6.1 UK’s evolution towards excellence

Regulation and legislation adopted some necessary changes with the objective of improving the industry’s performance. Solutions to the problems explained in the previous chapter, needed a parallel change in the legislation. It is not possible to change the culture without changing some rules of the game.

But the culture has also changed by the advice and guidance offered by the government. Since the Latham report a lot of guides have been published and a lot of programmes launched with the purpose of transforming the construction culture.

Flexibility instead of regulation rigidity has been the approach chosen to bring about the change. Even more, the different parts of the public sector, who have understand the benefits of using the Rethinking Construction principles, publish its own guidance. For example, the government departments follow the OGC procurement guide, the local authorities their own guides and the same happens with the NHS or the Highway Agency. This approach enables to adapt the new culture to the particularities of each agency.

The National Audit Office has the duty to check whether the different public authorities are following the advices and guidance, and if they are not, checking that they have reasonable reasons for not to do it.

The private sector follows the stream of these cultural changes, helped by the Construction Excellence’s activities and services and pulled by the public authorities’ successes.
### Legislation and regulation

**Chronology of the most important events in legislation, regulation, advice and guidance.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>1990</td>
<td>“Building Towards 2001”.</td>
</tr>
<tr>
<td>1992</td>
<td>The Chancellor of Exchequer (Kenneth Clarke) announced the introduction of the PFI.</td>
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<tr>
<td>1994</td>
<td>“Constructing the team”. (Latham report).</td>
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<tr>
<td>1995</td>
<td>Setting New Standards.</td>
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<tr>
<td>1996</td>
<td>“Housing, Grants, Construction and Regeneration Act 1996”.</td>
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<tr>
<td>1997-2000</td>
<td>The publication of the nine guides of the Treasury.</td>
</tr>
<tr>
<td>1998</td>
<td>The Egan report.</td>
</tr>
<tr>
<td>2000</td>
<td>Office Government Commerce established.</td>
</tr>
<tr>
<td>2000 May</td>
<td>Announcement by the chief Secretary of the Treasury. Only PFI, D&amp;B and Prime Contracting were going to be used for Government Works.</td>
</tr>
<tr>
<td>2002 March</td>
<td>Rethinking Construction</td>
</tr>
<tr>
<td>2003</td>
<td>Construction Excellence</td>
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</tbody>
</table>

- Before the crash, **“Building towards 2001”** indicated that the construction industry was not performing properly, despite the growth of the economy and of the industry.

- The chancellor of Exchequer (Kenneth Clarke) announced the introduction of the **PFI (Private Finance Initiative) in 1992**. This meant a continuation of the privatisation policy started in the second half of the 1970’s. Both PFI and the modified arrangement, described as **PPP (Public Private Partnering)**, wanted to transfer the responsibility for the provision and management of public services to private firms, but also to promote long terms relationships between the industry and their clients that could bring innovation and cost reductions.

Although the PFI and PPP contracts permit long terms relationships, innovations and cost reductions; some public authorities disagree with these policies. They argue that if clients have to be the core of the cultural change, they must be involved in the project, and this can not happen if they transfer the responsibility to private firms. Moreover, some public authorities say that capitals costs can be better managed by public authorities, because they can borrow money from banks cheaper.

- **The Latham report** reminded the industry the issues that needed to be accomplished and that had been mentioned by other reports like “Building Towards 2001” some time ago.

The report encouraged the government to become a best practice client, to prepare some guidance for its publics authorities in order to teach them the
new culture and to draw up some new contracts that fulfil the new needs that the industry was demanding.

Some of the issues pointed out in the report were: trust funds to reduce adversarial attitudes, preparation of good briefs to achieve client’s expectancies, reduction of tender lists to finish with low profits, clients dissatisfaction and adversarial attitudes, Alternative Dispute Resolution, interrelated package of documents to keep the fragmentation away, a register of consultants and contractors to gain quality assurance and long term relationships.

- At the same year as the Latham report was launched, the CDM regulations were also published. The CDM regulations came into force on the 31st of March 1995 with the intention of improving the Health and Safety issues in the construction sites. The number of reportable injuries was too high in comparison with other industries and gave the construction industry a tough and dangerous image. As a result of the introduction of the CDM regulations, a new professional discipline appeared in the sector: the “planning supervisor”. In addition, clients started to participate in the share of responsibilities of health and safety issues, what meant a more active participation of the client to tackle this kind of problems.

- In 1995 the Chancellor of the Exchequer presented the White Paper “Setting New Standards” to Parliament (May 1995). It described how the new government’s strategy would procure all its goods, services and capital projects. A lot of emphasis was given to “value for money” and “whole life costs”, as the criteria for awarding contracts; moving away from automatically picking the lowest bidder. Furthermore, it claimed for long term relationships, the removal of late variations; fairly share of dangers and risks, the cutting of tender lists to reasonable lengths, the introduction of milestones and benchmarking tools.

- The “Housing, Grants, Construction and Regeneration Act 1996” was introduced on May of the 1998, and meant that most contracts had to be amended to include regular payments, notices of payment and adjudication. The then existing conditions of contracts, were modified to incorporate new provisions that included procedure for payments and an expeditious systems of adjudication to reduce and expedite the number of disputes. The goal of these modifications was to reduce the adversarial relationships within the industry, which was creating fears, over expenditures and inefficiencies throughout the process.

