

Housing Grants, Construction and Regeneration Act 1996 C53

PART II CONSTRUCTION CONTRACTS

Introductory provisions.

Construction Contracts

- 104(1)** In this Part 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.
- 104(2) References in this Part 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.
- 104(3) References in this Part to a construction contract do not include a contract of employment (within the meaning of the Employment Rights Act 1996 C18).
- 104(4) The Secretary of State may by order add to, amend or repeal any of the provisions of subsection (1), (2) or (3) as to the agreements which are construction contracts for the purposes of this Part or are to be taken or not to be taken as included in references to such contracts.
No such order shall be made unless a draft of it has been laid before and approved by a resolution of each of House of Parliament.
- 104(5) Where an agreement relates to construction operations and other matters, this Part 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 subsection (1) or (2).
- 104(6) This Part applies only to construction contracts which-
- (a) are entered into after the commencement of this Part, and
 - (b) relate to the carrying out of construction operations in England, Wales or Scotland.
- 104(7) This Part applies whether or not the law of England and Wales or Scotland is otherwise the applicable law in relation to the contract

Meaning of "construction operations".

- 105(1)** In this Part "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, telecommunication 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 subsection, 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.

Housing Grants, Construction and Regeneration Act 1996 C53

- 105(2) The following operations are not construction operations within the meaning of this Part-
- (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.
- 105(3) The Secretary of State may by order add to, amend or repeal any of the provisions of subsection (1) or (2) as to the operations and work to be treated as construction operations for the purposes of this Part.

105(4) No such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Provisions not applicable to contract with residential occupier.

106(1) This Part does not apply-

- (a) to a construction contract with a residential occupier (see below), or
- (b) to any other description of construction contract excluded from the operation of this Part by order of the Secretary of State.

106(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 subsection "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.

106(3) The Secretary of State may by order amend subsection (2).

106(4) No order under this section shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Provisions applicable only to agreements in writing.

107(1) The provisions of this Part apply only where the construction contract is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing.

The expressions "agreement", "agree" and "agreed" shall be construed accordingly.

107(2) There is an agreement in writing-

- (a) if the agreement is made in writing (whether or not it is signed by the parties),
- (b) if the agreement is made by exchange of communications in writing, or
- (c) if the agreement is evidenced in writing.

107(3) Where parties agree otherwise than in writing by reference to terms which are in writing, they make an agreement in writing.

Housing Grants, Construction and Regeneration Act 1996 C53

- 107(4) An agreement is evidenced in writing if an agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.
- 107(5) An exchange of written submissions in adjudication proceedings, or in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and not denied by the other party in his response constitutes as between those parties an agreement in writing to the effect alleged.
- 107(6) References in this Part to anything being written or in writing include its being recorded by any means.

Adjudication

Right to refer disputes to adjudication.

- 108(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.
- 108(2) The contract shall-
- (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.
- 108(3) The contract shall provide 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.
- 108(4) The contract shall also provide 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
- 108(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.
- 108(6) For England and Wales, the Scheme may apply the provisions of the 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.

Payment

Entitlement to stage payments.

- 109(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.
- 109(2) The parties are free to agree the amounts of the payments and the intervals at which, or circumstances in which, they become due.
- 109(3) In the absence of such agreement, the relevant provisions of the Scheme for Construction Contracts apply.
- 109(4) References in the following sections to a payment under the contract include a payment by virtue of this section

Housing Grants, Construction and Regeneration Act 1996 C53

Dates for payment.

110(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.

110(2) Every construction contract shall provide for the giving of notice by a party not later than five 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 subsection (1) or (2), the relevant provisions of the Scheme for Construction Contracts apply

Notice of intention to withhold payment.

111(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 section 110(2) may suffice as a notice of intention to withhold payment if it complies with the requirements of this section.

111(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.

111(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 for Construction Contracts.

111(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) seven 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.

112(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").

112(2) The right may not be exercised without first giving to the party in default at least seven days' notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.

112(3) The right to suspend performance ceases when the party in default makes payment in full of the amount due

112(4) Any period during which performance is suspended in pursuance of the right conferred by this section 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.

Housing Grants, Construction and Regeneration Act 1996 C53

Prohibition of conditional payment provisions.

