Overview

The Construction Employers Federation (CEF) is the certified representative body for the construction industry in Northern Ireland. The organisation has over 800-member companies ranging from micro businesses employing a handful of people to the largest construction companies in Northern Ireland. In total, CEF member companies account for over 70% of construction output in Northern Ireland.

Comments on the Inquiry

The Northern Irish construction industry very much welcomes the inquiry, and its constituent terms of reference. In the current absence of either a Northern Ireland Executive or an alternative model of government (be it Direct Rule from Westminster or some alternative) it is important that detailed consideration is given as to how decisions are prioritised and taken forward within Northern Ireland.

Across the construction industry, there is a strong and united view that the political impasse locally has gone on for far too long.

As the Federation has already said on the public record, there is a significant and increasingly harmful lack of governance within Northern Ireland.

Our industry is most exposed to this via approximately half of all construction turnover and related activities within Northern Ireland coming from public sector work.

For a significant number of our members, and accepting the welcome rebalancing of public-private work that has taken place over the last 2-3 years, public sector work continues to be their lifeblood.

As the committee has itself correctly noted in its terms of reference, the introduction of a 2017/18 Northern Ireland Budget via Westminster in the last month is welcome, but there is a clear question as to whether it is a ‘sticking plaster or the start of a longer-term solution’.

Our experience this year with regard to the Executive’s capital budget has been that decisions have been put off, some projects stalled and there has been confusion around the expenditure of elements of the capital budget.

This has been barely tolerable in the current financial year.

However, to be even considering that this scenario replicate itself as Government Clients begin looking at their 2018/19 budgets and beyond is absurd.

Further, on budgetary issues, not only do we barely have a budget for 2017/18 but we also face into a situation where, for the next three financial years to 2021, we know exactly how much we can
spend on infrastructure works but have absolutely no clarity on how, beyond the Executive’s Flagship projects, it will be spent.

Civil servants have been placed in an intolerable position. When we consider infrastructure, schemes require in many cases years of preparatory work and approvals. With little political direction beyond the Executive’s Flagship schemes, it is therefore impossible for future infrastructure planning across Government Clients to take place.

Additionally, we also face a huge choice over the coming 3 years. The Executive’s Flagship schemes stand on their very clear economic merits. However, and even allowing for the extra budgetary allocations made by the Chancellor in his Budget Statement of 22 November (of which most were Financial Transactions Capital – not something that has a direct, on the round construction impact in the main), a balance must be struck in budgetary planning between how much resource is spent on these and other areas, such as roads maintenance, so to avoid a massive cliff edge for the vast majority of firms not engaged on the Flagship projects.

That balance requires difficult choices to be considered and taken at devolved government level and, clearly, we are currently not in a position to debate these challenges never mind take decisions.

Of course, the lack of an Executive doesn’t just have negative impacts with respect to industry’s budgetary concerns.

For a significant number of companies, this year has seen the unwelcome imposition of the Apprenticeship Levy. When added to the statutory CITB Levy, approximately 25 local construction companies have, since May, been paying two levies.

With the absence of devolved government since January and with the financial settlement in respect of the Apprenticeship Levy equating to an actual loss to Northern Ireland’s Block Grant, contractors have had no other option than to accept the second Levy as nothing other than a new payroll tax. We have long understood that the Department for the Economy has been considering ways to help the industry deal with the dual Levy issue but, without a Minister to guide them, this has understandably come to nothing.

The industry has a real and genuine skills crisis within Northern Ireland. A combination of the two levies and the absence of an Executive to provide the policy lead on addressing the skills crisis is doing nothing to enhance the medium to long term sustainability of Northern Ireland’s construction industry.

Within this policy development hiatus, let us also consider housing.

Northern Ireland shares the housing challenge that is currently facing the rest of the UK. While most of the policy announcements made in the Chancellor’s Budget will not directly impact here as housing policy is devolved, they do too reflect a wider need for the restoration of a Northern Ireland Executive. The Executive’s Programme for Government was very clear that we needed to address our housing shortfall. Some work on addressing the shortfall has now commenced but it is far from what is required.

Even if the pro’s and con’s of the announcements by the Chancellor, including the abolition on Stamp Duty on first-time buyer purchases up to £300k, are open to debate, the simple fact is that the Government is coming forward with proposals. Northern Ireland, put simply, is not.

