

DACB's 2021 Construction look ahead

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1. Covid

Whilst the coronavirus has dominated the headlines and the vaccination programme is underway, numerous pieces of legislation have been passed to deal with this unique situation. Given the inherent curb on civil liberties (social distancing and “lockdowns”) some of the legislation passed is time limited. We therefore expect continued legislative change and dependant on the spread of the virus and the vaccination programme a possible return to “Regional” opening up of areas, as opposed to “National” legislation applying to the whole of England. See also <https://www.dacbeachcroft.com/en/gb/articles/2021/january/new-national-lockdown-in-england/>

Whilst we also wait to see whether the Government will extend support to businesses and individuals arising from the pandemic, it is still pressing ahead with the IR35 and reverse taxation, later this year. See <https://www.dacbeachcroft.com/en/gb/articles/2019/august/construction-risks-newsletter-august-2019/>

2. Brexit

The country is taking its first and tentative steps following the withdrawal from the European Union. It remains to be seen how Brexit will affect supply chains and materials coming from the EU. Just as importantly how EU workers will be allowed to work and remain in the UK. Early reports that labour going home to EU countries for the Festive Period and not returning, has been masked by the various travel bans imposed due to Covid-19. Accordingly it is perhaps too early to say what problems this may cause the Industry. Products and materials coming into the UK have been held up at the Channel Ports as a result of Brexit.

3. Infrastructure

In November 2020 the Government announced the “Construction Playbook”. Then in December 2020 a Procurement Policy Notice setting out guidance on the “Playbook” which set out 14 key policies on how the Government will assess, procure and deliver public works programmes. Whilst it is too early to see how this will be implemented, it is part of the Governments wider plans for the Country following Brexit and recovery from Covid-19. A copy of the Notice is here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941899/PPN_The_Construction](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941899/PPN_The_Construction_Playbook.pdf)

As part of the Governments plan for economic recovery, levelling up of the UK and meeting zero emissions targets, we expect the next Budget from the Chancellor to propose and put forward schemes to bring these ambitions into place. For example we expect further detail on “National Infrastructure and Construction Pipeline” and “Transforming Infrastructure Performance 2021”, both to be published later this year.

4. Building Safety Acts

It remains unclear as to when the Government will lay before Parliament amendments to and new legislation regarding Building Safety/Control. In late 2020, it was indicated that the New Building Safety Regime would be raised in Parliament in 2021 and potentially to come into force in 2023. As part of the wider proposed legislation, the Government issued a consultation paper on the regulation of Architects which closed in late January 2021 as well as an intention to appoint a new regulator for construction products.

The Fire Safety Bill (2019/21) which applies to England and Wales, amends the Regulatory Reform (Fire Safety) Order 2005 and is expected to result in greater clarity over responsibility for fire safety in buildings containing more than one home. The Bill is currently awaiting House of Commons consideration of the House of Lords amendments.

5. Construction Act

In DACB's predictions for 2020 we referred to the long overdue Government response to the Consultation paper on potential amendments to the Construction Act. The Government issued its response in February 2020 - <https://www.gov.uk/government/consultations/2011-changes-to-part-2-of-the-housing-grants-construction-and-regeneration-act-1996> The Government is now conducting a “implementation review”. We therefore wait to see if amendments are made to the payment mechanism, what is a construction contract?, retentions and potentially issues arising from Bresco and the interaction between the Construction Act and Insolvency legislation.

6. Courts

The legal system has had to adapt to deal with the pandemic, with virtual hearings and amendments to the Civil Procedure Rules. See <https://www.dacbeachcroft.com/en/gb/articles/2020/march/covid-19-litigation-in-the-time-of-a-pandemic-latest-updates/>

Specifically with regard to Construction claims we understand that there might be amendments to the Construction and Engineering Pre-Action Protocol and also the TCC Guide. There are no dates as to when any drafts may be available.

7. Disputes

Finally and of note, the CLC has continued to issue Site Operating Procedures to the Industry, to assist with a practical view of how to implement various Government and Public Health England Guidance notes. In that regard the CLC issued SOP 7 in January 2021 <https://www.constructionleadershipcouncil.co.uk/news/site-operating-procedures-version-7-published/> . Issues surrounding the recovery of delay and additional costs of works, will no doubt continue to dominate 2021.

As a result of the pandemic, the economy and issues around Brexit, the CLC considers that disputes will increase in 2021. It has published a useful snapshot across the industry on claims and disputes - see <https://www.constructionleadershipcouncil.co.uk/wp-content/uploads/2021/01/21.01.11-CLC-COVID-19-Claims-and-Disputes-in-Construction-V1.0-FINAL.pdf>

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