



Watts Bulletin

The technical companion to the Watts Pocket Handbook, keeping its readership abreast of industry news, every month.

watts-international.com

Issue 119 November 2009

DECC gives year's grace on CRC

The Government announced in October that businesses and other large organisations will have until 2011 before they have to start buying energy allowances under the new Carbon Reduction Commitment (CRC).

In order to emphasise the focus of the scheme, which is to reduce the energy used by large public and private sector organisations, in future the CRC will be known as the CRC Energy Efficiency Scheme. Large energy users will be required to take part in the scheme from April 2010. However, after consultation with businesses and trade bodies, the Department for Energy and Climate Change (DECC) has said that during the first year of the scheme, organisations will only have to report emissions during the first year in order "to help ease upfront costs".

In future years, allowances will have to be bought corresponding to emissions from energy use, which must then be surrendered by the end of the year. Organisations will be listed in a league table, where their position will depend on their ability to reduce energy use. In the second year of the scheme, extra weighting will be given to those organisations

that take action early to improve energy efficiency. Recognition will also be given to organisations that use on-site renewable energy such as wind turbines or solar panels, by publishing the increased carbon savings achieved.

In a further improvement to the scheme, organisations are now to be given greater flexibility in how they participate in the CRC. Subsidiary companies that are large enough to qualify in their own right (using at least 6,000 MWh) may opt to do so separately from their organisational group.

The Government – through the Carbon Trust – is providing advice and financial incentives to help those participating in the scheme take practical steps to improve their energy efficiency.

For more information go to www.decc.gov.uk or www.carbontrust.co.uk

Editorial

Welcome to the November issue of Watts Bulletin. At a time when both the public and private sectors are still dealing with the impact of the economic downturn, some may regard it as good news that the Government has decided to delay the full introduction of the newly rebranded CRC Energy Efficiency Scheme. We all understand that large organisations have the potential to achieve cost-effective energy efficiency savings – ultimately we will all benefit both financially and in terms of environmental improvements. But depending where you sit on the issue of climate change any delays in implementation is further bad news for the environment.

In contrast, the new fines that could be imposed on companies falling foul of the Corporate Manslaughter Act are likely to cause a sharp intake of breath. Of course heavy fines should be imposed on those not taking the safety of employees and the public seriously but does the industry really want to see innocent parties suffer genuine hardship if companies are forced out of business?

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Developers ignore bat roosts at their peril

Two cases that came to court in October highlight the importance of ensuring that wildlife habitats in and around construction developments are properly protected.

In the first case, heard at Prestatyn Magistrates' Court, planning consultant Ayob Bhailok from Preston, Lancashire, was convicted of two charges of damaging or destroying the sites of protected bat species at a former hospital building. The two-day trial heard charges relating to the destruction of the nesting sites of two protected species of bats – lesser horseshoe and brown long-eared bats – during the course of the redevelopment of a Grade II listed former hospital. The court was told that the defendant had been aware of the presence of the bats in the buildings since a survey was carried out in 2007. As a result, Bhailok should have taken responsibility for ensuring the terms of a bat licence – which included re-housing the bats – were met. However the work was not carried out. He was given a six-month conditional discharge and ordered to pay £2,000 costs.

In a second case two companies, Hills Construction and North East Demolition were found guilty at Colchester Magistrates Court of destroying a bat roost during a redevelopment project. A bat survey carried out in 2006 found a brown long-eared bat roost in small barn which formed part of the scheme. The survey report recommended that a licence would be required before the project could go ahead. In 2008 it was brought to the attention of the Essex Police that the barn had been demolished with the licence having not been obtained. Police investigated and the two companies were charged and fined £2,000 and £1,500 respectively.

These two cases emphasise the need to be aware of environmental legislation relating to wildlife and to comply with the relevant regulations.

For more information go to www.naturalengland.org.uk

Tender prices fall faster than 1990s

Tender prices have hit a rate of decline not seen since the early 1990s downturn, although new work output levels stabilised during the second quarter of 2009, remaining virtually unchanged from the previous quarter.

