



WHAT'S NEXT FOR THE UK CONSTRUCTION INDUSTRY IF LABOUR PREVAILS?

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Introduction

Press reports are anticipating a dramatic shift in the status quo for the next UK general election, with YouGov predicting the Conservatives to only achieve c.19% of the vote^[1].

In this article, we consider how the key political battlegrounds in the construction, engineering and infrastructure sectors may play out and how a new Labour Government might change the overall landscape in these sectors.

Our high-level commentary is based upon what we know from key market trends and statements coming from the political parties to date. We expect the parties' respective positions, and public opinion polls, will evolve and so we will continue to review the main policies and information as this becomes available between now and 4 July 2024 (when the General Election will take place).

Planning Issues

National Policy Statements ("**NPS**") were established under the Planning Act 2008. By setting out a clear statement of national policy in one place, they are intended to provide greater clarity and certainty on Government policy. NPS set out the need for Government's policies to deliver the development of nationally significant infrastructure projects. They provide planning guidance as well as the assessment and decision-making basis for the Examining Authority and the Secretary of State. The Conservatives' January 2024 update to the NPS for energy includes a plan to create a Nuclear National Policy Statement for nuclear power stations beyond 2025.

The Labour Party proceeded to announce that they intend to speed up the planning for critically important infrastructure via NPS within the first six months of coming into Government. Labour have provided further detail on other potential planning reforms and have indicated that the main priorities will include:

- fast tracking the planning process for priority growth areas of the economy, such as battery factories, laboratories, and 5G infrastructure;
- strengthening public sector capacity to expedite planning decisions by raising the stamp duty surcharge on non-UK residents to appoint 300 new planning officers; and
- setting clearer national guidance for developers on the engagement and consultation expected with local communities.

It is important to note the proposal to increase tax on foreign nationals and abolish non-domiciled status could deter foreign investment.

The construction sector needs to be familiar with planning requirements, so naturally

clearer processes and associated guidance will be welcomed. With the proposed addition of 300 planning officers, the process around planning applications and approvals may be smoother. However, with the amount of change Labour intend to bring in, this may take longer than anticipated.

In the meantime, we have seen greater emphasis and application around social value requirements (i.e. with the introduction of a mandatory weighted item for certain public procurements). We are also seeing the roll-out of the requirements on developers and landowners as a result of the biodiversity net gain requirements and regulations. It will be interesting to understand what, if anything, Labour might have planned in terms of such requirements. These points are starting to be incorporated into tender documents and contract terms in range of differing approaches. It is therefore important for parties to check the content before submitting scope/fee proposals or entering into contracts for such projects.

Health, Safety & Environment

This will likely prove to be a key area of focus in the run up to the General Election. On 30 April 2024, the Government updated the statistics on air pollution in the UK. In 2023, the number of hours of 'moderate' or higher NO₂ pollution (a common air pollutant) at roadside sites was the lowest since measurements began, continuing the downward trend^[2]. This is thought to be largely the result of tighter emission standards for road vehicles, and the switch away from burning coal for power generation. Pollution particles suspended in the air (such as dust from construction sites) are down to their lowest levels recorded. Urban areas have shown the highest levels of ozone since recording began, which is partly due to the prohibition or limiting of pollutants with ozone concentrations.

The Labour Party now intend to overhaul regulation of our environment by passing a Clean Air Act. This would establish a legal right to breathe clean air and place new duties on ministers to ensure air quality guidelines are met. This aligns with discussions on improving air quality via the use of strict guidelines and targets. In Europe, we have also seen a recent trend towards novel claims around environmental matters and human rights. Beale & Co have [discussed](#) how this might impact public sector and corporate entities in the longer term. We are yet to see the detail of the Clean Air Bill, but it is something to look out for. The construction industry tends to be a high polluter compared to other areas of the economy, largely due to the machinery and processes required, and the raw materials needed.

We are also seeing wider moves for changes around products certification and use from a health, safety, and environmental perspective. Depending on the content of the legislation, it may bring increased administration requirements or result in future litigation or heavy fines for polluters.

Another common ground concerns waste and inefficiency. In a publication by Ofwat in 2022 it was reported that one fifth of all water going through pipes is lost to leakage^[3]. The privatisation of the water industry was (and still is) a controversial political issue. Although Labour have not fully committed to nationalising the entire water system, they have indicated a nationalisation of Thames Water. Labour have decided to get tough on water leakage as they have indicated plans to set mandatory targets to halve water leaks and strike off company directors who continually breach and ignore their obligations.

