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STATUTORY INSTRUMENTS

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**1997 No. 274**

**The Construction Contracts (Northern Ireland) Order 1997**

*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 under the contract include a payment by virtue of this Article.

**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.

(2) Every construction contract shall provide for the giving of notice by a party not later than 5 days after the date on which a payment becomes due from him under the contract, or would have become due if—

- (a) the other party had carried out his obligations under the contract, and
- (b) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts,

specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated.

(3) If or to the extent that a contract does not contain such provision as is mentioned in paragraph (1) or (2), the relevant provisions of the Scheme apply.

**Notice of intention to withhold payment**

**10.—**(1) A party to a construction contract may not withhold payment after the final date for payment of a sum due under the contract unless he has given an effective notice of intention to withhold payment.

The notice mentioned in Article 9(2) may suffice as a notice of intention to withhold payment if it complies with the requirements of this Article.

- (2) To be effective such a notice must specify—
- (a) the amount proposed to be withheld and the ground for withholding payment, or
  - (b) if there is more than one ground, each ground and the amount attributable to it,
- and must be given not later than the prescribed period before the final date for payment.
- (3) The parties are free to agree what that prescribed period is to be.

In the absence of such agreement, the period shall be that provided by the Scheme.

(4) Where an effective notice of intention to withhold payment is given, but on the matter being referred to adjudication it is decided that the whole or part of the amount should be paid, the decision shall be construed as requiring payment not later than—

- (a) 7 days from the date of the decision, or
  - (b) the date which apart from the notice would have been the final date for payment,
- whichever is the later.

### **Right to suspend performance for non-payment**

**11.**—(1) Where a sum due under a construction contract is not paid in full by the final date for payment and no effective notice to withhold payment has been given, the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of his obligations under the contract to the party by whom payment ought to have been made (“the party in default”).

(2) The right may not be exercised without first giving to the party in default at least 7 days' notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.

(3) The right to suspend performance ceases when the party in default makes payment in full of the amount due.

(4) Any period during which performance is suspended in pursuance of the right conferred by this Article shall be disregarded in computing for the purposes of any contractual time limit the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right.

Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

### **Prohibition of conditional payment provisions**

**12.**—(1) A provision making payment under a construction contract conditional on the payer receiving payment from a third person is ineffective, unless that third person, or any other person payment by whom is under the contract (directly or indirectly) a condition of payment by that third person, is insolvent.

- (2) For the purposes of this Article a company becomes insolvent—
- (a) on the making of an administration order against it under Part III of the Insolvency (Northern Ireland) Order 1989,
  - (b) on the appointment of an administrative receiver or a receiver or manager of its property under Part IV of that Order,
  - (c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under Article 75 of that Order, or

(d) on the making of a winding-up order under Part V or Part VI of that Order.

(3) For the purposes of this Article a partnership becomes insolvent on the making of a winding-up order against it under any provision of the Insolvency (Northern Ireland) Order 1989 as applied by an order under Article 364 of that Order.

(4) For the purposes of this Article an individual becomes insolvent on the making of a bankruptcy order against him under Part IX of the Insolvency (Northern Ireland) Order 1989.

(5) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in paragraph (2), (3) or (4) under the law of England and Wales, or of Scotland, or of a country outside the United Kingdom.

(6) Where a provision is rendered ineffective by paragraph (1), the parties are free to agree other terms for payment.

In the absence of such agreement, the relevant provisions of the Scheme apply.