



# CONSTRUCTION CONTRACTS ACT 2013

A user-friendly guide to the Act and the statutory payment process.

This Guide will steer users through a practical and user-friendly understanding of the Act, and how you, as a contractor, can use the statutory payment process and adjudication to protect your business.

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### CONSTRUCTION CONTRACTS ACT 2013

**The Construction Contracts Act 2013** (hereafter referred to as the '**Act**') was introduced into Ireland by the passing of the Act on the 29th July 2013. The Act was sponsored by the late Senator Fergal Quinn and it was brought about on the back of the collapse of the economy in 2008 and the impact of insolvencies in the construction industry and the wider supply chain.

The Act has two main aims:

- 1) **To provide a statutory system of payments in the Construction Industry,**  
*and*
- 2) **To introduce Adjudication as a dispute resolution system for payment disputes**

The Act came into force on any Contract entered into after the 25th July 2016. This in affect means that you can only seek to rely upon the provisions of the Act on projects entered into after that date.

The Act is now over 5 years in operation and take up has generally been slow in respect to both the use of the payment mechanism and also the use of Adjudication but there has been a steady year on year growth in the use of both areas.

This Guide will attempt to steer users through a practical and user-friendly understanding of the Act, and how you, as a contractor, can use the Act to protect your business.

This Guide will take you through the Act, section by section, and will highlight what each section means, and how you can best utilise the provisions of the Act.

Good contract administration is vital in the event of a payment dispute. We would always recommend seeking professional support in the first instance from CIF if considering suspending works or proceeding to adjudication.

The CIF would like to acknowledge Keith Kelliher; Kelliher & Associates for his expert advice and collaboration in preparing this document.

**1 (1) In this Act –**

**“construction contract”** means (subject to subsection (2) and section 2) an agreement (whether or not in writing) between an executing party and another party, where the executing party is engaged for any one or more of the following activities:

- (a) carrying out construction operations by the executing party;
- (b) arranging for the carrying out of construction operations by one or more other persons, whether under subcontract to the executing party or otherwise;
- (c) providing the executing party's own labour, or the labour of others, for the carrying out of construction operations'

*In order to be able to use the Act your works must relate to “construction operations” carried out under a “construction contract” and therefore it must fall within the definition of a construction contract as defined above in section 1(1) of the Act. Where you are providing labour as part of your contract there will be limited if any times that you would not fall within this definition, but each case must be taken on its own merits.*

**“construction operations”** means, subject to subsections (3) and (4), any activity associated with construction, including operations of any one or more 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 works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, telecommunications 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, thermal insulation, 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 and traffic management;
- (f) painting or decorating the internal or external surfaces of any building or structure;
- (g) making, installing or repairing sculptures, murals and other artistic works that are attached to real property;

*The Act outlines a wide-ranging list of operations that the works under the contract must be for, in order to be covered by the legislation. Again, the extent of this list makes it unlikely in the majority of cases that anyone would not fall within the definition allowed under the Act but again each case must be checked to ensure that it does.*

**“executing party”** in relation to a construction contract, means-

- (a) where the parties to the construction contract are a contractor and the person for whom the contractor is doing work under the contract, the contractor; or
- (b) where the parties to the construction contract are a contractor and a subcontractor or are 2 subcontractors, the subcontractor or whichever of the subcontractors agrees to execute work under the contract;

*This defines the executing party as either a Contractor in a Contractor / Employer relationship or a Sub-Contractor in a Main Contractor / Sub-Contract relationship.*

**“main contract”** means a construction contract such as is referred to in paragraph (a) of the definition of “executing party”;

**“Minister”** means the Minister for Public Expenditure and Reform;

**“other party”**, in relation to a construction contract, means the party to the construction contract who is not the executing party”;

*This defines the other party as either the Employer in a Contractor / Employer relationship or the Main-Contractor in a Main Contractor / Sub-Contract relationship.*

**“payment claim”** means a claim to be paid an amount under a construction contract;

**“payment claim date”**, in relation to a construction contract, means the date when a payment claim in relation to an amount due under the construction contract is required to be made;

**“payment claim notice”** has the meaning assigned to it by section 4;

**“payment dispute”** has the meaning assigned to it by section 6;

**“subcontract”** means a construction contract such as is referred to in paragraph (b) of the definition of “executing party”;

**“subcontractor”** means a person to whom the execution of work under a construction contract is subcontracted by the contractor or another subcontractor;

**“work”**, in relation to a construction contract, means any act done in furtherance of the construction contract under the terms of the construction contract.

### 1 (2) In this Act -

references to a construction contract include an agreement, in relation to construction operations, to do work or provide services ancillary to the construction contract such as –

- (a) architectural, design, archaeological or surveying work,
- (b) engineering or project management services, or
- (c) advice on building, engineering, interior or exterior decoration or on the laying-out of landscape.

*The Act also covers professionals under the definition of a Construction Contract once the works are ancillary to the Contract. We have no case law at this point confirming what is or is not covered by the term “ancillary to a construction contract”.*

### 1 (3) Subject to -

subsection (4) references in this Act to construction operations do not include the manufacture or delivery to a construction site of –

- (a) building or engineering components or equipment,
- (b) materials, plant or machinery, or
- (c) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communication systems.

