

**1 NOVEMBER 2011**

## **CHANGES TO THE CONSTRUCTION ACT IN SCOTLAND**

### **Are you ready?**

Just as we were getting used to Part II of the Housing Grant, Construction and Regeneration Act 1996, Part 8 of the Local Democracy, Economic Development and Construction Act 2009 will require a fresh look from all of those involved in the construction industry. The changes arrive in England and Wales on 1 October 2011 and in Scotland on 1 November 2011.

Essentially, most construction documents currently used in the UK will need to be amended to comply with the new law. The three main issues to grapple with are:-

- the revised payment regime
- changes to the statutory adjudication process
- greater right for consultants, contractors, and sub-contractors to suspend work for non-payment and claim costs/expenses

As before, any construction documents which do not comply with the new regime will have terms implied into them by the Scheme for Construction Contracts (Scotland) Regulations 1998.

The changes do not have retrospective effect and therefore only contracts signed after 1 November this year will be subject to the new regime.

In order to be ready, consider the following:-

1. All of your template construction documents will need to be amended if you wish them to comply with the new legislation. Industry bodies have already updated their standard forms but if you use bespoke schedules of amendments or bespoke contracts, you will be required to revise and update these documents.
2. Payment procedures will require to be changed. There will be no more withholding notices. Instead either the payer or the payee must issue payment notices, and if the payer thinks a lesser amount is payable, the payer must serve a "pay less" notice. The penalty for not doing so is that the sum applied for by the payer may be payable.
3. Train your staff. They need to be familiar with the new payment procedures and they need to be ready to serve new forms of notice. The consequences of failure to serve the correct notice are more severe than before.
4. Review any contracts coming up for signature. If you have standard form terms and conditions which are subject to the Construction Act they will not be compliant after 1 November.
5. Depending on what side of the fence you are on, it will either be wise to conclude the contract before 1 November 2011, or, delay its conclusion until the changes to the Act come into force.

*HBJ Gateley's Construction Team are happy to assist you in preparing your business for the changes about to come into force in Scotland. Please contact either Frazer Wardhaugh on 0131 222 9887 ([fwardhaugh@hbigateley.com](mailto:fwardhaugh@hbigateley.com)), or Anne Struckmeier on 0131 222 9839 ([astruckmeier@hbigateley.com](mailto:astruckmeier@hbigateley.com)) to discuss your requirements.*