

## Questions And Answers

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The countdown is on to big things happening in construction legislation soon - what can be done to get businesses ready in advance?

If the Government's target date of October 2011 is met, many familiar provisions of Part II of the Housing Grants, Construction & Regeneration Act 1996 will be swept away, when Part 8 of the Local Democracy, Economic Development & Construction Act 2009 is brought into force.

Important points for businesses to consider now are:

**All your construction contracts will need amended if you wish them to comply with the new legislation.** Industry bodies (SBCC, JCT and NEC) will be publishing updates to their standard forms - but any bespoke schedules of amendments/contracts you may use (eg. your own sub-contract Ts&Cs) will need revised and updated. Some changes to adjudication provisions will be necessary. The most significant changes relate to payment arrangements, being the subject of complex statutory provisions.

**You will have to change your procedures.** Payment procedures under the 1996 Act: the 'section 110' payment notice will disappear, as will withholding notices. Instead, either the payer or payee must issue payment notices. If the payer thinks a lesser amount is payable, the payer must serve a 'pay less' notice - failing which the notified sum will be payable.

**You will need to train your staff.** They need to be familiar with the new payment procedures and be ready to serve new forms of notice.

**Be aware that consequences of failure to serve the correct notices are more severe.** A payer failing to serve the correct notice could result in having to pay the payee whatever's claimed - even if you think the amount is excessive. If you are a payee and fail to promptly serve the correct notice, this could significantly delay payment to you.

**Be aware that consequences of non-payment are more severe.** The new legislation makes clear that if a notified sum is not properly paid, the unpaid party can suspend performance of any or all of its obligations and will have a statutory right to be paid its costs and expenses of doing so.

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