

Muckle Construction – A practical guide to Construction Act Reform

The Legislation

1. The Housing Grants, Construction and Regeneration Act 1996 (**Construction Act**) came into force on 1 October 1998. It works in conjunction with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (**Statutory Scheme**).

(NB: This note does not deal with PFI which is covered by the Construction Contracts (England and Wales) Exclusion Order 1998, as amended this year).

2. The Construction Act and the Statutory Scheme have been amended by the Local Democracy and Economic Development Act 2009 and the Scheme for Construction Contracts (England and Wales) Regulations (Amendment) (England) Regulations 2011.

Why do the Construction Acts matter?

3. The Act as amended gives extensive protections and rights to the parties to construction contracts on the UK mainland unless (1) involving a domestic occupier concerning its property or (2) excluded by virtue of involvement in a PFI scheme; or (3) in one of the excluded categories listed at Section 105 (2). These protections briefly are:

3.1 special dispute resolution regime (Section 108) adjudication;

3.2 entitlement to stage payments unless the agreed period is less than 45 days (Section 109);

3.3 payment mechanisms, Final Dates for payment and Notices of payments (Section 110);

3.4 limits on rights to set-off, withhold or pay less (Section 111);

3.5 right to suspend for non-payment of sums due (Section 112);

3.6 prohibition of pay-when-paid, except insolvency (Section 113); and

- 3.7 statutory scheme of implied terms where the contract provisions are inadequate (Section 114).

Changes

4. There are seven separate changes, each with potentially serious impacts upon particular contractual relationships.
- A1. **The legislation now applies to all construction contracts not simply those in writing** (Section 107). This is a major expansion of contracts covered.
- A2. There were repeated difficulties with contracts which were only partly recorded or evidenced in writing or where a written contract was varied by a verbal agreement. In some ways this is a much fairer arrangement. There are however major problems.
- A3. Adjudicators will have to decide whether and what contract exists which will put a premium on an adjudicator's legal skills.
- A4. Adjudications may well in future involve cross-examination of witnesses and there will be considerable scope for argument about who agreed what, with whom and when.
- A5. Practical implication is to keep records of all conversations, send emails, letters and/or keep minutes to confirm your version of every meeting. Do not ignore what comes in from the other side.
- B1. **Adjudicators are given the right to amend minor slips** (Section 108(3)). If the contract does not expressly give the adjudicator such a power, then the statutory scheme will allow 5 days from the Decision (counting weekends). If you wait until day 6 it will be too late. (Practical recommendation is to put a sensible period for rectification of slips into your contracts. We recommend 28 days).
- C1. **Restrictions on clauses pre-allocating costs of adjudication.** In *Bridgeway –v- Tolent [2000]* a clause requiring the aggressor in any adjudication to pay the costs of both parties

whether he won or lost was upheld. Subsequently in *Yuanda –v- Gear [2010]* a similar clause was rejected as conflicting with the fundamental right to adjudicate given by Section 108. In the meantime, Parliament has addressed the same problem in the 2009 Act and the outcome is Section 108(A). This is not well drafted but appears to outlaw clauses which "pre-allocate costs" unless either the parties voluntarily agree this after the adjudication has started or alternatively the clause is written into the contract before and "confers powers on the adjudicator to allocate his fees and expenses.

- C2. This probably means that the only pre-allocation clauses which will be upheld are those which confer the power of the adjudicator to allocate his own fees and expenses (not anybody else's). There is however an alternative school of thought which is that as long as the adjudicator has the power to rule on his own fees, then the parties can also impose duties on each other to pre-allocate liability for the other side's costs.
- C3. We believe the "narrow interpretation" will be applied which means that Tolent clauses will be banned in future. This will probably require litigation before the point is firmly settled.
- D1. **Further restrictions on pay-when-paid and conditional payments** (Section 110(1A)). Pay-when-paid is banned (except for insolvency) but ingenious employers and main contractors were circumventing this by using "pay-when-certified" clauses instead. These are now also banned except where the certified work is being done by a third party (see Section 110 (1C)). The example usually given is payments between an employer and managing contractor where a third party Works Contractor is actually carrying out the small work.
- E1. **"Specified persons"** – (new Section 110A(6)). There was some doubt whether a third party such as an Architect or Engineer could give Notice on behalf of the Payer. This is expressly addressed by new Section 111 which replaces the old Section 111, read together with new Section 110A(6), empowers specified persons to act on the Payer's behalf.
- F1. **Refinement of suspension rights** – Section 112 permitted suspension of the Payee's works if a sum which was due was not paid and 7 days' Notice had been given without effect. A

Payee can now suspend either the whole of his works or choose a particular part to suspend (thus keeping his cash flow going). The rights to recover costs are extended to all the reasonable costs and expenses of the suspension (for example remobilisation).

