

AMENDMENTS TO THE HOUSING  
GRANTS, CONSTRUCTION AND  
REGENERATION ACT 1996  
AND THE AMENDMENTS TO THE  
CONSTRUCTION SCHEME

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# AMENDMENTS TO THE ACT

## PART II OF THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 AS AMENDED BY:

1. The Enterprise Act 2002 (Insolvency) Order 2003 (Statutory Instrument 2003 No. 2096)
2. The Communications Act 2003 (Schedule 17, paragraph 137, (Commencement Order No. 1) Order 2003)
3. Part 8 of the Local Democracy, Economic Development and Construction Act 2009.

## CAUTION

The Government website version of the Act does not include the amendments brought about by the Enterprise Act or the Communications Act.

# SECTION 104 CONSTRUCTION CONTRACTS

No change to definition of “construction contract” (which includes construction operations).

# SECTION 105 MEANING OF "CONSTRUCTION OPERATIONS"

(1) In this Part "construction operations" means, subject as follows, operations of any of the following descriptions:

- a) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings, or structures forming, or to form, part of the land (whether permanent or not);
  
- b) construction, alteration, repair, maintenance, extension, demolition or dismantling of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, road works, power-lines, **electronic communications apparatus**, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

[the words "electronic communications apparatus" replace "telecommunications apparatus" by virtue of the Communications Act amendment]

# SECTION 105 MEANING OF "CONSTRUCTION OPERATIONS"

- c) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or security or communications systems;
- d) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
- e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works;
- f) painting or decorating the internal or external surfaces of any building or structure.

# SECTION 105 MEANING OF "CONSTRUCTION OPERATIONS"

- (2) [Definition of operations which are not construction operations – no change]

# SECTION 106 PROVISIONS NOT APPLICABLE TO CONTRACT WITH RESIDENTIAL OCCUPIER

(1) This Part does not apply-

(a) to a construction contract with a residential occupier (see below),

[sub-section (b) (Secretary of State's power to add to list of non-applicability deleted)]

(2) [Definition of dwelling, flat etc - no change]

# SECTION 106A POWER TO DISAPPLY PROVISIONS OF THIS PART

- (1) The Secretary of State may by order provide that any or all of the provisions of this Part, so far as extending to England and Wales, shall not apply to any description of construction contract relating to the carrying out of construction operations (not being operations in Wales) which is specified in the order.
- (2) The Welsh Ministers may by order provide that any or all of the provisions of this Part, so far as extending to England and Wales, shall not apply to any description of construction contract relating to the carrying out of construction operations in Wales which is specified in the order.



# SECTION 106A POWER TO DISAPPLY PROVISIONS OF THIS PART

- (3) The Scottish Ministers may by order provide that any or all of the provisions of this Part, so far as extending to Scotland, shall not apply to any description of construction contract which is specified in the order.
- (4) An order under this section shall not be made unless a draft of it has been laid before and approved by resolution of –
  - (a) in the case of an order under subsection (1), each House of Parliament;
  - (b) in the case of an order under subsection (2), the National Assembly for Wales;
  - (c) in the case of an order under subsection (3), the Scottish Parliament.

**[Section 107 – provisions applicable to contracts in writing – deleted]**

# SECTION 108 RIGHT TO REFER DISPUTES TO ADJUDICATION

- (1) A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section.

For this purpose “dispute” includes any difference.

# SECTION 108 RIGHT TO REFER DISPUTES TO ADJUDICATION

- (2) The contract shall **include provision in writing so as to** –
- (a) enable a party to give notice at any time of his intention to refer a dispute to adjudication;
  - (b) provide a timetable with the object of securing the appointment of the adjudicator and referral of the dispute to him within 7 days of such notice;
  - (c) require the adjudicator to reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred;
  - (d) allow the adjudicator to extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred;
  - (e) impose a duty on the adjudicator to act impartially; and
  - (f) enable the adjudicator to take the initiative in ascertaining the facts and the law.