With specific regard to Brexit, we produced in October a detailed eight-point position paper. This has been included as the Annex to this paper.
Options to be considered

We have long said that the Secretary of State must now bring clarity. Decisions need to be prioritised and taken and a clear and accountable way of government taking these decisions needs to be established. Our preference is, of course, the establishment of a Northern Ireland Executive. However, failing that, we need to move to a position where the functions of government can be exercised in a way that any other part of these islands would expect as a matter of course.

Looking at the day to day governance of Northern Ireland in the short term, however, there are a number of steps that we would advocate:

- **Immediate focus on approving the 2018/19 Northern Ireland Budget** – industry, nor the Government Clients, can afford to be in a position in March, never mind once the financial year has actually started, of still not having a legislatively approved budget. We are aware that Clients have now been asked to put forward how they would prioritise capital investment in 2018/19. So that this process can be done as efficiently and effectively as possible, we would urge that the 2018/19 budget be approved in January or, at worst, by mid-February and that, in the context of the ongoing impasse at Stormont, that Westminster must assume this responsibility will fall on them.

- **Greater accountability around the Northern Ireland Budget** – reflecting on the debate in the House of Commons at Second Reading of the 2017/18 Northern Ireland Budget Bill, we would agree with many MPs that there are currently no clear lines of accountability with respect to capital expenditure. This needs to be addressed. The construction industry has a useful insight into Government Clients’ procurement and spending plans through its membership of the Construction Industry Forum Northern Ireland. However, this deals with projects at the procurement stage rather than contract award or construction on-site. Therefore, it is incredibly hard to ascertain, in-year, how exactly capital budgets are being spent and what on. Normal accountability processes, via a functioning Northern Ireland Assembly, are not currently taking place. An alternative approach must be advanced.

- **An updated and published analysis of the impact of the Executive’s Flagship schemes on the entire capital budget** – as we have stated, the schemes stand on their clear economic merits. However, the 2017/18 Budget did not detail an updated spend profile for each of the projects and it is important that industry sees greater detail on how, to 2021, the projects are proposed to make up their element of the overall spend

- **Clarity around the rules the Civil Service operates under** – while we appreciate that, in the absence of Ministerial direction, it is not advisable for civil servants to take explicit new policy decisions (and certainly not decisions which could be overtly deemed as counter to the priorities of any Executive if established), the issue becomes much more confused with respect to advancing capital works. Industry completely understands the need for elected politicians to drive infrastructure priorities and actual works. However, in their absence, this year has seen procurements commence and then be suspended (Belfast Streets Ahead Phase 3 as the most prominent example) at huge cost to contractors, officials consistently tell the industry that schemes currently at design or feasibility stage may not further advance due to a lack of political sign-off and projects stall at tender award stage due to contractors’ prices coming in over the business case/pre-tender estimates with little clarity as to how they can then be advanced in the absence of Ministers. These issues need tidied up, and they need tidied up now. It is a reality that, with every week that passes, these challenges are only going to increase without being urgently addressed
• **Widening the scope of capital works business cases** – with approximately half of all construction materials used on sites in Northern Ireland being imported, the industry has been negatively hit by the fall of Sterling vis-à-vis the Euro since the 2016 EU Referendum. This has had a very obvious impact in recent months on contractors’ prices. When you then set these prices against business cases and pre-tender estimates, some of which may have been done months if not over a year ago, you can quickly see a scenario where civil servants do not have the cover to advance projects because they are now, if awarded, so far over their original estimated, and Ministerially signed-off, price. In the context of the current impasse, where civil servants are convinced that projects should proceed, there must be an easier way for them to do so. Issuing extensions of tender validity period letters, as has been done in recent cases, is not a sustainable approach.

• **Renewing proposals around agreeing multi-year budgets** – with the overall capital expenditure pot in Northern Ireland now in place for the next three financial years, there is a strong argument that elements of it should be agreed on a multi-year format. While the immediacy relates to passing a 2018/19 Budget, industry has long expressed concern at the peaks and troughs in expenditure on areas such as roads maintenance. Putting in place a floor now, and then seeking to top it up via the three-times annual monitoring round process would avoid the cliff edges that many companies, year on year, have to face. Plans on taking such an approach were well advanced before the Executive fell in January 2017 – it could therefore be argued that such a direction given by civil servants/Westminster now would not be a policy departure so to speak.

