

Construction Update

March 2008



Payment practices within the construction industry have undeniably improved since the introduction of the Housing, Grants, Construction and Regeneration Act 1996 (the "Act") in England and Wales and the Construction Contracts (Northern Ireland) Order 1997 (the "Order") in Northern Ireland, however problems still remain.

Both the Act and the Order apply to construction contracts lasting over 45 days and introduced a number of mechanisms including payment by instalments, notices of payment and notices to withhold payment.

The Department of Trade and Industry Minister for Industry and Regions, Margaret Hodge, and the Welsh Assembly Government Minister for Social Justice and Public Service Delivery, Andrew Davies, recently announced the second joint consultation on the payment practices contained within the Act. It is thought that a similar if not an identical process will follow in Northern Ireland in due course.

The second consultation seeks to :

1. enable construction companies to better manage cash flow by introducing greater clarity and transparency into the statutory payment framework
2. encourage parties to resolve disputes by adjudication
3. identify how the costs and benefits of the package can be evaluated

These aims are hoped to be achieved by:

- Improving the right to refer disputes to adjudication by:
 - applying the adjudication process to oral contracts
 - preventing the use of agreements that interim payment decisions will be conclusive in order to avoid adjudication of interim payment disputes
 - ensuring costs involved are fairly allocated
- Improving the process of payment by:
 - prohibiting the use of "pay when certified" clauses
 - clarifying content of "payment and withholding notices"
 - ensuring payment framework creates a clear interim entitlement to payment
 - clarifying the requirement to serve "payment notice"
 - preventing unnecessary duplication of "payment notices"
- Improving the statutory right to suspend performance by allowing the suspending party to claim the costs of delay which result

No indication has been given as to when the industry can hope to see the amendments introduced into law both in the UK and Northern Ireland, although any change before 2008 seems somewhat unlikely.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.