



Intelligent Transport
Planning Solutions



Bribery Act in force

The Bribery Act 2010 came in to force last Friday, 1 July 2011.

Much has been written about its likely implications. At the start of the debate, it would even be fair to say there was a degree of scare-mongering by some in terms of how the provisions of the Act were reported.

No organisation can afford to ignore this legislation. The larger the company, and the further its global reach, the higher the risk and the greater the need for an integrated policy. However, it also needs to be remembered that the Act is tempered by proportionality. Proper risk assessment from the outset will help to identify what is proportionate (or not) for your business.

[Click here](#) for more detail.

Collection and use of location data should require consent

The construction industry is one of the largest users of vehicles and drivers. It is increasingly common to install devices to track location and driver performance. A recently published opinion from EU data privacy regulators may require you to get consents and/or limit the information collected.

[Click here](#) to read more.

The RICS contracts in use survey – Top Gun or Minority Report?

Every few years the RICS carry out a survey of which contract forms are being used. In the previous survey, the RICS describes it as "...the single most authoritative survey of construction contracts used in the UK market". I've referred to it as it contains the only hard data I've been able to find on which contracts are winning the battle of the forms as far as sales are concerned. However, just how good is the survey and what can make it better?

After offering to write this piece on the current survey, I thought I'd better read back over some of the previous ones and do my own analysis of the data gathered before. Clearly the data has been methodically collected and well analysed and I'd encourage you to have a look at it if you haven't already. For the time being, I've pulled out some data that looked interesting to me:

- Friday 30 July 2011 - possibly the most important piece of data – the date by which completed surveys need to be returned.
- 2007 - the year which was analysed in the previous survey (the 11th)
- 3 – the number of years between the year for which the data is captured and the year in which the findings are published
- 83 - the number of surveys returned last time around (there had been 143 in the survey before)
- 1370 - the number of projects captured in the last survey

- £7.8 billion - the value of projects captured in the last survey in 2007 (according to the Office for National Statistics the total output of the industry that year was £104.9 billion)
- 2 - the number of FIDIC contracts reported to have been used in 2007
- 2 - the number of surveys (the 10th and the 11th) that I could readily find available on the internet

So what do I draw from this? It's a respected survey carried out by a leading professional organisation and the data in it is the best we have. But, while that is the case, the RICS readily acknowledges in its findings that there was underreporting in the last survey. Of course, in many ways that is hardly surprising - the industry was still booming that year (even though the financial crisis had started, the impact on construction followed later when the pipeline of projects reduced). The RICS reported that its sample relates to "...17.4% of the total value of new orders received in Great Britain in 2007". This was an improvement on the previous survey (which captured 8.6% by value of projects carried out) but down on the 1998 which captured over 20%.

Because of the time between the data capture and publishing the findings, the next batch of data will reflect the tough market conditions we had last year but we might not see them until 2013 when, no doubt, the market will be something different again. However, if it only records two FIDIC contracts next time around, I'll be pretty sure there will have been underreporting again.

The RICS can only analyse what's put in front of them, so it's really up to industry to complete and return the survey if at all possible. Wouldn't it be really useful to have the most complete and authoritative information available when advising a client on the most appropriate procurement strategy for a project? Most people will have real, leading edge market knowledge in their specialist sectors but it's important not to lose sight of the wood because of the trees. Why not take a moment to have a look at the survey form on the [RICS website](#)?

So which form of contract did win out last time around? I was tempted to leave you to look that one up but I'll leave you with one last piece of data - 79% of all contracts by number (or 62% of all contracts by value; or 61% of all contracts by value for projects with values greater than £50 million) employed a JCT standard form. If that's not an industry you recognise, you might want to speak up - while it will probably be members of the RICS that complete most surveys, I can't see anything which stops others doing so (or encouraging RICS members to do so).



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Presumption in favour of sustainable development

Whilst the Localism Bill reaches the committee stage in the House of Lords (7 July 2011), the Government has released details of the proposed "presumption in favour of sustainable development". It appears that this (so far relatively elusive) phrase may now have some teeth.

On 15 June 2011, Greg Clerk published a statement indicating "an approach that the Government could take" to introducing a presumption in favour of sustainable development in the forthcoming National Planning Policy Framework ("NPPF"). We expect the Government's proposed draft NPPF to be released shortly. The presumption lies in the essential expectation that any sustainable development now moves to a default answer of "yes". Furthermore, the presumption should form the basis of any decision making by a local planning authority.

Local planning authorities should now:

- *Prepare local plans on the basis that objectively assessed development needs should be met, and with sufficient flexibility to respond to rapid shifts in demand or other economic changes;*
- *Approve development proposals that accord with statutory plans without delay; and*
- *Grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date.*

Greg Clerk MP has made clear that the presumption should only apply where any impacts caused by the development will not significantly outweigh the benefits provided. Furthermore, any development must accord with the NPPF as a whole. As ever, there will be clear tensions between with promotion of the presumption in favour of sustainable development and the protection of important environmental assets and designated areas of protected land. There will also continue to be issues relating to the prematurity of development proposals that are promoted in reliance upon the presumption, in the face of an emerging Development Plan which contains contradictory policy requirements. It is also clear that there may be some tension between the emerging NPPF and the provisions of the Localism Bill, as local communities seek to resist development activity in reliance upon neighborhood plans and associated referenda, the designation of community assets and through the strengthened requirements for pre-application consultation. On balance, however, the development and construction industry should welcome the potential opportunities afforded by both the NPPF and the presumption in favour of sustainable development.

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