

CIS implementation and implications

Important changes affecting those employing sub-contractors came into force in April this year with the introduction of the new construction industry scheme (CIS). Here we highlight the key changes and the transitional arrangements.

The new scheme places the responsibility on individual contractors to submit monthly returns to the HM Revenues and Customs (HMRC), declaring all payments that have been made to sub-contractors (the scheme will not apply to payments made to sub-consultants).

The new system was originally due to be in force by April 2005 but was deferred until 6 April this year.

The transition

Contractors will not be required to re-check the status of subcontractors provided they have paid them since 6 April 2005 and they have had sight of their registration card or temporary registration card with an expiry date of 04/07 or later, or a tax certificate with an expiry date of 04/07 or later.

Since November 2006 HMRC have been sending out lists to contractors, detailing sub-contractors that they will not need to verify. A final



updated list was sent in March.

The majority of subcontractors will be automatically transferred across to the new system. Only new subcontractors and those who have temporary registration cards that expire before 6 April will have to register.

It is worth noting that a business may elect to become a multiple-contractor under the scheme. For example, a branch office could be registered as an independent contractor. A business can also register as a contractor and a subcontractor under the scheme.

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Industry Update gets back to basics

This year's Industry Update, hosted by Wright Hassall will take place on Friday 5 October at our new offices in Leamington Spa.

The theme will be 'Back to Basics - Back to the Future' which will explore how starting from first principles gives a much more solid foundation for future development.

The speakers include:

- Julia Evans, CEO of the NFB, who will talk about public sector procurement
- Mervyn Raybould, Ridge & Partners, who will discuss the

mechanics of time

■ Owen Fox, Brewer Consulting, will review risk and responsibility in design

■ Mike Bevan, Applied Geology, will explain how early site investigations can help reduce delays.

As ever, this event will provide an excellent opportunity to meet and exchange ideas and experiences with your peers in the industry. It will start at 9.00am and finish with lunch. For more information please visit www.wrighthassall.co.uk or email caroline.venuto@wrighthassall.co.uk.

Safety knowledge a must when working at height

A client was asked to help out a builder friend with replacing soffit boards on a private house. The householder offered to foot the extendable ladder, which was tied at the top. The ladder was set up on a pitched garage roof. It was only a quick job on a Sunday morning, and after all, the ladder was footed. Until the builder friend asked the householder to look to see if his end of the board was straight. He stepped away, the ladder twisted and the client fell, leaving him paralysed from the waist down.

In fact in 2005/6 falls from height accounted for some 46 fatal accidents at work, (the biggest single cause of workplace deaths) and for around 3350 major injuries at work.

The construction industry in particular needs to



SIMON TOWLER looks at the amended Working At Height Regulations 2005 and stresses the importance of ensuring safety at all costs.

be aware of the Working at Height Regulations 2005, and of how they can be instrumental in avoiding injury.

The 2005 regulations replaced all the many different regulations that dealt in part or in whole with working from height and consolidated them into a clearer framework.

A main change was in the definition of working from height which now refers to any height from which a fall would result in personal injury. The previous Construction (Health Safety and Welfare) Regulations referred to a fall from two metres as being working from height.

If you are responsible for safety on site you must "do all that is reasonably practicable to prevent anyone falling".

Under the regulations there is a priority list to



follow, starting with firstly, if possible, avoiding working from height. Then, if that is not possible, using equipment or other measures to prevent falls, and finally attempting to minimise the distance and consequence of a potential fall.

Work must be properly planned, and that planning must take into account matters such as weather conditions. Staff must be properly trained. All equipment must be properly inspected before each use.

Collective measures, such as adequate guard rails are given preference to individual measures such as a safety harness.

Taking the above example, a risk assessment would have highlighted the fact that an extendable ladder was not the right tool for the job. The builder wanted to avoid the expense of scaffolding. However, in that environment,

scaffolding would have been the best option. Had there been space, a mobile tower with adequate guard rails would have worked. There was clearly no prior planning. As for the householder footing the ladder, if it had been on secure non-slip ground, it is possible that a safety talk would have reinforced the importance of his task.

This may be an extreme example, and looking at the facts, it flies in the face of common sense, but it is human nature to want to cut corners or to do a friend a favour.

The regulations properly used, can reinforce that safety message.