## SECTION 108 RIGHT TO REFER DISPUTES TO ADJUDICATION

- (3) The contract shall provide **in writing** that the decision of the adjudicator is binding until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement. The parties may agree to accept the decision of the adjudicator as finally determining the dispute.
- (3A) The contract shall include provision in writing permitting the adjudicator to correct his decision so as to remove a clerical or typographical error arising by accident or omission.**

# SECTION 108 RIGHT TO REFER DISPUTES TO ADJUDICATION

- (4) The contract shall also provide in writing that the adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and that any employee or agent of the adjudicator is similarly protected from liability.
  
- (5) If the contract does not comply with the requirements of subsections (1) to (4), the adjudication provisions of the Scheme for Construction Contracts apply.

# SECTION 108 RIGHT TO REFER DISPUTES TO ADJUDICATION

- (6) For England and Wales, the Scheme may apply the provisions of the [1996 c. 23.] Arbitration Act 1996 with such adaptations and modifications as appear to the Minister making the scheme to be appropriate.

For Scotland, the Scheme may include provision conferring powers on courts in relation to adjudication and provision relating to the enforcement of the adjudicator's decision.

## SECTION 108A ADJUDICATION COSTS: EFFECTIVENESS OF PROVISION

- (1) This section applies in relation to any contractual provision made between the parties to a construction contract which concerns the allocation as between those parties of costs relating to the adjudication of a dispute arising under the construction contract.
- (2) The contractual provision referred to in subsection (1) is ineffective unless –
  - (a) it is made in writing, is contained in the construction contract and confers power on the adjudicator to allocate his fees and expenses as between the parties, or
  - (b) it is made in writing after the giving of notice of intention to refer the dispute to adjudication.



**[Section 109 – Entitlements to stage payments – no change]**

## SECTION 110 DATES FOR PAYMENT

- (1) Every construction contract shall-
  - (a) provide an adequate mechanism for determining what payments become due under the contract, and when, and
  - (b) provide for a final date for payment in relation to any sum which becomes due.

The parties are free to agree how long the period is to be between the date on which a sum becomes due and the final date for payment.

## SECTION 110 DATES FOR PAYMENT

(1A) The requirement in subsection (1)(a) to provide an adequate mechanism for determining what payments become due under the contract, or when, is not satisfied where a construction contract makes payment conditional on –

- (a) the performance of obligations under another contract, or
- (b) a decision by any person as to whether obligations under another contract have been performed.

## SECTION 110 DATES FOR PAYMENT

(1B) In subsection (1A)(a) and (b) the references to obligations do not include obligations to make payments (but see section 113).

(1C) Subsection (1A) does not apply where –

- (a) the construction contract is an agreement between the parties for the carrying out of construction operations by another person, whether under sub-contract or otherwise, and
- (b) the obligations referred to in that subsection are obligations on that other person to carry out those operations.

## SECTION 110 DATES FOR PAYMENT

(1D) The requirement in subsection (1)(a) to provide an adequate mechanism for determining when payments become due under the contract is not satisfied where a construction contract provides for the date on which a payment becomes due to be determined by reference to the giving to the person to whom the payment is due of a notice which relates to what payments are due under the contract.

## SECTION 110 DATES FOR PAYMENT

**[Sub-section (2) – Giving notice of payment – deleted]**

- (3) If or to the extent that a contract does not contain such provision as is mentioned in subsection (1), the relevant provisions of the Scheme for Construction Contracts apply.

# SECTION 110A PAYMENT NOTICES: CONTRACTUAL REQUIREMENTS

- (1) A construction contract shall, in relation to every payment provided for by the contract-
  - (a) require the payer or a specified person to give a notice complying with subsection (2) to the payee not later than five days after the payment due date, or
  - (b) require the payee to give a notice complying with subsection (3) to the payer or a specified person not later than five days after the payment due date.

# SECTION 110A PAYMENT NOTICES: CONTRACTUAL REQUIREMENTS

- (2) A notice complies with this subsection if it specifies-
  - (a) in a case where the notice is given by the payer-
    - (i) the sum that the payer considers to be or to have been due at the payment due date in respect of the payment, and
    - (ii) the basis on which that sum is calculated;
  - (b) in a case where the notice is given by a specified person-
    - (i) the sum that the payer or the specified person considers to be or to have been due at the payment due date in respect of the payment, and
    - (ii) the basis on which that sum is calculated.