### 1 (4) In this Act -

references to construction operations do include a case where the things referred to in subsection (3) are supplied under a contract which also provides for their installation.

*Section 1(3) and 1(4) of the Act outlines that if you manufacture and or deliver to site a product but you don't install the product then the Act does not apply. This includes materials, plant (therefore plant hire where there is no operative supplied) and any form of equipment which again is not installed as part of the Contract.*



### **2 (1) A contract is not a construction contract –**

- (a) if the value of the contract is not more than €10,000, or

*The Act does not apply to contracts where the value is less than €10,000. A dispute can obviously develop for a higher value but the Act will not apply to the Contract irrespective of value of the dispute, if the Contract is not greater than irrespective of value of the dispute, if the Contract is not greater than €10,000.*

- (b) if –
- (i) the contract relates only to a dwelling, and
  - (ii) the dwelling has a floor area not greater than 200 square metres, and
  - (iii) one of the parties to the contract is a person who occupies, or intends to occupy, the dwelling as his or her residence.

*This is referred to as the domestic exemption which attempts to keep domestic works under a certain size out of the Act and it is important to note that all three items must apply for the exemption to apply. On the basis of the above, any property over 200.01m<sup>2</sup> is not exempt and any subcontractor working on a domestic property will not be exempt once their contract is over €10,000 as they will not comply with item (iii) above.*

### **2 (2) A contract of employment**

(within the meaning of the Organisation of Working Time Act 1997) is not a construction contract.

### **2 (3) A contract**

between a State authority and its partner in a public private partnership arrangement, as those terms are defined in the State Authorities (Public Private Partnership Arrangements) Act 2002, is not a construction contract.

*Section 2(3) relates only to the contract between the State body entering into a PPP and their PPP Contracting partner. It does not apply to any sub-contracts that are entered into below that arrangement.*

### **2 (4) Where a contract contains provisions**

in relation to activities other than those referred to in the definition of a construction contract and section 1(2), it is a construction contract only so far as it relates to those activities.

### **2 (5) This Act applies**

to a construction contract whether or not –

- (a) the law of the State is otherwise the applicable law in relation to the construction contract, or

*The Act applies to any contract that takes place in Ireland even if the contract between the parties states that the law of another jurisdiction applies e.g., England and Wales.*

- (b) the parties to the construction contract purport to limit or exclude its application.

*The Act will still apply even if a party or parties try and contract out of it.*

**3 (1) A construction contract shall provide for –**

- (a) the amount of each interim payment to be made under the construction contract, and
- (b) the amount of the final payment to be made under the construction contract, or for an adequate mechanism for determining those amounts.

*If you have a written form of contract it must allow for how the amounts for each payment are calculated. The majority of written contracts will allow for this as standard but you should check.*

**3 (2) A construction contract shall provide for –**

- (a) the payment claim date, or an adequate mechanism for determining the payment claim date, for each amount due under the construction contract, and
- (b) the period between the payment claim date for each such amount and the date on which the amount is so due.

*If you have a written form of contract, it must outline a way that the parties can work out what the Payment Claim Dates are for the project and the period between each date. This is a specific date in time during each period of payment that must be identified from the Contract.*

**3 (3) The Schedule shall apply**

to a main contract if and to the extent that it does not make provision for the matters specified in subsections (1) and (2).

*If a written Main Contract (or where no written contract exists in a Main contract relationship) does not contain the items at 3(1) and 3(2) above then the Schedule to the Act applies by default.*

**3 (4) The Schedule shall apply**

to a subcontract except to the extent that it makes provision which is more favourable to the executing party than that which would otherwise be made by the Schedule.

*If a written Subcontract (or where no written contract exists in a Subcontract relationship) does not contain the items at 3(1) and 3(2) above then the Schedule to the Act applies by default. If the terms of a written Sub-Contract are more than 30 days then the Schedule also applies by default.*

**3 (5) Except after the occurrence**

of the circumstances specified in subsection (6), a provision in a construction contract is ineffective to the extent that it provides that payment of an amount due under the construction contract, or the timing of such a payment, is conditional on the making of a payment by a person who is not a party to the construction contract.

*“Paid when Paid” provisions are prohibited unless the below section, 3(6) applies.*

**3 (6) The circumstances referred to in subsection (5) are:**

- (a) where the other person is a company other than an unregistered company–
  - (i) the commencement of its winding up pursuant to section 251 of the Companies Act 1963 where no declaration of solvency has been made under section 256 of the Companies Act 1963,
  - (ii) the presentation of a petition to wind it up pursuant to section 213 of the Companies Act 1963,
  - (iii) the appointment of a receiver in respect of any of its property or assets, or
  - (iv) the presentation of a petition for the appointment of an examiner under the Companies (Amendment) Act 1990 in relation to it;
- (b) where the other person is an unregistered company, the commencement of its winding up pursuant to section 345 of the Companies Act 1963;

- (c) where the other person is an individual or partnership, the making of an application for adjudication under the Bankruptcy Act 1988 in relation to it;
- (d) the making of a winding up or similar order by a court in relation to the other person;
- (e) the occurrence of any event corresponding to those specified in this subsection under the law of any state to which Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings applies.