- 113(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.
- 113(2) For the purposes of this section a company becomes insolvent-
- (a) on the making of an administration order against it under Part II of the Insolvency Act 1986,
 - (b) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part,
 - (c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act, or
 - (d) on the making of a winding-up order under Part IV or V of that Act.
- 113(3) For the purposes of this section a partnership becomes insolvent-
- (a) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act, or
 - (b) when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- 113(4) For the purposes of this section an individual becomes insolvent-
- (a) on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986, or
 - (b) on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
- 113(5) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in subsection (2), (3) or (4) under the law of Northern Ireland or of a country outside the United Kingdom.
- 113(6) Where a provision is rendered ineffective by subsection (1), the parties are free to agree other terms for payment. In the absence of such agreement, the relevant provisions of the Scheme for Construction Contracts apply

Supplementary provisions

The Scheme for Construction Contracts.

- 114(1) The Minister shall by regulations make a scheme ("the Scheme for Construction Contracts") containing provision about the matters referred to in the preceding provisions of this Part
- 114(2) Before making any regulations under this section the Minister shall consult such persons as he thinks fit.
- 114(3) In this section "the Minister" means-
- (a) for England and Wales, the Secretary of State, and
 - (b) for Scotland, the Lord Advocate.
- 114(4) Where any provisions of the Scheme for Construction Contracts apply by virtue of this Part in default of contractual provision agreed by the parties, they have effect as implied terms of the contract concerned.
- 114(5) Regulations under this section shall not be made unless a draft of them has been approved by resolution of each House of Parliament.

Service of notices, &c.

- 115(1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be served in pursuance of the construction contract or for any of the purposes of this Part
- 115(2) If or to the extent that there is no such agreement the following provisions apply.
- 115(3) A notice or other document may be served on a person by any effective means

Housing Grants, Construction and Regeneration Act 1996 C53

- 115(4) If a notice or other document is addressed, pre-paid and delivered by post-
- (a) to the addressee's last known principal residence or, if he is or has been carrying on a trade, profession or business, his last known principal business address, or
 - (b) where the addressee is a body corporate, to the body's registered or principal office,
- it shall be treated as effectively served. (5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.
- 115(6) References in this Part to a notice or other document include any form of communication in writing and references to service shall be construed accordingly.

Reckoning periods of time.

116(1) For the purposes of this Part periods of time shall be reckoned as follows.

116(2) Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

116(3) Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, that day shall be excluded.

Crown application.

117 (1) This Part applies to a construction contract entered into by or on behalf of the Crown otherwise than by or on behalf of Her Majesty in her private capacity.

117(2) This Part applies to a construction contract entered into on behalf of the Duchy of Cornwall notwithstanding any Crown interest.

117(3) Where a construction contract is entered into by or on behalf of Her Majesty in right of the Duchy of Lancaster, Her Majesty shall be represented, for the purposes of any adjudication or other proceedings arising out of the contract by virtue of this Part, by the Chancellor of the Duchy or such person as he may appoint.

117(4) Where a construction contract is entered into on behalf of the Duchy of Cornwall, the Duke of Cornwall or the possessor for the time being of the Duchy shall be represented, for the purposes of any adjudication or other proceedings arising out of the contract by virtue of this Part, by such person as he may appoint.

The Scheme for Construction Contracts including Construction Contracts Exclusion Order (England and Wales) 1998

Signed by authority of the Secretary of State

Nick Raynsford

Parliamentary Under-Secretary of State, Department of the Environment, Transport and the Regions

6th March 1998

Housing Grants, Construction and Regeneration Act 1996 C53

Statutory Instrument 1998 No. 649 The Scheme for Construction Contracts (England and Wales) Regulations 1998 © Crown Copyright 1998

Made 6th March 1998 coming into force 1st May 1998. All Crown copyrights are reserved. The text is reproducible in all media and formats and without restriction provided that the text is reproduced accurately; is not used in a misleading manner; and is accompanied by the following acknowledgment:

Crown copyright 1998 with the permission of the Controller of Her Majesty's Stationery Office

It should be noted that the right to reproduce the text of Statutory Instruments does not extend to the Royal Arms and the Queen's Printer imprints.

The text of this Internet version of the Statutory Instrument has been prepared to reflect the text as it was Made. The authoritative version is the Queen's Printer copy published by The Stationery Office Limited as the **The Scheme for Construction Contracts (England and Wales) Regulations 1998**, ISBN 0 11 065709 8, £1.95 sterling. For details of how to obtain an official copy see [How to obtain The Stationery Office Limited titles](#).

