

# ePaper: JCT 2024

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# Introduction

Joint Contracts Tribunal (“JCT”) contracts are the most widely used standard form construction contract in the UK, with JCT contracts said to be used in 70% of UK construction projects. Although often heavily amended, they provide useful mechanisms that are widely understood in the construction sector. The last suite of contracts was produced by JCT in 2016. Therefore, it was not unexpected when the JCT announced that its 2024 edition will launch in the spring of next year.

The precise date for launch is delayed behind the anticipated further secondary legislation relating to the Building Safety Act 2022 (BSA), to allow JCT to cover-off any issues arising out of the BSA. This ePaper provides a summary of the expected changes to the JCT suite of contracts and looks further ahead to what JCT may be considering for the following suite in or around 2035.

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Karen Kirkham, JCT Chair, announced the launch of the 2024 suite at a (no doubt, ‘star-studded’) Parliamentary Reception on 16 June 2023 and further information was released the following month. We consolidate those announcements below.

### **Reaction to Covid**

Further grounds for a Contractor to claim loss and expense have been added in relation to epidemics and the exercise of statutory powers by the UK Government which directly affect the works.

### **Liquidated damages up to termination, but not thereafter**

JCT is making amendments to reflect the Supreme Court’s decision in Triple Point Technology Inc (Respondent) v PTT Public Company Ltd (Appellant) (2021) restoring the orthodox position that liquidated damages clauses apply up to termination, but not thereafter. The planned update will allow parties to agree that where works are not complete at termination, liquidated damages can be charged up to termination and only general damages for delay thereafter.

### **Price certainty in uncertain times**

Price uncertainty is anticipated to continue in 2023 and beyond. Reacting to that, JCT has launched a “fluctuations hub” to offer guidance on its fluctuations options, announcing the intention to move the fluctuations provisions to an online document to increase prominence and accessibility.

### **“Welcome to the family”**

The JCT Target Cost Contract (unhelpfully abbreviated as the “TCC”) family, made up of a main contract, sub-contract and guide, is being introduced. Hooray!

### **Amendments to reflect a changing legislative landscape**

Amendments will be incorporated to take into consideration legislative changes, such as the BSA and Corporate Insolvency and Governance Act 2020. How JCT 2024 deals with the potential contractual risks arising out of the implementation of the new regulatory regime for higher-buildings under Part 4 of the BSA remains to be seen. The termination accounting and payment provisions will also be amended to reflect the Construction Act.

### **Streamlining and future proofing**

We should expect to see amendments to reflect the intentions of the government’s Construction Playbook and incorporating (previously optional) supplemental provisions relating to a) collaborative working b) sustainable development and c) environmental considerations. The Construction Playbook is maintained by government and sets out key policies and guidance for how public works projects and programmes are assessed, procured and delivered.

Gender neutral language will also be adopted. The suite will allow increased flexibility for execution by electronic signature and for notices to be sent electronically (vive la revolution!). The extension of time provisions will be amended to reflect new relevant events relating to epidemics, how “statutory powers” are dealt with and redefining “Statutory Undertakers” as “Statutory Providers” (we are particularly excited about this amendment). The period of time for an Employer to assess an interim extension of time will also be reduced from 12 weeks to 8 weeks from receipt of the Contractor’s particulars. The amendments will extend the “relevant event” dealing with antiquities to deal with unexploded ordnance, contamination and asbestos.

### **Dispute avoidance**

In respect of the resolution of disputes (something that is often dealt with in bespoke amendments in any event), parties will be able to choose a nominating body or appointer of their choice, as opposed to only picking from the current shortlist. It is still anticipated that a list of bodies will be set out, although this will not include the Association of Independent Construction Adjudicators who are, in the words of Monty Python, “bleedin’ demised!”

The notification and negotiation of disputes, set out at Supplemental Provision 10, will now be mandatory. This provision deals with the avoidance or early resolution of disputes or differences by requiring each party to notify the other if a matter is likely to give rise to the same. It also requires senior executives to meet “as soon as practicable, for direct, good faith negotiations to resolve the matter”. Note, this does not prevent a party from bringing an adjudication at any time.

### **Conclusion**

The anticipated amendments to the JCT suite of contracts represent evolution rather than revolution. Contracting parties will still require bespoke amendments to the standard forms to ensure that their interests are protected.

### **What does the future look like?**

We now cast our eyes into the future. Given the last edition of JCT contracts was in 2016, we should expect to wait nearly a decade before the 2024 JCT suite is updated. So what do we expect to see in the 2035 edition?

- Future standard obligations in relation to Environmental, Social and Governance (“ESG”) (supplier diversity, social responsibility etc) and sustainability goals. This is an ever increasingly important area, where Employers are putting pressure on Main Contractors, which filters down the supply chain, to behave in a way that is environmentally and socially responsible and considered good governance.
- Although hard copy contracts will still be provided by JCT, they are pushing digital, so expect full digitisation by the time of the launch of the next JCT suite. On a similar note, could block chain be used where contracts will automatically be entered into or payments automatically made when triggered by certain events? Possibly.
- The end of retentions? Retentions are considered by many (perhaps not all Main Contractors) as outdated and harmful for Sub-Contractors. NEC3 and NEC4 contracts do not include retention as a standard provision (Option X16 can be used if a retention is appropriate). There are other options, such as bonds, or the proposal that trust accounts will be established, administered by an independent third party. 30 day standard payment terms, the norm in respect of public works, seem unlikely to appear in the private sector.

In line with the emergence of the concept of Environmental, Social and Governance (“ESG”), we may see a movement towards the Construction Supply Chain Payment Charter which promotes never justifiably delaying or withholding money owed, making payments within 45 days or less of the end of calendar month, removing retentions or making them less burdensome and adopting a more collaborate, transparent and honest approach. Perhaps the ESG train will push JCT to introduce some of these ideas into future editions.

- It seems inevitable that AI will be used in the drafting and implementation of JCT contracts to enhance efficiency, reduce risk and improve overall contract administration. Without wishing to do ourselves out of a job, AI ought to be able, at some point in the future, to recommend amendments, deletions and insertions based on “current market” standards and best practice. There will still be room for lawyers to make final bespoke amendments to make the contract work for a particular project, but expect to see amendments being produced at greater speed and, in theory, at lower cost, as AI is adopted within the sector.

We are JCT specialists. Email us on [tseal@ridgemont.co](mailto:tseal@ridgemont.co) or call us on 0203 909 9590 if you have any questions or need any advice relating to JCT contracts.



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