

# Construction & Engineering Client Alert

April 2016

## Meet the Family: All Change for JCT Contracts

The Joint Contracts Tribunal (JCT) has announced that it will be updating the 2011 editions of its families of contracts over the coming months, and in a recent press release it has now revealed some of the changes that will feature in these 2016 editions.

As was expected, the 2016 editions will incorporate the previous updates that the JCT made to the 2011 editions over time, such as those included in the Public Sector Supplement, the 2012 Named Specialist Update and the amendments made in relation to the CDM Regulations 2015 (which were first published as amendment sheets downloadable via the JCT website).

### Further proposed changes will include:

- Amending the payment provisions to reflect fair payment principles and to simplify and consolidate the payment regime. These amendments will include establishing “interim valuation dates” to operate at main contract, sub-contract and sub-sub-contract levels, and also include a new procedure for prompt assessment of loss and expense claims. The procedures are intended to ensure transparent and proper payments are made to the main supply chain members within 30 days and are likely to be the greatest changes introduced by the 2016 editions.
- Introducing specific options in relation to building information management (BIM) so that projects can benefit from the collaborative process of sharing electronic information throughout the lifecycle of a built asset between design team members, consultants and stakeholders. The JCT amendments will seek to ensure that the right information is delivered to the right people at the right time.
- Extending Works Insurance Option C to allow for alternative solutions to the problem encountered when seeking to obtain insurance for the existing structure when the owner of the existing structure is not the employer. Currently, the only option for dealing with this is Option C which requires the employer to take out and maintain a joint names policy, to cover both the employer and the contractor for (a) insurance of the existing structure and its contents occasioned by “specified perils” and (b) all risks insurance of the works. The existing drafting also requires that the insurance policy contains a waiver of subrogation rights so that the insurer does not pursue either the employer or contractor should damage occur as a result of either party’s negligence in carrying out the works.

These conditions are less problematic if the employer is, for example, a landlord carrying out works to his own property. However, if the employer is a tenant carrying out works with the landlord’s consent, the conditions of Option C do not work without amendment. The new amendment will make this situation more straightforward by:

- Including provisions for the grant of performance bonds and a parent company guarantee.
- Introducing an option for sub-contractors to grant third party rights under the Contracts (Rights of Third Parties) Act 1999 as an alternative to the provision of collateral warranties.
- Updating the contracts to reflect the Public Contract Regulations 2015 for public sector projects, including provisions to be used by public bodies, contractors and sub-contractors.

The new contracts will be released over the course of the next nine months, commencing with the Minor Works family of contracts in May 2016. The JCT will then look to release the Design and Build, Intermediate and Standard forms, before moving on to the less popular forms, which may not be released until early in 2017. As a natural consequence, the 2011 contracts will of course be phased out over a nine month period, starting from May 2016.

The reconsidering of Option C insurance in our opinion is particularly welcome and long overdue. This has often caused a problem for tenant clients carrying out works within the landlord’s property.

Clients should be aware that the new contracts are gradually being introduced through 2016 and 2017, and should keep this in mind for projects due to start this year in which JCT contracts are proposed to be used.

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