



## **“Construction Act 2008”**

### **What changes can we expect?**

The new Construction Act should proceed through Parliament and come into force during the summer of this year. But what changes will it bring? Those covering the following areas should be expected:

#### **Unwritten Rule**

Currently for a construction contract to fall under the remit of the Construction Act, it must be a written contract in terms of Section 107. That is likely to be swept away to extend adjudication to contracts which are not evidenced in writing. That may well reflect the all too common practice whereby a contract is not committed to writing (or not properly committed to writing) but it might be that this will produce new problems for parties, lawyers and adjudicators given that at the heart of resolving contractual disputes is the need to know and identify the full and proper extent of the rights and obligations under the terms of the contract. If that contract is in fact purely oral, or largely so, considerable further cost and time may be expended in sorting out that front end issue.

#### **Interim Payments**

Any attempts to provide that interim payments are final and conclusive and so outwith the remit of adjudication will be swept away. Such a change is clearly designed to support purposes of the Legislation.

#### **“Tolent Clauses”**

These are clauses which state that the referring party must pay both parties costs regardless of the outcome, thereby discouraging and potentially removing from a party with a claim the ability to actually take it to adjudication. Tolent Clauses are likely to be severely limited under the new legislation, again the main purpose being to ensure that the purposes of the adjudication process are not defeated in this way.



### Slip Rule

It is likely that the new Act will provide the adjudicator with a power to correct clerical or arithmetical errors for a short period of time after a decision has been made. The purpose of that is quite clear and again seems to represent a sensible amendment to the current rules.

*For any further information or advice on adjudication procedure or payment obligations under the Construction Act do not hesitate to contact a member of our [Construction and Projects team](#) on 0131 270 7700.*