



The Construction Act - update

What is the current position?

The current act will be replaced. The new act is included in Part 8 of The Local Democracy, Economic Development and Construction Act 2009.

Whilst parts of this act are now in force Part 8 will not come into force until The Scheme for Construction Contracts (England and Wales) Regulations 1998 ("The Scheme") has also been reviewed.

The Department of Communities and Local Government have told us that the new act will not be in force until The Scheme has also been reviewed which will be at least 12 months.

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What will be the main effects of the new act?

Contracts in writing

Current Act

The current act, as applied by the Courts, is restrictive as it requires all the material terms of a contract to be in writing for the act to apply.

New Act

The new act will be more expansive.

As long as the right to determine disputes by adjudication is written down a contract will be subject to the act.

Disputes

Current Act

Adjudicators cannot correct mistakes, even the most simple and obvious ones, in their awards.

New Act

The new act will enable these mistakes to be corrected.

Current Act

Unfair contractual provisions addressing which party pays for the cost of adjudication, often the referring party and without reference to the outcome of the adjudication, are valid.

New Act

These provisions will not be valid.

Responsibility for the costs of adjudication can only be addressed after a notice of intention to refer has been served.

Payment

Current Act

"Pay when paid" clauses are prohibited but "pay when certified" clauses are not.

New Act

Both are prohibited.

Current Act

The initial payment notice, to

be served by the payer at least 5 days after the due date for payment, has no effect.

New Act

The initial payment notice will have effect and will have to be served, at least 5 days after the due date for payment, either by the payer or by, if the payer fails to do so, the payee.

Rights on suspension

Current Act

If the payee (eg the contractor or the consultant) suspends work it does not have an express right to

- an extension of time; or
- loss and expense.

New Act

The new act expressly gives these rights.

How else will you be affected?

Contracts, sub-contracts and professional appointments will need to be redrafted to take into account of these changes.

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