator" to sit within the Health and Safety Executive.

Health and Safety

7. Linked to the above predictions regarding Building Regulations, there will also impact the Health and Safety Regulations. In 2019 we saw increasingly large fines being handed out by the Courts. The HSE issued a revised Business Plan seeking to continue this approach and to continue tackling ill health as part the Health and Work Programme. Our update is here: https://www.dacbeachcroft.com/en/articles/2020/january/regulatory-predictions-for-2020/?utm_source=Vuture&utm_medium=Alert&utm_campaign=15012020-Casualty-Regulatory-TobyRoche

Construction Act / Payment

8. Since the consultation regarding amendments to the Construction Act ended in January 2018, very little has been done to progress the replies provided by the industry. Indeed the consultation responses have yet to be published. Accordingly "payment" remains a live issue which may come in the form of legislation. "It also continues to form a large part of the Court's business, as we have discussed in our regular updates throughout the year and we expect this to continue into 2020. For example these issues will remain important and live:

8.1 "Construction operations" where part of a project might not fall within the definitions given in the Construction Act, giving rise to "Hybrid Contracts" see: <https://www.dacbeachcroft.com/en/gb/articles/2019/december/payment-provisions-in-hybrid-contracts-and-the-effect-of-the-construction-act/>

8.2 "Smash and grab". Following the decisions given in the TCC and Appeal Courts on ***Grove Developments v S&T (UK) Limited***, the ripples continue to run across the Construction industry. Contractors are still smarting from the weakened position they find themselves in now that the potency of a "Smash and Grab" Adjudication has been reduced (because the Employer may subsequently pursue a "True Value" adjudication and receive a repayment). It remains to be seen if there will be a call to make further changes to the Construction Act as a result, see: <https://www.dacbeachcroft.com/en/articles/2018/december/true-value/>

Retentions

9. The Construction (Retention Deposit Schemes) Bill (aimed to make provision about protecting retention deposits in connection with construction contracts) failed to complete its passage through Parliament before the end of the session and so will make no further progress. It will be interesting to see if a further, similar Bill is introduced in the near future. Our thoughts on the original bill and the benefits of cash retentions can be found here; <https://www.dacbeachcroft.com/en/gb/articles/2018/august/construction-retention-deposit-schemes-bill-2017-19/> and <https://www.dacbeachcroft.com/en/gb/articles/2018/may/cash-retentions-who-do-they-really-help/>

HMRC

10. Issues of IR35 and VAT will have practical implications to the industry and will likely increase the tax burden of companies operating in the construction sector throughout 2020.

10.1 IR35 deals with the engagement of “3rd party professional services” and whether those individuals are “self-employed” for tax and national insurance purposes. From April 2020, medium and large companies in the private sector that contract with personal service companies for the provision of workers’ services (off payroll workers) will have to account for tax and national insurance through PAYE.

10.2 In terms of VAT, we need to wait and see whether the reverse tax amendments to legislation, that were due to be enacted in October 2019 will come into force in its current form, see: <https://www.dacbeachcroft.com/en/gb/articles/2019/august/construction-risks-newsletter-august-2019/>

Low value adjudication

11. Adjudication as a method of resolving disputes, has undergone substantial change and refinement since it was brought into force by way of the Construction Act 1996. One of issues with adjudication is the rising costs. Numerous adjudication bodies have piloted low value adjudications.

11.1 TeSCA have confirmed that following a successful pilot, the low value dispute adjudication service (“LVD”) will continue. The LVD service offers fixed fee adjudications, pro-rata to the value of the dispute (up to a limit of £100,000).

11.2 RICS and the Construction Industry Council (“CIC”) have also consulted on similar schemes and it remains to be seen whether these will come to fruition.

Supreme Court

12. It is rare to see construction cases being appealed to the Supreme Court. Grove v S&T was such an example and would have provided much needed guidance on payment and the status of “smash and grab” adjudication. Regrettably for the industry, this case was settled and we now wait to see if further clarity will emerge from either the Courts or legislation.

13. Of a wider interest, a case that deals with whether a professional was providing “advice” or “information” is Manchester Building Society v Grant Thornton. This case is important for those acting within a professional or design capacity on a construction project as it concerns the applicability of the SAMMCO principles. Shortly stated the SAMMCO principle is that “...a person under a duty to take reasonable care to provide information on which someone else will decide upon a course of action is, if negligent, not generally regarded as responsible for all the consequences of that course of action. He is responsible only for the consequences of the information being wrong.” Despite the fact that this will not be the first occasion upon which the Supreme Court has been asked to consider this well-known principle, it remains to be seen upon what grounds the Supreme Court is being asked to revisit the issue and whether the Supreme Court alters the balance to the extent that it might impact on construction professionals.

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