# SECTION 110A PAYMENT NOTICES: CONTRACTUAL REQUIREMENTS

- (3) A notice complies with this subsection if it specifies-
  - (a) the sum that the payee considers to be or to have been due at the payment due date in respect of the payment, and
  - (b) the basis on which that sum is calculated.
- (4) For the purposes of this section, it is immaterial that the sum referred to in subsection (2)(a) or (b) or (3)(a) may be zero.
- (5) If or to the extent that a contract does not comply with subsection (1), the relevant provisions of the Scheme for Construction Contracts apply.

# SECTION 110A PAYMENT NOTICES: CONTRACTUAL REQUIREMENTS

(6) In this and the following sections, in relation to any payment provided for by a construction contract-

“payee” means the person to whom the payment is due;

“payer” means the person from whom the payment is due;

“payment due date” means the date provided for by the contract as the date on which the payment is due;

“specified person” means a person specified in or determined in accordance with the provisions of the contract.

## SECTION 110B PAYMENT NOTICES: PAYEE'S NOTICE IN DEFAULT OF PAYER'S NOTICE

- (1) This section applies in a case where, in relation to any payment provided for by a construction contract-
  - (a) the contract requires the payer or a specified person to give the payee a notice complying with section 110A(2) not later than five days after the payment due date, but
  - (b) notice is not given as so required.

## SECTION 110B PAYMENT NOTICES: PAYEE'S NOTICE IN DEFAULT OF PAYER'S NOTICE

- (2) Subject to subsection (4), the payee may give to the payer a notice complying with section 110A(3) at any time after the date on which the notice referred to in subsection (1)(a) was required by the contract to be given.
- (3) Where pursuant to subsection (2) the payee gives a notice complying with section 110A(3), the final date for payment of the sum specified in the notice shall for all purposes be regarded as postponed by the same number of days as the number of days after the date referred to in subsection (2) that the notice was given.

# SECTION 110B PAYMENT NOTICES: PAYEE'S NOTICE IN DEFAULT OF PAYER'S NOTICE

(4) If-

- (a) the contract permits or requires the payee, before the date on which the notice referred to in subsection (1)(a) is required by the contract to be given, to notify the payer or a specified person of-
  - (i) the sum that the payee considers will become due on the payment due date in respect of the payment, and
  - (ii) the basis on which that sum is calculated, and
- (b) the payee gives such notification in accordance with the contract, that notification is to be regarded as a notice complying with section 110A(3) given pursuant to subsection (2) (and the payee may not give another such notice pursuant to that subsection).

# SECTION 111 REQUIREMENT TO PAY NOTIFIED SUM

- (1) Subject as follows, where a payment is provided for by a construction contract, the payer must pay the notified sum (to the extent not already paid) on or before the final date for payment.
- (2) For the purposes of this section, the “notified sum” in relation to any payment provided for by a construction contract means-
  - (a) in a case where a notice complying with section 110A(2) has been given pursuant to and in accordance with a requirement of the contract, the amount specified in that notice;
  - (b) in a case where a notice complying with section 110A(3) has been given pursuant to and in accordance with a requirement of the contract, the amount specified in that notice;
  - (c) in a case where a notice complying with section 110A(3) has been given pursuant to and in accordance with section 110B(2), the amount specified in that notice.

# SECTION 111 REQUIREMENT TO PAY NOTIFIED SUM

- (3) The payer or a specified person may in accordance with this section give to the payee a notice of the payer's intention to pay less than the notified sum.
- (4) A notice under subsection (3) must specify-
  - (a) the sum that the payer considers to be due on the date the notice is served, and
  - (b) the basis on which that sum is calculated.

It is immaterial for the purposes of this subsection that the sum referred to in paragraph (a) or (b) may be zero.

- (5) A notice under subsection (3) –
  - (a) must be given not later than the prescribed period before the final date for payment, and
  - (b) in a case referred to in subsection (2)(b) or (c), may not be given before the notice by reference to which the notified sum is determined.

# SECTION 111 REQUIREMENT TO PAY NOTIFIED SUM

- (6) Where a notice is given under subsection (3), subsection (1) applies only in respect of the sum specified pursuant to subsection (4)(a).
- (7) In subsection (5), “prescribed period” means –
  - (a) such period as the parties may agree, or
  - (b) in the absence of such agreement, the period provided by the Scheme for Construction Contracts.
- (8) Subsection (9) applies where in respect of a payment-
  - (a) a notice complying with section 110A(2) has been given pursuant to and in accordance with a requirement of the contract (and no notice under subsection (3) is given), or
  - (b) a notice under subsection (3) is given in accordance with this section,but on the matter being referred to adjudication the adjudicator decides that more than the sum specified in the notice should be paid.