- F2. The Payee can also now get an extension of time for the delay caused by the extension over and above the actual period of suspension itself. (In other words, a 7-day suspension previously would carry a right to an extension of time of 7 days but if the suspension is itself disruptive and causes a further 14 delays, then the Payee could have an extension of time of 21 days).
- G. **Notices to pay and notices to pay less.** The following changes have been made to the statutory payment regime by the recent amendments to the Construction Act, effective on all contracts formed on or after 1 October 2011.
- G1. The Payer must give a notice ("the Payer's Notice") specifying the sum due ("the Notified Sum") and the basis of calculation. The Payer's Notice must be given within 5 calendar days following the Due Date for payment (not counting Bank Holidays). It should be noted that apart from the fixed 5-day period from the Due Date in which the Payee should give a Payer's Notice, the other Notices can be determined by contractual agreement and only if they are not so determined will the Act impose the periods prescribed by the Statutory Scheme.
- G2. The Due Date for payment occurs when the contract says so. If there is no provision in the contract to determine when the Due Date occurs, then the Statutory Scheme at Part 2 paragraph 4 provides that the Due Date occurs either 7 days from the end of the relevant period or instalment or stage, or when the Payee makes a claim for payment, whichever is later.
- G3. If the Payer's Notice is not given within 5 days of the Due Date then the Payee may instead give a Notice ("the Payee's Notice") specifying the sum due ("the Notified Sum"), and the basis of calculation. This means that the Payee may have to make a claim to create a Due

Date, and also give a Payee's Notice to establish the Notified Sum. A period equal to the time from day 5 after the Due Date to the Payee's Notice is added to the agreed or prescribed period from the Due Date to the Final Date with the effect of extending time to the Final Date.

- G4. If the contract provides both for the Payee to make an application, and for when the Due Date occurs, but the Payer does not issue a Notice within 5 days of the Due Date, the Payee's application stands as a valid Payee's Notice which identifies the Notified Sum for payment purposes. The Payee does not need (and is not entitled) to issue any further Payee's Notice.
- G5. Where the Payer considers that nothing is due, he must still issue a Payer's Notice stating this. Thus if the Payer does not issue a Payer's Notice then either the previous Payee's application (if any) or a subsequent specific Payee's Notice (if none) will be effective instead.
- G6. A new concept of a "Notice to pay less" has replaced the old concept of a withholding Notice. This is because the new Notice encompasses not only set-off and abatement but also gives the Payer the opportunity to disagree with the Payee's valuation. The Notice to pay less must specify the sum that the Payer considers will be due on the date the Notice is served, and the basis on which that sum is calculated. The sum may be zero.
- G7. So if the Payer does not wish to pay the Notified Sum contained in either a Notice by him or by the Payee, he should issue a "Notice to pay less" not later than the stipulated period before the Final Date for payment. The parties can by their contract agree this period, which might therefore be as short as one day, but in the absence of such agreement, the period is 7 days, imposed by the Statutory Scheme.
- G8. Remember that the period from the Due Date to the Final Date can be agreed by the parties in their contract but if it is not agreed in a contract, then the Statutory Scheme imposes a 17 day period from Due Date to Final Date.

Conclusion

- It is disappointing that Section 105(2) was not repealed – protection for petro-chemical and process plant contracts is thus still limited (although contact us to see how in various ways these limitations can to some extent be circumvented).
- Adjudication is likely to become much more legalistic and expensive and too often will include an initial stage in which the terms of the contract are established.
- It is imperative to record any verbal deal.
- Payment notifications are now very important. The Payee can ambush the Payer.
- Suspension has become a much more flexible and credible threat.
- Paradoxically, the law on "slip rule" amendments of adjudicator's mistakes has become much more restrictive.
- The cost deterrent on some adjudications has been abolished.
- Pay when paid clauses have been further restricted.

