



## The JCT Design and Build Contract 2024 – What’s New?

JCT has now published the long-awaited 2024 edition of the Design and Build Contract family. Keen to know what has changed? In this update, we summarise the key differences between the 2016 edition (“DB 2016”) and the 2024 edition (“DB 2024”) of the Design and Build Contract.

### Collaborative working

New Article 3 requires the parties to work in a cooperative and collaborative manner, in good faith and with a spirit of mutual trust and respect. This wording is in DB 2016 as an optional Supplemental Provision (although it was deemed included unless stated otherwise). By moving this requirement into the Articles, DB 2024 places greater importance on the parties’ behaviour. It also aligns the JCT drafting more with NEC4 contracts, which require parties to act in a spirit of mutual trust and cooperation.

### Building Regulations Part 2A

From 1 October 2023, Part 2A of the Building Regulations imposes requirements on those who procure, plan, manage and undertake building work in England, also known as dutyholders. As part of the new dutyholder regime, Employers must appoint a Principal Designer and Principal Contractor under the Building Regulations.

To cater for this new requirement, DB 2024 includes a new Article 7 for identifying the Principal Designer and Principal Contractor under Part 2A of the Building Regulations. Clause 3.16 now addresses compliance with both the CDM Regulations and Part 2A of the Building Regulations, requiring the Contractor to comply with regulations 11F, 11J, 11K and 11L, of Part 2A, together with regulation 11N if it is Principal Contractor. Clause 2.7.2 requires the Employer to provide the Contractor with “building information” in accordance with regulation 11A(4).

### Design responsibility and fitness for purpose

Clause 2.17.1 of DB 2016, which is often amended, has been significantly changed in DB 2024. The old

“same liability as would an architect” wording has been replaced with new wording requiring the Contractor to design the Works using the reasonable skill and care to be expected of a qualified and experienced architect.

There is also a new clause 2.17.1.2 which confirms that “*under no circumstances shall be Contractor be subject to any duty, obligation or liability which requires that any such design shall be fit for its purpose*”. This is likely to be a welcome change for Contractors. However, fitness for purpose is only excluded to the extent permitted by the Statutory Requirements, acknowledging Contractors’ statutory duties under the Defective Premises Act 1972.

### Site conditions risk

Clause 3.15, which in DB 2016 only covers fossils, antiquities and other objects of interest found on the site, now extends to the discovery of asbestos, contaminated material and unexploded ordnance.

The Relevant Event and Relevant Matter linked to clause 3.15 will allow the Contractor to claim an extension of time and loss and expense for these risks, except to the extent that the presence of asbestos or contamination is identified in the Contract Documents or if the Contractor brought such material onto the site.

### Extensions of time

New clause 2.24.4 gives the Employer 14 days to ask for further information about the Contractor’s extension of time claim. In clause 2.25.2, the time limit for making extension of time decisions has been reduced from 12 weeks to 8 weeks of the date of the claim being made. Notably, there is no sanction for the Employer failing to comply with either time limit, other than giving the Contractor clearer grounds to start an adjudication.

There is a new clause 2.26.7 Relevant Event for delays caused by epidemics which limit the availability or use of labour or prevent or delay the Contractor in securing materials or services necessary for the proper carrying out of the Works. In addition, DB 2016 clause 2.26.12 (exercise of statutory power) has been expanded to include changes in laws and the publication of guidance by the UK Government, any local or public

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# Construction Law Update

authority and the Construction Leadership Council. These new Relevant Events have clearly been introduced in response to the Covid-19 pandemic, though the term “epidemic” seems more generous to the Contractor than “pandemic”, with epidemics occurring on a smaller geographical scale.

The defined term “Statutory Undertaker” has been amended to refer to a **person**, rather than a local authority or statutory undertaker, carrying out work solely in pursuance of its statutory obligation. This seemingly wider wording may give improved grounds to claim for delays caused by Statutory Undertakers.

## Loss and expense

The new Relevant Events for epidemic and change of law or guidance or exercise of statutory power can also be Relevant Matters, but only if expressly stated in the Contract Particulars.

## Liquidated damages

New clause 2.29.5 provides that if the Contractor’s employment is terminated before practical completion, liquidated damages are not recoverable by the Employer post-termination. This change follows the Supreme Court’s judgment in *Triple Point Technology Inc v PTT Public Co Ltd* (2021), which confirmed that liquidated damages cease to accrue on termination.

## Sustainability and environment

New clause 2.1.5 encourages the Contractor to propose economically viable changes to improve the environmental performance and sustainability of the Works, and new clause 2.2.2 requires the Contractor to provide information about the environmental impact of materials and goods. These requirements are Supplemental Provisions in DB 2016.

## Language and communications

The Contract has been amended so that the Contractor and Employer are referred to as “it” rather than “he”.

Clause 1.7 has been amended to permit notices and communications to be sent by email, with space in the Contract Particulars for the parties’ email addresses to

be inserted. For those notices with special contractual significance (such as notice of termination), which in DB 2016 must be sent in hard copy, there is now the option to send by email, but only if specifically stated in the Contract Particulars.

## Termination

To reflect changes introduced by the Corporate Insolvency and Governance Act 2020 (“CIGA”), clause 8.1 contains a revised definition of “Insolvent”. However, there are no other changes to reflect CIGA. Notably, DB 2024 does not acknowledge section 233B of CIGA, which affects the Contractor’s contractual rights to terminate due to Employer insolvency.

There are also changes to the post-termination payment provisions, with a new defined term “Termination Payment” and a new clause 8.13 setting out a clearer payment mechanism which complies fully with the requirements of the Housing Grants, Construction and Regeneration Act 1996.

## Dispute resolution

A requirement for parties to negotiate to try and resolve disputes with each other now appears in clause 9.1 of DB 2024. This is another clause which is a Supplemental Provision in DB 2016.

## Analysis

Whilst DB 2024 brings the JCT form up to date with current law and industry trends, the new edition is far from a complete re-draft and is better described as a light-touch update. Contractors will no doubt be pleased by these changes, which are largely in their favour, though whether Employers will look to remove some of these new protections via bespoke amendments remains to be seen.

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