Construction Contracts (Amendment) Act (Northern Ireland) 2011

2011 CHAPTER 4

N.I.

An Act to amend the Construction Contracts (Northern Ireland) Order 1997. [10th February 2011]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

VALID FROM 14/11/2012

Requirement for construction contracts to be in writing **N.I.**

1.—(1) Article 6 of the 1997 Order (provisions applicable only to agreements in writing) is repealed.

(2) In Article 7 of that Order (right to refer disputes to adjudication)—

(a) in paragraph (2) after "The contract shall" insert " include provision in writing so as to ";

(b) in paragraphs (3) and (4) after "provide" insert " in writing ".

(3) In this Act "the 1997 Order" means the Construction Contracts (Northern Ireland) Order 1997 (NI 1).

VALID FROM 14/11/2012

Power to disapply provisions of the 1997 Order N.I.

2.—(1) Article 5 of the 1997 Order (provisions not applicable to certain contracts) is amended as follows.

(2) For paragraph (1) and the heading to the Article substitute—

"**Application of this Order**

5.—(1) This Order does not apply to a construction contract with a residential occupier (see paragraph (2)).

(1A) The Department may by order provide that all or any of the provisions of this Order shall not apply to any other description of construction contract which is specified in the order.".

VALID FROM 14/11/2012

Adjudicator's power to make corrections N.I.

3 In Article 7 of the 1997 Order (right to refer disputes to adjudication) after paragraph (3) insert—

"(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.".

VALID FROM 14/11/2012

Adjudication costs N.I.

4 After Article 7 of the 1997 Order insert—

"**Adjudication costs: effectiveness of provision**

7A.—(1) This Article 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. It is immaterial whether or not the contractual provision is contained in the construction contract.

(2) The contractual provision referred to in paragraph (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.".

VALID FROM 14/11/2012

Determination of payments due **N.I.**

5 In Article 9 of the 1997 Order (dates for payment) after paragraph (1) insert—

"(1A) The requirement in paragraph (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 paragraph (1A)(a) and (b) the references to obligations do not include obligations to make payments (but see Article 12).

(1C) Paragraph (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 paragraph are obligations on that other person to carry out those operations.

(1D) The requirement in paragraph (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.".

VALID FROM 14/11/2012

Notices relating to payment **N.I.**

6.—(1) The 1997 Order is amended as follows.

(2) In Article 8 (entitlement to stage payments) in paragraph (4) for "under the contract" substitute " provided for by the contract ".

(3) In Article 9 (dates for payment) the following are repealed—

(a) paragraph (2), and

(b) in paragraph (3), the words "or (2)".

(4) After Article 9 insert—

"**Payment notices: contractual requirements**

9A.—(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 paragraph (2) to the payee not later than 5 days after the payment due date, or

(b) require the payee to give a notice complying with paragraph (3) to the payer or a specified person not later than 5 days after the payment due date.

(2) A notice complies with this paragraph 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 paragraph 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 Article, it is immaterial that the sum referred to in paragraph (2)(a) or (b) or (3)(a) may be zero.

(5) If, or to the extent that, a contract does not comply with paragraph (1), the relevant provisions of the Scheme apply.

(6) In this and the following Articles, 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.

Payment notices: payee's notice in default of payer's notice

9B.—(1) This Article 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 Article 9A(2) not later than 5 days after the payment due date, but

(b) notice is not given as so required.

(2) Subject to paragraph (4), the payee may give to the payer a notice complying with Article 9A(3) at any time after the date on which the notice referred to in paragraph (1)(a) was required by the contract to be given.

(3) Where, pursuant to paragraph (2), the payee gives a notice complying with Article 9A(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 paragraph (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 paragraph (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 Article 9A(3) given pursuant to paragraph (2) (and the payee may not give another such notice pursuant to that paragraph).".

VALID FROM 14/11/2012

Requirement to pay notified sum **N.I.**

7.—(1) For Article 10 of the 1997 Order (notice of intention to withhold payment) substitute—

"**Requirement to pay notified sum**

10.—(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 Article, the "notified sum" in relation to any payment provided for by a construction contract means—

(a) in a case where a notice complying with Article 9A(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 Article 9A(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 Article 9A(3) has been given pursuant to and in accordance with Article 9B(2), the amount specified in that notice.

(3) The payer or a specified person may in accordance with this Article give to the payee a notice of the payer's intention to pay less than the notified sum.

(4) A notice under paragraph (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 paragraph that the sum referred to in sub-paragraph (a) or (b) may be zero.

(5) A notice under paragraph (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 paragraph (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 paragraph (3), paragraph (1) applies only in respect of the sum specified pursuant to paragraph (4)(a).

(7) In paragraph (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.

(8) Paragraph (9) applies where in respect of a payment—

(a) a notice complying with Article 9A(2) has been given pursuant to and in accordance with a requirement of the contract (and no notice under paragraph (3) is given), or

(b) a notice under paragraph (3) is given in accordance with this Article,

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 paragraph applies, the decision of the adjudicator referred to in paragraph (8) shall be construed as requiring payment of the additional amount 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.

(10) Paragraph (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 paragraph (5)(a).

(11) Paragraphs (2) to (5) of Article 12 apply for the purposes of paragraph (10) of this Article as they apply for the purposes of that Article.”.

(2) In Article 11 of the 1997 Order (right to suspend performance for non-payment)—

(a) in paragraph (1) for the words from “Where” to “given” substitute “ Where the requirement in Article 10(1) applies in relation to any sum but is not complied with, ”;

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

VALID FROM 14/11/2012

Suspension of performance for non-payment **N.I.**

8 In Article 11 of the 1997 Order (right to suspend performance for non-payment)—

(a) in paragraph (1) after “performance of” insert “ any or all of ”;

(b) after paragraph (3) insert—

"(3A) Where the right conferred by this Article 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.";

(c) in paragraph (4) after "pursuance of" insert " , or in consequence of the exercise of, ".

Short title and commencement **N.I.**

9.—(1) This Act may be cited as the Construction Contracts (Amendment) Act (Northern Ireland) 2011.

(2) Sections 1 to 8 come into operation on such day or days as the Department of Finance and Personnel may by order appoint.

(3) An order under subsection (2) may contain transitional provisions.

(4) An amendment made by a provision of this Act does not apply in relation to construction contracts (within the meaning of the 1997 Order) which are entered into before the day appointed under subsection (2) for the coming into operation of that provision.

Status:
Point in time view as at 10/02/2011. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Construction Contracts (Amendment) Act (Northern Ireland) 2011.