• **An assessment of how much of the Executive’s Programme for Government can be taken forward in the absence of an Executive** – the Department for Communities has recently called stakeholders together to consider how to advance the Programme for Government themes under their oversight in relation to housing. This is welcome; however, we need to be clear how much of this detailed policy work can take place in the absence of Ministers. Taking housing on its own, any shift towards addressing our shortfall in new build homes will clearly require either policy interventions (such as the virtual delivery unit pilot proposed in the Housing Supply Forum report of January 2016) or changes to existing approaches. The industry does not believe our housing shortfall can in any way be addressed without political buy-in and active support. It therefore begs the question, and this could be extended to other aspects of the Programme for Government, as to how far can this important work be advanced in the short to medium term?

• **Additional powers for the 11 councils** – unquestionably, given how long the current impasse has lasted, there is a strong argument for considering devolving more responsibility to the 11 local councils. At the very minimum, the regeneration powers held back from the councils by the Executive in 2016 should be devolved, especially as councils continue to prepare their local development plans.

• **A strong and clear Northern Ireland voice on Brexit** – please see the paper enclosed as an Annex.

In conclusion, however, there is though one fundamental question that we believe this inquiry must ask: Is the current system of devolved government in Northern Ireland sustainable? This latest crisis is the latest in a very long line of crises which have and are continuing to drain confidence within the construction industry and indeed the wider business community. Put quite simply, Northern Ireland cannot go on like this – and nor should its businesses nor citizens expect it to.
The eight key issues that the industry wants to see addressed between now and March 2019 – and in the transition/implementation phase thereafter

1. **Formation of a Northern Ireland Executive and an agreed Northern Ireland position on Brexit**

The importance of a coherent, united Northern Ireland voice on Brexit cannot be understated. While progress has undoubtedly been made in making sure that Northern Ireland’s interests are heard in the Brexit process, there remains a substantive gap in the rhetoric and policy positions of the main political parties within Northern Ireland, especially those entitled to seats in the Northern Ireland Executive. It’s not of course realistic to believe that complete unanimity can be achieved between the parties. However, there needs to be a step change in how Northern Ireland’s position and voice on Brexit is discussed, agreed and heard. Fundamental to this is the need for urgent formation of a Northern Ireland Executive. While not casting judgment on the reasons why Northern Ireland has been without a devolved Executive for over nine months, it is incumbent that the impasse does not persist – especially as the detailed negotiation in respect of Brexit has now begun and the Repeal Bill is due to be debated again in Parliament in a matter of weeks, with a number of other industry-critical bills such as the Immigration Bill and Customs Bill due in the next year. Enough uncertainty within the public and private sectors has been caused as a result of this latest political impasse – there is a clear need to get back to business.

In addition, and echoing the call of colleagues in the CBI, we believe the UK government must establish a more meaningful process for engaging the devolved governments.

2. **Confirm the rights of construction and allied workers from the EU who are already working in the UK**

Like much else in the talks to date, positive comments have been said on the desire to confirm the rights of EU citizens in the UK and vice versa. However, there is clear economic need to turn those words into something concrete. Across the UK around 15% of the 2.1 million construction workers are from the EU. In London alone, something many local contractors see on a day to day basis, that figure is closer to 25%. To exit the EU without guaranteeing these workers their stay in the UK would be economically damaging. Even with a major shift in the number of new entrants to the UK’s construction workforce over the coming eighteen months, there is no way that indigenous labour could meet the sudden shortfall. Turning to Northern Ireland specifically, the renewal and protection of the Common Travel Area would, in large part, enable workers from north and south to move between the two jurisdictions freely – that is why the Common Travel Area is so important. In addition, unlike the South East of England for example, Northern Ireland’s construction industry is not as exposed to the need for EU labour. However, that is not to downgrade the importance of confirming the rights of existing EU workers given how critical a role they play in helping many local contractors deliver all manner of projects in Great Britain.
3. Establish the fact that, irrespective of the type and detail of agreement reached between the UK and the EU, there will need to be a transition/implementation period

Negotiations may well have commenced but it is an assumed fact that these, encompassing both the exit arrangements and the future relationship, need to reach some form of concluded deal by October 2018 to allow for both parliamentary ratification in the UK and among the 27 remaining Member States of the EU in time for the end of March 2019 when the UK is due to leave. Given the complexity of the matters involved, and the paramount requirement not to unnecessarily cause economic shocks either within the UK or in the EU, it makes justifiable sense to agree a transition/implementation period that would last between 2-3 years beyond March 2019 (and certainly to have concluded by the time of the next scheduled UK General Election in June 2022). Purely from the perspective of the construction industry, this extended period is required to make sure that the matters we raise in our remaining points are adequately addressed and practical solutions agreed and implemented.