# SECTION 111 REQUIREMENT TO PAY NOTIFIED SUM

- (9) In a case where this subsection applies, the decision of the adjudicator referred to in subsection (8) shall be construed as requiring payment of the additional amount not later than-
- (a) seven days from the date of the decision, or
  - (b) the date which apart from the notice would have been the final date for payment,
- whichever is the later.
- (10) Subsection (1) does not apply in relation to a payment provided for by a construction contract where –
- (a) the contract provides that, if the payee becomes insolvent the payer need not pay any sum due in respect of the payment, and
  - (b) the payee has become insolvent after the prescribed period referred to in subsection (5)(a).
- (11) Subsections (2) to (5) of section 113 apply for the purposes of subsection (10) of this section as they apply for the purposes of that section.

## SECTION 112 RIGHT TO SUSPEND PERFORMANCE FOR NON-PAYMENT

- (1) Where the requirement in section 111(1) applies in relation to any sum but is not complied with, the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of any or all of his obligations under the contract to the party by whom payment ought to have been made (“the party in default”).
- (2) The right may not be exercised without first giving to the party in default at least seven days’ notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.

## SECTION 112 RIGHT TO SUSPEND PERFORMANCE FOR NON-PAYMENT

- (3) The right to suspend performance ceases when the party in default makes payment in full of **the sum referred to in subsection (1)**.
  
- (3A) Where the right conferred by this section is exercised, the party in default shall be liable to pay to the party exercising the right a reasonable amount in respect of costs and expenses reasonably incurred by that party as a result of the exercise of the right.

## SECTION 112 RIGHT TO SUSPEND PERFORMANCE FOR NON-PAYMENT

- (4) Any period during which performance is suspended in pursuance of, **or in consequence of the exercise of**, the right conferred by this section shall be disregarded in computing for the purposes of any contractual time limit the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right.

Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

# SECTION 113 PROHIBITION OF CONDITIONAL PAYMENT PROVISIONS

- (1) A provision making payment under a construction contract conditional on the payer receiving payment from a third person is ineffective, unless that third person, or any other person payment by whom is under the contract (directly or indirectly) a condition of payment by that third person, is insolvent.
  
- (2) For the purposes of this section a company becomes insolvent-
  - (a) when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986

**[113 (2)(a) is an amendment introduced by the Enterprise Act Insolvency Order]**

# SECTION 113 PROHIBITION OF CONDITIONAL PAYMENT PROVISIONS

- (3) For the purposes of this section a partnership becomes insolvent-
  - (a) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act, or
  - (b) when sequestration is awarded on the estate of the partnership under section 12 of the [1985 c. 66.] Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- (4) For the purposes of this section an individual becomes insolvent-
  - (a) on the making of a bankruptcy order against him under Part IX of the [1986 c. 45.] Insolvency Act 1986, or
  - (b) on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

## SECTION 113 PROHIBITION OF CONDITIONAL PAYMENT PROVISIONS

- (5) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in subsection (2), (3) or (4) under the law of Northern Ireland or of a country outside the United Kingdom.
- (6) Where a provision is rendered ineffective by subsection (1), the parties are free to agree other terms for payment.

In the absence of such agreement, the relevant provisions of the Scheme for Construction Contracts apply.

**114 The Scheme for Construction Contracts  
– no change**

**115 Service of notices, & c – no change**

**116 Reckoning periods of time – no change**

**117 Crown application – no change**

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Wales has its own order implementing most of the above changes from 1 October 2011.

The Construction Contracts Exclusion Orders of 1998 and 2011 should also be referred to if the construction contract is a private finance initiative contract, section 106 planning application, section 104 of the Water Industry Act or sections 38 or 278 of the High Ways Act.

