



Housing Grants, Construction and Regeneration Act 1996

1996 CHAPTER 53

PART II

CONSTRUCTION CONTRACTS

Payment

109 Entitlement to stage payments.

- (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 for Construction Contracts apply.
- (4) References in the following sections to a payment [^{F1}provided for by the contract] include a payment by virtue of this section.

Textual Amendments

- F1** Words in s. 109(4) substituted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. [143\(1\)](#), [148\(8\)](#), [149](#) (with s. [149\(3\)\(4\)](#)); S.I. [2011/1582](#), art. 2; S.I. [2011/1597](#), arts. [2](#), [3](#), S.S.I. [2011/291](#), art. 2

Status: Point in time view as at 01/11/2011.

Changes to legislation: There are currently no known outstanding effects for the Housing Grants, Construction and Regeneration Act 1996, Cross Heading: Payment. (See end of Document for details)

Commencement Information

II S. 109 wholly in force; s. 109 not in force at Royal Assent see s. 150; s. 109 in force at 1.5.1998 by (E.W.) [S.I. 1998/650, art. 2](#) and (S.) [S.I. 1998/894, art. 2](#)

110 Dates for payment.

- (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.

[^{F2}(1A) The requirement in subsection (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 subsection (1A)(a) and (b) the references to obligations do not include obligations to make payments (but see section 113).

(1C) Subsection (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 subsection are obligations on that other person to carry out those operations.]

[^{F3}(1D) The requirement in subsection (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.]

^{F4}(2)

(3) If or to the extent that a contract does not contain such provision as is mentioned in subsection (1) ^{F5}..., the relevant provisions of the Scheme for Construction Contracts apply.

Textual Amendments

F2 S. 110(1A)-(1C) inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 142(2)**, 148(8), 149 (with s. 149(3)(4)); [S.I. 2011/1582, art. 2](#); [S.I. 2011/1597, arts. 2, 3](#), S.S.I. 2011/291, art. 2

F3 S. 110(1D) inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 142(3)**, 148(8), 149 (with s. 149(3)(4)); [S.I. 2011/1582, art. 2](#); [S.I. 2011/1597, arts. 2, 3](#), S.S.I. 2011/291, art. 2

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- F4** S. 110(2) repealed (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. 143(2)(a), 146(3), 148(8), 149, [Sch. 7 Pt. 5](#) (with s. 149(3)(4)); [S.I. 2011/1582](#), art. 2; [S.I. 2011/1597](#), arts. 2, 3, [S.S.I. 2011/291](#), art. 2
- F5** Words in s. 110(3) repealed (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. 143(2)(b), 146(3), 148(8), 149, [Sch. 7 Pt. 5](#) (with s. 149(3)(4)); [S.I. 2011/1582](#), art. 2; [S.I. 2011/1597](#), arts. 2, 3, [S.S.I. 2011/291](#), art. 2

Modifications etc. (not altering text)

- C1** S. 110(1A) restricted (1.10.2011) by [The Construction Contracts \(England\) Exclusion Order 2011 \(S.I. 2011/2332\)](#), arts. 1(1), 3
- C2** S. 110(1A) disapplied (S.) (1.11.2011) by [The Construction Contracts \(Scotland\) Exclusion Order 2011 \(S.S.I. 2011/370\)](#), arts. 1(1), 2

Commencement Information

- I2** S. 110 wholly in force; s. 110 not in force at Royal Assent see s. 150; s. 110 in force at 1.5.1998 by (E.W.) [S.I. 1998/650](#), art. 2 and (S.) [S.I. 1998/894](#), art. 2

[^{F6}110A Payment notices: contractual requirements

- (1) A construction contract shall, in relation to every payment provided for by the contract—
- require the payer or a specified person to give a notice complying with subsection (2) to the payee not later than five days after the payment due date, or
 - require the payee to give a notice complying with subsection (3) to the payer or a specified person not later than five days after the payment due date.
- (2) A notice complies with this subsection if it specifies—
- in a case where the notice is given by the payer—
 - the sum that the payer considers to be or to have been due at the payment due date in respect of the payment, and
 - the basis on which that sum is calculated;
 - in a case where the notice is given by a specified person—
 - 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
 - the basis on which that sum is calculated.
- (3) A notice complies with this subsection if it specifies—
- the sum that the payee considers to be or to have been due at the payment due date in respect of the payment, and
 - the basis on which that sum is calculated.
- (4) For the purposes of this section, it is immaterial that the sum referred to in subsection (2)(a) or (b) or (3)(a) may be zero.
- (5) If or to the extent that a contract does not comply with subsection (1), the relevant provisions of the Scheme for Construction Contracts apply.
- (6) In this and the following sections, 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;

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“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.

