

AMENDED CONSTRUCTION ACT - READY?

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Many of the provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996 (Construction Act) will be changed when Part 8 of the Local Democracy, Economic Development and Construction Act 2009 comes into force, probably on 1st October 2011.

Industry bodies such as the JCT and NEC as well as professional bodies such as the RIBA will soon be publishing updates to their standard forms. If you use bespoke contracts, schedules of amendments, certain types of development agreements or your own sub-contract terms and conditions, these will need to be revised and updated.

Some changes will be required to the adjudication provisions and the most significant amendments relate to the payment provisions. Payer or payee notices, for example, will replace payment due notices, and withholding notices will be replaced by “pay less” notices. Your staff will need to become familiar with the revised payment procedures, including the new forms of notice.

If, for example, the payer does not serve its notice, the payee can serve its own notice. If the contract requires an application for payment, the payee’s application can stand as the payee’s notice if the payer fails to notify. Where a sub-contractor makes a monthly application and the main contractor fails to serve a payer notice in time, it must pay the full amount of the application even if on a closer analysis there might be good grounds for challenging parts of the claim.

You should be aware that the consequences of non-payment will be more severe once the amendments come into force. If a “notified sum” is not properly paid, the receiving party can suspend performance of all or part of its contractual obligations and it will also have a statutory right to be paid its reasonable costs and expenses associated with the suspension.

The “new” Scheme for Construction Contracts will be implied into many more contracts, since oral contracts will also be covered.

For advice or more information, including amendments to your terms and conditions to ensure that they comply with the amended Construction Act, and training to your staff on the new procedures, please contact:



Clients value the team’s cost-effective advice: “They always communicate, and will mention if they don’t need to get involved in order to minimise costs.”

Independent legal directory, Chambers UK 2011