



Technical

JCT 2011 & The New Construction Act - Part 1

Date: 31 Oct 2011

JCT 2011

1. The principal purpose for the release of the 2011 editions of the JCT suite of contracts is to reflect the amendments to The Housing Grants Construction and Regeneration Act 1996 brought about by the Local Democracy, Economic Development and Construction Act 2009.
2. The main changes relate to the payment terms and payment related notices. The amendments relating to Adjudication do not require any changes to the contract because the JCT suite of contracts refer to the Act itself and the Scheme for Construction Contracts as the rules for Adjudication.
3. The amendments include extensive changes to the payment certificates, applications and notices subsections with less significant changes to the rules for termination. There are other minor amendments to the JCT 2011 suite of contracts. In this article for the most part we are referring to the Standard Building Contract. The Design and Build form of Contract and the Standard Subcontracts will be covered in part 2.

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The Standard Building Contract

4. There are amendments to the Contract Particulars to reflect the amendments to the conditions themselves. Section 1 of the conditions, Definitions and Interpretation, includes some changes to reflect the new definitions for the most part brought about by the new Act. For example the Pay Less Notice.
5. The most significant amendments are to Section 4 - Payment, which has been substantially redrafted.
6. Clause 4.9 defines the due dates for interim payments which are to be specified in the Contract Particulars. Seven days before the due date the main contractor may make an application for payment to the Quantity Surveyor. Five days after each due date the Architect/CA is to issue a Certificate.
7. The final date for payment is fourteen days from the due date. The amount of the payment is to be in accordance with the Certificate issued by the Architect unless the Employer gives a Pay Less Notice which must be given no later than five days before the final date for payment.
8. If the Architect/CA has not issued a Certificate then the contractor's application becomes an effective Payment Notice. If the contractor has not made an application then he may issue a Payment Notice at any time after the period when the Architect/CA's Certificate should have been issued (five days after the due date).
9. If no Payment Notice or Pay Less Notice has been issued by the Architect/CA or Employer then the amount due becomes the amount notified by the contractor in his application or Payment Notice.
10. Practically, and to summarise what can seem to be confusing mechanisms, in most circumstances contractors do issue applications and in those circumstances where the Architect/CA has not issued a Certificate or a Pay Less Notice then the contractor should be paid the amount of his application in full. The mechanism for final payment is reliant on the issue of the Final Certificate and is subject to different timescales.
11. It is essential that the Parties to the contract follow the contract procedures for payment to ensure that they do not pay sums that are not properly due and/or that they are paid the sums to which they are entitled.

The New Construction Act - What you need to know

12. If you require further guidance on the Construction Act then please refer to our article *The New Construction Act - What you need to know* which is available on our website. You may also be interested to know that we are presenting our *10th annual Seminar on 10 November 2011 at Pride Park in Derby* covering some of the practical issues arising out of The New Construction Act and the amendments to the JCT and NEC Suites of Contracts. Ramskill Martin is also providing more detailed guidance and training for contractors and subcontractors to suit individual businesses' requirements. If you require any help with this please contact Clive Ramskill (see details below).

[Click here for JCT 2011 & The New Construction Act - Part 2](#)

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