The regulations also refer to working on fragile surfaces as well as preventing falling objects, and provide detailed schedules dealing with, for example, guard rails and toe boards, ladders and step ladders, mobile platforms and nets and airbags.

Looking at the schedule relating to the use of ladders;(Schedule 6) the use of a ladder can only be justified after a risk assessment has taken place to consider if other more suitable work equipment is available. It should not be used as a long term option. The base on which the ladder rests must be stable, and adequate means are found to prevent it slipping or moving.

Section ladders must have locking sections, so that they cannot move when in use, and if a load is carried, the user must be able to gain a secure handhold.

In all there are nine parts to the schedule, all based on common sense, but easily overlooked especially when in a hurry.

A thorough working knowledge of the regulations, for both you and your staff, can go a long way to preventing a major cause of serious injury on construction sites and in the general workplace.

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The A, B . . . G of Norman Foster

Lord Foster of Thames Bank was born in Manchester in 1935 and grew up in its then run down Levenshulme district. After leaving school at 16 and National Service in the Royal Air Force, he went to Manchester University School of Architecture and City Planning, funding his tuition by diverse activities such as selling ice cream and acting as a bouncer at a local cinema. He graduated in 1961 and won a fellowship to study for a Masters Degree at the Yale School of Architecture.

In 1967 he formed Foster Associates, which subsequently became Foster & Partners, soon winning many important commissions, an early example of which was the headquarters of Willis Faber & Dumas in Ipswich, completed in 1974. For this insurance company building, described as a "pioneering piece of social architecture", Foster made use of "open plan" office floors before they became the established pattern for office working, and energy conservation measures. His firm achieved international recognition, with works including the 50-storey Hong Kong and Shanghai Bank headquarters, Century Tower in Tokyo, and the Reichstag in Berlin.

He was knighted in 1990, and became a life peer in 1999, the same year that he was awarded the International Pritzker architecture prize; earlier awards included the prestigious Royal Gold Medal by the Royal Institute of British Architects in 1993, and the Stirling prize



in 1998 for his American Air Museum building at Duxford.

Two architects had an early influence on Foster's outlook – the American architect, Frank Lloyd Wright, with his maxim "form and function are one", and Le Corbusier with his theories of space, light and minimalism.

He saw in the sweeping curves and natural light of Wright's buildings something which he determined to bring to Britain.

Foster's design of the Stansted Airport was described as "ground breaking" and his design for, possibly at the world's largest airport, Chep Lep Kok in Hong Kong, has set the design

standard – clean, spacious and airy.

From his early beginnings he used modern materials, especially steel and glass, and opted wherever possible for natural light. A style for the millennium, it was no surprise when the task of designing the first bridge across the River Thames for more than 100 years, fell to him. The footbridge, described by Lord Foster as "a blade of light across the river" has become a favourite with both tourists and office workers alike, and those seeking the cultural and other experiences on the South Bank by "a gentle promenade to walk across offering . . . spectacular views".

And again, in London it is appropriate now to mention his firm's iconic work, the "Gherkin" or as it is properly known, 30 St Mary Axe, The Swiss Re building, completed in 2004. Built on the bombed Baltic Exchange site, this glazed tower of 40 storeys, with its innovative design, both in terms of its striking appearance and eco-friendly services, incorporates the features so dear to Lord Foster – a design that maximises daylight and is eco-friendly. The building is a film star as well – it starred in *Love Actually*.

Rightly described as an icon of the 21st century, it has become a familiar part of the London skyline, its distinctive shape, 180 metres tall, rising amongst the office blocks with which it marvellously contrasts.

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CIS implementation

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The scheme's definition of a contractor

■ Anyone who pays subcontractors for construction work is considered to be a contractor

■ Non-construction contractors (for example, Government departments, local authorities and many other businesses that are normally known in the industry as 'clients') fall within the definition if their average annual expenditure on construction operations over a period of three years is £1 million or more. If the figure is less, then they are not considered to be contractors under the scheme.

What has changed?

■ CIS annual returns no longer apply. Contractors must make monthly returns showing all payments to subcontractors.

■ Nil returns can be made by telephone or internet.

■ Contractors will have to check subcontractors with HMRC. The Contractor confirms that the contract is one of self employment, and HMRC will instruct whether or not the subcontractor should be paid net or gross.