MUCKLE LLP CONSTRUCTION TEAM

**AMENDED/CONSOLIDATED TEXT OF HOUSING GRANTS CONSTRUCTION REGENERATION ACT 1996 FOLLOWING
LOCAL DEMOCRACY AND ECONOMIC DEVELOPMENT ACT 2009**

PART II CONSTRUCTION CONTRACTS

Introductory provisions

104 Construction contracts

(1) In this Part a “construction contract” means an agreement with a person for any of the following—

- (a) the carrying out of construction operations;
- (b) arranging for the carrying out of construction operations by others, whether under sub-contract to him or otherwise;
- (c) providing his own labour, or the labour of others, for the carrying out of construction operations.

(2) References in this Part to a construction contract include an agreement—

- (a) to do architectural, design, or surveying work, or
- (b) to provide advice on building, engineering, interior or exterior decoration or on the laying-out of landscape,

in relation to construction operations.

(3) References in this Part to a construction contract do not include a contract of employment (within the meaning of the [1996 c. 18.] Employment Rights Act 1996).

(4) The Secretary of State may by order add to, amend or repeal any of the provisions of subsection (1), (2) or (3) as to the agreements which are construction contracts for the purposes of this Part or are to be taken or not to be taken as included in references to such contracts.

No such order shall be made unless a draft of it has been laid before and approved by a resolution of each of House of Parliament.

(5) Where an agreement relates to construction operations and other matters, this Part applies to it only so far as it relates to construction operations.

An agreement relates to construction operations so far as it makes provision of any kind within subsection (1) or (2).

(6) This Part applies only to construction contracts which—

- (a) are entered into after the commencement of this Part, and
- (b) relate to the carrying out of construction operations in England, Wales or Scotland.

(7) This Part applies whether or not the law of England and Wales or Scotland is otherwise the applicable law in relation to the contract.

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, roadworks, power-lines, telecommunication 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;

(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.

(2) The following operations are not construction operations within the meaning of this Part—

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works, for this purpose;

(c) assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery, on a site where the primary activity is—

(i) nuclear processing, power generation, or water or effluent treatment, or

(ii) the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel or food and drink;

(d) manufacture or delivery to site of—

(i) building or engineering components or equipment,

(ii) materials, plant or machinery, or

(iii) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems,

except under a contract which also provides for their installation;

(e) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature.

(3) The Secretary of State may by order add to, amend or repeal any of the provisions of subsection (1) or (2) as to the operations and work to be treated as construction operations for the purposes of this Part.

(4) No such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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),

~~(b) (deleted)~~

(2) A construction contract with a residential occupier means a construction contract which principally relates to operations on a dwelling which one of the parties to the contract occupies, or intends to occupy, as his residence.

In this subsection “dwelling” means a dwelling-house or a flat; and for this purpose—

- “dwelling-house” does not include a building containing a flat; and
- “flat” means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which the premises are divided horizontally.

(3) The Secretary of State may by order amend subsection (2).

(4) No order under this section shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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.

(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

107 Provisions applicable only to agreements in writing

REPEALED

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.

(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.

(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.

(4) The contract shall also ~~include provision in writing so as to 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.

(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.

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

Payment

109 Entitlement to stage payments

(1) A party to a construction contract is entitled to payment by instalments, stage payments or other periodic payments for any work under the contract unless—

(a) it is specified in the contract that the duration of the work is to be less than 45 days, or

(b) it is agreed between the parties that the duration of the work is estimated to be less than 45 days.

(2) The parties are free to agree the amounts of the payments and the intervals at which, or circumstances in which, they become due.

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

(4) References in the following sections to a payment provided for by the contract include a payment by virtue of this 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.

(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.

(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.

“(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.”

(2) OMITTED

(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.

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.

(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.

(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.

(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.

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.

(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.

(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).

111 Notice of intention to withhold payment –REPEALED AND REPLACED

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.

(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.

(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.

(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.”

