

## CAPITAL & ASSET MANAGEMENT BUILDING CONTRACT DIRECTIVE

DATE: January 2013

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### HUMAN RIGHTS ACT 1998 & CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

#### REFERENCE

1. **Human Rights Act 1998**

The above act came into force on 2<sup>nd</sup> October 2000, and is retrospective for a period of 12 months. From this date Human Rights issues will be dealt with initially by the UK Courts and not by the European Courts.

Until case law starts to develop implications of the Act upon building contracts and related matters will remain uncertain. In the meantime, the following wording has been agreed for inclusion in all contracts entered into by the Council:

***“The contractor shall not***

***Do or permit or allow to be done by act or thing or omission in connection with this contract which would either cause or give proper grounds for an action to be brought against the Council under Section 7 of the Human Rights Act 1998 or any amendment or re-enactment of that Act or***

***Give grounds for a person to rely upon such act or thing or omission on the part of the contractor in his defence in any proceedings brought against a third party by the Council.”***

ICD 11  
cl 2.1C.1,  
IC 11  
cl 2.1C.1,  
MW 11  
cl 2.1.7.1,  
DB 11  
cl 2.1.7.1  
SBC(Q) 11  
cl 2.1C.1  
SBC 11  
Cl 2.1C.1

ICD 11  
cl 2.1C.2,  
IC 11  
cl 2.1C.2,  
MW 11  
cl 2.1.7.2,  
DB 11  
cl 2.1.7.2  
SBC(Q) 11  
cl 2.1C.2  
SBC 11  
cl 2.1C.2

2. **Contracts (Rights of Third Parties) Act 1999**

The JCT 2011 family of contracts now have amendments issued which provide clauses that specifically exclude provisions of the above Act. Exclusion of its provisions is specifically permissible under wording within the Act, which otherwise without reference automatically apply.

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NOTE:

**THIS DIRECTIVE IS APPLICABLE TO THE MAJORITY OF SCHEMES BUT IT WILL NOT NECESSARILY BE APPROPRIATE TO ALL WORKS AND THEREFORE ON EACH SCHEME IT WILL BE NECESSARY TO CHECK THE SPECIFIC REQUIREMENTS.**

The JCT wording is acceptable to the Council, and therefore for works carried out using these forms and incorporating this amendment, no further action is required.

Other bodies that issue standard forms of contract have in most instances inserted similar amendments, which specifically exclude the provisions of the Act. However should unusual circumstances arise it needs to be verified whether an acceptable exclusion clause exists in the contract being used. Where this is not the case, the following wording should be inserted:

***“Nothing in this agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this contract, pursuant to the Contracts (Rights of Third Parties) Act 1999.”***

**CONCLUSION**