■ Subcontractors can be verified using the telephone, internet, or through the use of specialist

software.

■ If the subcontractor is not registered then a higher rate of tax deduction will apply until the subcontractor contacts HMRC to register or rectify the problem.

■ CIS cards, certificates or vouchers will no longer be used. The subcontractor will have to present themselves in person to the client.

Detailed information can be found at <http://www.hmrc.gov.uk/new-cis/index.htm>.

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Defining efficiency is a perplexing task

Efficiency and productivity are not defined in the JCT family of contracts. They are elusive and difficult to measure or define.

This is, of course, because what amounts to an efficient performance or an acceptable level of productivity depends upon what the employer and the contractor agree in the context of each specific project and very different arrangements may be made.

For example, a contract to point the brickwork and paint a large building may be tendered for by one contractor on the basis that he would scaffold the building for six months and use one man and one "boy" to undertake the job. The same project may be procured on the basis that the scaffolding is erected for six weeks and 30 men are used to do the job. Efficiency and productivity will be measured on different bases depending which method of procurement is adopted.



It is precisely because different ways of performing the project can be agreed that the JCT makes no attempt to define efficiency or productivity within the standard forms.

Any attempt to assess efficiency is made more difficult by the fact that the JCT contracts do not, generally, make the contract programme a contract document. A contract programme can be useful evidence in measuring progress and performance. However, if it has no contractual status, its significance must necessarily be limited.

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PHILIP HARRIS considers the difficulty of defining and measuring efficiency for both the employer and the contractor

Authoritative guides on what constitutes an acceptable level of productivity are hard to find. Sponson or Wessex give a guide to how many hours an activity should take for pricing purposes. However, if you ask a quantity surveyor how much work should have been undertaken in one day of daywork the answer is likely to be "it depends . . .".

The Ancient Romans were better at assessing the productivity of a slave than we are at assessing the productivity of a skilled man today.

The JCT does use language in its contracts which indicates that efficiency and productivity are promised. For example, a contractor's employment can be terminated if he fails to proceed regularly and diligently with the works.

In dealing with applications for an extension of time there is a proviso that "the contractor shall use constantly his best endeavours to prevent delay in the progress of the works".

What the JCT contracts do not do, however, is to provide a mechanism for measuring efficiency.

Some of the initiatives to reform the construction industry at the end of the last century gave rise to the realisation that we need to measure efficiency and productivity and that contractual terms are needed to do so.

The NEC form of contracts, now known as the Engineering and Construction Contract, has an option, known as the X12 Partnering Option, which provides for value engineering and value management and specifically provides for measuring performance by using Key Performance Indicators. Key Performance Indicators are used to measure performance with a view to the payment of a bonus as an incentive. The NEC has another option, Option X20, which also uses

Key Performance Indicators to measure performance with a view to paying bonuses under an Incentive Schedule if targets are met. KPI's are to be objective measurements - e.g. setting a number of days to complete each floor of the building.

The Project Partnering Contract PPC 2000, amended 2003, also uses Key Performance Indicators agreed between the Partnering Team members for measurement of their performance under the project. However, under Condition 23 of PPC 2000 Conditions, Key Performance Indicators are a device for reviewing performance and continuous improvement, rather than a means of assessing incentive payments.

At last, not to be outdone, the JCT has introduced Performance Indicators and Value Engineering, not into the standard forms of contract themselves, but into its Framework Agreement. The Framework Agreement can be used as a binding or non-binding version as an overarching "partnering" type framework for a series of projects or contracts, each of which will be done under a standard form JCT contract.

Under Clause 21 of the Framework Agreement the Service Provider's contribution to progress in achieving the Framework Objectives will be monitored and assessed by reference to Performance Indicators. On completion of the project the Service Provider will be provided with a written report from the Employer assessing his performance against the Performance Indicators.

We seem to have the early stages of a movement towards defining and measuring efficiency and productivity in the context of performance in construction contracts. At the moment, this seems to be largely limited to a means of reviewing performance or incentivising performance rather than punishing poor performance. This is a good thing and ought to lead to increased efficiency by creating certainty and defining acceptable levels of performance.

However, contractors must be aware that once the parties can define agreed performance, the failure to achieve that level of performance will be a breach of contract.

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