

Review

Construction, Engineering and Projects



2009 Revisions of the JCT Standard Forms of Contract

Sweet and Maxwell has commenced publishing the 2009 Revisions of the JCT Standard Forms of Contract with the revised Standard Building Contract, the Design and Build Contract and the Minor Works Contract families. The other contract families will be published over the next couple of months. Sweet and Maxwell describe the main amendments as:

- (a) The incorporation of the new sustainability provisions.
- (b) Modifications to the payment provisions.
- (c) Other changes in response to the Office for Government Commerce's (OGC) Achieving Excellence criteria.

There has been some criticism of Sweet and Maxwell for not dealing with these amendments by issuing flyers on their website which could be downloaded for free in accordance with its usual practice. Also, for some reason, JCT has not published a detailed note of the amendments in the corresponding Guide which means that construction practitioners will have to carry out their own comparisons of the amendments at their own cost. On a practical point, heavy users of the forms should look into switching to the JCT Contracts digital service rather than receiving paper copies of the forms, as this may provide better value for money.

Some of the Standard Building Contract amendments in more detail:

- a) A new Schedule 8 of Supplemental Provisions detailing sustainable development and environmental considerations as well as the OGC's Achieving Excellence criteria.
- b) Schedule 2 has been amended and the definition of a "Schedule 2 Quotation" has been replaced by new definitions of a "Variation Quotation" and an "Acceleration Quotation".
- c) The notices and the electronic communications clauses have been amalgamated. Administrators are advised to review this new clause in detail and ensure that their standard letters and notices comply with it. One unfortunate consequence of this amendment is that the clause dealing with the effect of the final certificate has now been renumbered meaning we will all need to re-learn this key clause number and adjust schedule of amendments and/or contract documents to suit.
- d) It is considered that electronic communications are the norm; therefore amendments have been made to reflect this, eg 2 copies of the information release schedule are no longer required. If contractual information still flows in hard copy, the Guide recommends that a protocol may be useful in these areas particularly if distributing to a wider team.
- e) There is now a requirement to identify the critical paths in the master programme if stated in Contract Particulars.
- f) The liquidated damages clause now refers to these being withheld or deducted from "sums" due to the Contractor instead of "monies" due. Again, administrators may need to amend their standard letters or notices to suit.
- g) There is a new obligation to use a JCT Standard Building Sub-Contract.
- h) Loss and expense arising from antiquities is now a Relevant Matter.

Do the 2009 Revisions of the JCT Standard Forms of Contract contain any significant amendments?

- i) There is a provision for the regular issue of interim certificates after practical completion at intervals of 2 months (or other agreed intervals) rather than simply as and when further amounts are ascertained.
- j) There are new contractual obligations on the Contractor to issue a payment notice and, if required, a withholding notice, if the Final Certificate means the Contractor is to pay the Employer a balance due.
- k) There are changes to the professional indemnity insurance cover (if required) and pollution, contamination and asbestos claims now refer to a default aggregate amount reflecting the industry's stance on this type of cover generally.

In our opinion, the majority of the amendments to the JCT Standard Forms of Contract are not essential to comply with the law and the primary driver behind the amendments is Sweet and Maxwell's desire to achieve the OGC's Achieving Excellence criteria thus removing the remaining barriers for the adoption of JCT Contracts across the central government departments and in order to gain ground lost in recent years to the NEC family of contracts. The upshot of this is that users of the form will have to bear the cost of familiarising themselves with these revisions and amending their standard documentation to suit and then go through the process again when Revision 3 comes out to deal with the proposed changes to the payment and/or adjudication provisions of the Housing Grants Construction and Regeneration Act 1996 which are currently making their way through Parliament.

If you would like more details on the amendments made to the 2009 Revisions of the JCT Standard Forms of Contract, please do not hesitate to contact us.

FURTHER INFORMATION

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