

## The Construction Act: Update

In July the draft Construction Contract Bill 2008 was published which will amend part 2 of the Housing Grants, Construction and Regeneration Act 1996 ("the Act"), the consultation period for which has now ended.

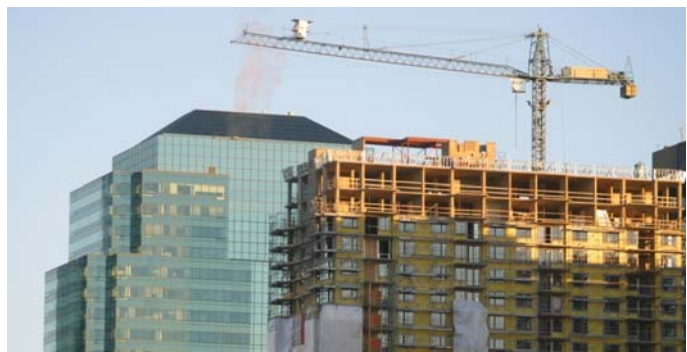
This alert summarises the main changes proposed in relation to the form of construction contracts and payments made under construction contracts.

If you have any questions on this topic please do not hesitate to contact Paul Matcham  
([pmatcham@maplesteesdale.co.uk](mailto:pmatcham@maplesteesdale.co.uk))  
or Claire Atkins  
([catkins@maplesteesdale.co.uk](mailto:catkins@maplesteesdale.co.uk))

**Requirements for contracts to be in writing** – contracts will no longer have to be in writing for part 2 of the Act to apply. Therefore the Act will apply to construction contracts made in writing, partly in writing and even to oral contracts. However, the Act still requires that some provisions regarding adjudication need to be made in writing.

**Interim Payments** - parties will no longer be able to agree in advance that interim certificates issued by a third party will be final and binding and thereby excluding the right to adjudicate.

**Payment notices** – withholding notices will be abolished. Instead, a payment notice must be issued by the payer or the payee. The notice must identify the sum the payer/payee considers due and the basis on which that sum was calculated. A payer is not obliged to serve a notice, but if he does not, the payee must serve a notice if he wishes to suspend performance and/or to enforce payment. If the payer intends to pay less than the amount stated to be due in a notice served by the payee, he must issue a notice stating the amount he intends to pay and the basis on which the sum is calculated.



**Payment by reference to other contracts** – at present the issuing of a certificate by a third party under a main contract is sufficient for determining when payment is due under a sub-contract. This is called a "pay-when-certified" clause and it has been problematic for sub-contractors. Under the draft bill this type of clause will be prevented.

**Suspension of performance for non-payment** – the bill clarifies the position that in the event of non-payment the contractor can suspend part but not necessarily all of its obligations. The party in default will also be obliged to pay the contractor's reasonable costs and expenses incurred in suspending the works (for example, redeploying staff). In addition, the period of suspension will not count towards any time period prescribed in the contract and therefore will act as an extension of time.

The proposed changes are intended to increase the transparency of information relating to payments and often favour the payee, in an effort to improve cash flow in the industry.

Consultation of the draft Bill has taken place and the Bill is now being prepared for Parliament. Concerns were raised about the draft bill during the consultation period and so it will have to be seen if and how the Bill changes as a result. We will keep you informed of developments.