

JULY 2010

# HVCA Key Issues



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**Improving public sector payment culture**

**Review of construction contracts legislation**

**Promoting sustainability in construction**

**Enforcement of the Building Regulations**

**Proposed pan-European phase-out of HFCs**

**Implementation of Agency Workers Directive**

**HMRC action on "false self-employment"**

**Contractor pre-qualification reform**

**Taking the UK towards a low-carbon future**

**Reducing rate of VAT on home improvements**

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*A summary of the principal issues being progressed by the Association*

## HMRC action on 'false self-employment'

In the autumn of last year, the Treasury and Her Majesty's Revenue and Customs (HMRC) consulted the construction industry on the possible introduction of legislation aimed at ensuring that workers in the sector who were engaged in an employment relationship were taxed appropriately.

The Government is concerned that "false self-employment" occurs where workers are treated as self-employed for the purposes of income tax and National Insurance contributions, despite the fact that the way in which their work is carried out on a day-to-day basis suggests that there is an employment relationship.

The Association's response – developed through its employment affairs policy committee in consultation with the Joint Taxation Committee for the Construction Industry and the Building Services Engineering Employment Agency Alliance – expressed concern that the Government's proposals run the dual risk of striking at the very flexibility the industry requires, and of driving manpower procurement practices back towards the black market.

**CURRENT POSITION** As Government officials continue to develop legislative proposals, the Association is keeping this matter under continuous review.

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## Contractor pre-qualification reform

The Association continues to pursue a strategy designed to counter the proliferation of discrete contractor qualification schemes and to put in place "deemed to satisfy" arrangements that offer its members automatic entry on to "approved" lists.

HVCA has achieved membership of the Safety Schemes in Procurement (SSIP) Forum, which was established by four of the UK's leading operators of approved contractor schemes. Forum members recognise each other's schemes – so that, when firms have pre-qualified under one scheme, they are "deemed to satisfy" the health and safety requirements of all SSIP schemes.

This enables HVCA member companies automatically to satisfy the health and safety tender requirements of the increasing number of clients who are limiting their use of approved contractor schemes to those operated by members of the SSIP Forum.

The Association has also been engaged – through the Specialist Engineering Contractors' (SEC) Group – in developing a *publicly available specification* to establish minimum quality criteria for pre-qualification schemes.

**CURRENT POSITION** Following the conclusion of a public consultation in May of this year, publication of the *publicly available specification* is expected during the summer of 2010.

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## Taking the UK towards a low-carbon future

With the heating, lighting and cooling of buildings being responsible for some 60% of the nation's carbon emissions, the Government is looking to the built environment to contribute substantially to the UK's achievement of zero-carbon status by 2060.

The importance being placed on this target – along with long-term concerns over the security of the nation's energy supply – indicates that energy efficiency/reduction strategies and the promotion of low and zero-carbon technologies will be the subject of increasing focus in the years ahead.

As part of this trend, the current Part L of the Building Regulations is being revised, with the new edition expected during 2010. This will be followed by further revisions in 2013, 2015 and 2018 – the overall objective being that all new buildings will be “zero-carbon emitters” by 2018.

Revisions of Parts F, J and G of the regulations – dealing with reducing water usage and wastage – were published in April of this year.

**CURRENT POSITION** HVCA is working closely with the Department for Communities and Local Government (and the Scottish Building Standards Division, which is pursuing similar strategies) in the revision of the Building Regulations and the production of supporting guidance.

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## Reducing rate of VAT on home improvements

An agreement reached at European level allows individual European Union member states to apply, on a permanent basis, reduced rates of VAT to certain services.

These services include domestic repair, maintenance and improvement and the introduction of home energy-saving measures.

The HVCA believes that the introduction into the UK of a reduced rate of VAT on such services would:

- *contribute positively to the sustainability agenda by providing an additional incentive to householders to carry out energy-saving measures;*
- *provide a welcome boost to the UK construction industry, and particularly to the residential sector, which are suffering very significantly from the effects of the economic downturn.*

### CURRENT POSITION

**In the light of the imminent rise in the standard rate of VAT announced by the Chancellor of the Exchequer in his Budget speech, HVCA has renewed its commitment to discuss with the Coalition Government a reduction in the rate of VAT charged on home repair, maintenance and improvement projects, especially those that have energy-saving potential.**

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## Improving public sector payment culture

The Association continues to seek improved payment security in respect of public sector construction contracts – and to express concern over the public sector’s poor payment record.

At a meeting with the prompt payment team at the Department for Business Innovation and Skills (BIS), HVCA was able to demonstrate that, not only were public sector clients failing to adhere to the ten-day payment period which was being actively promoted by the department, but that their adherence to their contractual obligations, and to the payment periods laid down in the Office of Government Commerce’s *Fair Payment Charter*, also left much to be desired.

BIS recognised that payment periods across the construction sector were unacceptably lengthy, but believed that the roll-out of fair payment clauses – which are expected to become mandatory for all central Government departments during 2011 – would significantly improve matters, as the performance of public sector bodies in this context would be monitored and measured. BIS further stated that they would welcome evidence of poor payment practices.

