

2011 No. 291 (C. 27)

CONSTRUCTION

**The Local Democracy, Economic Development and
Construction Act 2009 (Commencement No. 2) (Scotland)
Order 2011**

| | | |
|--|---------|--------------------------|
| <i>Made</i> | - - - - | <i>29th June 2011</i> |
| <i>Laid before the Scottish Parliament</i> | | <i>1st July 2011</i> |
| <i>Coming into force</i> | - - | <i>1st November 2011</i> |

The Scottish Ministers make the following Order in exercise of the power conferred by section 149(2) of the Local Democracy, Economic Development and Construction Act 2009(a).

Citation and commencement

1. This Order may be cited as the Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 2) (Scotland) Order 2011 and comes into force on 1st November 2011.

Day appointed

2. Sections 139 to 145 of the Local Democracy, Economic Development and Construction Act 2009 come into force on 1st November 2011.

ALEX NEIL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
29th June 2011

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.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2009 Act have been brought into force in relation to Scotland by Commencement Orders made before the date of this Order.

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|------------------------|-----------------------------|-----------------|
| Sections 67(2) to (6) | 01.04.2010 | S.I. 2009/3318 |
| Sections 85(2) to (6) | 01.04.2010 | S.I. 2009/3318 |
| Section 114 | 12.01.2010 | S.I. 2009/3318 |
| Sections 116 and 117 | 12.01.2010 | S.I. 2009/3318 |
| Section 138 | 24.06.2011 | S.S.I. 2011/269 |
| Schedule 7 (partially) | 01.04.2010 | S.I. 2009/3318 |

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