The Secretary of State, in exercise of the powers conferred on him by sections 108(6), 114 and 146(1) and (2) of the Housing Grants, Construction and Regeneration Act 1996[[1](#)], and of all other powers enabling him in that behalf, having consulted such persons as he thinks fit, and draft Regulations having been approved by both Houses of Parliament, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1(1) These Regulations may be cited as the Scheme for Construction Contracts (England and Wales) Regulations 1998 and shall come into force at the end of the period of 8 weeks beginning with the day on which they are made (the "commencement date").

1(2) These Regulations shall extend only to England and Wales.

1(3) In these Regulations, "the Act" means the Housing Grants, Construction and Regeneration Act 1996.

The Scheme for Construction Contracts

2 Where a construction contract does not comply with the requirements of section 108(1) to (4) of the Act, the adjudication provisions in Part I of the Schedule to these Regulations shall apply.

3 Where -

- a. the parties to a construction contract are unable to reach agreement for the purposes mentioned respectively in sections 109, 111 and 113 of the Act, or
- b. a construction contract does not make provision as required by section 110 of the Act, the relevant provisions in Part II of the Schedule to these Regulations shall apply.

4 The provisions in the Schedule to these Regulations shall be the Scheme for Construction Contracts for the purposes of section 114 of the Act.

Signed by authority of the Secretary of State

Nick Raynsford

Parliamentary Under-Secretary of State, Department of the Environment, Transport and the Regions

6th March 1998

Housing Grants, Construction and Regeneration Act 1996 C53

SCHEDULE

Regulations 2, 3 and 4

THE SCHEME FOR CONSTRUCTION CONTRACTS 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.
- 1(2) The notice of adjudication shall be given to every other party to the contract.
- 1(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, or
 - (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 the nominating body named in the contract to select a person to act as adjudicator, or
 - (c) where neither paragraph (a) nor (b) above applies, or where the person referred to in (a) has already indicated that he is unwilling or unable to act and (b) does not apply, the referring party shall request an adjudicator nominating body to select a person to act as adjudicator.
- 2(2) A person requested to act as adjudicator in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.
- 2(3) In this paragraph, and in paragraphs 5 and 6 below, an "adjudicator nominating body" shall mean a body (not being a natural person 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 a natural person 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 five days of receiving a request to do so.
- 5(2) Where the nominating body or the adjudicator nominating body fails to comply with 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.
- 5(3) The person requested to act as adjudicator in accordance with the provisions of paragraphs (1) or (2) shall indicate whether or not he is willing to act within two days of receiving the request.

Housing Grants, Construction and Regeneration Act 1996 C53

- 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 para 2(2), the referring party may -
- (a) request another person (if any) specified in the contract to act as adjudicator, or
 - (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.
- 6(2) The person requested to act in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two 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 seven days from the date of the notice of adjudication, refer the dispute in writing (the "referral notice") to the adjudicator.
- 7(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.
- 7(3) The referring party shall, at the same time as he sends to the adjudicator the documents referred to in 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.
- 8(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.
- 8(3) All the parties in 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.
- 8(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.
- 9(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.
- 9(3) Where an adjudicator ceases to act under paragraph 9(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.
- 9(4) Where an adjudicator resigns in the circumstances referred to in 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.

Housing Grants, Construction and Regeneration Act 1996 C53

11(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 pay 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 party 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 para 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 or parties, 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 or parties, 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 documents or oral representations to be complied with, and
 - (h) issue other directions relating to the conduct of the adjudication.
- 14.** The parties shall comply with any request or direction of the adjudicator in relation to the adjudication.
- 15.** If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may -
- (a) continue the adjudication in the absence of that party or of the document or written statement requested,
 - (b) draw such inferences from that failure to comply as circumstances may, in the adjudicator's opinion, be justified, and
 - (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed.
- 16(1)** Subject to any agreement between the parties to the contrary, and to the terms of paragraph (2) below, any party to the dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
- 16(2)** Where the adjudicator is considering oral evidence or representations, a party to the dispute may not be represented by more than one person, unless the adjudicator gives directions to the contrary.
- 17.** The adjudicator shall consider any relevant information submitted to him by any of the parties to the dispute and shall make available to them any information to be taken into account in reaching his decision.
- 18.** The adjudicator and any party to the dispute shall not disclose to any other person any information or document provided to him in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with, the adjudication.

