
STATUTORY INSTRUMENTS

1997 No. 274 (N.I. 1)

The Construction Contracts (Northern Ireland) Order 1997 ^{F1}

- - - - - 12th February 1997

Annotations:

F1 functions transf. by SR 1999/481

Introductory

Title and commencement

- 1.—(1) This Order may be cited as the Construction Contracts (Northern Ireland) Order 1997.
(2) This Order shall come into operation on such day as the Head of the Department may by order appoint^{F2}.

Annotations:

F2 fully exercised by SR 1999/34

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
(2) In this Order—
the Department means the Department of the Environment;
the Scheme means the Scheme for Construction Contracts in Northern Ireland, made under Article 13(1).

Construction contracts.

- 3.—(1) In this Order a construction contract means an agreement with a person for any of the following—
(a) the carrying out of construction operations;
(b) arranging for the carrying out of construction operations by others, whether under sub-contract to him or otherwise;
(c) providing his own labour, or the labour of others, for the carrying out of construction operations.
(2) References in this Order to a construction contract include an agreement—

- (a) to do architectural, design, or surveying work, or
- (b) to provide advice on building, engineering, interior or exterior decoration or on the laying-out of landscape,

in relation to construction operations.

(3) References in this Order to a construction contract do not include a contract of employment (within the meaning of the Employment Rights (Northern Ireland) Order 1996).

(4) The Department may by order add to, amend or repeal any of the provisions of paragraph (1), (2) or (3) as to the agreements which are construction contracts for the purposes of this Order or are to be taken or not to be taken as included in references to such contracts.

(5) Where an agreement relates to construction operations and other matters, this Order applies to it only so far as it relates to construction operations.

An agreement relates to construction operations so far as it makes provision of any kind within paragraph (1) or (2).

(6) This Order applies only to construction contracts which—

- (a) are entered into after the coming into operation of this Order, and
- (b) relate to the carrying out of construction operations in Northern Ireland.

(7) This Order applies whether or not the law of Northern Ireland is otherwise the applicable law in relation to the contract.

Meaning of construction operations

4.—(1) In this Order construction operations means, subject as follows, operations of any of the following descriptions—

- (a) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings, or structures forming, or to form, part of the land (whether permanent or not);
- (b) construction, alteration, repair, maintenance, extension, demolition or dismantling of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, [^{F3} electronic communications apparatus], aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
- (c) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or security or communications systems;
- (d) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
- (e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this paragraph, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works;
- (f) painting or decorating the internal or external surfaces of any building or structure.

(2) The following operations are not construction operations within the meaning of this Order—

- (a) drilling for, or extraction of, oil or natural gas;
- (b) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works, for this purpose;

- (c) assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery, on a site where the primary activity is—
 - (i) nuclear processing, power generation, or water or effluent treatment, or
 - (ii) the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel or food and drink;
 - (d) manufacture or delivery to site of—
 - (i) building or engineering components or equipment,
 - (ii) materials, plant or machinery, or
 - (iii) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems,except under a contract which also provides for their installation;
 - (e) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature.
- (3) The Department may by order add to, amend or repeal any of the provisions of paragraph (1) or (2) as to the operations and work to be treated as construction operations for the purposes of this Order.

Annotations:

F3 [2003 c. 21](#)

[^{F4}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.]

(2) A construction contract with a residential occupier means a construction contract which principally relates to operations on a dwelling which one of the parties to the contract occupies, or intends to occupy, as his residence.

In this paragraph dwelling means a dwelling-house or a flat; and for this purpose—

dwelling-house does not include a building containing a flat; and

flat means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which the premises are divided horizontally.

(3) The Department may by order amend paragraph (2).

Annotations:

F4 [Art. 5\(1\)\(1A\)](#) and heading substituted for [art. 5\(1\)](#) and heading (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\)](#), [ss. 2\(2\)](#), [9\(2\)](#) (with [s. 9\(4\)](#)); [S.R. 2012/367](#), [art. 2](#)

Provisions applicable only to agreements in writing

^{F5}6.

Annotations:

- F5** Art. 6 repealed (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 1\(1\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

*Adjudication***Right to refer disputes to adjudication**

7.—(1) A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this Article.

For this purpose dispute includes any difference.

- (2) The contract shall^[F6] include provision in writing so as to]—
- (a) enable a party to give notice at any time of his intention to refer a dispute to adjudication;
 - (b) provide a timetable with the object of securing the appointment of the adjudicator and referral of the dispute to him within 7 days of such notice;
 - (c) require the adjudicator to reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred;
 - (d) allow the adjudicator to extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred;
 - (e) impose a duty on the adjudicator to act impartially; and
 - (f) enable the adjudicator to take the initiative in ascertaining the facts and the law.

(3) The contract shall provide^[F7] in writing] that the decision of the adjudicator is binding until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.

The parties may agree to accept the decision of the adjudicator as finally determining the dispute.

^[F8](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.]

(4) The contract shall also provide^[F7] in writing] that the adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and that any employee or agent of the adjudicator is similarly protected from liability.

(5) If the contract does not comply with the requirements of paragraphs (1) to (4), the adjudication provisions of the Scheme apply.

(6) The Scheme may apply the provisions of the Arbitration Act 1996 with such adaptations and modifications as appear to the Department to be appropriate.

Annotations:

- F6** Words in art. 7(2) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 1\(2\)\(a\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2
- F7** Words in art. 7(3)(4) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 1\(2\)\(b\), 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2
- F8** Art. 7(3A) inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 4\), ss. 3, 9\(2\)](#) (with s. 9(4)); S.R. 2012/367, art. 2

[^{F9}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—

- (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.]

Annotations:

F9 Art. 7A inserted (14.11.2012) by [Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011](#) (c. 4), ss. 4, 9(2) (with s. 9(4)); S.R. 2012/367, art. 2

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 [^{F10}provided for by the contract] include a payment by virtue of this Article.

Annotations:

F10 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.

[^{F11}(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