**CURRENT POSITION** HVCA remains active in bringing to the attention of the new Coalition Government the effect of late payment on members’ cash flow, and in highlighting instances of poor payment practice, especially in respect of public sector procurement.

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## Review of construction contracts legislation

In 2004, following pressure from HVCA and the Specialist Engineering Contractors’ (SEC) Group, the Chancellor of the Exchequer announced a re-examination of the provisions of the contracts legislation contained in Part II of the Housing Grants, Construction and Regeneration Act 1996.

This exercise was duly undertaken and a consultation document, to which HVCA made a robust response, was subsequently issued.

Government then introduced – in Part VIII of the Local Democracy, Economic Development and Construction Bill – measures designed further to improve payment security and adjudication procedures in construction. This Bill received the Royal Assent in November 2009.

The changes contained in the new Act will not come into force until supporting secondary legislation – the Scheme for Construction Contracts – has been amended and approved by Parliament, a process which is expected to be completed within 12 to 18 months.

**CURRENT POSITION** The Association has responded, via the SEC Group, to a public consultation on the draft Scheme for Construction Contracts, and will be issuing advice and guidance to members in advance of the amended legislation coming into effect.

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## Promoting sustainability in construction

The quest for sustainability in construction presents both challenges and opportunities for the building services engineering sector.

Via M&E Sustainability – which is a joint initiative with the Electrical Contractors' Association (ECA) – HVCA has developed a programme designed to ensure that its members derive maximum advantage from the emerging commercial opportunities.

The principal objectives of the programme are: (a) to raise awareness among ECA/HVCA members of such commercial opportunities; (b) to identify technical guidance from all existing sources and to present and explain to members the implications of key policy, legislative and supply chain developments in a manner that is useful and accessible; and (c) to assess, prioritise, summarise and influence third-party initiatives of particular relevance to M&E Sustainability.

Fulfilment of the key objectives is being progressed by members and staff of the ECA and HVCA, under the direction of the M&E Sustainability Committee.

**CURRENT POSITION** The principal element in M&E Sustainability's communications strategy is the organisation's website, which can be accessed at [www.mech-elec.org.uk](http://www.mech-elec.org.uk), and which is being used for the dissemination to members of a rapidly growing archive of commercially valuable information.

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## Enforcement of the Building Regulations

Under the Building Regulations, a range of "controlled services" work must be notified to local authority building control, or be self-certified by a "competent person", who is a member of a recognised Competent Persons scheme such as that operated by HVCA subsidiary Building Engineering Services Competence Accreditation Ltd (BESCA).

HVCA's concern over the failure of Government to enforce – and local authority building control to police – such notification arrangements has led it to work with Local Authority Building Control to increase understanding of the requirements of Part L within local authority building control departments, and to participate in the production of joint guidance which has been circulated to all building control bodies.

The Association has also signed up to the *Non Compliance Costs* campaign – against non-compliance with the Energy Performance of Buildings Regulations (from which the Building Regulations in part derive) and the F Gas Regulation – which was launched by the Chartered Institution of Building Services Engineers and has gained the support of a number of other interested industry bodies.

**CURRENT POSITION** The Association continues to take every opportunity – both publicly and privately – to warn Government that its lack of rigour over enforcement is seriously jeopardising the achievement of the UK's carbon reduction targets.

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## Proposed pan-European phase-out of HFCs

A debate is ongoing across Europe on the future of hydrofluorocarbons (HFCs), which are used by the refrigeration and air conditioning sector as a practical alternative to the ozone-depleting – and now banned – chlorofluorocarbons (CFCs).

Although HFCs have no effect on the ozone layer, the fact that they are considered to have global warming potential has given rise to a campaign led by some member states for their early phase-out.

While acknowledging that HFCs will be superseded in the fullness of time, the HVCA Refrigeration and Air Conditioning (RAC) Group believes they still have a vital role to play in the transition from ozone-depleting to more environment-friendly refrigerants.

RAC Group also believes the proposal to ban HFC use as early as 2011 is impractical in that it would require wholesale plant replacement programmes that end users could not afford to carry out.

As things stand, HFCs remain the most energy-efficient choice for most refrigeration and smaller air conditioning applications.

**CURRENT POSITION** HVCA and the RAC Group are urging the European powers-that-be to approach the review process with an open mind – and to consider very carefully the relative pros and cons before rushing to judgement on the HFC issue.

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## Implementation of Agency Workers Directive

Regulations designed to implement the EU Agency Workers Directive in the UK having been laid before Parliament, the Association is pleased that Government has responded positively to its lobbying efforts by choosing to implement them at the latest possible date – ie, October 2011.

The stated aim of the directive is to liberalise the agency worker sector across Europe by ensuring the protection of agency workers through the application of the principle of equal treatment.

After an initial qualifying period of 12 weeks, the basic employment conditions of temporary agency workers will be, for the duration of their assignment, at least equal to those that would apply if they had been recruited directly. This has the potential fundamentally to alter the business relationship between manpower supply agencies and those firms that hire personnel from them.

### CURRENT POSITION

**The HVCA is continuing to work with the Building Services Engineering Employment Agency Alliance – with which it has responded to Government consultations on the issue – with a view to preparing appropriate industry-specific guidance on the practical operation of the regulations for use by contractors and agencies alike.**

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