

SEC GROUP **focus**

Voice of the Specialist Engineering Contractor

*The members of the
SEC Group are:*

Association of
Plumbing and Heating
Contractors

British Constructional
Steelwork Association

Electrical Contractors'
Association

Heating and Ventilating
Contractors'
Association

Lift and Escalator
Industry Association

SELECT

REVIEW OF THE **CONSTRUCTION CONTRACTS LEGISLATION**

The purpose of this edition is to bring members up to date with SEC Group involvement on the Review of the Construction Act. **In order to ensure that appropriate improvements are made to the Act the SEC Group will begin a political campaign in the coming months to gain support for its position and recommendations.**

Background

Part II of the Housing Grants, Construction and Regeneration Act 1996 (i.e. the Construction Act) has been in force since May 1998. It provides minimum adjudication and payment requirements for all construction contracts. In 2003 the Specialist Engineering Contractors' Group (SEC Group) conducted a survey into how the Act was operating, and the response from members indicated that there were concerns that the Act was not wholly successful in preventing the worst forms of payment abuse.

As a result of the survey the SEC Group entered into discussions with the Cabinet Office about these concerns and were subsequently instrumental in persuading the Chancellor of the Exchequer to announce in his Budget that he would "conduct a review of the operation of the adjudication and payment provisions in the Housing Grants, Construction and Regeneration Act 1996 to identify whether, and if so what, amendments can be made to tackle unreasonable delay to reasonable payments throughout the supply chain."

Review of the Construction Act

The review is now well underway chaired by Sir Michael Latham who has been appointed by the Minister for Construction to produce a report into the operation of the Act. Sir Michael has set a demanding timetable for the review, and a final report on its outcome will be presented to Ministers by



the end of March 2005. To complete this task a review group has been formed (on which SEC Group are represented) and two task groups have been established to provide initial reports into the operation of the Act's adjudication and payment provisions.

The SEC Group are closely engaged in the review process and have made strong representations that improvements need to be made to the legislation which involve:

Changes to the **adjudication requirements** including:

- The introduction of a single mandatory adjudication procedure to eliminate the difficulties over onerous adjudication procedures.
- Prohibiting parties from imposing contract provisions that make the referring party responsible for the costs of adjudication.

Changes to the **payment requirements** including:

- Improving the payment arrangements so that there is greater certainty over the amount and timing of payments under construction contracts.
- Providing a "long stop" period in which payment should be made.
- Improving the information which the payer must provide if they wish to withhold payment.
- Outlawing cross-contract set-off.
- Providing parties who exercise the statutory right to suspension with an entitlement to damages for the loss and expense and adequate time for de-mobilisation and re-mobilisation.
- Outlawing all conditional payment provisions, including pay-when-certified arrangements.
- Removing the right to operate pay when paid arrangements on the insolvency of third party payers.
- Providing a statutory right to demand evidence at any time from the payer of his ability to pay the balance owing under the contract.

For further information on all aspects of SEC Group and its activities contact:

John Nelson

Executive Secretary

SPECIALIST ENGINEERING CONTRACTORS' GROUP

34 Palace Court

London

W2 4JG

Tel: **020 7313 4819**

Fax: 020 7727 9268

E-mail: contact@secgroup.org.uk

Website: www.secgroup.org.uk

The two task groups are now in the process of completing their initial tasks. The adjudication task group reported in some detail to the review group during early August, recommending some changes to the Act, while the payment task group is still completing its report. Inevitably, there is a wide range of views across the various industry bodies about whether any changes to the Act are necessary and what those changes are likely to be.

Government Consultation Paper

Following completion of this phase of the review the Department of Trade and Industry will begin the development of a consultation paper. It is expected that the Government will conduct a full consultation exercise on suggested areas of reform to the Act during October/November 2004, and that a further round of consultation on the Government's proposed changes to the Act will take place early in 2005.