Further, the discharge of sewage and pollutants has been widely covered by the media. With 301,000 sewage spills in 2022,^[4] coming down hard on this may prove to be a popular and 'easy win' for Labour. Their current plan concerns mandatory monitoring of sewage outlets and automatic fines for sewage discharges, with a penalty for outlets that do not have monitoring. Increased monitoring will no doubt provide a more accurate picture and increased visibility around what is going on within the industry, and so naturally this will be seen as a positive move by the public and regulators. We have previously [commented](#) upon earlier environmental prosecutions and fines in this space.

The AMP8 cycle has revealed significant investment in water related projects and infrastructure. The new plans may result in further capital spending on the water industry and provide opportunities for the construction industry. We might see contracts providing for greater flow down of such obligations and risk by clients in the water sector, i.e. in the form of back-to-back obligations, performance requirements, and other contractual protections such as record-keeping and audit provisions or indemnities. It is possible that frameworks may be issued for a range of different services during a water project lifecycle and will move towards increased alliancing projects aimed at ensuring all parties are better aligned on the project aims and share in the associated benefits and risks).

In the meantime, we have seen Government guidance and moves towards carbon reduction measures, (see the Carbon Reduction Schedule under Public Procurement Notice 01/24) in addition to public procurement requirements being put in place. We also await further guidance on the implementation of the changes recently introduced under the Building Safety Act 2022 and associated secondary legislation.

Energy

With ever increasing energy costs for families and businesses across the UK, energy has become an increasingly politicised issue. With the UK facing impacts from international events like the war in Ukraine, the Labour Party appear eager to reduce energy bills and ensure the future availability and resilience of energy within the UK. Power generation/ reliability and use will also need to be seen as cleaner and sustainable.

Firstly, Labour have stated they want to upgrade every home to EPC standard C within a decade by installing energy-saving measures such as loft insulation, effectively going street by street in locally delivered programmes. This will be a great opportunity for residential contractors and their supply chains as it may prompt a huge influx of work.

To insulate the UK economy from geo-political events that impact oil and gas prices, the Labour Party intend to have clean power by 2030. They aim to achieve this by (amongst other things):

- Pioneering floating offshore wind, by fast-tracking at least 5 GW of capacity.
- More than doubling our onshore wind capacity to 35 GW.
- More than tripling solar power to 50 GW.
- Quadrupling offshore wind with an ambition of 55 GW by 2030.
- Getting new nuclear projects at Hinkley and Sizewell over the line, extending the lifetime of existing plants, and backing new nuclear including Small Modular Reactors.
- Doubling the Government's target on green hydrogen, with 10 GW of production

for use particularly in flexible power generation, storage, and industries like green steel.^[5]

However, this may incur some resistance or opposition, especially regarding the planned doubling of onshore wind. Further, these methods will also require large amounts of capital and technology, and with Labour recently cutting their green pledge spend from just under £30bn to just under £15bn there may be questions around how this will be funded effectively in practice.

Late Payments

There are specific statutory payment requirements and the mechanism of adjudication to tackle late payments under construction contracts. However, there is no such provision for more general commercial contracts and so this must be managed via careful drafting, risk management, and good relationships. Whilst there is legislation around the compensation and interest on late payment of commercial debts, we often see parties seeking to agree alternative rights and remedies.

The Labour Party has stated it wishes to bring in legislation that will tighten the rules on late payments, a crisis which is particularly acute for small businesses. Could this potentially see the adjudication process opened to include other types of relationships or forms of contract? The detail has yet to be published, however it is an important pledge to note. Having a further mechanism for tackling late payments to reduce risk, time, cost and resource investment that is linked to payment disputes will be welcomed by a range of sectors, even outside of construction and engineering.

Conclusion

The topics discussed above propose significant potential change and would directly impact the types and allocation of risk between regulators/stakeholders, employers, and project teams. With Labour trying not to give too much detail away at this point, it is presently difficult to understand fully what will be achieved and how/when. As is the way with politics, everything can change overnight!

If you're interested in finding out more about key trends impacting the construction and engineering sector, or the environment, then please visit our website to find out about other webinars, articles and updates or contact the writers.

[1] [Voting Intention: Con 19%, Lab 44% \(19-20 Mar 2024\) | YouGov](#)

[2] [Summary – GOV.UK \(www.gov.uk\)](#)

[3] [Leakage in the water industry – Ofwat](#)

[4] [Environment Agency publishes Event Duration Monitoring data for 2022 – GOV.UK \(www.gov.uk\)](#)

[5] [Let's get Britain's future back \(labour.org.uk\)](#) – page 12

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