

Review

Construction, Engineering and Projects



THE "COFFEE-BREAK" VERSION

Notices – the new regime

Payment notices setting out the sum considered due ('notified sum') must be given by the person as agreed between the parties: ie, the payer or a specified person (eg, architect), or even the payee;

More importantly there is now a sanction for failing to issue a payment notice. In default, the payee can issue a payment notice;

In particular, if the contract requires or allows the payee to submit an application for payment, this may stand in default of a payment notice;

The payer is required to pay the 'notified sum' by the final date for payment unless a valid 'counter-notice' is given not later than the prescribed period before the final date for payment.

Parties are free to agree what the prescribed period is to be.

Changes to the Construction Act and the Scheme – a quick round-up

Here is the coffee-break version of the amendments to the Construction Act 1996 and the consequential amendments currently proposed for the Scheme:

- 1 The amendments to the Housing Grants, Construction and Regeneration Act 1996 (the 'Construction Act 1996') have become law but are not yet in force.
- 2 The long-awaited consultation on The Scheme for Construction Contracts (England and Wales) Regulations 1998 ('Scheme') has been published and closes on 18 June 2010.
- 3 These two provisions must come into force at the same time so we are still some way off having to change our working practices. As always, it is better to be prepared.
- 4 When the Construction Act 1996 amendments come into force:
 - (a) Oral contracts will be caught by the Act, so expect more adjudications;
 - (b) Pay-when-certified provisions will be banned;
 - (c) We will all need to learn the new regime with respect to notices (see box);
 - (d) Amend your contracts to take advantage of the insolvency carve-out i.e., subject to issuing the correct notices, you should not have to pay if the payee becomes insolvent before the final date for payment;
 - (e) The statutory suspension provisions will become more powerful so expect these to be used more and adjust your tactics accordingly.
- 5 Finally, there is some tweaking of the Scheme to align it with the Amendments to the Construction Act 1996. These are not controversial but if the provisions come into force, we will need to do a bit of relearning eg,:
 - (a) The dispute must be referred not later than ten days from the date a copy of the notice of adjudication was sent (previously seven days from the date of the notice of adjudication). This provision is intended to clarify the position in relation timing of referrals;
 - (b) The adjudicator may open up, revise and review any decision or certificate. This may include decisions or certificates which are final and conclusive.

You can find a copy of the all-new Construction Act 1996 [here](#) and proposed changes to the Scheme [here](#).