

---

## EXPLANATORY NOTE

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

This Order brings into force Part 8 (construction contracts), so far as it extends to Scotland, of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”) to the extent that it is not already in force.

Part II of the Housing Grants, Construction and Regeneration Act 1996 (c.53) (“the 1996 Act”) concerns contracts for the carrying out of construction operations and, in particular, introduces ‘adjudication’ as a dispute resolution procedure for disputes under construction contracts.

Part 8 of the 2009 Act, to the extent commenced by this Order, amends Part II of the 1996 Act to make the changes as follows—

- (a) removes the requirement for construction contracts to be in writing (section 139);
- (b) enables the correction of clerical or typographical errors in an adjudicator’s decision (section 140);
- (c) makes agreement about the allocation of the costs of adjudication ineffective, subject to limited exceptions (section 141);
- (d) prohibits the making of periodic payments under a construction contract being conditional upon obligations being fulfilled under another contract (excluding obligations to make payments) or having been certified as fulfilled (section 142);
- (e) introduces a requirement that a construction contract must contain provision to the effect that a ‘payment notice’ (setting out, in relation to every payment, the sum considered due) must be given by the person whom the parties have agreed – the payer, the payee or certain other persons (section 143);
- (f) introduces a requirement to pay the sum set out in ‘payment notices’ and allows for the sum in such a notice to be challenged or revised by the giving of a counter notice (section 144);
- (g) amends existing provisions relating to the right of a party to whom payment is due to suspend performance of his obligations under the contract (section 145).

Part 9 of the 2009 Act came into force on the date of Royal Assent on 12th November 2009.