New Pre-action Protocol for Construction and Engineering Disputes now in force


Last week, we reported that a ‘New’ Pre action Protocol for Construction and Engineering Disputes (“New Protocol”) was expected to come into force on 9 November 2016 (see article here). Despite a short delay, the Master of the Rolls approved the New Protocol which came into force on 14 November 2016.

As reported in our article last week, several changes have been introduced into the New Protocol to meet the New Protocol’s objective – not only to put parties in a position where they will be able to settle cases early and fairly, but also ‘inexpensively’.

Whilst no express transition period has been published, it is our understanding that the New Protocol applies to all proceedings issued on or after 14 November 2016. Any proceedings commenced before 14 November 2016 will be subject to the previous edition of the Pre-action Protocol for Construction and Engineering Disputes.

Key changes made to the New Protocol include that:

- parties can now agree to contract out of the New Protocol;
- a new Protocol Referee Procedure has been introduced to oversee compliance with the New Protocol;
- cost sanctions will only be imposed for flagrant or significant breach; and
- the New Protocol is shorter and intended to be less expensive for parties to implement (with greater emphasis on proportionality).

For further details of the changes, please see our article here.

Copies of the New Protocol and accompanying Protocol Referee Procedure can be obtained on the TeCSA website, using the following link.

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