*There is no definition of “other person” but it is assumed to mean the Employer or the third party who is not a party to the contract. If a “paid when paid” provision exists in a contract then it will apply if the other person goes into insolvency, has a winding up order against it, has a receiver appointed or an examiner petitioned or goes bankrupt.*



▶ **The Construction Contracts Act 2013** was sponsored by the late Senator Fergal Quinn and it was brought about on the back of the collapse of the economy in 2008.

▶



*A Payment Claim notice will only be valid if it includes the above 4 items. The Payment Claim notice should always be cumulative and supersede the previous claim, it should be clear and identify clearly the amount claimed, it must specifically state the period or stage of work to which the payment claim relates to, and it must include a breakdown of what makes up the claim and how it is valued. Not including any of the above and the notice could be classed as invalid and no payment will flow. There are templates available for Payment Claim Notices but you are free to develop your own once they include, the 4 items listed above.*

#### **4(3) If the other party or specified person**

referred to in subsection (1) contests that the amount is due and payable, then the other party or specified person –

- (a) shall deliver a response to the payment claim notice to the executing party, not later than 21 days after the payment claim date, specifying –
  - (i) the amount proposed to be paid,
  - (ii) the reason or reasons for the difference between the amount in the payment claim notice and the amount referred to in subparagraph (i), and
  - (iii) the basis on which the amount referred to in subparagraph (i) is calculated, and
  - (iv) if the matter has not been settled by the day on which the amount is due, shall pay the amount referred to in paragraph (a) to the executing party not later than on that day.

*A Payment Claim Response need only be issued by the other party if they disagree with the value claimed in the Payment Claim Notice. A Payment Claim Response must be clear and identify clearly the amount proposed to be paid, it must specifically state the reason for any difference to the value claimed and it must outline the basis of the calculation of the amount proposed to be paid. Not including any of the above and the notice could be classed as invalid.*

#### **4(4) Where a reason for**

the different amount in the response is attributable to a claim for loss or damage arising from an alleged breach of any contractual or other obligation of the executing party (under the construction contract or otherwise), or any other claim that the other person alleges against the executing party, the response shall also specify –