These figures are taken from the latest tender price index published by the Royal Institution of Chartered Surveyors Building Cost Information Service (BCIS) which also reveals that the price of new construction work fell another 4.0% in the second quarter of this year, and is 11.7% down on the same quarter last year. Since a peak in prices in late 2007, prices have fallen 13.1%, with BCIS predicting that they still have a further 3.3% to go over the next year, before starting to recover in 2011.

The main driver for declining tender prices has been the increased competition in the market caused by the steep drop in orders and the consequent decline in new work output. Despite new work output stabilising in the second quarter compared with the first quarter of 2009, it remains 14% lower than a year ago. Although construction orders saw a quarterly rise of 25% percent, BCIS reports that they also fell by 14% compared with the same quarter in 2008.

The figures for new work output and orders in the second quarter point to annual falls slowing down over the coming quarters, but new work output is still expected to fall in 2009 and 2010 as a whole. BCIS predicts that the result will be a continuing fall in tender prices.

Cost pressures are becoming less of an issue, as the rate of increasing costs almost halved to 2.2% for the second quarter – down from 4.0% in the previous quarter – as a result of materials remaining unchanged and wage rates only rising by 3.5%.

Commenting on the figure, Joe Martin, BCIS executive director said: "It is clear from the latest tender prices that the recession is really taking its toll on the construction industry, and despite new orders appearing to have experienced a small turn around in fortunes, it is unlikely that we will see this reflected in prices for some time. The next year will remain tough and with new work output expected to fall in 2009 and 2010 as a whole, tenders will continue to edge downwards, although at a slower pace. The fact that cost pressures are expected to remain less of an issue will be of small consolation to those contractors who are seeing their margins getting ever smaller as they compete to stay in business."

As an aside, building owners might wish to review their building reinstatement cost assessments with a view to reducing the sums insured and seeking reduced premiums upon renewal.

For more information go to www.bcis.co.uk



New Construction Act by year end

Having been approved by the House of Commons in October, the Local Democracy, Economic Development and Construction Bill is expected to be enacted by the end of the year.

The new legislation, amending the Housing Grants, Construction and Regeneration Act 1996, is unlikely to come into force until 2010, allowing time for consultation on changes to the statutory scheme. Only construction contracts entered into after the Bill is enacted will be affected. A possible change of Government after next year's general election could also delay or halt the introduction of the new Act.

The main aims of the new Act are to speed up dispute resolution in the industry by introducing a statutory 28-day adjudication process and to improve cash flow via a new payment regime. The proposed changes to



the 1996 Act will require significant alterations to all UK standard forms of contract and payment practices.

During the Bill's final passage through the Commons, the Government made two amendments. The first allows a Government minister – with parliamentary approval – to make an order eliminating any or all of the provisions of the 1996 Act (as amended by the Bill) from any description of construction contract. In a recent report, outlining the proposed changes, law firm Cameron McKenna explains that:

“The 1996 Act currently contains an all-or-nothing power allowing all of the 1996 Act's provisions to be disapplied to certain types of contract. A 1998 order disapplies the whole legislation to PFI/PPP project agreements as well as finance, development and statutory agreements, all as defined. The amendment would allow the disapplication of just some of the legislation from certain contracts.”

The second amendment would outlaw existing clauses that require one party to an adjudication to pay all related costs.

For more information go to www.law-now.com



BCO promotes safer offices

The British Council for Offices (BCO) has launched a new guide to security, aimed at all involved in the office sector, including occupiers, landlords, developers, consultants, suppliers and contractors.

The new guide outlines the business case for security planning. Three separate sections then detail three different aspects of office security.

Operational issues are discussed in Section one of the guide. This covers the fundamentals of office security: identifying potential threats, assessing risks, developing security plans, and the basics of physical and electronic security systems.

Section two looks in detail at the 'secure by design' principle. This approach focuses on the importance of thinking about security from the very outset of any new-build or refurbishment project, from initial choice of site through the design and construction process to occupation.

The third section covers the security requirements that aim to minimise the threat of terrorism. This is a specialised area of security planning and design which – with some notable exceptions – the BCO considers most likely to be relevant to high-profile or city-centre offices.

