

Key Legal and Industry Changes in 2026

The construction sector showed greater stability last year, yet 2025 still delivered notable industry and legal changes. New case law, technical developments and shifting market trends mean that construction companies and professionals must stay alert to ensure compliance and maintain a competitive edge. The recent changes may also inform tendering strategies, contract drafting, and project administration. In this section, we outline key updates from the past year and practical steps to prepare for the year ahead.

KEY CONTRACTUAL DRAFTING CONSIDERATIONS

2025 saw several developments worth understanding and addressing in contracts, including:

Embedding the Procurement Act 2023 (PA 2023)

Public sector bodies and supply chains are still adapting to the PA 2023, in force from 24 February 2025. Understanding the practical impact of the new regime remains essential. For further insights, please refer to our [PA 2023 guide](#) and our [summary](#) of the key changes. Specific points to note and manage under the PA 2023 include:

- **Payment terms:** sums due under a “public contract” and “public subcontract” must now be paid before the end of a maximum period of 30 days, beginning:
 - the day on which an invoice is received by the contracting authority in respect of that sum; or
 - if later, the day on which the payment falls due in accordance with the invoice.

This overrides any contract term seeking to supersede or restrict this deadline. More information can be found [here](#).

- **Debarment:** contracting authorities have automatic termination rights where exclusion grounds arise. The PA 2023 expanded the mandatory and discretionary exclusion grounds to include economic crime (i.e. fraud), contract breaches, poor contract performance, and competition-law violations. Misconduct by parent entities, subsidiaries, or subcontractors can also trigger exclusion. More information can be found [here](#).
- **Subcontracts:** adopting tailored, public sector-specific terms reflecting the PA 2023 will support compliance (e.g. with the mandatory payment terms) and provide protection in the event of breach or potential debarment within a supply chain. Suppliers should therefore seek to include appropriate contractual provisions in their subcontracts.

Duty to Prevent Fraud

The Economic Crime and Corporate Transparency Act 2023 introduced a new failure to prevent fraud offence, effective from 1 September 2025 (applicable to large companies). This makes organisations responsible and potentially criminally liable for fraud committed by associated persons, regardless of senior management knowledge or involvement. Companies are well advised to strengthen their due diligence processes for potential business partners, suppliers, and subcontractors. This is particularly important on complex projects where the risks may be less visible due to the overall contracting structure. More information can be found [here](#).

Tax Default/Evasion

A business can also be prosecuted under the Criminal Finances Act 2017 for failing to prevent the facilitation of tax evasion. An updated HMRC Guidance note on this provides recommendations and underlines that a potential defence to this is where the company can demonstrate that it has in place “*prevention procedures as it was reasonable in all the circumstances to expect the business to have in place*”¹. There are clear commercial and reputational issues for non-compliance, so it is prudent to adopt appropriate policies and to include provisions to deal with this in subcontracts.

New Architects Registration Board (ARB) Code

The ARB published a substantially revised version of the Architects Code of Conduct and Practice, in force from 1 September 2025. Architects should consider the Standards under the 2025 Code and take steps to embed the core principles into their internal procedures and future contractual arrangements. More information can be found [here](#).

DIGITAL AND ARTIFICIAL INTELLIGENCE (AI) PROVISIONS

The sector is increasingly adopting digital tools and AI across design, construction, and health and safety, with recent industry reports such as the [NBS Digital Construction Report 2025](#) (covered in our [update](#)) and the RIBA AI Report 2025 (covered [here](#)) indicating widespread use cases. As digital usage increases, organisations must strengthen governance/policies, oversight, and staff training. Certain procurement processes, particularly in the public sector, now require disclosure of digital tools and AI to ensure transparency². Professionals must also comply with contractual provisions relating to cyber and data security, professional membership rules (i.e. RICS requires specific terms in fee proposals and contracts, considered [here](#)), and government or industry guidance. More information can be found [here](#).

From a legal and contractual perspective, traditional contracts in the construction industry often lack suitable provisions for digital and AI-enabled work. Contract terms and commercial models may therefore need adjustments to address the use of digital tools or AI and compliance with policies; allocation of liability; requirements for maintenance, updates, and training; intellectual property rights; data protection, cybersecurity, and data governance; and arrangements with third-party digital providers (e.g., software as a service contracts). The specific terms will depend on the project scope and deliverables, risk profile, and commercial structure.

THE EVOLVING LANDSCAPE OF BUILDING SAFETY AND ASSOCIATED PROVISIONS

The sector is still adapting to building safety requirements and whilst there are signs of progress, delays in the relevant gateway processes continue to affect projects. Our earlier [articles](#) highlight that clear contractual protections remain essential, particularly around change in law and precise allocation of responsibilities and risks arising from building safety legislation or project delays. Contractors and consultants should treat onerous provisions going beyond the statutory position with caution and assess these carefully against their professional duties and insurance coverage. The competency of subcontractors should also be managed.

OTHER KEY 2025 CASE LAW AND DRAFTING POINTS

Several high-profile construction cases reiterate the importance of clear and precise contract drafting.