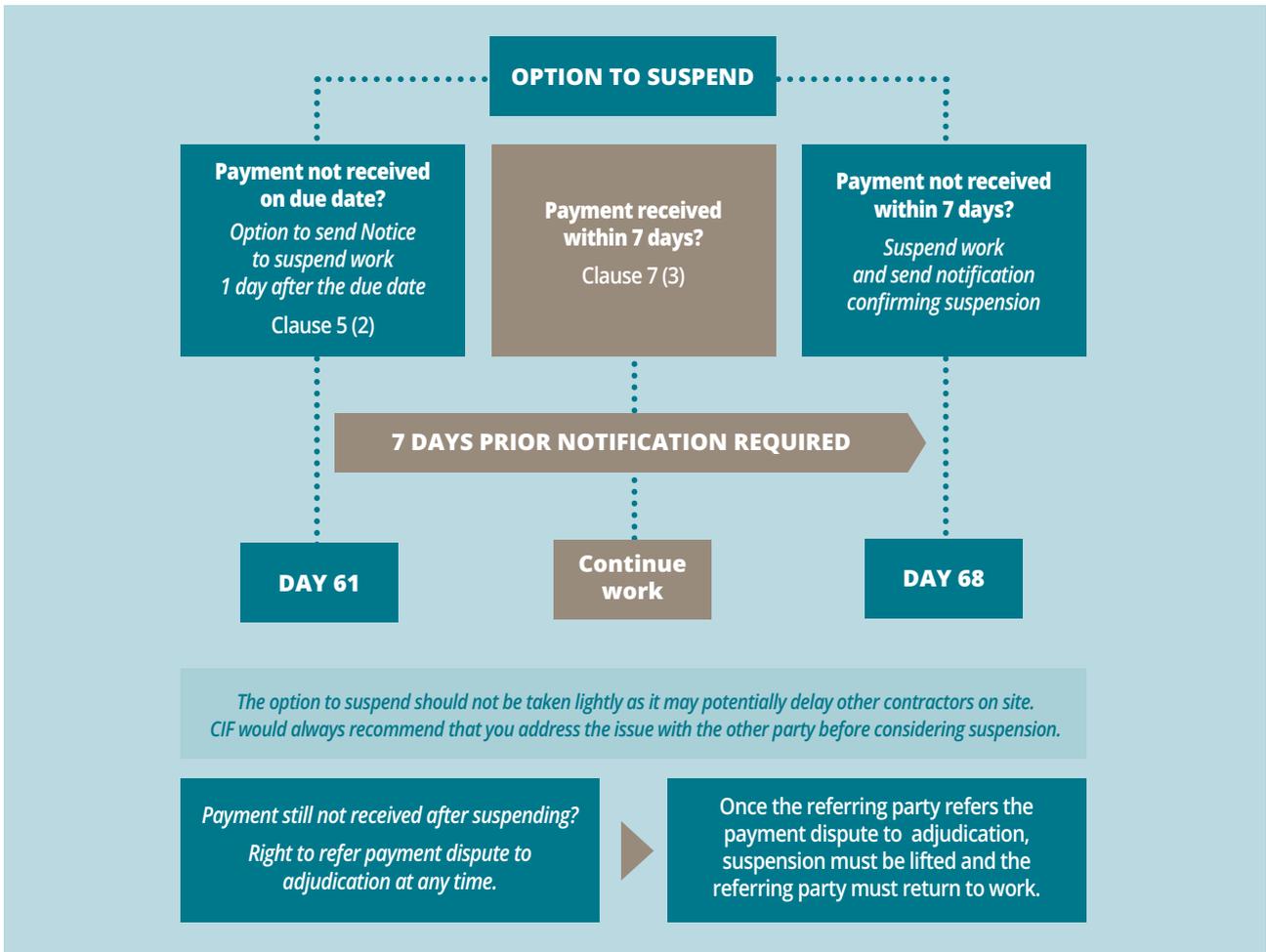
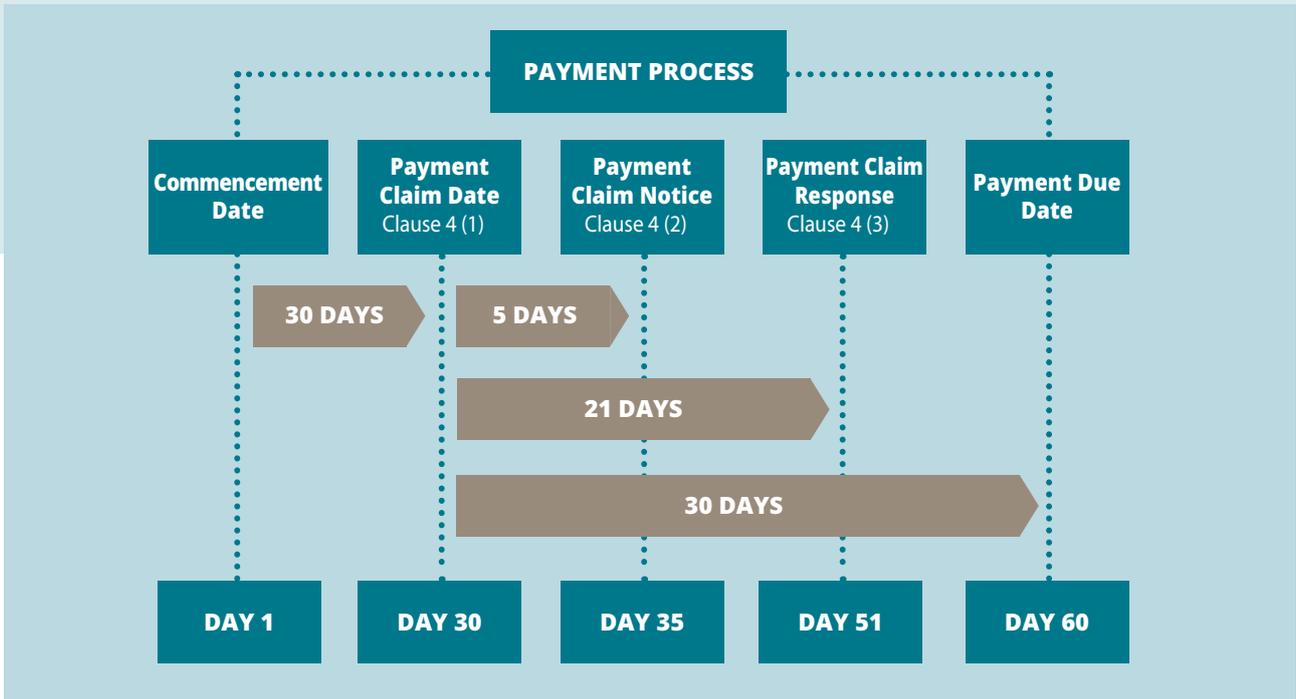
- (a) when the loss was incurred or the damage occurred, or how the other claim arose,
- (b) the particulars of the loss, damage, or claim, and
- (c) the portion of the difference that is attributable to each such particular.

*If a party seeks to raise a contra charge or similar in the Payment Claim Response, they must include the 3 details above or they cannot deduct the value.*

#### **4(5) The rights and obligations conferred**

or imposed by this section are additional to any conferred or imposed by the terms of the construction contract.

*The written contract between the parties may impose additional requirements on this process once they don't conflict with the Act. Some examples would be the need to deliver the Payment Claim Notice by registered post, the need for the Payment Claim Notice to state it is a Payment claim Notice under the Construction Contracts Act etc.*



**NOTE: Review 'Option to Suspend' diagram on previous page.**

### **5 (1) Where any amount due**

under a construction contract is not paid in full by the day on which the amount is due, the executing party may suspend work under the construction contract by giving notice in writing under subsection (2).

*An amount due is a value that is included on a Payment Response Notice or on a validly issued Payment Claim Notice where no Response Notice was issued. It should be noted that a suspension will not resolve a dispute, it will only seek to resolve a non-payment but only if it works in the short term.*

### **5 (2) Notice under this subsection**

shall specify the grounds on which it is intended to suspend work and shall be delivered to the other party –

- (a) not earlier than the day after the day on which the amount concerned is due, and
- (b) at least 7 days before the proposed suspension is to begin.

