



Technical

JCT 2011 & The New Construction Act - Part 2

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JCT 2011

1. This is the second part of our review of the JCT 2011 suite of contracts dealing with the changes made 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. In this article we have considered the Design and Build form of contract and the JCT Subcontracts.

Design and Build

3. Practically, the most significant changes are again those relating to the payment provisions of the Design and Build Contract and Section 4 has been substantially redrafted.
4. In this contract it is mandatory for the Contractor to make an application to the Employer for each Interim Payment. It is anticipated that most contracts will adopt the Alternative B provisions for valuing the works; that is on a traditional basis rather than on a stage payment basis.

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The intervals for payments will generally then be monthly up to the date of Practical Completion (two monthly thereafter).

5. The date of the application is the due date with the final date for payment being fourteen days later.
6. Five days after the due date the Employer should issue a Payment Notice. If the Employer does not intend to pay the amount included in the Payment Notice then he can issue a Pay Less Notice five days before the final date for payment. If the Employer (or its agent) has not issued a Payment Notice or Pay Less Notice then the amount to be paid will be the amount of the Contractor's application.
7. It is likely that the timescales for payment will be amended by Employers because they are relatively short with the risk that Employers might unintentionally end up paying the amount of the application as sometimes occurred with the 1998 versions of this form of contract.

JCT Subcontracts

8. The most important changes are again those to the payment provisions and Section 4 of the subcontracts has been substantially redrafted.
9. The trigger for payment to the subcontractor can either be the subcontractor's application or it may be the main contractor's valuation of the work. The payment period will generally be monthly and the due dates should be set out in the Contract Particulars. Five days after the due date the main contractor should issue his Payment Notice. The final date for payment is twenty-one days after the due date. If the main contractor does not intend to pay the amount in the Payment Notice then he must issue a Pay Less Notice and this must be issued no later than five days before the final date for payment. Similar to the other contracts in the JCT suite if the payer, in this case the main contractor, does not issue a Payment Notice or a Pay Less Notice, then the amount of the subcontractor's application should be paid in full.
10. Main contractors and subcontractors must ensure that they operate the payment mechanisms correctly to ensure that they do not pay sums that are not properly due and/or they are paid sums to which they are entitled.

The New Construction Act - What you need to know

11. If you require further guidance on the Construction Act then please refer to our article *The New Construction Act - What you need to know* and our articles on the NEC and JCT contract amendments which are 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).

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