



2011 CHAPTER 4

Requirement to pay notified sum

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)—

Status: This is the original version (as it was originally enacted).

- (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)”.