*If you wish to suspend your works then you must give 7 days prior notice in writing to the other party and outline why you are suspending and the date your suspension will start. Your written contract may contain further requirements including the name of who this notice must be delivered to and by what method. If not, it can be emailed but always advisable to also send a copy by registered post to the head office of the other party.*

### **5 (3) Work may not be suspended**

under subsection (1) –

- (a) after payment by the other party of the amount due, or
- (b) after notice has been served by a party to the construction contract under section 6(2) in relation to a dispute relating to payment of the amount concerned.

*If payment of the amount due is made, then the suspension must lift. If a notice of adjudication is issued then you cannot suspend your works.*

### **5 (4) Where work is suspended**

under subsection (1) and the ability of the executing party to complete work within a contractual time limit is affected by the suspension of work, the period of suspension shall be disregarded for the purpose of computing the contractual time limit unless the suspension of work is unjustified in the circumstances.

### **5 (5) Where work is suspended**

under subsection (1) and the ability of a subcontractor to complete work within a contractual time limit is affected by the suspension of work, the period of suspension shall be disregarded for the purpose of computing the contractual time limit.

*If you suspend due to a valid reason then the programme for works pauses and it cannot be held against you for delay. If you suspend for an unjustified reason then it will be held against you.*

**5 (6) A period of suspension of work**

under subsection (1) shall also be disregarded for the purpose of computing the time taken to complete the work under another construction contract where –

- (a) the construction contract the work under which is suspended is a subcontract,
- (b) the other construction contract is also a subcontract and the other party to that other subcontract is the same as the other party to the subcontract the work under which is suspended, and
- (c) the ability of the executing party under that other subcontract to complete work within a contractual time limit is affected by the suspension of work.

*If you are impacted by another subcontractors suspension due to non-payment then the suspension cannot be held against you for delay.*

**5 (7) This section is without prejudice**

to the right of the other party to the construction contract under which work is suspended to claim for compensation or damages for any loss due to a suspension of work that is unjustified in the circumstances.

*A suspension does not stop for the party who refused to pay and they may be liable for damages from their own Client for the delay.*



## ▶ Section 6 **RIGHT TO REFER PAYMENT DISPUTES TO ADJUDICATION**

### **6(1) A party to a construction contract**

has the right to refer for adjudication in accordance with this section any dispute relating to payment arising under the construction contract (in this Act referred to as a “payment dispute”).

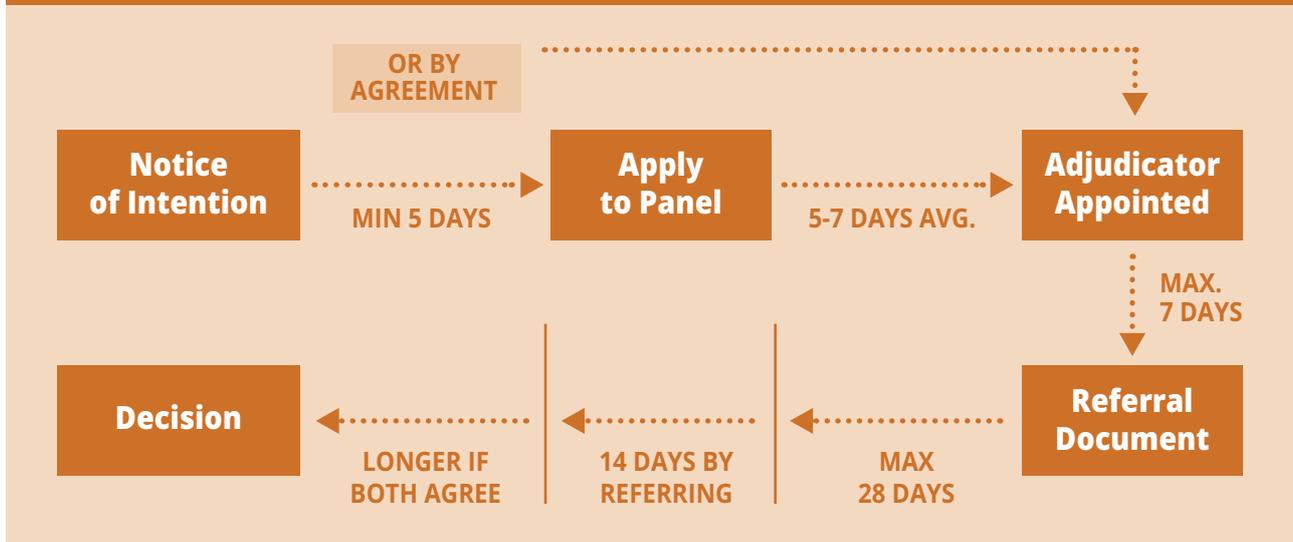
*Any party who has a payment dispute can refer that dispute to Adjudication at any time under the Contract. All that is required is that they are able to prove they have a crystallised payment dispute. A crystallised payment dispute is a dispute where both parties have had their say and one party has rejected the other parties position or value.*

**See Section 29 of the AMEC V Secretary for State for Transport UK case**

#### **What is Adjudication?**

*Adjudication is the dispute resolution mechanism used in a payment dispute under the Construction Contract Act. A binding agreement is usually provided within 28 days of the delivery of the referral notice, however in some cases the adjudicator may extend this period by up to 14 days with the consent of the party who served notice of the dispute.*

### ▶ **THE ADJUDICATION TIME LINE**



### **6(2) The party may exercise the right**

by serving on the other person who is party to the construction contract at any time notice of intention to refer the payment dispute for adjudication.

