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STATUTORY INSTRUMENTS

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**1997 No. 274 (N.I. 1)**

**NORTHERN IRELAND**

**The Construction Contracts (Northern Ireland) Order 1997**

*Made - - - - 12th February 1997*  
*Laid before Parliament 27th February 1997*  
*Coming into operation on a day to be appointed under*  
*Article 1(2)*

At the Court at Buckingham Palace, the 12th day of February 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of Part II of the Housing Grants, Construction and Regeneration Act 1996:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 149 of the said Act of 1996) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Construction Contracts (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day as the Head of the Department may by order appoint.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“the Scheme” means the Scheme for Construction Contracts in Northern Ireland, made under Article 13(1).

**Construction contracts.**

3.—(1) In this Order 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 Order 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 Order to a construction contract do not include a contract of employment (within the meaning of the Employment Rights (Northern Ireland) Order 1996).

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

(5) Where an agreement relates to construction operations and other matters, this Order 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 paragraph (1) or (2).

- (6) This Order applies only to construction contracts which—
- (a) are entered into after the coming into operation of this Order, and
  - (b) relate to the carrying out of construction operations in Northern Ireland.

(7) This Order applies whether or not the law of Northern Ireland is otherwise the applicable law in relation to the contract.

**Meaning of “construction operations”**

4.—(1) In this Order “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 paragraph, 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 Order—
- (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 Department may by order add to, amend or repeal any of the provisions of paragraph (1) or (2) as to the operations and work to be treated as construction operations for the purposes of this Order.

### **Provisions not applicable to contract with residential occupier**

5.—(1) This Order does not apply—

- (a) to a construction contract with a residential occupier (see below), or
- (b) to any other description of construction contract excluded from the operation of this Order by order of the Department.

(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 paragraph “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 Department may by order amend paragraph (2).

### **Provisions applicable only to agreements in writing**

6.—(1) The provisions of this Order apply only where the construction contract is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Order only if in writing.

The expression “agreement” shall be construed accordingly.

(2) There is an agreement in writing—

- (a) if the agreement is made in writing (whether or not it is signed by the parties),
- (b) if the agreement is made by exchange of communications in writing, or
- (c) if the agreement is evidenced in writing.

(3) Where parties agree otherwise than in writing by reference to terms which are in writing, they make an agreement in writing.

(4) An agreement is evidenced in writing if an agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.

(5) An exchange of written submissions in adjudication proceedings, or in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and not denied by the other party in his response constitutes as between those parties an agreement in writing to the effect alleged.

(6) References in this Order to anything being written or in writing include its being recorded by any means.

### *Adjudication*

#### **Right to refer disputes to adjudication**

7.—(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 Article.

For this purpose “dispute” includes any difference.

(2) The contract shall—

- (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 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.

(4) The contract shall also provide 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 paragraphs (1) to (4), the adjudication provisions of the Scheme apply.

(6) The Scheme may apply the provisions of the Arbitration Act 1996 with such adaptations and modifications as appear to the Department to be appropriate.

### *Payment*

#### **Entitlement to stage payments**

**8.—**(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 apply.

(4) References in the following Articles to a payment under the contract include a payment by virtue of this Article.

#### **Dates for payment**

**9.—**(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.

(2) Every construction contract shall provide for the giving of notice by a party not later than 5 days after the date on which a payment becomes due from him under the contract, or would have become due if—

- (a) the other party had carried out his obligations under the contract, and
- (b) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts,

specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated.

(3) If or to the extent that a contract does not contain such provision as is mentioned in paragraph (1) or (2), the relevant provisions of the Scheme apply.

#### **Notice of intention to withhold payment**

**10.—**(1) A party to a construction contract may not withhold payment after the final date for payment of a sum due under the contract unless he has given an effective notice of intention to withhold payment.

The notice mentioned in Article 9(2) may suffice as a notice of intention to withhold payment if it complies with the requirements of this Article.

