STATUTORY RULES OF NORTHERN IRELAND

1999 No. 32

CONSTRUCTION

The Scheme for Construction Contracts in Northern Ireland Regulations (Northern Ireland) 1999

To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974

Made - - - -	*27th January 1999*
Coming into operation	*1st June 1999*

The Department of the Environment, in exercise of the powers conferred on it by Articles 7(6), 13 and 16(1) of the Construction Contracts (Northern Ireland) Order 1997(**1**), and of every other power enabling it in that behalf, having consulted with such persons as it thinks fit, thereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scheme for Construction Contracts in Northern Ireland Regulations (Northern Ireland) 1999 and shall come into operation on 1st June 1999.

(2) In these Regulations "the 1997 Order" means the Construction Contracts (Northern Ireland) Order 1997.

The Scheme for Construction Contracts in Northern Ireland

2. Where a construction contract does not comply with the requirements of Article 7(1) to (4) of the 1997 Order, Part I of the Schedule shall apply.

3. Where–

(a) the parties to a construction contract are unable to reach agreement for the purposes mentioned respectively in Articles 8, 10 and 12 of the 1997 Order; or

(b) a construction contract does not make provision as required by Article 9 of the 1997 Order,

the relevant provisions in Part II of the Schedule shall apply.

4. The provisions in the Schedule shall be the Scheme.

(**1**) S.I.1997/274 (N.I. 1)

Sealed with the Official Seal of the Department of the Environment on

27th January 1999.

Trevor Pearson
Assistant Secretary

SCHEDULE Regulations 2, 3 and 4

The Scheme

Part I

Adjudication

Notice of Intention to seek Adjudication

1.—(1) Any party to a construction contract (the "referring party") may give written notice (the "notice of adjudication") of his intention to refer any dispute arising under the contract, to adjudication.

(2) The notice of adjudication shall be given to every other party to the contract.

(3) The notice of adjudication shall set out briefly—

(a) the nature and a brief description of the dispute and of the parties involved;

(b) details of where and when the dispute has arisen;

(c) the nature of the redress which is sought; and

(d) the names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).

2.—(1) Following the giving of a notice of adjudication and subject to any agreement between the parties to the dispute as to who shall act as adjudicator–

(a) the referring party shall request the person (if any) specified in the contract to act as adjudicator;

(b) if no person is named in the contract or the person named has already indicated that he is unwilling or unable to act, and the contract provides for a specified nominating body to select a person, the referring party shall request that nominating body named in the contract to select a person, the referring party shall request the nominating body named in the contract to select a person to act as adjudicator; or

(c) where neither paragraph (*a*) nor (*b*) applies, or where the person referred to in paragraph (*a*) has already indicated that he is unwilling or unable to act and paragraph (*b*) does not apply, the referring party shall request an adjudicator nominating body to select a person to act as adjudicator.

(2) A person requested to act as adjudicator in accordance with sub-paragraph (1) shall indicate whether or not he is willing to act within 2 days of receiving the request.

(3) In this paragraph, and in paragraphs 5 and 6, an "adjudicator nominating body" shall mean a body (not being an individual and not being a party to the dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a referring party.

3. The request referred to in paragraphs 2, 5 and 6 shall be accompanied by a copy of the notice of adjudication.

4. Any person requested or selected to act as adjudicator in accordance with paragraphs 2, 5 or 6 shall be an individual acting in his personal capacity. A person requested or selected to act as an adjudicator shall not be an employee of any of the parties to the dispute and shall declare any interest, financial or otherwise, in any matter relating to the dispute.

5.—(1) The nominating body referred to in paragraphs 2(1)(*b*) and 6(1)(*b*) or the adjudicator nominating body referred to in paragraphs 2(1)(*c*), 5(2)(*b*) and 6(1)(*c*) must communicate the selection of an adjudicator to the referring party within 5 days of receiving a request to do so.

(2) Where the nominating body or the adjudicator nominating body fails to comply with sub-paragraph (1), the referring party may–

(a) agree with the other party to the dispute to request a specified person to act as adjudicator; or

(b) request any other adjudicator nominating body to select a person to act as adjudicator.

(3) The person requested to act as adjudicator in accordance with sub-paragraphs (1) or (2) shall indicate whether or not he is willing to act within 2 days of receiving the request.

6.—(1) Where an adjudicator who is named in the contract indicates to the parties that he is unable or unwilling to act, or where he fails to respond in accordance with paragraph 2(2), the referring party may–

(a) request another person (if any) specified in the contract to act as adjudicator;

(b) request the nominating body (if any) referred to in the contract to select a person to act as adjudicator; or

(c) request any other adjudicator nominating body to select a person to act as adjudicator.

(2) The person requested to act in accordance with sub-paragraph (1) shall indicate whether or not he is willing to act within 2 days of receiving the request.

7.—(1) Where an adjudicator has been selected in accordance with paragraphs 2, 5 or 6, the referring party shall, not later than 7 days from the date of the notice of adjudication, refer the dispute in writing (the "referral notice") to the adjudicator.

(2) A referral notice shall be accompanied by copies of, or relevant extracts from, the construction contract and such other documents as the referring party intends to rely upon.

(3) The referring party shall, at the same time as he sends to the adjudicator the documents referred to in sub-paragraphs (1) and (2), send copies of those documents to every other party to the dispute.

8.—(1) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on more than one dispute under the same contract.

(2) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on related disputes under different contracts, whether or not one or more of those parties is a party to those disputes.

(3) All the parties in sub-paragraphs (1) and (2) respectively may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes.

(4) Where an adjudicator ceases to act because a dispute is to be adjudicated on by another person in terms of this paragraph, that adjudicator's fees and expenses shall be determined in accordance with paragraph 25.

9.—(1) An adjudicator may resign at any time on giving notice in writing to the parties to the dispute.

(2) An adjudicator must resign where the dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.

(3) Where an adjudicator ceases to act under sub-paragraph (1)–

(a) the referring party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and

(b) if requested by the new adjudicator and insofar as it is reasonably practicable, the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.

(4) Where an adjudicator resigns in the circumstances referred to in sub-paragraph (2), or where a dispute varies significantly from the dispute referred to him in the referral notice and for that reason he is not competent to decide it, the adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.

10. Where any party to the dispute objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the adjudicator's appointment nor any decision he may reach in accordance with paragraph 20.

11.—(1) The parties to a dispute may at any time agree to revoke the appointment of the adjudicator. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him. The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.

(2) Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the parties shall not be liable to apply the adjudicator's fees and expenses.

Powers of the adjudicator

12. The adjudicator shall–

(a) act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the contract and shall reach his decision in accordance with the applicable law in relation to the contract; and

(b) avoid incurring unnecessary expense.

13. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute, and shall decide on the procedure to be followed in the adjudication. In particular he may–

(a) request any part to the contract to supply him with such documents as he may reasonably require including, if he so directs, any written statement from any party to the contract supporting or supplementing the referral notice and any other documents given under paragraph 7(2);

(b) decide the language or languages to be used in the adjudication and whether a translation of any document is to be provided and if so by whom;

(c) meet and question any of the parties to the contract and their representatives;

(d) subject to obtaining any necessary consent from a third party, make such site visits and inspections as he considers appropriate, whether accompanied by the parties or not;

(e) subject to obtaining any necessary consent from a third party, carry out any tests or experiments;

(f) obtain and consider such representations and submissions as he requires, and, provided he has notified the parties of his intention, appoint experts, assessors or legal advisers;

(g) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written document or oral representations to be complied with; and