*If a party wishes to start an Adjudication, they must issue a Notice of Intention to the other party. This notice outlines the extent of the dispute and starts the process. It is advisable that this notice is only created and issued after the Referral Notice (section 6(3)) is drafted and ready due to the tight timeframes in Adjudication. The Notice of Intention can be from a template or drafted in your own way, once it includes the items listed at section 5 of the Code of Practice.*

**See Section 5 of the Code of Practice for the items required in a Notice of Intention**

The 'Construction Contracts Act 2013', Code of Practice Governing the Conduct of Adjudications is available at <https://enterprise.gov.ie/en/Publications/Publication-files/Code-of-Practice-Governing-Conduct-of-Adjudications.pdf>

### **6 (3) The parties may, within 5 days**

beginning with the day on which notice under subsection (2) is served, agree to appoint an adjudicator of their own choice or from the panel appointed by the Minister under section 8.

*The parties should initially try and agree an adjudicator between them. This adjudicator can be from the Ministers Panel or anyone not listed on the Ministers Panel. Section 6 to 20 inclusive of the Code of Practice outlines the appointment process.*

### **6 (4) Failing agreement**

between the parties under subsection (3), the adjudicator shall be appointed by the chair of the panel selected by the Minister under section 8.

*If the parties fail to agree on an adjudicator between them, the referring party, being the party taking the adjudication, can apply to the Chair (Mr Bernard Gogarty from July 2021 until July 2026) of the Ministers Panel of Adjudicators for the appointment of an Adjudicator from the Panel.*

*The members of the Panel are listed at <https://enterprise.gov.ie/en/Construction-Contracts-Adjudication-Service/Construction-Contracts-Adjudication-Panel/>*

### **6 (5) The party by whom the notice under subsection (2) was served –**

- (a) shall refer the payment dispute to the adjudicator within 7 days beginning with the day on which the appointment is made, and
- (b) shall at the same time provide a copy of the referral and all accompanying documents to the person who is party to the construction contract.

*After an Adjudicator has been appointed (either by appointment by the Chair of the Ministers Panel of Adjudicators on a particular date noted in the letter of appointment or by agreement of the parties with a date confirmed by the Adjudicator as the date of appointment), the Referring Party has a maximum of 7 days to deliver the Referral to the Adjudicator and the other party. The 7 days begins on the date of appointment. The content of a Referral must be in line with Section 22 of the Code of Practice.*

### **6 (6) The adjudicator shall reach a decision**

within 28 days beginning with the day on which the referral is made or such longer period as is agreed by the parties after the payment dispute has been referred.

*The Adjudicator shall arrive at a decision within a maximum of 28 days. The 28 days begins on the date of receipt of the Referral.*

### **6 (7) The adjudicator may extend the period**

of 28 days by up to 14 days, with consent of the party by whom the payment dispute was referred.

*The Referring Party can agree to extend the 28 day period with the Adjudicator even if the other party does not agree or engage in the process. No further extension can be given to the Adjudicator unless both parties agree.*

### **6 (8) The adjudicator shall act impartially**

in the conduct of the adjudication, and shall comply with the code of practice published by the Minister under section 9, whether or not the adjudicator is a person who is a member of the panel selected by the Minister under section 8.

### **6 (9) The adjudicator may take the initiative**

in ascertaining the facts and the law in relation to the payment dispute and may deal at the same time with several payment disputes arising under the same construction contract or related construction contracts.

### **6 (10) The decision of the adjudicator shall be binding**

until the payment dispute is finally settled by the parties or a different decision is reached on the reference of the payment dispute to arbitration or in proceedings initiated in a court in relation to the adjudicator's decision.

*The decision of the Adjudicator is temporarily binding on the parties in that they must comply with the decision until and unless a different decision is reached in Arbitration (if you have an arbitration agreement in your contract) or litigation (if you don't have an arbitration agreement or if litigation is the stated process in your contract). This is often referred to as the pay now argue later process.*

### **6 (11) The decision of the adjudicator,**

if binding, shall be enforceable either by action or, by leave of the High Court, in the same manner as a judgement or order of that Court with the same effect and, where leave is given, judgment may be entered in the terms of the decision.

*The decision of the Adjudicator is enforceable through the High Court under practice direction HC105*

### **6 (12) The decision of the adjudicator,**

if binding, shall, unless otherwise agreed by the parties, be treated as binding on them for all purposes and may accordingly be relied on by any of them, by way of defence, set-off or otherwise, in any legal proceedings.

### **6 (13) The adjudicator may correct**

his or her decision so as to remove a clerical or typographical error arising by accident or omission but may not reconsider or re-open any aspect of the decision.

### **6 (14) The adjudicator is not liable**

for anything done or omitted in the discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected from liability.

### **6 (15) Each party shall bear**

his or her own legal and other costs incurred in connection with the adjudication.

