



Construction January 2021

Welcome to the Winter 2021 edition of our quarterly Construction e-bulletin. May I take the opportunity to wish you happy new year. Whilst it doesn't seem like a lot has changed since last spring and in some respects it may seem worse, there are more vaccines coming through and so we hope this will give some light at the end of the tunnel.

Unsurprisingly, issues coming out of the pandemic remain topical particularly when looking at how documents can be signed remotely and considering the impact on construction contracts. Adjudication remains the forum of choice for resolving construction disputes and we have been running a Q&A blog series on adjudication. We have included one of our latest blogs from this series in this bulletin and you can access all previous blogs in the series from this link.

We hope that this bulletin will continue to keep you updated with issues affecting the construction industry and changes in law as they happen. In the meantime, stay safe and if there are any issues you would like to see covered in future editions or wish to discuss anything relating to the issues covered in this edition please do not hesitate to contact me or one of our construction team.

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If you want to omit make sure the contractual glove fits - the importance of clear drafting

When works are omitted they are essentially de-scoped from



the contract. The contractual right to omit works gives some flexibility over the scope of the works.

It has long been established that where a party to a construction contract omits work under the contract to give to another party this will in most circumstances constitute a breach of contract. The Court of Session has recently had to consider the issue of omitted works under an NEC3 contract. This is novel in itself as there are not many legal authorities relating to the NEC form of Contract.

Author: Julie Scott-Gilroy

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Covid-19's impact on construction contracts going forwards - a drafter's perspective

The practical implications of Covid-19 for the construction industry, and the impact of lockdown on live projects, has been considered by my colleague Sandra Cassels in her article "What next for Covid-19's impact on construction contracts".

As we all adapt our lives to the new normal, from a drafter's perspective, this is the time to look at the contracts that we are drafting now to ensure that we adapt them too.

Author: Caroline Earnshaw

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The Reliability of Witness Evidence



As commercial contract lawyers we spend a lot of time discussing the interpretation of written contracts. What we spend less time doing is discussing the difficulties that arise if parties decide not to put their contracts in writing at all.

It is unusual if there are no relevant documents. Typically, even if there is no detailed contract, there are usually purchase orders, invoices and emails between the parties which can be spoken to by witnesses. Pinning your hopes on witness evidence, however, is problematic.

Author: Richard McMeeken

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Electronic Signatures in Scotland

We have had a number of clients enquire about the possibility of signing documents electronically. We have therefore put together a quick guide to digital signatures and when these may, or may not, be suitable for use in Scotland, to answer some of the more frequently asked questions.

Author: Alexandru Iliescu

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What happens if I am unhappy with an adjudicator's decision?



When a party is unhappy with an adjudicator's decision they really have two options:

1. Challenge Enforcement of an Adjudicator's Decision - When a Decision is issued, if the paying party does not pay, then enforcement proceedings require to be raised. These proceedings will be in court. If the court enforces the decision then the paying party will require to make payment. If the court does not enforce the decision, the decision will become void.
2. Final Determination - when either party are unhappy with the decision, and there are no grounds to challenge enforcement the only option is to seek to have the matter finally determined by the court (or if the contract provides, arbitration).

Author: Julie Scott-Gilroy

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Five litigation trends which might come out of 2021

We all know 2020 made an impact – and as we look at the year ahead, there are a few repercussions of the incredible strain placed on businesses that are likely to come into the limelight as a result. While there are some global trends in litigation – like litigation funding and class actions - some Scotland specific trends are also worth highlighting. With that in mind, here are the five key things for litigators to watch in the year ahead:

- 1) Frustration and leases in Scots law
- 2) Insolvencies once government support for business ends
- 3) Success Fees in Scotland
- 4) Prescription of Claims
- 5) The UK's Judicial Review and its constitutional implications

Article by Richard McMeeken, click [here](#) to read more.

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