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STATUTORY INSTRUMENTS

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**1997 No. 274**

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

*Payment*

**Entitlement to stage payments**

**8.—(1)** A party to a construction contract is entitled to payment by instalments, stage payments or other periodic payments for any work under the contract unless—

- (a) it is specified in the contract that the duration of the work is to be less than 45 days, or
- (b) it is agreed between the parties that the duration of the work is estimated to be less than 45 days.

(2) The parties are free to agree the amounts of the payments and the intervals at which, or circumstances in which, they become due.

(3) In the absence of such agreement, the relevant provisions of the Scheme apply.

(4) References in the following Articles to a payment [<sup>F1</sup>provided for by the contract] include a payment by virtue of this Article.

**F1** Words in art. 8(4) substituted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 6\(2\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

**Dates for payment**

**9.—(1)** Every construction contract shall—

- (a) provide an adequate mechanism for determining what payments become due under the contract, and when, and
- (b) provide for a final date for payment in relation to any sum which becomes due.

The parties are free to agree how long the period is to be between the date on which a sum becomes due and the final date for payment.

[<sup>F2</sup>(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.]

<sup>F3</sup>(2) .....

(3) If or to the extent that a contract does not contain such provision as is mentioned in paragraph (1) <sup>F4</sup> ..., the relevant provisions of the Scheme apply.

- F2** Art. 9(1A)-(1D) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 5, 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2
- F3** Art. 9(2) repealed (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 6\(3\)\(a\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2
- F4** Words in art. 9(3) repealed (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 6\(3\)\(b\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

**Modifications etc. (not altering text)**

- C1** Art. 9(1A) excluded (14.11.2012) by [The Construction Contracts Exclusion Order \(Northern Ireland\) 2012 \(S.R. 2012/366\), arts. 1, 3](#)

**[<sup>F5</sup>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.

**F5** Art. 9A - Art. 9B inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 6\(4\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

#### **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).]

**F5** Art. 9A - Art. 9B inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 6\(4\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

### **Requirement to pay notified sum**

[<sup>F</sup>610.—(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.]

**F6** Art. 10 substituted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 7\(1\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

### **Right to suspend performance for non-payment**

**11.**—(1) [<sup>F7</sup>Where the requirement in Article 10(1) applies in relation to any sum but is not complied with,] the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of [<sup>F8</sup>any or all of] his obligations under the contract to the party by whom payment ought to have been made ( the party in default).

(2) The right may not be exercised without first giving to the party in default at least 7 days' notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.

(3) The right to suspend performance ceases when the party in default makes payment in full of [<sup>F9</sup>the sum referred to in paragraph (1)].

[<sup>F10</sup>(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.]

(4) Any period during which performance is suspended in pursuance of [<sup>F11</sup>, or in consequence of the exercise of,] the right conferred by this Article shall be disregarded in computing for the purposes of any contractual time limit the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right.

Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

**F7** Words in art. 11(1) substituted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 7\(2\)\(a\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

**F8** Words in art. 11(1) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 8\(a\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

**F9** Words in art. 11(3) substituted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 7\(2\)\(b\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

**F10** Art. 11(3A) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 8\(b\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

**F11** Words in art. 11(4) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 8\(c\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

### **Prohibition of conditional payment provisions**

**12.**—(1) A provision making payment under a construction contract conditional on the payer receiving payment from a third person is ineffective, unless that third person, or any other person payment by whom is under the contract (directly or indirectly) a condition of payment by that third person, is insolvent.

(2) For the purposes of this Article a company becomes insolvent—

[<sup>F12</sup>(a) when it enters administration within the meaning of Schedule B1 to the Insolvency (Northern Ireland) Order 1989,]

- (b) on the appointment of an administrative receiver or a receiver or manager of its property under Part IV of that Order,
- (c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under Article 75 of that Order, or
- (d) on the making of a winding-up order under Part V or Part VI of that Order.

(3) For the purposes of this Article a partnership becomes insolvent on the making of a winding-up order against it under any provision of the Insolvency (Northern Ireland) Order 1989 as applied by an order under Article 364 of that Order.

(4) For the purposes of this Article an individual becomes insolvent on the making of a bankruptcy order against him under Part IX of the Insolvency (Northern Ireland) Order 1989.

(5) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in paragraph (2), (3) or (4) under the law of England and Wales, or of Scotland, or of a country outside the United Kingdom.

(6) Where a provision is rendered ineffective by paragraph (1), the parties are free to agree other terms for payment.

In the absence of such agreement, the relevant provisions of the Scheme apply.

**F12** Art. 12(2)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 55](#); S.R. 2006/21, [art. 2](#) (subject to transitional provisions in S.R. 2006/22, arts. 2-7)

**Changes to legislation:**

There are currently no known outstanding effects for the The Construction Contracts (Northern Ireland) Order 1997, Cross Heading: Payment.