



# Construction Contracts (Amendment) Act (Northern Ireland) 2011

## 2011 CHAPTER 4

An Act to amend the Construction Contracts (Northern Ireland) Order 1997.  
[10th February 2011]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### **Requirement for construction contracts to be in writing**

**1.**—(1) Article 6 of the 1997 Order (provisions applicable only to agreements in writing) is repealed.

(2) In Article 7 of that Order (right to refer disputes to adjudication)—

(a) in paragraph (2) after “The contract shall” insert “ include provision in writing so as to ”;

(b) in paragraphs (3) and (4) after “provide” insert “ in writing ”.

(3) In this Act “the 1997 Order” means the Construction Contracts (Northern Ireland) Order 1997 (NI 1).

#### **Commencement Information**

**II** [S. 1](#) in operation at 14.11.2012 by [S.R. 2012/367](#), [art. 2](#)

**Power to disapply provisions of the 1997 Order**

2.—(1) Article 5 of the 1997 Order (provisions not applicable to certain contracts) is amended as follows.

(2) For paragraph (1) and the heading to the Article substitute—

**“Application of this Order**

5.—(1) This Order does not apply to a construction contract with a residential occupier (see paragraph (2)).

(1A) The Department may by order provide that all or any of the provisions of this Order shall not apply to any other description of construction contract which is specified in the order.”

**Commencement Information**

I2 [S. 2](#) in operation at 14.11.2012 by [S.R. 2012/367](#), [art. 2](#)

**Adjudicator's power to make corrections**

3 In Article 7 of the 1997 Order (right to refer disputes to adjudication) after paragraph (3) insert—

“(3A) The contract shall include provision in writing permitting the adjudicator to correct his decision so as to remove a clerical or typographical error arising by accident or omission.”

**Commencement Information**

I3 [S. 3](#) in operation at 14.11.2012 by [S.R. 2012/367](#), [art. 2](#)

**Adjudication costs**

4 After Article 7 of the 1997 Order insert—

**“Adjudication costs: effectiveness of provision**

7A.—(1) This Article applies in relation to any contractual provision made between the parties to a construction contract which concerns the allocation as between those parties of costs relating to the adjudication of a dispute arising under the construction contract. It is immaterial whether or not the contractual provision is contained in the construction contract.

(2) The contractual provision referred to in paragraph (1) is ineffective unless—

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*Changes to legislation: There are currently no known outstanding effects for the Construction Contracts (Amendment) Act (Northern Ireland) 2011. (See end of Document for details)*

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- (a) it is made in writing, is contained in the construction contract and confers power on the adjudicator to allocate his fees and expenses as between the parties, or
- (b) it is made in writing after the giving of notice of intention to refer the dispute to adjudication.”.

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**Commencement Information**

**I4** [S. 4](#) in operation at 14.11.2012 by [S.R. 2012/367](#), [art. 2](#)

**Determination of payments due**

**5** In Article 9 of the 1997 Order (dates for payment) after paragraph (1) insert—

“(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.”.

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**Commencement Information**

**I5** [S. 5](#) in operation at 14.11.2012 by [S.R. 2012/367](#), [art. 2](#)

### **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.