(2) In section 112 of that Act (right to suspend performance for non-payment)—

(a) in subsection (1), for the words from “Where” to “given” substitute “Where the requirement in section 111(1) applies in relation to any sum but is not complied with,”;

(b) in subsection (3), for “the amount due” substitute “the sum referred to in subsection (1)”.

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.

(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.

(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

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) on the making of an administration order against it under Part II of the [1986 c. 45.] Insolvency Act 1986,

(b) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part,

(c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act, or

- (d) on the making of a winding-up order under Part IV or V of that Act.
- (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.
- (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.

Supplementary provisions

114 The Scheme for Construction Contracts

- (1) The Minister shall by regulations make a scheme (“the Scheme for Construction Contracts”) containing provision about the matters referred to in the preceding provisions of this Part.
- (2) Before making any regulations under this section the Minister shall consult such persons as he thinks fit.
- (3) In this section “the Minister” means—
- (a) for England and Wales, the Secretary of State, and
- (b) for Scotland, the Lord Advocate.
- (4) Where any provisions of the Scheme for Construction Contracts apply by virtue of this Part in default of contractual provision agreed by the parties, they have effect as implied terms of the contract concerned.
- (5) Regulations under this section shall not be made unless a draft of them has been approved by resolution of each House of Parliament.

115 Service of notices, &c

- (1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be served in pursuance of the construction contract or for any of the purposes of this Part.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) A notice or other document may be served on a person by any effective means.
- (4) If a notice or other document is addressed, pre-paid and delivered by post—
- (a) to the addressee’s last known principal residence or, if he is or has been carrying on a trade, profession or business, his last known principal business address, or

(b) where the addressee is a body corporate, to the body's registered or principal office, it shall be treated as effectively served.

(5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.

(6) References in this Part to a notice or other document include any form of communication in writing and references to service shall be construed accordingly.

116 Reckoning periods of time

(1) For the purposes of this Part periods of time shall be reckoned as follows.

(2) Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where the period would include Christmas Day, Good Friday or a day which under the [1971 c. 80.] Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, that day shall be excluded.

117 Crown application

(1) This Part applies to a construction contract entered into by or on behalf of the Crown otherwise than by or on behalf of Her Majesty in her private capacity.

(2) This Part applies to a construction contract entered into on behalf of the Duchy of Cornwall notwithstanding any Crown interest.

(3) Where a construction contract is entered into by or on behalf of Her Majesty in right of the Duchy of Lancaster, Her Majesty shall be represented, for the purposes of any adjudication or other proceedings arising out of the contract by virtue of this Part, by the Chancellor of the Duchy or such person as he may appoint.

(4) Where a construction contract is entered into on behalf of the Duchy of Cornwall, the Duke of Cornwall or the possessor for the time being of the Duchy shall be represented, for the purposes of any adjudication or other proceedings arising out of the contract by virtue of this Part, by such person as he may appoint.

Statutory Instrument 1998 No. 649

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

The red track changes were included in the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011

Made - 6th March 1998

Coming into force - 1st May 1998

The Secretary of State, in exercise of the powers conferred on him by sections 108(6), 114 and 146(1) and (2) of the Housing Grants, Construction and Regeneration Act 1996, and of all other powers enabling him in that behalf, having consulted such persons as he thinks fit, and draft Regulations having been approved by both Houses of Parliament, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1. (1) These Regulations may be cited as the Scheme for Construction Contracts (England and Wales) Regulations 1998 and shall come into force at the end of the period of 8 weeks beginning with the day on which they are made (the "commencement date").
- (2) These Regulations shall extend only to England and Wales.
- (3) In these Regulations, "the Act" means the Housing Grants, Construction and Regeneration Act 1996.

The Scheme for Construction Contracts

2. Where a construction contract does not comply with the requirements of section 108(1) to (4) of the Act, the adjudication provisions in Part I of the Schedule to these Regulations shall apply.

3. Where-

- (a) the parties to a construction contract are unable to reach agreement for the purposes mentioned respectively in sections 109, 111 and 113 of the Act, or
- (b) a construction contract does not make provision as required by section 110 or by section 110A of the Act,

the relevant provisions in Part II of the Schedule to these Regulations shall apply.

4. The provisions in the Schedule to these Regulations shall be the Scheme for Construction Contracts for the purposes of section 114 of the Act.