Up and until the point when new, long-lasting arrangements are agreed between the UK and EU (be it on the movement of people, a customs union or a trade deal for instance) then it should be the case that existing arrangements remain in place, or as close to as is politically, legally and economically possible. The UK would of course, though, still be leaving the EU at end March 2019 (unless the Article 50 negotiating window were extended for a further 12 months as is possible).

Consequently, this would then lead on to two specific sub-points:

Ensure tariff-free and barrier-free access for all construction product imports and exports with the EU for the duration of the transition/implementation period.

Agreement of an ambitious and comprehensive new free trade agreement with the EU (that would take effect towards the end of the transition/implementation period) as well as the speedy development of new mutually beneficial free trade agreements with other nations.

4. The critical importance to the maintenance of a soft border with the Republic of Ireland

The industry acknowledges the significance that all negotiators have attached to resolving the question of the border between Northern Ireland and the Republic of Ireland post-Brexit. The wider social, political and economic reasons for this have already been well discussed. However, purely from the industry’s perspective there are two fundamental economic and social imperatives for the border remaining as close as possible to what it is now:

- Firstly, the daily flows of labour and materials in both directions and;
- Secondly, the ability of firms to bid for, win and deliver work in what is a growth market for Northern Irish firms.

To make sure that there are no impediments to either of these crucial considerations then:

- There must be a new customs arrangement agreed for the border between the UK and the EU that recognises the particular issue on the island of Ireland, at the very minimum
- Any technological element of this must be given time to bed-in given the somewhat chequered past of the introduction of new, complex systems. In addition, businesses must be given ample opportunity to adapt
• All parties must commit to renew and protect the Common Travel Area arrangement between the UK and the Republic of Ireland irrespective of future UK-EU migration controls.

• On areas such as procurement, health & safety and environmental policy there must be detailed consideration as to how existing reciprocal arrangements are dealt with. These are critical to the processes relating to the bidding for public sector work in the Republic and, although all existing EU law will be copied into UK law at the point of departure from the EU (albeit that the Henry VIII powers in the Repeal Bill, if passed, may alter this significantly), substantive divergences in these three areas post-Brexit could make existing reciprocal standards very hard to maintain. It is also worth noting that many of the health & safety and environmental developments that have arisen from the UK’s membership of the EU should not be seen as negative. Indeed, these have encouraged new behaviours within the industry that have unlocked growth opportunities and embedded much higher standards of health & safety which have, unquestionably, reduced accidents on site. Any revoking of existing EU legislation must therefore not be done on a mere political whim.

• Existing reciprocal arrangements around professional qualifications within the industry must also be protected post-Brexit. Renewing and protecting the CTA is only one element in terms of making sure that the workforce across the island is completely portable across the island.

• Right up until the UK’s departure in March 2019, local contractors will continue to win new work in the Republic and, indeed, deliver jobs that may have been won in recent times and have multi-year build programmes. Contractors cannot have the risk of a hard border hanging over these works and there must be a commitment by all parties to making sure jobs are delivered as currently planned between clients and contractors.

Industry will work closely with the Irish Government and colleagues in the Construction Industry Federation in the Republic to make joint cause on the considerations above.

However, just as much as the industry requires no hard border on the island of Ireland, we are firmly against the imposition of any measures detrimental to the continued health of the UK Single Internal Market. The Republic of Ireland is a growth market for local firms but it is dwarfed by the market share that local contractors have and will, due to their success and competitiveness, continue to have in Great Britain.