Housing Grants, Construction and Regeneration Act 1996 C53

- 19(1) The adjudicator shall reach his decision not later than -
- (a) twenty eight days after the date of the referral notice mentioned in paragraph 7(1), or
 - (b) forty two days after the date of the referral notice if the referring party so consents, or
 - (c) such period exceeding twenty eight days after the referral notice as the parties to the dispute may, after the giving of that notice, agree.
- 19(2) Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph (1)
- (a) any of the parties to the dispute 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.
- 19(3) As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the parties to the contract.

Adjudicator's decision

20. The adjudicator shall decide the matters in dispute. He may take into account any other matters which the parties to the dispute agree should be within the scope of the adjudication or which are matters under the contract which he considers are necessarily connected with the dispute. In particular, he may -
- (a) open up, revise and review any decision taken or any certificate given by any person referred to in the contract unless the contract states that the decision or certificate is final and conclusive,
 - (b) decide that any of the parties to the dispute is liable to make a payment under the contract (whether in sterling or some other currency) and, subject to section 111(4) of the Act, when that payment is due and the final date for payment,
 - (c) having regard to any term of the contract relating to the payment of interest decide the circumstances in which, and the rates at which, and the periods for which simple or compound rates of interest shall be paid.
21. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the parties in accordance with this paragraph.
22. If requested by one of the parties to the dispute, the adjudicator shall provide reasons for his decision.

Effects of the decision

- 23(1) In his decision, the adjudicator may, if he thinks fit, order any of the parties to comply peremptorily with his decision or any part of it.
- 23(2) The decision of the adjudicator shall be binding on the parties, and they shall comply with it 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 between the parties.
24. Section 42 of the Arbitration Act 1996 shall apply to this Scheme subject to the following modifications -
- (a) in subsection (2) for the word "tribunal" wherever it appears there shall be substituted the word "adjudicator",
 - (b) in subparagraph (b) of subsection (2) for the words "arbitral proceedings" there shall be substituted the word "adjudication",
 - (c) subparagraph (c) of subsection (2) shall be deleted, and
 - (d) subsection (3) shall be deleted.
25. 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.
26. The adjudicator shall not be 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 any employee or agent of the adjudicator shall be similarly protected from liability.

Housing Grants, Construction and Regeneration Act 1996 C53

PART II - PAYMENT

Entitlement to and amount of stage payments

1. Where the parties to a relevant construction contract fail to agree -
 - (a) the amount of any instalment or stage or periodic payment for any work under the contract, or
 - (b) the intervals at which, or circumstances in which, such payments become due under that contract, or
 - (c) both of the matters mentioned in sub-paragraphs (a) and (b) above,
the relevant provisions of paragraphs 2 to 4 below shall apply.
- 2(1) The amount of any payment by way of instalments or stage or periodic payments in respect of a relevant period shall be the difference between the amount determined in accordance with sub-paragraph (2) and the amount determined in accordance with sub-paragraph (3).
- 2(2) The aggregate of the following amounts -
 - (a) an amount equal to the value of any work performed in accordance with the relevant construction contract during the period from the commencement of the contract to the end of the relevant period (excluding any amount calculated in accordance with sub-paragraph (b)),
 - (b) where the contract provides for payment for materials, an amount equal to the value of any materials manufactured on site or brought onto site for the purposes of the works during the period from the commencement of the contract to the end of the relevant period, and
 - (c) any other amount or sum which the contract specifies shall be payable during or in respect of the period from the commencement of the contract to the end of the relevant period.
- 2(3) The aggregate of any sums which have been paid or are due for payment by way of instalments, stage or periodic payments during the period from the commencement of the contract to the end of the relevant period.
- 2(4) An amount calculated in accordance with this paragraph shall not exceed the difference between -
 - (a) the contract price, and
 - (b) the aggregate of the instalments or stage or periodic payments which have become due.