# AMENDMENTS TO THE SCHEME

The Scheme for Construction Contracts  
(England and Wales) Regulations 1998

as amended by

The Scheme for Construction Contracts (England  
and Wales) Regulations 1998 (Amendment)  
(England) Regulations 2011

# CITATION, COMMENCEMENT, APPLICATION AND INTERPRETATION

1. *[Applicability of Scheme – no change]*

# **SCHEDULE**

**Regulations 2, 3 and 4**

**THE SCHEME FOR CONSTRUCTION CONTRACTS**

**PART 1**

**ADJUDICATION**

# NOTICE OF INTENTION TO SEEK ADJUDICATION

1. – (1) Any party to a construction contract (the “referring party”) may give written notice (the “notice of adjudication”) **at any time** of his intention to refer any dispute arising under the contract, to adjudication.
  - (2) The notice of adjudication shall be given to every other party to the contract.
1. – (3) *[Contents of Notice of Adjudication - No change]*
2. – *[provisions for appointment of adjudicator etc unchanged]*
3. The request referred to in paragraphs 2, 5 and 6 shall be accompanied by a copy of the notice of adjudication.

# NOTICE OF INTENTION TO SEEK ADJUDICATION

4. *[Adjudicator to be a natural person – no change]*
- 5.- *[provisions concerning the nominating body and timing of nomination and acceptance of nomination etc no change]*
- 6.– *[provisions concerning unwilling/unable adjudicators etc no change]*
- 7.– *[Referral Notice requirements no change]*
- 7.– (3) The referring party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs (1) and (2), send copies of those documents to every other party to the dispute.  
  
**Upon receipt of the referral notice, the adjudicator must inform every party to the dispute of the date that it was received.**
8. – *[provisions concerning resolution of more than one dispute etc no change]*

# NOTICE OF INTENTION TO SEEK ADJUDICATION

- 9.– (1) An adjudicator may resign at any time on giving notice in writing to the parties to the dispute.
- (2) An adjudicator must resign where the dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
9. (3) Where an adjudicator ceases to act under paragraph 9(1) –
  - (a) the referring party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
  - (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the parties shall supply him with copies of all documents which they made available to the previous adjudicator.

# NOTICE OF INTENTION TO SEEK ADJUDICATION

- 9.– (4) Where an adjudicator resigns in the circumstances referred to in paragraph (2), or where a dispute varies significantly from the dispute referred to him in the referral notice and for that reason he is not competent to decide it, the adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. **Subject to any contractual provision pursuant to section 108A(2) of the Act, the adjudicator may determine how the payment is to be apportioned and the parties** are jointly and severally liable for any sum which remains outstanding following the making of any **such** determination.
10. *[objection to appointment of particular adjudicator unchanged]*



# NOTICE OF INTENTION TO SEEK ADJUDICATION

- 11.– (1) The parties to a dispute may at any time agree to revoke the appointment of the adjudicator. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him. **Subject to any contractual provision pursuant to section 108A(2) of the Act, the adjudicator may determine how the payment is to be apportioned and the parties are jointly and severally liable for any sum which remains outstanding following the making of any such determination.**
- 11.– (2) Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the parties shall not be liable to pay the adjudicator's fees and expenses.

# POWERS OF THE ADJUDICATOR

12. *[impartiality and unnecessary expense unchanged]*
13. *[adjudicator's own initiative and procedure]*
14. *requests/directions by the adjudicator unchanged]*

## POWERS OF THE ADJUDICATOR

15. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may –

# POWERS OF THE ADJUDICATOR

15. (a) continue the adjudication in the absence of that party or of the document or written statement requested,
- (b) draw such inferences from that failure to comply as **the** circumstances may, in the adjudicator's opinion, **justify**, and
- (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed.

## POWERS OF THE ADJUDICATOR

16. – *[representation by the parties unchanged]*
17. *[adjudicator considering relevant information provided by the parties unchanged]*
18. *[non disclosure of information unchanged]*

# POWERS OF THE ADJUDICATOR

19.– (1) The adjudicator shall reach his decision not later than –

- (a) twenty eight days after **receipt** of the referral notice mentioned in paragraph 7(1), or
- (b) forty two days after **receipt** of the referral notice if the referring party so consents, or
- (c) such period exceeding twenty eight days after **receipt** of the referral notice as the parties to the dispute may, **after receipt** of the giving of that notice, agree.

