



# Housing Grants, Construction and Regeneration Act 1996

## 1996 CHAPTER 53

### PART II

#### CONSTRUCTION CONTRACTS

##### *Adjudication*

#### **108 Right to refer disputes to adjudication.**

- (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 section.

For this purpose “dispute” includes any difference.

- (2) The contract shall [<sup>F1</sup>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 [<sup>F2</sup>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.

*Status: Point in time view as at 01/11/2011.*

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

[<sup>F3</sup>(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 [<sup>F2</sup>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 subsections (1) to (4), the adjudication provisions of the Scheme for Construction Contracts apply.
- (6) For England and Wales, the Scheme may apply the provisions of the <sup>M1</sup>Arbitration Act 1996 with such adaptations and modifications as appear to the Minister making the scheme to be appropriate.

For Scotland, the Scheme may include provision conferring powers on courts in relation to adjudication and provision relating to the enforcement of the adjudicator's decision.

#### Textual Amendments

- F1** Words in s. 108(2) inserted (1.10.2011 for E.W. for specified purposes, 1.10.2011 for E.W. in so far as not already in force, 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\), ss. 139\(2\)\(a\)](#), 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
- F2** Words in s. 108(3)(4) inserted (1.10.2011 for E.W. for specified purposes, 1.10.2011 for E.W. in so far as not already in force, 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\), ss. 139\(2\)\(b\)](#), 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
- F3** S. 108(3A) inserted (1.10.2011 for E.W. for specified purposes, 1.10.2011 for E.W. in so far as not already in force, 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\), ss. 140](#), 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

#### Modifications etc. (not altering text)

- C1** S. 108 excluded (S.) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\), s. 79\(2\)](#) (with s. 75)
- C2** S. 108 excluded (S.) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\), s. 80\(2\)](#) (with ss. 76, 84)
- C3** S. 108 excluded (S.) (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\), s. 34\(3\)](#) (with ss. 34(4), 50(2), 51)
- C4** S. 108 excluded (S.) (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\), s. 35\(4\)](#) (with s. 50)
- C5** S. 108 excluded (S.) (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\), s. 56\(3\)](#) (with ss. 52, 60)
- C6** S. 108 excluded (S.) (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\), s. 55\(3\)](#) (with ss. 48, 59)
- C7** S. 108 excluded (S.) (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\)](#), arts. 1, **40(3)**

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#### Commencement Information

- II** S. 108 wholly in force; s. 108 not in force at Royal Assent see s. 150; s. 108 in force for certain purposes at 11.9.1996 by [S.I. 1996/2352](#), [art. 2\(2\)](#); s. 108 in force insofar as not already 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** 1996 c. 23.

### [<sup>F4</sup>108A Adjudication costs: effectiveness of provision

- (1) This section 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.
- (2) The contractual provision referred to in subsection (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.]

#### Textual Amendments

- F4** S. 108A inserted (1.10.2011 for E.W. for specified purposes, 1.10.2011 for E.W. in so far as not already in force, 1.11.2011 for S.) by [Local Democracy, Economic Development and Construction Act 2009](#) (c. 20), [ss. 141](#), [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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