(2) To be effective such a notice must specify—

(a) the amount proposed to be withheld and the ground for withholding payment, or  
(b) if there is more than one ground, each ground and the amount attributable to it,  
and must be given not later than the prescribed period before the final date for payment.

(3) The parties are free to agree what that prescribed period is to be.

In the absence of such agreement, the period shall be that provided by the Scheme.

(4) Where an effective notice of intention to withhold payment is given, but on the matter being referred to adjudication it is decided that the whole or part of the amount should be paid, the decision shall be construed as requiring payment not later than—

(a) 7 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.

### **Right to suspend performance for non-payment**

**11.**—(1) Where a sum due under a construction contract is not paid in full by the final date for payment and no effective notice to withhold payment has been given, the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance 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 7 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 amount due.

(4) Any period during which performance is suspended in pursuance of the right conferred by this Article 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.

### **Prohibition of conditional payment provisions**

**12.**—(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 Article a company becomes insolvent—

(a) on the making of an administration order against it under Part III of the Insolvency (Northern Ireland) Order 1989,

(b) on the appointment of an administrative receiver or a receiver or manager of its property under Part IV of that Order,

(c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under Article 75 of that Order, or

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

(3) For the purposes of this Article a partnership becomes insolvent on the making of a winding-up order against it under any provision of the Insolvency (Northern Ireland) Order 1989 as applied by an order under Article 364 of that Order.

(4) For the purposes of this Article an individual becomes insolvent on the making of a bankruptcy order against him under Part IX of the Insolvency (Northern Ireland) Order 1989.

(5) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in paragraph (2), (3) or (4) under the law of England and Wales, or of Scotland, or of a country outside the United Kingdom.

(6) Where a provision is rendered ineffective by paragraph (1), the parties are free to agree other terms for payment.

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

### *Supplementary provisions*

#### **The Scheme for Construction Contracts in Northern Ireland**

**13.**—(1) The Department shall by regulations make a scheme (“the Scheme for Construction Contracts in Northern Ireland”) containing provision about the matters referred to in the preceding provisions of this Order.

(2) Before making any regulations under this Article the Department shall consult such persons as it thinks fit.

(3) Where any provisions of the Scheme apply by virtue of this Order in default of contractual provision agreed by the parties, they have effect as implied terms of the contract concerned.

#### **Service of notices, &c.**

**14.**—(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 Order.

(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) Section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents), as it applies to the service by post of such a notice or other document, shall have effect with the omission of the word “registering” in subsection (1).

(5) This Article 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 Order to a notice or other document include any form of communication in writing and references to service shall be construed accordingly.

#### **Crown application**

**15.** This Order 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.

#### **Orders and regulations**

**16.**—(1) Orders and regulations under this Order may contain such incidental, supplementary or transitional provisions and savings as the Department considers appropriate.

(2) Subject to paragraph (3), orders and regulations made under this Order shall be subject to affirmative resolution.

(3) Paragraph (2) does not apply to an order made under Article 1(2).

*N.H. Nicholls*  
Clerk of the Privy Council



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made only for purposes corresponding to those of Part II of the Housing Grants, Construction and Regeneration Act 1996.

The Order gives any party to a construction contract in Northern Ireland a right to refer disputes to a quick, impartial and investigative adjudication procedure. If no adequate procedure is agreed in the contract, one set out in a scheme made by the Department of the Environment will apply (*Article 7*).

The Order also—

- (a) gives a contractor a statutory right to insist on payment by instalments where the work is to last 45 days or more (*Article 8*);
- (b) requires construction contracts to provide a mechanism for determining the amount of payments and set a final date for payment of sums due (*Article 9*);
- (c) obliges a payer to give a contractor notice with reasons, before the final date of payment, if he intends to withhold payment (*Article 10*); and
- (d) makes unenforceable contract provisions which have the effect of making payment dependent upon receipt of payment from a third party, unless payment is delayed because a third party has become insolvent (*Article 12*).