WELSH STATUTORY INSTRUMENTS

2011 No. 1715 (W.194)

CONSTRUCTION, WALES

The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (Wales) Regulations 2011

Made - - - -	*12 July 2011*
Coming into force - -	*1 October 2011*

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 108(6), 114(1) and 146(1) and (2) of the Housing Grants, Construction and Regeneration Act 1996(**1**) ("the Act") and now exercisable by them(**2**) make the following Regulations.

Before making these Regulations, the Welsh Ministers have consulted such persons as they think fit as required by section 114(2) of the Act.

In accordance with section 114(5) of the Act(**3**), a draft of these Regulations was laid before the National Assembly for Wales and approved by a resolution of the National Assembly for Wales.

Title, application, commencement and interpretation

1.—(1) The title of these Regulations is the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (Wales) Regulations 2011. They come into force on 1 October 2011.

(2) These Regulations apply to construction contracts entered into after the coming into force of these Regulations.

(3) These Regulations apply to construction contracts in so far as they relate to the carrying out of construction operations in Wales.

(4) In these Regulations—

"the Act" ("*y Ddeddf*") means the Housing Grants, Construction and Regeneration Act 1996;

(**1**) 1996 c. 53.

(**2**) Functions of the Minister and Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672. The functions were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**3**) Section 114(5) provides that the Secretary of State may not make a statutory instrument containing regulations unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament. By virtue of paragraph 34(2) of Schedule 11 to the Government of Wales Act 2006 (c. 32), the provision applies to the exercise by the Welsh Ministers of the function of making a statutory instrument containing such regulations as if any reference to either House of Parliament were a reference to the National Assembly for Wales.

"the Principal Regulations" ("*y Prif Reoliadau*") means the Scheme for Construction Contracts (England and Wales) Regulations 1998(**4**);

"the Schedule" ("*yr Atodlen*") means the schedule to the Principal Regulations.

Amendment to regulation 3 of the Principal Regulations

2. In paragraph (b) of regulation 3 of the Principal Regulations, after "section 110", insert "or by section 110A"(**5**).

Amendments to Part 1 (Adjudication) of the Schedule

3.—(1) Part 1 (Adjudication) of the Schedule is amended as follows.

(2) In paragraph 1(1), before "of his intention", insert "at any time".

(3) After paragraph 7(3) insert—

"(4) Upon receipt of the referral notice, the adjudicator must inform every party to the dispute of the date that it was received".

(4) In paragraph 9(4), for the second sentence substitute—

"Subject to any contractual provision pursuant to section 108A(2) of the Act, the adjudicator may determine how the payment is to be apportioned and the parties are jointly and severally liable for any sum which remains outstanding following the making of any such determination"(**6**).

(5) In paragraph 11(1), for the third sentence substitute—

"Subject to any contractual provision pursuant to section 108A(2) of the Act, the adjudicator may determine how the payment is to be apportioned and the parties are jointly and severally liable for any sum which remains outstanding following the making of any such determination".

(6) In paragraph 15(b) for "draw such inferences from that failure to comply as circumstances may, in the adjudicator's opinion, be justified" substitute "draw such inferences from that failure to comply as the circumstances may, in the adjudicator's opinion, justify".

(7) In paragraph 19(1)—

(a) in paragraphs (a) and (b), for "the date", substitute "receipt"; and

(b) in paragraph (c), insert "receipt of" after the word "after".

(8) In paragraph 20(b), for "section 111(4)", substitute "section 111(9)"(**7**).

(9) In paragraph 21, omit "in accordance with this paragraph".

(10) After paragraph 22 insert—

"**22A.**—(1) The adjudicator may on the adjudicator's own initiative or on the application of a party correct the decision so as to remove a clerical or typographical error arising by accident or omission.

(2) Any correction of a decision must be made within five days of the delivery of the decision to the parties.

(**4**) S.I. 1998/649.
(**5**) Section 110A was inserted by section 143(3) of the Local Democracy, Economic Development and Construction Act 2009 (c. 20).
(**6**) Section 108A was inserted by section 141 of the Local Democracy, Economic Development and Construction Act 2009.
(**7**) Section 111 was substituted by section 144 of the Local Democracy, Economic Development and Construction Act 2009.

(3) As soon as possible after correcting a decision in accordance with this paragraph, the adjudicator must deliver a copy of the corrected decision to each of the parties to the contract.

(4) Any correction of a decision forms part of the decision."

(11) Omit paragraph 23(1).

(12) Omit paragraph 24.

(13) In paragraph 25, for the second sentence substitute—

"Subject to any contractual provision pursuant to section 108A(2) of the Act, the adjudicator may determine how the payment is to be apportioned and the parties are jointly and severally liable for any sum which remains outstanding following the making of any such determination".

Amendment to Part 2 (Payment) of the Schedule

4.—(1) Part 2 (Payment) of the Schedule is amended as follows.

(2) In paragraph 5 omit "the expiry of" and insert "the expiry of" before the words "30 days following completion of the work".

(3) For paragraph 9, substitute—

"**Payment notice**

9.—(1) Where the parties to a construction contract fail, in relation to a payment provided for by the contract, to provide for the giving of a notice pursuant to section 110A(1) of the Act, the provisions of this paragraph apply.

(2) The payer must, not later than five days after the payment due date, give a notice to the payee complying with sub-paragraph (3).

(3) A notice complies with this sub-paragraph if it specifies the sum that the payer considers to be due or to have been due at the payment due date and the basis on which that sum is calculated.

(4) For the purposes of this paragraph, it is immaterial that the sum referred to in sub-paragraph (3) may be zero.

(5) A payment provided for by the contract includes any payment of the kind mentioned in paragraph 2, 5, 6, or 7 above."

(4) For paragraph 10, substitute—

"**Notice of intention to pay less than the notified sum**

10. Where, in relation to a notice of intention to pay less than the notified sum given in accordance with section 111(3) of the Act, the parties fail to agree the prescribed period as provided for in section 111(5), that notice must be given not later than seven days before the final date for payment determined either in accordance with the construction contract, or where no such provision is made in the contract, in accordance with paragraph 8 above."