

Your World First



# JCT 2016

White Paper Conference



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# JCT 2016

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What are we covering today?

- An outline of the main areas of change in JCT 2016
  - A discussion of some areas where the risk profile has (or may have) changed
  - A discussion of the areas where amendments may be made
- (By reference to JCT DB suite)

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# JCT 2016 – main areas of change

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Three main themes:

- Best practice
- User feedback/streamlining
- Legislative updates

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# JCT 2016 – main areas of change

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## Best practice:

- Fair payment principles from the Public Sector Supplement, so:-
  - Common valuation dates across the supply chain
  - Monthly payment cycles throughout
  - Revised processes for dealing with loss and/or expense claims
- ...and enabling BIM provisions

## User feedback:

- Operative provisions allowing for PCGs and bonds
- Enabling provisions for warranties and TPRs: now in a separate document
- Sub-contracts: option for TPRs as an alternative to warranties
- An alternative regime for insurance of existing structures

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# JCT 2016 – main areas of change

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## Streamlining:

- Re-ordering of clause 4
- Consolidation of payment and pay less notice regimes
- Simplification and consolidation of insurance provisions into clause 6

## Legislative updates

- CDM 2015
- Public Contracts Regulations 2015

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# JCT 2016 – changes in risk profile

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Picking out three examples:

- Loss and/or expense
- Insurance
- Payment

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# JCT 2016 – changes in risk profile

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Loss and/or expense: change is around process

- Notification (rather than application). Trigger different?
  - Previously: “...as soon as it has become or should reasonably have become apparent to him **that the regular progress has been or is likely to be affected...**”
  - Now: “...as soon as **the likely effect of a Relevant Matter on regular progress....** becomes (or should have become) reasonably apparent to him...”
- Monthly updating of information
- Requirement on Employer to notify Contractor (within 28 days for initial assessment and 14 days for updates) of ascertainment

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# JCT 2016 – changes in risk profile

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## Loss and/or expense cont'd

- Condition precedent:
  - Previously: “... If the Contractor makes such application ... the amount of the loss and/or expense... shall be ascertained and added to the Contract Sum; provided always that [timely submission of application and provision of information on request by Contractor]”
  - Now: “If... the Contractor incurs or is likely to incur any direct loss and/or expense...he shall, subject to...compliance with the provisions of clause 4.20 be entitled to reimbursement...”
- (Provisions substantially the same at sub-contract level save that the time periods for response are longer)

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# JCT 2016 – changes in risk profile

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## Insurance

- Existing Structures now defined as “any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension” – difference?
- Clause 6.3 (standard regime):
  - The Contractor’s liability under the property damage indemnity excludes loss or damage to Existing Structures caused by any of the risks/perils required to be insured against under Option C1; exclusion to apply “notwithstanding that the loss or damage is or may be due in whole or in part to the negligence....or default of the Contractor or any Contractor’s Person”
  - Difference? Reflects case law in any event?
- No equivalent in sub-contract; still refer to case law

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# JCT 2016 – changes in risk profile

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## Insurance cont'd

- Option for a “C1 Replacement Schedule” for insurance in respect of Existing Structures
- This allows the parties to choose an alternative insurance regime in respect of Existing Structures
- If they do so then the “standard” clause 6.3 exclusion does not apply and instead “...the Contractor’s liability and indemnity... shall, in respect of loss, injury or damage to the Existing Structures...be subject only to such limitations or exclusions as are specified in [the C1 Replacement Schedule]”
- Potential for significant difference in the position eg if no joint insurance

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# JCT 2016 – changes in risk profile

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## Payment

- Clause 4.9.3:
  - Previously: “If the Payment Notice is not given in accordance with clause 4.9.2, **the amount of the Interim Payment to be made by the Employer shall**, subject to any Pay Less Notice under clause 4.9.4, be the sum stated as due in the Interim Application”
  - Now: “If a Payment Notice is not given in accordance with clause 4.7.5, **the Employer shall**, subject to any Pay Less Notice under clause 4.9.5, **pay the Contractor the sum stated as due** in the Interim Payment Application”
- Closer alignment to other JCT forms, and diminishes arguments that certified values cannot be challenged

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# JCT 2016 – changes in risk profile

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## Payment cont'd

- At sub-contract levels:-
  - Due dates are calculated from Interim Valuation Dates (with final dates for payment running from due dates)
  - Interim Valuation Dates are to be set out in the Sub-Contract Particulars; guidance states that it should be the same as the interim valuation date under the main contract – to align payments and speed up payments down the supply chain.

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## JCT 2016 – where might amendments be made?

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Many issues coming out of the amendments will be dealt with through appropriate entries in the Particulars e.g.:

- Identity of parent company guarantor (if required);
- Amount and expiry of bond; any reduction in value;
- “Rights Particulars” document for the provision of warranties/TPRs

Amendments made be made e.g. in relation to the provisions dealing with bonds and guarantees:

- “substantially in the form identified”
- Sanctions for non-provision

Otherwise many of the amendments you are used to seeing are still likely to be present

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# JCT 2016

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## Conclusion

- No significant changes in risk profile
- Many of the amendments you are used to seeing will still be there
- However the devil is in the detail...

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