

The Construction Act

**The Housing Grants, Construction And Regeneration Act
1996 As Amended By The Local Democracy, Economic
Development And Construction Act 2009 (The
“Construction Act”)**



When does the Act apply?

- To all construction contracts
 - carrying out construction operations as defined by the Act
 - arranging for the carrying out of construction operations
 - proving labour for the carrying out of construction operations
- For architectural, design or surveying work
- For providing advice on building or engineering
- Not for the excluded contracts as set out in the Act



Payment Provisions

- For contracts in excess of 45 days, stage payments should be made
- Contracts must have an adequate mechanism for deciding what payments are due and when
- Contractor has the right to suspend works if full payment of the notified sum is not made by the final date for payment
- A provision making payment under a construction contract conditional on the payer receiving payment from a third party is ineffective (paid when paid)
- An interim application needs to be clear that it is intended to be such an application
- Important that the application is issued in accordance with the requirements of the contract
- The basis of calculating the sum claimed needs to be provided with the application
- Claims within an application do not necessarily have to be sufficiently substantiated for the application to be valid



The Eight Pillars of Wisdom Enforced by the Act

- Either party may give notice at any time of his intentions to refer a dispute (any difference) to adjudication
- A timetable to be included for appointment of the Adjudicator to enable referral of the dispute to him within 7 days of such notice
- Require the Adjudicator to reach a decision within 28 days of referral or such longer period as agreed between the parties
- Allow the Adjudicator to extend the 28 day period up to 42 days with agreement of the referring party
- Require the Adjudicator to act impartially
- The Adjudicator can take the initiative in ascertaining the facts and the law
- The decision of the Adjudicator is binding until the dispute is finally determined by legal proceedings, arbitration or by agreement
- The Adjudicator is not liable for his actions, unless he acts in bad faith



Scheme for Construction Contracts

- If the contract does not include the “eight pillars of wisdom” then the provisions of the “Scheme for Construction Contracts” apply
- The Scheme contain certain adjudication procedures including giving the Adjudicator the power to;
 - request the supply of documents
 - meet and question the parties
 - make such site visits, inspections and take tests as he sees fit
 - request such representations and submissions as he requires
 - appoint experts, assessors or legal advisors
 - give directions as to the timetable for the adjudication and issue other directions as to the adjudication



The Nature of Adjudication

- Adjudication is a means by which an independent third party makes a quick decision
- When making his decision the Adjudicator needs to act independently (note not necessarily be independent) of both parties
- Adjudication is an inquisitorial rather than an adversarial procedure
- Not only will the Adjudicator consider the cases put by the parties he will be entitled to build a case from his own investigations
- Adjudication is a quick fix, providing rough justice allowing a quick decision to be made which usually avoids the escalation of disputes to litigation (costly)

3 Golden Rules

1. The importance of records
2. The importance of records
3. The importance of records