### **6 (16) The parties shall pay**

the amount of the fees, costs and expenses of the adjudicator in accordance with the decision of the adjudicator.

*The costs incurred in running an Adjudication are borne directly by the parties themselves and cannot be claimed irrespective of outcome.*

### **6 (17) An adjudicator may resign**

at any time on giving notice in writing to the parties to the dispute and the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the adjudicator up to the date of resignation.

### **6 (18) The parties to a dispute**

may at any time agree to revoke the appointment of the adjudicator and the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the adjudicator up to the date of revocation.

*The Adjudicator decides who pays their fee and how it is to be apportioned irrespective of outcome but generally it is expected that the costs will follow the award and the loser pays principal will apply.*

### **7 (1) Where any amount due**

pursuant to the decision of the adjudicator is not paid in full before the end of the period of 7 days beginning with that on which the decision is made, the executing party may suspend work under the construction contract by giving notice in writing under subsection (2).

*An amount due is the value awarded by the Adjudicator.*

### **7 (2) Notice under this subsection**

shall specify the grounds on which it is intended to suspend work and shall be delivered to the other party not later than 7 days before the proposed suspension is to begin.

*If you wish to suspend your works then you must give 7 days prior notice in writing to the other party and outline why you are suspending and the date your suspension will start. Your written contract may contain further requirements including the name of who this notice must be delivered to and by what method. If not, it can be emailed but always advisable to also send a copy by registered post to the head office of the other party.*

### **7 (3) Work may not be suspended under subsection (1) –**

- (a) after payment by the other party of the amount due, or
- (b) after the decision of the adjudicator is referred to arbitration or proceedings are otherwise initiated in relation to the decision.

*If payment of the amount due is made, then the suspension must lift. If a notice of arbitration or litigation is issued then you cannot suspend your works.*

### **7 (4) Work is suspended**

under subsection (1) and the ability of the executing party or a subcontractor to complete work within a contractual time limit is affected by the suspension of work, the period of suspension shall be disregarded for the purpose of computing the contractual time limit.

*If you suspend due to a valid reason then the programme for works pauses and it cannot be held against you for delay. If you suspend for an unjustified reason then it will be held against you.*

### **7 (5) A period of suspension of work**

under subsection (1) shall also be disregarded for the purpose of computing the time taken to complete the work under another construction contract where –

- (a) the construction contract, the work under which is suspended, is a subcontract,
- (b) the other construction contract is also a subcontract and the other party to that other subcontract is the same as the other party to the subcontract the work under which is suspended, and
- (c) the ability of the executing party under that other subcontract to complete work within a contractual time limit is affected by the suspension of work.

*If you are impacted by another subcontractor's suspension due to non-payment then the suspension cannot be held against you for delay.*

**8 (1) The Minister shall**

from time to time select persons to be members of a panel (in this section referred to as the “panel”) to act as adjudicators in relation to payment disputes and shall select one of those persons to chair the panel.

**8 (2) Persons selected under subsection (1)**

shall be made members of the panel for a period of 5 years commencing on the date of selection and shall be eligible for reselection at the end of the period of 5 years.

**8 (3) The Minister may,**

for good and sufficient reason, remove a member of the panel.

**8 (4) A member of the panel may**

at any time resign by giving notice in writing to the Minister.

**8 (5) In selecting persons**

to be members of the panel, the Minister shall have regard to their experience and expertise in dispute resolution procedures under construction contracts; and a person may not be selected to be a member of the panel unless the person is a person of any of the descriptions specified in subsection (6).

**8 (6) The descriptions of persons**

referred to in subsection (5) are as follows:

- (a) a registered professional as defined in section 2 of the Building Control Act 2007;
- (b) a chartered member of the Institution of Engineers of Ireland;
- (c) a barrister;
- (d) a solicitor;
- (e) a fellow of the Chartered Institute of Arbitrators;
- (f) a person with a qualification equivalent to any of those specified in paragraphs (a) to (e) duly obtained in any other Member State in the European Union.

*This Section of the Act relates to the process around selection of Adjudicators for the Ministers Panel of Adjudicators, their qualifications and the term of office. The current panel is available on the Department of Enterprise website at <https://enterprise.gov.ie/en/Construction-Contracts-Adjudication-Service/Construction-Contracts-Adjudication-Panel/>*



## ▶ Section 9 **CODE OF PRACTICE FOR ADJUDICATION**

The Minister may prepare and publish a code of practice governing the conduct of adjudications under section (6).

*The code of practice outlines the process of how Adjudication is to operate and is available from the website; <https://enterprise.gov.ie/en/Publications/Publication-files/Code-of-Practice-Governing-Conduct-of-Adjudications.pdf>.*

## ▶ Section 10 **DELIVERY OF NOTICES, ETC.**

### **10 (1) The parties to a construction contract**

may agree on the manner by which notices under this Act shall be delivered.

*A written contract can include the manner in which notices are to be delivered and this will be binding on the parties. It may be by email, registered post, both or any other prescribed manner. A notice not delivered in accordance with the prescribed manner in the Contract may be deemed invalid.*

### **10 (2) If or to the extent**

that there is no such agreement, a notice may be delivered by post or by any other effective means.