The BCO Security Guide is available free of charge to members via the BCO Portal.

For more information go to www.bco.org.uk/research

Air conditioning: time for a change?

Under EU Regulation 2037/2000 that came into force in 2000, the phase-out of R22 and associated greenhouse gases will start in 2010. No virgin refrigerant can be used to top up systems from the end of 2009 and recycled refrigerant must be used instead.

This is expected to have a significant impact for all owners of split or variable refrigerant flow (VRF or sometimes VRV) systems that were installed before 2001, as such systems are most likely to use R22 refrigerant.

Some of the specialist R22 family of gases have been effectively unavailable since 2008 because production of virgin refrigerant has been phased out as the producers and suppliers cut back production to avoid being left with unsalable stock.

Any owners holding stockpiled virgin refrigerant will find that it cannot be used after the end of this year and must be recycled. However, the availability of recycled refrigerant is uncertain; Watts' clients are already reporting shortages largely due to the fact that major users have reached agreements with the primary recyclers to hold banks of recycled refrigerant for their exclusive use. Prices are more likely to rise rather than fall.

Drop-in refrigerants have begun to appear but they are not approved by the major equipment suppliers and there is little track record of proven effectiveness. While we regularly see ten year old systems that are fully

functional and in good repair, the lack of economically available refrigerants may yet force replacement. Even if the refrigerant gas is replaced the availability of parts for systems more than ten years old will also be an issue as R22 equipment is effectively obsolete.

All the major suppliers are offering package replacements where the condensers on the roof and room units are changed but the pipework between them remains. This approach offers a quick solution that should not be too disruptive, however, how well the pipework was installed and maintained is critical. Buyers should consider that a new installation might offer improved flexibility and performance.

The good news for anyone considering replacing their air conditioning system is that modern split and VRF systems have much higher efficiencies than most of the older systems. Sales personnel are suggesting payback periods of only two years when enhanced capital allowances are taken into account.

More information go to www.defra.gov.uk or contact Mark Rabbett, Director in Watts' London office.

New consultation on corporate manslaughter sentencing

Companies found guilty under the Corporate Manslaughter Act could be fined at levels that would force them into insolvency the construction press warned in October. A recent article published in Building magazine highlighted new rules that could come into effect following a consultation issued earlier this autumn.

The Sentencing Guidelines Council has published a draft guideline on corporate manslaughter and health and safety offences causing death. This relates to organisations rather than individuals, and involves sentencing for offences which have resulted in the death of an employee, employees or a member of the public.

Some of the recommendations, already proposed by the Sentencing Advisory Panel have proved controversial, particularly those relating to the level of fine to be imposed on companies found in breach of the law.

The Panel's suggested starting point for an offence of corporate manslaughter (committed by a first time offender pleading not guilty) is a fine of 5% of the offender's average annual turnover during the three years prior to sentencing. After taking into account any aggravating or mitigating factors, the court would then set a fine which would be expected to total from 2.5% to 10% of the offender's average annual turnover.

The Sentencing Guidelines Council does not agree with this recommendation. It argues that this approach would mean fines were levied at various levels across companies of different sizes. With this in mind, the

Council has proposed that if convicted of corporate manslaughter, a company should pay a fine starting at a set level. The fine proposed, it says, should seldom be less than £500,000, and may be measured in 'millions of pounds'.

This recommendation has been criticised in the construction press (Building, News, 30/10/09 issue) for making fines effectively unaffordable for many small and medium sized businesses. For many companies, one such fine together with the associated bad publicity would be enough to put them out of business and would have the knock-on effect of putting employees out of work who played no part in the offence.

The Council has said that, while the effect on employment of 'innocent' staff may be a relevant factor, the effect on shareholders, directors and prices should not be considered when sentencing.

Responses to the Consultation must be submitted by 5 January 2010.

For more information, go to www.sentencing-guidelines.gov.uk



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The Watts Bulletin is the technical companion to the Watts Pocket Handbook, the essential guide to property and construction, as used by professionals since 1983.

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Comments, criticisms and contributions are always welcome.

The Handbook is available to purchase from www.ricsbooks.com priced £24.95.

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