5. Ensure the agreement of common standards and frameworks across the UK

Given the size of the market for local contractors within Great Britain, and the huge opportunities it will continue to present post-Brexit, there must be no impediment to that growth potential once the UK leaves the EU. Therefore, the UK Government and the devolved nations must make sure that no internal borders are created as a result of substantial policy shifts on anything from procurement policy to environmental policy. Of course, devolution creates the desire and opportunity to mould Northern Ireland-specific or Scotland-specific type policies but huge care must be exercised in how these are developed and delivered. Clause 11 of the Repeal Bill, where it details that devolved legislatures will not be able to legislate contrary to retained EU law, should help with that process of maintaining common standards and frameworks. However, there is also the scenario whereby some politicians push back against the implications of Clause 11 as it hands power from the EU to the UK Government and the power does not get devolved further than that. The industry can see the pros and cons of this, however, when taken in the round it makes much more sense for commonality to
be retained within the UK rather than four divergent systems begin to emerge over time - for example if the UK Government, in consultation with the devolved nations, is of a mind to change existing OJEU procurement rules post-Brexit then all devolved nations should follow.

6. Agreement of a new devolution settlement across the UK

Building on Point 5 it therefore makes sense, as the UK Government have already outlined, for a new devolution settlement to be drawn up and agreed across the UK. From the transferring of new powers from Whitehall to the extension of City Deals to Northern Ireland to fleshing out the detail and taking forward the proposed UK Shared Prosperity Fund as a replacement for existing EU funding streams, there is an opportunity to bring central, devolved and local government together to reassess where roles and responsibilities should lie post-Brexit. Taking this dialogue forward during the UK’s exit negotiations and the proposed transition/implementation period to 2022 would, hopefully, encourage positive relationships between all players – especially in the context of a sense that many believe the Shared Prosperity Fund proposal, at the very minimum, could result in a power grab by Westminster.

Throughout the entire period, however, devolution as is must continue to work. For local contractors that means key deliverables such as seeing a Northern Ireland Executive reformed, making sure industry and government work collectively on the sustainability challenges we have highlighted, delivering the Programme for Government, agreeing a multi-year capital Budget, delivering the Executive’s flagship schemes, delivering the procurement pipeline, finding new and innovative ways for industry and government to partner to meet our new housing shortfall and addressing our skills shortages among many more. In addition, any new devolution settlement needs to come with the clear understanding that the civil service will need tooled up for its new responsibilities – be it because they have been transferred from Brussels or Westminster. Working on the assumption that the civil service and wider public sector, as it is now, can handle these arguably unquantifiable challenges would be a mistake. The UK’s departure from the EU must solely not be about managing transition. It must be about that and delivering transformation.

For us, this gives another clear reason as to why there should be early agreement of a transition period.

7. Work with the industry to develop and implement a long-term plan to tackle skills shortages and meet evolving trends

The government commissioned Farmer Review in 2016 made clear that, across the UK and before the impact of Brexit was taken into account, construction’s labour force could decline by 25% over the next decade. Yes, unquestionably, technology and new innovations are changing the type of worker the industry needs. Yes, undoubtedly, substantial growth in off-site construction is adding a somewhat different dynamic to the skills needs of the future. However, industry, CITB NI and government have to find a much more productive way in addressing the growth-limiting skills challenges that we collectively face. Allied to this is the clear need for the industry, primarily, to fundamentally challenge the image it itself presents. Diversity in our workforce, most notably by attracting more women, has to be key if we are to enhance our own sustainability.

This process should also entail a fundamental review of the impact and benefits of the Apprenticeship Levy on the devolved nations. Bringing forward a payroll tax such as this (for that is
all that it is in the context of the devolved nations having their own skills policies) was a completely absurd way in the devolved nations of dealing with the skills challenges that government and industry are agreed that we have.

8. Clarity regarding the future immigration system so that the construction industry can access the talent that it needs to thrive

Building on Point 2, the UK construction industry has a clear and growing need for labour from the EU. This can of course be ameliorated by fixing our skills challenge as noted in Point 7, but it is challenging to imagine that our reliance on labour from the EU could be reduced substantially even over a 10-year horizon. Therefore, the industry needs to know where it is going. The Immigration Bill in 2018 will be key to this, so the work now being commenced by the Migration Advisory Committee is arguably some of the most important work that will be completed during the period to March 2019. All levels of skilled workers from the EU will remain absolutely vital to the capacity of the UK construction industry to meet the UK’s infrastructure needs. That will need to be a centre stage recognition in whatever type of immigration system the UK moves to post-Brexit be it based on work permits or something like the Australian points-based system or something entirely new.

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