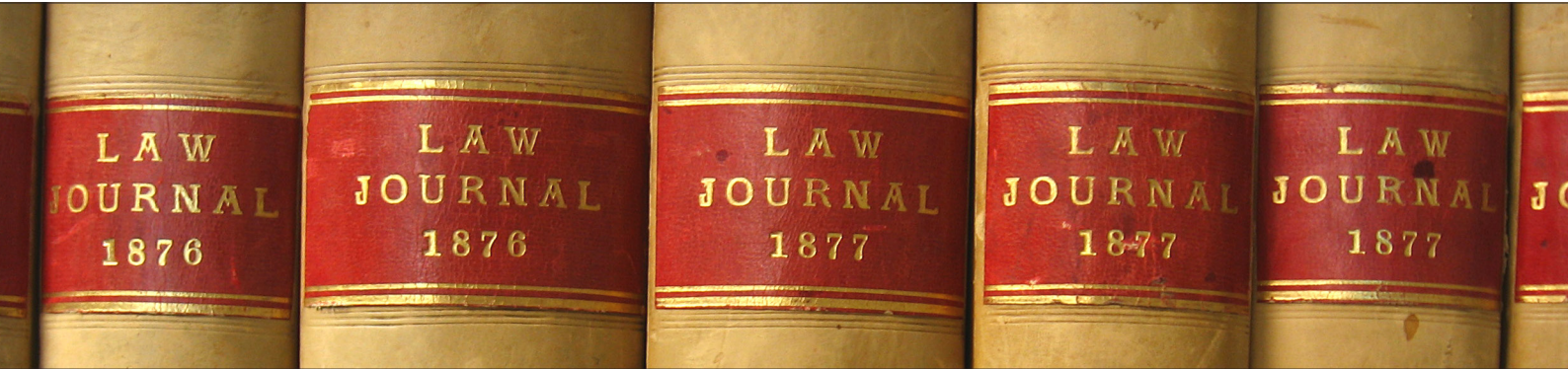


CONSTRUCTION LAW UPDATE: The New JCT 2016 Suite of Contracts – What Changes Are in Store?



The first tranche of the new Joint Contracts Tribunal (JCT) standard form contracts 2016 are to be released this month starting with the Minor Works Contract.

The JCT standard form contracts have been in use in the UK in one form or another for over 85 years with new contracts and new versions being released regularly to keep up with the ever changing and increasingly complex nature of construction and engineering projects.

The Chair of the JCT recently explained that their aim is to produce standard form contract for the industry following collaboration between all parties to the building and construction process. The philosophy adopted when producing new contracts and versions is consensus, with the JCT attempting to allocate risk in a fair way and to cover most of the pitfalls surrounding contractual relationships.

Following industry wide consultation the JCT have consolidated the updates and supplements that have been released since the 2011 Editions along with some key changes to update the JCT suite of contracts.

While there will not be any wholesale changes, the biggest change relate to the Fair Payment Principals being fed into the standard form contracts. The Fair Payment Principals aim to ensure transparent and proper payments are made to main supply chain members within 30 days in addition to not withholding cash retentions, not delaying or withholding payment, and making payments electronically.

The key changes from the 2011 versions to 2016 are summarised as follows:

Payment

New payment provisions will be introduced into the 2016 suite of contracts. These changes have been designed to simplify the current payments provisions but also to reflect Fair Payment Principals including the introduction of Interim Valuation Dates.

While under the current versions of the JCT contract the due dates applicable to payments after practical completion are on a two month cycle, the new 2016 versions will revert to a monthly cycle of due dates applicable to payments even after practical completion.

The Fluctuation Provisions will also be amended to allow parties on larger projects additional flexibility.

Loss and Expense

The Fair Payment principals have also impacted on the Loss and Expense provisions in the new 2016 suite. The JCT will amend the wording of the new contracts to introduce prompt assessment of Loss and Expense Claims.

It is envisioned that claims or potential claims will be notified at the earliest opportunity along with monthly updates from the Contractor. The Contract Administrator (or other party managing the contract) will make an assessment of the claim within 28 days and, upon receiving additional information from the Contractor, will

be required to respond within 14 days.

Final Certificate

The 2016 suite will make a minor amendment to the final certificate in particular in relation to consents and approvals. Given that these provisions will differ significantly from contract to contract, details of these will be released piecemeal as the different forms of contracts are released.

Collateral Documents

While Devonshires Schedule of Amendments to the JCT contracts have included an obligation for Performance Bonds and/or a Parent Company Guarantee, the new 2016 JCT contracts will introduce this as standard.

The option of Collateral Warranties has been extended as well as offering the alternative of using Third Party Rights. The use of Third Party Rights have generally been shunned by the construction industry in favour of having a physical hard copy warranty and this trend has been reflected in the extension of Collateral Warranties in the 2016 versions.

Insurance

Despite the Insurance Act 2015 coming into force there have been relatively few changes to the insurance portion of the JCT suite. There has been a consolidation of the provisions relating to Insurance Option A, B and C.

Within insurance Option C, a new extension of (Works) has been included to assist domestic homeowners who have faced difficulties obtaining Existing Structure cover.

Intellectual Property

The 2016 contracts will only see a minor update to the intellectual property provisions with the JCT 2012 Named Specialist Update being inserted.

Building Information Modelling

To reflect the increased use of BIM throughout the construction industry the JCT BIM updates, which have

been released since the 2011 suite of contracts, have been inserted into the new 2016 suite.

Construction (Design and Management) Regulations 2015

Following the introduction of the CDM regulations an amendments sheet was published by the JCT to be appended into the 2011 suite of contracts. The Devonshires Schedule of Amendments also amended the standard form contracts. The 2016 suite of JCT contracts will update the drafting to reflect the new CDM regulations.

Public Contracts Regulations 2015

The 2016 suite of JCT contracts have also been update to reflect the new Public Contract regulations as standard. This update will be used by public bodies (which include Local Authorities and Registered Providers of Social Housing) utilising the JCT contract but also contractors and sub-contractors who are engaged to act on public sector building projects.

Summary

It does not appear that there will be wholesale changes to the 2016 suite of JCT contracts and the update will simply reflect some of the case law and legislation that has come out over the last 5 years. Notwithstanding this the current Schedule of Amendments being used within the industry will not be applicable to the new suite of contracts. Parties should make sure they are using an appropriate Schedule of Amendments before they enter into a new JCT 2016 form of contract.

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The tiny print

No action should be taken on the matters covered by this leaflet without taking specific legal advice.