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STATUTORY INSTRUMENTS

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**1997 No. 274**

**The Construction Contracts (Northern Ireland) Order 1997**

*Introductory*

**Title and commencement**

- 1.—(1) This Order may be cited as the Construction Contracts (Northern Ireland) Order 1997.
- (2) This Order shall come into operation on such day as the Head of the Department may by order appoint.

**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—
- “the Department” means the Department of the Environment;
- “the Scheme” means the Scheme for Construction Contracts in Northern Ireland, made under Article 13(1).

**Construction contracts.**

- 3.—(1) In this Order 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 Order 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 Order to a construction contract do not include a contract of employment (within the meaning of the Employment Rights (Northern Ireland) Order 1996).
- (4) The Department may by order add to, amend or repeal any of the provisions of paragraph (1), (2) or (3) as to the agreements which are construction contracts for the purposes of this Order or are to be taken or not to be taken as included in references to such contracts.
- (5) Where an agreement relates to construction operations and other matters, this Order 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 paragraph (1) or (2).

(6) This Order applies only to construction contracts which—

- (a) are entered into after the coming into operation of this Order, and
- (b) relate to the carrying out of construction operations in Northern Ireland.

(7) This Order applies whether or not the law of Northern Ireland is otherwise the applicable law in relation to the contract.

### **Meaning of “construction operations”**

4.—(1) In this Order “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, telecommunication 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 paragraph, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of 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 Order—

- (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 Department may by order add to, amend or repeal any of the provisions of paragraph (1) or (2) as to the operations and work to be treated as construction operations for the purposes of this Order.

### **Provisions not applicable to contract with residential occupier**

5.—(1) This Order does not apply—

- (a) to a construction contract with a residential occupier (see below), or
- (b) to any other description of construction contract excluded from the operation of this Order by order of the Department.

(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 paragraph “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 Department may by order amend paragraph (2).

### **Provisions applicable only to agreements in writing**

6.—(1) The provisions of this Order 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 Order only if in writing.

The expression “agreement” shall be construed accordingly.

(2) There is an agreement in writing—

- (a) if the agreement is made in writing (whether or not it is signed by the parties),
- (b) if the agreement is made by exchange of communications in writing, or
- (c) 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 Order to anything being written or in writing include its being recorded by any means.