Textual Amendments

F6 Ss. 110A, 110B inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 143(3), 148(8), 149** (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2

110B Payment notices: payee's notice in default of payer's notice

- (1) This section 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 section 110A(2) not later than five days after the payment due date, but
 - (b) notice is not given as so required.
- (2) Subject to subsection (4), the payee may give to the payer a notice complying with section 110A(3) at any time after the date on which the notice referred to in subsection (1)(a) was required by the contract to be given.
- (3) Where pursuant to subsection (2) the payee gives a notice complying with section 110A(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 subsection (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 subsection (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 section 110A(3) given pursuant to subsection (2) (and the payee may not give another such notice pursuant to that subsection).]

Textual Amendments

F6 Ss. 110A, 110B inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 143(3), 148(8), 149** (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2

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[^{F7}111 Requirement to pay notified sum.

- (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 section, the “notified sum” in relation to any payment provided for by a construction contract means—
 - (a) in a case where a notice complying with section 110A(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 section 110A(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 section 110A(3) has been given pursuant to and in accordance with section 110B(2), the amount specified in that notice.
- (3) The payer or a specified person may in accordance with this section give to the payee a notice of the payer's intention to pay less than the notified sum.
- (4) A notice under subsection (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 subsection that the sum referred to in paragraph (a) or (b) may be zero.
- (5) A notice under subsection (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 subsection (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 subsection (3), subsection (1) applies only in respect of the sum specified pursuant to subsection (4)(a).
- (7) In subsection (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 for Construction Contracts.
- (8) Subsection (9) applies where in respect of a payment—
 - (a) a notice complying with section 110A(2) has been given pursuant to and in accordance with a requirement of the contract (and no notice under subsection (3) is given), or
 - (b) a notice under subsection (3) is given in accordance with this section,

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 subsection applies, the decision of the adjudicator referred to in subsection (8) shall be construed as requiring payment of the additional amount not later than—
 - (a) seven days from the date of the decision, or

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- (b) the date which apart from the notice would have been the final date for payment,
whichever is the later.
- (10) Subsection (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 subsection (5)(a).
- (11) Subsections (2) to (5) of section 113 apply for the purposes of subsection (10) of this section as they apply for the purposes of that section.]

Textual Amendments

F7 S. 111 substituted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. **144(1)**, 148(8), 149 (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2

112 Right to suspend performance for non-payment.

- (1) [^{F8}Where the requirement in section 111(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 [^{F9}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 seven 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 [^{F10}the sum referred to in subsection (1)].
- [^{F11}(3A) Where the right conferred by this section 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 [^{F12}, or in consequence of the exercise of,] the right conferred by this section 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.

Textual Amendments

F8 Words in s. 112(1) substituted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. **144(2)(a)**, 148(8), 149 (with s. 149(3)(4)); S.I. 2011/1582, art. 2, S.S.I. 2011/291, art. 2

Status: Point in time view as at 01/11/2011.

Changes to legislation: There are currently no known outstanding effects for the Housing Grants, Construction and Regeneration Act 1996, Cross Heading: Payment. (See end of Document for details)

- F9** Words in s. 112(1) inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 145(2)**, 148(8), 149 (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2
- F10** Words in s. 112(3) substituted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 144(2)(b)**, 148(8), 149 (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2
- F11** S. 112(3A) inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 145(3)**, 148(8), 149 (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2
- F12** Words in s. 112(4) inserted (1.10.2011 for E.W., 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 145(4)**, 148(8), 149 (with s. 149(3)(4)); S.I. 2011/1582, art. 2; S.I. 2011/1597, arts. 2, 3, S.S.I. 2011/291, art. 2

Commencement Information

- I3** S. 112 wholly in force; s. 112 not in force at Royal Assent see s. 150; s. 112 in force at 1.5.1998 by (E.W.) [S.I. 1998/650, art. 2](#) and (S.) [S.I. 1998/894, art. 2](#)

113 Prohibition of conditional payment provisions.

- (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 section a company becomes insolvent—
 - ^{F13}(a) when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986,
 - (b) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part,
 - (c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act, or
 - (d) on the making of a winding-up order under Part IV or V of that Act.
- (3) For the purposes of this section a partnership becomes insolvent—
 - (a) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act, or
 - (b) when sequestration is awarded on the estate of the partnership under section 12 of the ^{M1}Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- (4) For the purposes of this section an individual becomes insolvent—
 - (a) on the making of a bankruptcy order against him under Part IX of the ^{M2}Insolvency Act 1986, or
 - (b) on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
- (5) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in subsection (2), (3) or (4) under the law of Northern Ireland or of a country outside the United Kingdom.

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

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

Textual Amendments

- F13** S. 113(2)(a) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 30** (with art. 6)

Commencement Information

- I4** S. 113 wholly in force; s. 113 not in force at Royal Assent see s. 150; s. 113 in force at 1.5.1998 by (E.W.) [S.I. 1998/650](#), **art. 2** and (S.) [S.I. 1998/894](#), **art. 2**

Marginal Citations

- M1** 1985 c. 66.
M2 1986 c. 45.

Status:

Point in time view as at 01/11/2011.

Changes to legislation:

There are currently no known outstanding effects for the Housing Grants, Construction and Regeneration Act 1996, Cross Heading: Payment.