



2011 CHAPTER 4

Notices relating to payment

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(3) In Article 9 (dates for payment) the following are repealed—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

Status: This is the original version (as it was originally enacted).

- (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).”.