Dates for payment

3. Where the parties to a construction contract fail to provide an adequate mechanism for determining either what payments become due under the contract, or when they become due for payment, or both, the relevant provisions of paragraphs 4 to 7 shall apply.
4. Any payment of a kind mentioned in paragraph 2 above shall become due on whichever of the following dates occurs later -
 - (a) the expiry of 7 days following the relevant period mentioned in paragraph 2(1) above, or
 - (b) the making of a claim by the payee.
5. The final payment payable under a relevant construction contract, namely the payment of an amount equal to the difference (if any) between -
 - (a) the contract price, and
 - (b) the aggregate of any instalment or stage or periodic payments which have become due under the contract, shall become due on the expiry of -
 - (a) 30 days following completion of the work, or
 - (b) the making of a claim by the payee, whichever is the later.
6. Payment of the contract price under a construction contract (not being a relevant construction contract) shall become due on
 - (a) the expiry of 30 days following the completion of the work, or
 - (b) the making of a claim by the payee, whichever is the later.
7. Any other payment under a construction contract shall become due
 - (a) on the expiry of 7 days following the completion of the work to which the payment relates, or
 - (b) the making of a claim by the payee, whichever is the later.

Housing Grants, Construction and Regeneration Act 1996 C53

Final date for payment

- 8(1) Where the parties to a construction contract fail to provide a final date for payment in relation to any sum which becomes due under a construction contract, the provisions of this paragraph shall apply.
- 8(2) The final date for the making of any payment of a kind mentioned in paragraphs 2, 5, 6 or 7, shall be 17 days from the date that payment becomes due.

Notice specifying amount of payment

9. A party to a construction contract shall, not later than 5 days after the date on which any payment -
- (a) becomes due from him, or
 - (b) would have become due, if -
 - (i) the other party had carried out his obligations under the contract, and
 - (ii) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts,
- give notice to the other party to the contract specifying the amount (if any) of the payment he has made or proposes to make, specifying to what the payment relates and the basis on which that amount is calculated.

Notice of intention to withhold payment

10. Any notice of intention to withhold payment mentioned in section 111 of the Act shall be given not later than the prescribed period, which is to say not later than 7 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.

Prohibition of conditional payment provisions

11. Where a provision making payment under a construction contract conditional on the payer receiving payment from a third person is ineffective as mentioned in section 113 of the Act, and the parties have not agreed other terms for payment, the relevant provisions of -
- (a) paras 2, 4, 5, 7, 8, 9 and 10 shall apply in the case of a relevant construction contract, and
 - (b) paras 6, 7, 8, 9 and 10 shall apply in the case of any other construction contract.

Interpretation

12. In this Part of the Scheme for Construction Contracts -
- "claim by the payee"** means a written notice given by the party carrying out work under a construction contract to the other party specifying the amount of any payment or payments which he considers to be due and the basis on which it is, or they are calculated;
- "contract price"** means the entire sum payable under the construction contract in respect of the work;
- "relevant construction contract"** means any construction contract other than one -
- (a) which specifies that the duration of the work is to be less than 45 days, or
 - (b) in respect of which the parties agree that the duration of the work is estimated to be less than 45 days;
- "relevant period"** means a period which is specified in, or is calculated by reference to the construction contract or where no such period is so specified or is so calculable, a period of 28 days;
- "value of work"** means an amount determined in accordance with the construction contract under which the work is performed or where the contract contains no such provision, the cost of any work performed in accordance with that contract together with an amount equal to any overhead or profit included in the contract price;
- "work"** means any of the work or services mentioned in section 104 of the Act.

EXPLANATORY NOTE *(This note is not part of the Order)*

Part II of the Housing Grants Act 1996 makes provision in relation to construction contracts. S114 empowers the Secretary of State to make the Scheme for Construction Contracts. Where a construction contract does not comply with the requirements of s108 to 111 (adjudication of disputes and payment provisions), and s113 (prohibition of conditional payment provisions), the relevant provisions of the Scheme for Construction Contracts have effect.

The Scheme which is contained in the Schedule to these Regulations is in two parts. Part I provides for the selection and appointment of an adjudicator, gives powers to the adjudicator to gather and consider information, and makes provisions in respect of his decisions. Part II makes provision with respect to payments under a construction contract where either the contract fails to make provision or the parties fail to agree -

- (a) the method for calculating the amount of any instalment, stage or periodic payment,
- (b) the due date and the final date for payments to be made, and
- (c) prescribes the period within which a notice of intention to withhold payment must be given.