¹ECSH24000 - Criminal Finances Act 2017 - HMRC internal manual - GOV.UK, updated 26 January 2026 / [Help with labour supply chain assurance — GfC12 - Guidance - GOV.UK](#), updated 16 January 2025 (see 'The contractual process and recommended steps to take')

²PPN 02/24 Improving Transparency of AI use in Procurement, Cabinet Office, dated 25 March 2024

Clear Terms on Scope and Risk Allocation

All agreed terms, including scope, clarifications and requirements, must be included in the final contract. In [John Sisk and Son Ltd v Capital & Centric \(Rose\) Ltd](#) [2025] EWHC 594 (TCC) the court held that the contract transferred the risk concerning unsuitability of existing structures to the Employer. The tender clarifications did not override the express wording used.

Conditions Precedent

Clear, accurate and explicit wording should be used for condition precedent clauses, together with the inclusion of details on how the requirements should be followed and any applicable consequences. The decision in [Disclosure and Barring Service v Tata Consultancy Services Limited](#) [2025] EWCA Civ 380 demonstrated the importance of reviewing such clauses in detail and in ensuring these operate as intended by the parties. More information can be found [here](#).

Collateral Warranties

If there is intent to limit liability under contracts (including in line with that owed to an employer client), it is crucial to include a clear and properly drafted equivalent rights and defences clause and/or a no greater or longer liability clause to this effect. The scope and effect of an equivalent rights of defence clause was explored in the Scottish decision of [Legal and General Assurance \(Pensions Management\) Ltd v The Firm of Halliday Fraser Munro and others](#) [2025] CSIH 24. The outcome confirms that courts will seek to apply the precise wording used.

Contractual Adjudication Rights

A collateral warranty will only be recognised as a construction contract for the purpose of the Construction Act (and adjudication) if it includes an obligation “distinct and separate from” those in the underlying contract. [Abbey Healthcare \(Mill Hill\) Ltd v Augusta 2008 LLP \(formerly Simply Construct \(UK\) LLP\)](#) [2024] UKSC 23 (summarised [here](#)) resulted in requests for expanded contractual adjudication rights in collateral warranties, third party rights schedules or other documents (like parent company guarantees). This approach will not be appropriate in most cases, so should be carefully considered if proposed. Other onerous terms in a collateral warranty, or provisions which conflict with the underlying contract, should also be resisted.

Termination Grounds for Non-Payment (Repeated Specified Default)

any contractual right to terminate for non-payment should be clearly drafted and then followed, as demonstrated by [Providence Building Services v Hexagon](#) [2026] UKSC 1. Further details can be found [here](#). Consider alternative contractual protections such as payment periods and suspension and ensure that associated notice provisions are adhered to.

The Arbitration Act 2025

Amendments to the Arbitration Act 1996 came into force in August 2025. Unless parties expressly agree otherwise, arbitration will now be governed by the law of the seat of the arbitration (i.e., the jurisdiction where the arbitration takes place). Parties should review their contracts to understand the dispute resolution procedure and whether any adjustment is required in view of the change to the earlier default position on this. More information can be found [here](#).

OTHER COMMERCIAL CONSIDERATIONS

Due Diligence and Insolvency Provisions

The risk of volatility in global markets and supply chain conditions means robust due diligence remains essential. Parties should assess all project participants and stakeholders carefully and ensure contracts include appropriate security and risk mitigation provisions, particularly around delay, disruption and insolvency.

Commercial Risks

The impact of commercial risks arising from rising costs, inflation, global tariffs, and evolving payment practices, including related reporting obligations, should continue to be factored into project planning and risk management.

Payments and Company Reporting

The Companies (Directors' Report) (Payment Reporting) Regulations 2025 came into effect on 1 January 2026 and requires large companies to include certain information about their payment practices and performance within their directors' reports. This data will also be published on a government portal, enabling prospective suppliers to review the company's approach to payment, including average payment times and the proportion of invoices paid late. This aims to address poor payment practices and improve cash flow given the impact this has on business.

NEW INDUSTRY STANDARD CONTRACTS IN 2025

Last year saw the publication of the JCT Target Cost Contract 2024 Edition, the JCT's first mainstream target-cost offering in its suite (outside the Constructing Excellence form) and a clear reflection of evolving UK construction trends. Find our updates on the JCT 2024 suite [here](#) (JCT TCC 2024) and [here](#) (JCT D&B 2024).

KEY TAKEAWAYS

2025 saw significant legal, commercial and technical developments across the construction sector which are likely to be reflected in tender documents, contract drafting and negotiation, and project delivery. Construction companies and professionals should focus on robust contract documentation, management of payment and notice procedures, and proactive legal and regulatory compliance. Existing precedents and standard forms should be reviewed in light of these changes.

Looking ahead, there is opportunity driven by the government's infrastructure, energy and transport agenda. Forthcoming legislative changes expected in 2026 should also be monitored. Part two of our report will explore key developments on the horizon and how to prepare for them in your contracts and appointments.

GET IN TOUCH

Beale & Co advises clients across the full project lifecycle. Our Contracts and Project Advisory Team support clients in navigating these developments and ensuring their contracts and appointments remain compliant, robust and effective. For support in considering and implementing the above, please contact Andrew Croft.



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³[Guidance to reporting on payment data in directors' reports - GOV.UK](#), dated 30 December 2025