- In 1998 the Egan report was published. The report pointed out that the industry could improve its performance by using new management tools, partnering arrangements, pre-assembly and standardisation, benchmarking tools and so on. After this report, programs such as the Housing Forum, Local Government Task Force and Movement for Innovation were launched.
Between 1997 and 2000 the treasury issued nine guides on construction procurement. Changing the procurement systems was a complicated task, consequently, the treasury published the following guidances:

- Essential requirements for construction procurement
- Value for money in construction procurement
- Appointment of consultants and contractors
- Teamworking, partnering and incentives
- Procurement strategies
- Financial aspects of projects
- Whole life costs
- Project evaluation and feedback
- Benchmarking

In 2000 the Office Government Commerce (OGC) was established. This government office continued with the treasury task in the publication of guidances. The OGC firstly published the “Construction Procurement Guidance Notes”, which were replaced later on by the “Achieving Excellence procurement Guides”.

The association of consulting architects published the PPC2000. It combined in one document conventional conditions of a building contract and conditions governing partnering obligations and rights. This kind of contracts differed from the treasury’s advice, which said that partnering arrangements should be incorporated in a partnership charter and kept separate from the conditions of a formal building contract. However, it meant that partnering was being seen by the industry as a good path to follow.

On the 22nd of May 2000 an announcement by the chief Secretary of the Treasury was made. Non integrated strategies procurements would be seldom used, instead, one of these three following procurement systems would be used, in order of preference:

- PFI
- D&B
- Prime contracting

These strategies came into force for new work the same year but for maintenance and refurbishment was delayed till the 1st of June of 2002.

In The 2002 the Movement for Innovation, Housing Forum and Local Government Task Force come together as the Rethinking Construction.

Rethinking Construction and Construction Best Practice merged to form Construction Excellence in 2003.
6.2 Differences in regulation (Spain- UK)

In the Spanish case, there is a gap in the regulation of the housing sector. “La Ley de Ordenación de la Edificación” (L.O.E) wants to fill this gap by clarifying the duties and responsibilities of the different parties involved, by giving quality guarantees to the end users and by fulfilling the new demands from the society in issues such as structural stability, habitability, accessibility, noise isolation, energy efficiency and water efficiency.

The new law, which came into force on the 6th of May of 2000:

- Defines clearly the duties, responsibilities and roles of each party.
- In order to ensure a good quality product for the client; not only technical requirements will be examined, but also other issues such as functionality, habitability, safety, accessibility…
- Clarify the documentation that must be hand over to the end users, which will be finally compiled in the “Libro del Edificio”. The project and its modification, the different companies and agencies involved and a guide book with the instructions for a proper use and a proper maintenance of the building and its services will be required in such book.
- Establishes liability terms. The constructor is liable for the defects caused by a bad construction during the first year. All the parties involved in the process are liable the first three years for the defects that could difficult the habitability and will be also liable for the first ten years for the structural stability.
- The constructor have to take out insurance for the defects that might occur during the first year or pay a bond that will account for the 5% of the total cost of the project.
- The developer of the project will have to take out insurance for the defects that might affect the habitability and the structural safety for a three year term and ten year term, respectively.
- The government committed himself to publish a technical code in two years, “Código Técnico de la Edificación” (C.T.E.), which would explain the requirements that new dwellings would have to accomplish in terms of safety, accessibility, noise isolation, water efficiency, habitability, functionality, energy efficiency and so on. Unfortunately, this code has not been published yet. The particularity of this code is that it establishes objectives and quality performance standards, rather than setting detailed prescriptions.

- The study made by the “Gabinet d’Estudis Economics S.A.” shows us that the L.O.E is more than well received by the technical press and by the professional bodies. Only the public clients, engineers and specialist subcontractors have mixed feelings about the clarification of responsibilities and the improvement in the quality of the dwellings that this law could bring about.

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Comparison

The L.O.E is restricted only to the housing sector, where it is supposed to be more companies operating without the resources, qualifications and skills that are necessary for doing this kind of jobs. Whereas, the British initiative is open to other sectors of the construction industry, although it is very focused in the housing sector too.

The L.O.E just tackles the problem of the poor quality and the guarantees to protect the end user, but it does not talk about new relationships between the parties, the fragmentation of the industry, the importance of respecting the workforce, and other issues that could remove waste, delays and improve the quality of the final product.

The C.T.E is a flexible approach to tackle the lack of quality in the construction sector, because it looks at final quality performance standards, instead of detailed prescriptions. Nevertheless the British initiative is even more flexible, because it is just based on guides and agencies, which promote new values and other ways of managing the construction sector.

Conclusions

- It is believed that the L.O.E is a good initiative for improving the industry but it does not tackle all the problems and particularly, it is not boosting a change of spirit in the construction sector that could bring about huge benefits to the industry. There is a need for an agency, which promotes and spreads new values, new technologies, new management… throughout the whole industry.

- The compulsory insurances might increase the prices of the houses.

- The C.T.E has not been published though it was expected to be published two years ago. Without this code there are no regulations and insurance companies impose what they want to insure and what do not. As a result, they are benefiting from the present lack of regulation.

- There are other demands that could be satisfied with other legislation’s and regulation’s modifications such as setting up a register of firms; a fair distribution of the market taking into account firms’ size, resources and turnover; clear criteria and published results in the selection process; promotion of the use of ADR or arbitration in the construction sector in order to ease disputes that might arise in the construction site.