# POWERS OF THE ADJUDICATOR

- 19.– (2) Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph (1)
- (a) any of the parties to the dispute may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
  - (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
- 19.– (3) As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the parties to the contract.

# ADJUDICATOR'S DECISION

20. The adjudicator shall decide the matters in dispute. He may take into account any other matters which the parties to the dispute agree should be within the scope of the adjudication or which are matters under the contract which he considers are necessarily connected with the dispute. In particular, he may –
- (a) open up, revise and review any decision taken or any certificate given by any person referred to in the contract unless the contract states that the decision or certificate is final and conclusive,
  - (b) decide that any of the parties to the dispute is liable to make a payment under the contract (whether in sterling or some other currency) and, subject to section 111(9) of the Act, when that payment is due and the final date for payment,
  - (c) having regard to any term of the contract relating to the payment of interest decide the circumstances in which, and the rates at which, and the periods for which simple or compound rates of interest shall be paid.



# ADJUDICATOR'S DECISION

21. *[timing of compliance with adjudicator's decision]*
22. If requested by one of the parties to the dispute, the adjudicator shall provide reasons for his decision.

# ADJUDICATOR'S DECISION

- 22A.-(1)** The adjudicator may on his own initiative or on the application of a party correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- (2) Any correction of a decision shall be made within five days of the delivery of the decision to the parties.
  - (3) As soon as possible after correcting a decision in accordance with this paragraph, the adjudicator must deliver a copy of the corrected decision to each of the parties to the contract.
  - (4) Any correction of a decision forms part of the decision.

## EFFECTS OF THE DECISION

*[23.-(1) (adjudicator's power to order a party to comply peremptorily with his decision) - deleted]*

23.– (2) The decision of the adjudicator shall be binding on the parties, and they shall comply with it until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement between the parties.

*[24.– (application of section 42 of the Arbitration Act 1996) deleted]*

## EFFECTS OF THE DECISION

25. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. **Subject to any contractual provision pursuant to section 108A(2) of the Act, the adjudicator may determine how the payment is to be apportioned and the parties are** jointly and severally liable for any sum which remains outstanding following the making of any **such** determination.
  
26. *[liability of the adjudicator for things done unchanged]*

# THE SCHEME FOR CONSTRUCTION CONTRACTS

PART II

PAYMENT

# ENTITLEMENT TO AND AMOUNT OF STAGE PAYMENTS

1. Where the parties to a relevant construction contract fail to agree –
  - (a) the amount of any instalment or stage or periodic payment for any work under the contract, or
  - (b) the intervals at which, or circumstances in which, such payments become due under that contract, or
  - (c) both of the matters mentioned in sub-paragraphs (a) and (b) above,

the relevant provisions of paragraphs 2 to 4 below shall apply.

# ENTITLEMENT TO AND AMOUNT OF STAGE PAYMENTS

- 2.– (1) The amount of any payment by way of instalments or stage or periodic payments in respect of a relevant period shall be the difference between the amount determined in accordance with sub-paragraph (2) and the amount determined in accordance with sub-paragraph (3).
- 2.– (2) The aggregate of the following amounts—  
an amount equal to the value of any work performed in accordance with the relevant construction contract during the period from the commencement of the contract to the end of the relevant period (excluding any amount calculated in accordance with sub-paragraph (b)),

# ENTITLEMENT TO AND AMOUNT OF STAGE PAYMENTS

- 2.– (2) (b) where the contract provides for payment for materials, an amount equal to the value of any materials manufactured on site or brought onto site for the purposes of the works during the period from the commencement of the contract to the end of the relevant period, and
- (c) any other amount or sum which the contract specifies shall be payable during or in respect of the period from the commencement of the contract to the end of the relevant period.



## ENTITLEMENT TO AND AMOUNT OF STAGE PAYMENTS

- 2.- (3) The aggregate of any sums which have been paid or are due for payment by way of instalments, stage or periodic payments during the period from the commencement of the contract to the end of the relevant period.
  
- (4) An amount calculated in accordance with this paragraph shall not exceed the difference between –
  - (a) the contract price, and
  - (b) the aggregate of the instalments or stage or periodic payments which have become due.

