



Housing Grants, Construction and Regeneration Act 1996

1996 CHAPTER 53

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 ^{M1}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.

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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.

Commencement Information

- II** S. 104 wholly in force; s. 104 not in force at Royal Assent see s. 150; s. 104 in force for certain purposes at 11.9.1996 by [S.I. 1996/2352](#), [art. 2\(2\)](#); s. 104 in force insofar as not already in force at 1.5.1998 by (E.W.) [S.I. 1998/650](#), [art. 2](#) and (S.) [S.I. 1998/894](#), [art. 2](#)

Marginal Citations

- M1** 1996 c. 18.

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, [^{F1}electronic communications apparatus], aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
 - (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

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- 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.

Textual Amendments

- F1** Words in s. 105(1)(b) substituted (25.7.2003 for specified purposes, 29.12.2003 otherwise) by [Communications Act 2003 \(c. 21\)](#), ss. 408(6), 411(2), [Sch. 17 para. 137](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [art. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

Commencement Information

- I2** S. 105 wholly in force; s. 105 not in force at Royal Assent see s. 150; s. 105 in force for certain purposes at 11.9.1996 by [S.I. 1996/2352](#), [art. 2\(2\)](#); s. 105 in force insofar as not already in force at 1.5.1998 by (E.W.) [S.I. 1998/650](#), [art. 2](#) and (S.) [S.I. 1998/894](#), [art. 2](#)

106 Provisions not applicable to contract with residential occupier.

- (1) This Part does not apply—

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- (a) to a construction contract with a residential occupier (see below), ^{F2}or
- (b) to any other description of construction contract excluded from the operation of this Part by order of the Secretary of State.]
- (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.

Textual Amendments

- F2** S. 106(1)(b) repealed (18.6.2011 for E.W. for specified purposes, 24.6.2011 for S., 24.6.2011 for E.W. for specified purposes, 1.10.2011 for E.W. in so far as not already in force) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. 138(2), 146(3), 148(8), 149, [Sch. 7 Pt. 5](#) (with s. 149(3)(4)); S.I. 2011/1514, arts. 2, 3; S.S.I. 2011/269, art. 2; S.I. 2011/1569, art. 2; S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3

Commencement Information

- I3** S. 106 wholly in force; s. 106 not in force at Royal Assent see s. 150; s. 106 in force for certain purposes at 11.9.1996 by [S.I. 1996/2352, art. 2\(2\)](#); s. 106 in force insofar as not already in force at 1.5.1998 by (E.W.) [S.I. 1998/650, art. 2](#) and (S.) [S.I. 1998/894, art. 2](#)

^{F3}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.]

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Textual Amendments

- F3** S. 106A inserted (18.6.2011 for E.W. for specified purposes, 24.6.2011 for E.W. for specified purposes, 24.6.2011 for S., 1.10.2011 for E.W. in so far as not already in force) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. [138\(3\)](#), [148\(8\)](#), [149](#) (with s. [149\(3\)\(4\)](#)); [S.I. 2011/1514](#), arts. [2](#), [3](#), [S.I. 2011/1569](#), art. [2](#), [S.S.I. 2011/269](#), art. [2](#), [S.I. 2011/1582](#), art. [2](#), [S.I. 2011/1597](#). arts. [2](#), [3](#)

107 Provisions applicable only to agreements in writing.

- [^{F4}(1) The provisions of this Part 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 Part only if in writing.

The expressions “agreement”, “agree” and “agreed” shall be construed accordingly.

- (2) There is an agreement in writing—
- if the agreement is made in writing (whether or not it is signed by the parties),
 - if the agreement is made by exchange of communications in writing, or
 - 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 Part to anything being written or in writing include its being recorded by any means.]

Textual Amendments

- F4** S. 107 repealed (1.10.2011 for E.W.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. [139\(1\)](#), [146\(3\)](#), [148\(8\)](#), [149](#), [Sch. 7 Pt. 5](#) (with s. [149\(3\)\(4\)](#)); [S.I. 2011/1582](#), art. [2](#); [S.I. 2011/1597](#), arts. [2](#), [3](#)

Commencement Information

- I4** S. 107 wholly in force; s. 107 not in force at Royal Assent see s. 150; s. 107 in force at 1.5.1998 by (E.W.) [S.I. 1998/650](#), art. [2](#) and (S.) [S.I. 1998/894](#), art. [2](#)

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