Signed by authority of the Secretary of State

Nick Raynsford

Parliamentary Under-Secretary of State, Department of the Environment, Transport and the Regions

6th March 1998

SCHEDULE

Regulations 2, 3 and 4

THE SCHEME FOR CONSTRUCTION CONTRACTS

PART I -

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.
 - (3) The notice of adjudication shall set out briefly -
 - (a) the nature and a brief description of the dispute and of the parties involved,
 - (b) details of where and when the dispute has arisen,
 - (c) the nature of the redress which is sought, and
 - (d) the names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).
2. (1) Following the giving of a notice of adjudication and subject to any agreement between the parties to the dispute as to who shall act as adjudicator -
 - (a) the referring party shall request the person (if any) specified in the contract to act as adjudicator, or
 - (b) if no person is named in the contract or the person named has already indicated that he is unwilling or unable to act, and the contract provides for a specified nominating body to select a person, the referring party shall request the nominating body named in the contract to select a person to act as adjudicator, or
 - (c) where neither paragraph (a) nor (b) above applies, or where the person referred to in (a) has already indicated that he is unwilling or unable to act and (b) does not apply, the referring party shall request an adjudicator nominating body to select a person to act as adjudicator.
- (2) A person requested to act as adjudicator in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.
- (3) In this paragraph, and in paragraphs 5 and 6 below, an "adjudicator nominating body" shall mean a body (not being a natural person and not being a party to the dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a referring party.

3. The request referred to in paragraphs 2, 5 and 6 shall be accompanied by a copy of the notice of adjudication.
4. Any person requested or selected to act as adjudicator in accordance with paragraphs 2, 5 or 6 shall be a natural person acting in his personal capacity. A person requested or selected to act as an adjudicator shall not be an employee of any of the parties to the dispute and shall declare any interest, financial or otherwise, in any matter relating to the dispute.
5. (1) The nominating body referred to in paragraphs 2(1)(b) and 6(1)(b) or the adjudicator nominating body referred to in paragraphs 2(1)(c), 5(2)(b) and 6(1)(c) must communicate the selection of an adjudicator to the referring party within five days of receiving a request to do so.
 - (2) Where the nominating body or the adjudicator nominating body fails to comply with paragraph (1), the referring party may-
 - (a) agree with the other party to the dispute to request a specified person to act as adjudicator, or
 - (b) request any other adjudicator nominating body to select a person to act as adjudicator.
 - (3) The person requested to act as adjudicator in accordance with the provisions of paragraphs (1) or (2) shall indicate whether or not he is willing to act within two days of receiving the request.
6. (1) Where an adjudicator who is named in the contract indicates to the parties that he is unable or unwilling to act, or where he fails to respond in accordance with paragraph 2(2), the referring party may-
 - (a) request another person (if any) specified in the contract to act as adjudicator, or
 - (b) request the nominating body (if any) referred to in the contract to select a person to act as adjudicator, or
 - (c) request any other adjudicator nominating body to select a person to act as adjudicator.
 - (2) The person requested to act in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.
7. (1) Where an adjudicator has been selected in accordance with paragraphs 2, 5 or 6, the referring party shall, not later than seven days from the date of the notice of adjudication, refer the dispute in writing (the "referral notice") to the adjudicator.
 - (2) A referral notice shall be accompanied by copies of, or relevant extracts from, the construction contract and such other documents as the referring party intends to rely upon.
 - (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.
 - (4) Upon receipt of the referral notice, the adjudicator must inform every party to the dispute of the date that it was received.
8. (1) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on more than one dispute under the same contract.

- (2) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on related disputes under different contracts, whether or not one or more of those parties is a party to those disputes.
 - (3) All the parties in paragraphs (1) and (2) respectively may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes.
 - (4) Where an adjudicator ceases to act because a dispute is to be adjudicated on by another person in terms of this paragraph, that adjudicator's fees and expenses shall be determined in accordance with paragraph 25.
- 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.
 - (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 had made available to the previous adjudicator.
 - (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. ~~The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.~~ 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.
- Where any party to the dispute objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the adjudicator's appointment nor any decision he may reach in accordance with paragraph 20.
- 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. ~~The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.~~ 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.
 - (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. The adjudicator shall-

- (a) act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the contract and shall reach his decision in accordance with the applicable law in relation to the contract; and
- (b) avoid incurring unnecessary expense.

13. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute, and shall decide on the procedure to be followed in the adjudication. In particular he may-

- (a) request any party to the contract to supply him with such documents as he may reasonably require including, if he so directs, any written statement from any party to the contract supporting or supplementing the referral notice and any other documents given under paragraph 7(2),
- (b) decide the language or languages to be used in the adjudication and whether a translation of any document is to be provided and if so by whom,
- (c) meet and question any of the parties to the contract and their representatives,
- (d) subject to obtaining any necessary consent from a third party or parties, make such site visits and inspections as he considers appropriate, whether accompanied by the parties or not,
- (e) subject to obtaining any necessary consent from a third party or parties, carry out any tests or experiments,
- (f) obtain and consider such representations and submissions as he requires, and, provided he has notified the parties of his intention, appoint experts, assessors or legal advisers,
- (g) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with, and
- (h) issue other directions relating to the conduct of the adjudication.

14. The parties shall comply with any request or direction of the adjudicator in relation to the adjudication.

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-

- (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, ~~be justified~~ 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.
16. (1) Subject to any agreement between the parties to the contrary, and to the terms of paragraph (2) below, any party to the dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
- (2) Where the adjudicator is considering oral evidence or representations, a party to the dispute may not be represented by more than one person, unless the adjudicator gives directions to the contrary.
17. The adjudicator shall consider any relevant information submitted to him by any of the parties to the dispute and shall make available to them any information to be taken into account in reaching his decision.
18. The adjudicator and any party to the dispute shall not disclose to any other person any information or document provided to him in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with, the adjudication.
19. (1) The adjudicator shall reach his decision not later than-
- (a) twenty eight days after ~~the date receipt~~ of the referral notice mentioned in paragraph 7(1), or
 - (b) forty two days after ~~the date 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 the giving of that notice, agree.
- (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.
- (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(4)(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.
21. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the parties ~~in accordance with this paragraph.~~
22. If requested by one of the parties to the dispute, the adjudicator shall provide reasons for his 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 must 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) In his decision, the adjudicator may, if he thinks fit, order any of the parties to comply peremptorily with his decision or any part of it.~~
- (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. Section 42 of the Arbitration Act 1996 shall apply to this Scheme subject to the following modifications-~~
- ~~(a) in subsection (2) for the word "tribunal" wherever it appears there shall be substituted the word "adjudicator",~~
 - ~~(b) in subparagraph (b) of subsection (2) for the words "arbitral proceedings" there shall be substituted the word "adjudication",~~
 - ~~(c) subparagraph (c) of subsection (2) shall be deleted, and~~
 - ~~(d) subsection (3) shall be deleted.~~
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. ~~The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.~~ 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. The adjudicator shall not be 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 any employee or agent of the adjudicator shall be similarly protected from liability.

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.
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) The aggregate of the following amounts-
- (a) 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)),
 - (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.
- (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.
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 ~~the expiry of-~~
 - (a) ~~the expiry of~~ 30 days following completion of the work, or
 - (b) the making of a claim by the payee,whichever is the later.
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.

Notice specifying amount of payment

~~9. A party to a construction contract shall, not later than 5 days after the date on which any payment~~

~~(a) becomes due from him, or~~

~~(b) would have become due, if~~

~~(i) the other party had carried out his obligations under the contract, and~~

~~(ii) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts;~~

~~give notice to the other party to the contract specifying the amount (if any) of the payment he has made or proposes to make, specifying to what the payment relates and the basis on which that amount is calculated.~~

Payment notice

9. (1) Where the parties to a construction contract fail, in relation to a payment provided for by the contract, to 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).
- (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 subparagraph (3) may be zero.
- (5) A payment provided for by the contract includes any payment of the kind mentioned in paragraphs 2, 5, 6, or 7 above.

~~Notice of intention to withhold payment~~

~~10. Any notice of intention to withhold payment mentioned in section 111 of the Act shall be given not later than the prescribed period, which is to say not later than 7 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.~~

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;

"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;

"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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We hope you have found this practical guide useful. If you would like to arrange an in-house seminar please contact Rob Langley on 0191 211 7975 or rlangley@muckle-llp.com