## DATES FOR PAYMENT

3. Where the parties to a construction contract fail to provide an adequate mechanism for determining either what payments become due under the contract, or when they become due for payment, or both, the relevant provisions of paragraphs 4 to 7 shall apply.
4. Any payment of a kind mentioned in paragraph 2 above shall become due on whichever of the following dates occurs later –
  - (a) the expiry of 7 days following the relevant period mentioned in paragraph 2(1) above, or
  - (b) the making of a claim by the payee.

## DATES FOR PAYMENT

5. The final payment payable under a relevant construction contract, namely the payment of an amount equal to the difference (if any) between –
  - (a) the contract price, and
  - (b) the aggregate of any instalment or stage or periodic payments which have become due under the contract,shall become due on –
  - (a) **the expiry of 30** days following completion of the work, or
  - (b) the making of a claim by the payee,

## DATES FOR PAYMENT

6. Payment of the contract price under a construction contract (not being a relevant construction contract) shall become due on
  - (a) the expiry of 30 days following the completion of the work, or
  - (b) the making of a claim by the payee,whichever is the later.
  
7. Any other payment under a construction contract shall become due
  - (a) on the expiry of 7 days following the completion of the work to which the payment relates, or
  - (b) the making of a claim by the payee,whichever is the later.

## FINAL DATE FOR PAYMENT

- 8.– (1) Where the parties to a construction contract fail to provide a final date for payment in relation to any sum which becomes due under a construction contract, the provisions of this paragraph shall apply.
  
- (2) The final date for the making of any payment of a kind mentioned in paragraphs 2, 5, 6 or 7, shall be 17 days from the date that payment becomes due.

# PAYMENT NOTICE

9.– (1) Where the parties to a construction contract fail, in relation to a payment provided for by the contract, provide for the issue of a payment notice pursuant to section 110A(1) of the Act, the provisions of this paragraph apply.

(2) The payer must, not later than five days after the payment due date, give a notice to the payee complying with subparagraph (3).

## PAYMENT NOTICE

- 9.– (3) A notice complies with this sub-paragraph if it specifies the sum that the payer considers to be due or to have been due at the payment due date and the basis on which that sum is calculated.
- (4) For the purposes of this paragraph, it is immaterial that the sum referred to in sub-paragraph (3) may be zero.
- (5) A payment provided for by the contract includes any payment of the kind mentioned in paragraph 2, 5, 6, or 7 above.

## NOTICE OF INTENTION TO PAY LESS THAN THE NOTIFIED SUM

10. Where, in relation to a notice of intention to pay less than the notified sum mentioned in section 111(3) of the Act, the parties fail to agree the prescribed period mentioned in section 111(5), that notice must be given not later than seven days before the final date for payment determined either in accordance with the construction contract, or where no such provision is made in the contract, in accordance with paragraph 8 above.



# PROHIBITION OF CONDITIONAL PAYMENT PROVISIONS

11. Where a provision making payment under a construction contract conditional on the payer receiving payment from a third person is ineffective as mentioned in section 113 of the Act, and the parties have not agreed other terms for payment, the relevant provisions of –
  - (a) paragraphs 2, 4, 5, 7, 8, 9 and 10 shall apply in the case of a relevant construction contract, and
  - (b) paragraphs 6, 7, 8, 9 and 10 shall apply in the case of any other construction contract.

# INTERPRETATION

12. In this Part of the Scheme for Construction Contracts –

“claim by the payee” means a written notice given by the party carrying out work under a construction contract to the other party specifying the amount of any payment or payments which he considers to be due and the basis on which it is, or they are calculated;

“contract price” means the entire sum payable under the construction contract in respect of the work;

## INTERPRETATION

12. “relevant construction contract” means any construction contract other than one –
- (a) which specifies that the duration of the work is to be less than 45 days, or
  - (b) in respect of which the parties agree that the duration of the work is estimated to be less than 45 days;

“relevant period” means a period which is specified in, or is calculated by reference to the construction contract or where no such period is so specified or is so calculable, a period of 28 days;

## INTERPRETATION

12. “value of work” means an amount determined in accordance with the construction contract under which the work is performed or where the contract contains no such provision, the cost of any work performed in accordance with that contract together with an amount equal to any overhead or profit included in the contract price;

“work” means any of the work or services mentioned in section 104 of the Act.

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