*If no prescribed manner of delivery is included in a written contract than any regularly accepted means of delivery is acceptable including post, email etc. It is however important that a note of delivery or receipt is available if required to prove an item was delivered to the other party.*

### **10 (3) Where under this Act**

a notice is required to be delivered not later than a specified number of days after a particular date and the last of those days is a day which is a Saturday or Sunday or a public holiday (within the meaning of the Organisation of Working Time Act 1997), the notice shall be taken to be validly delivered if delivered on the next day which is not such a day.

*All days noted in the Act refer to calendar days. If the landing day (the 5th day, the 7th day, the 21st day, the 28th day, etc.,) lands on a weekend or public holiday then the next non weekend day or public holiday is acceptable for delivery.*

## ▶ Section 11 **EXPENSES**

The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

## ▶ Section 12 **SHORT TITLE AND COMMENCEMENT**

### **12 (1) This Act may be cited**

as the Construction Contracts Act 2013.

### **12 (2) This Act applies**

in relation to construction contracts entered into after such day as the Minister may by order appoint.

*The minister appointed the 25th July 2016 as the day after which any contract entered into applies to the Act.*



*As was noted at section 3(3) and 3(4) of the Act above, the Schedule applies to all written contracts that do not comply with the payment provisions of the Act or where no written contract exists. The Schedule applies to all sub-contractors unless their contract has more favourable terms. As you cannot contract out of the Act, the schedule is always available by default if a contract does not comply with the Act, and it over rides the written contract in that scenario.*

### **Provisions to Apply to Matters Regarding Payments**

- (1) The payment claim dates under a construction contract shall (subject to paragraph 2), as follows:
  - (a) 30 days after the commencement date of the construction contract;
  - (b) 30 days after the date referred to in clause (a) and every 30 days thereafter up to the date of substantial completion;
  - (c) 30 days after the date of final completion.

*The above seeks to set the payment process on all projects by default to a 30 day payment cycle.*

*Payment Claim Date 1 on a project is 30 days after the commencement date. There is no definition of what commencement date is so you must agree this date in advance or be able to prove the date you commenced on the project in order to work out the correct dates.*

*Payment Claim Date 2 is 30 days after Payment Claim Date 1 and every 30 days after for Date 3, 4, 5 etc. until the date of Substantial Completion which is also a payment claim date.*

*The Final Payment Claim date is 30 days after the date of final completion and this relates to the final release of retention.*

*As there is no allowance for any payments between the date of substantial completion and final completion, the issue of when the final account is agreed, or how variations post substantial completion are made, is an anomaly in the Act and one that parties need to agree a process on given the Act is silent on how this period is dealt with.*

### **Payment Timelines**

#### **The payment process if contract exceeds 45 days**

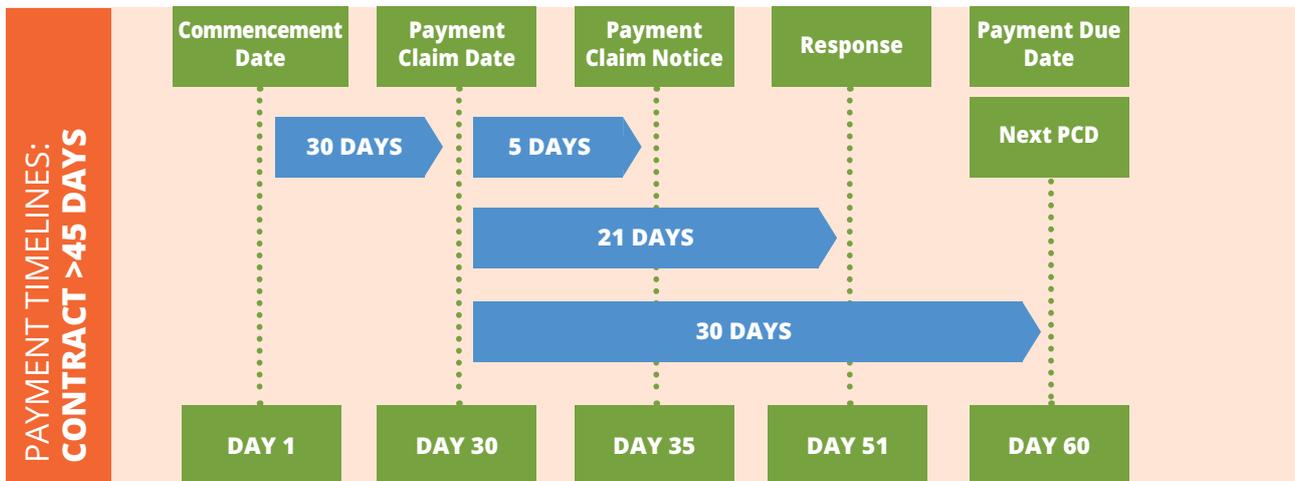
- (2) Where a construction contract provides, or the parties to a construction contract otherwise agree, that the duration of the work under the construction contract is or is estimated to be less than 45 consecutive days, the payment claim date shall be 14 days following completion of the work under the construction contract.

*On projects of less than 45 days, the Payment Claim Date for anyone on the project is 14 days following completion of their work under their contract unless agreed otherwise.*

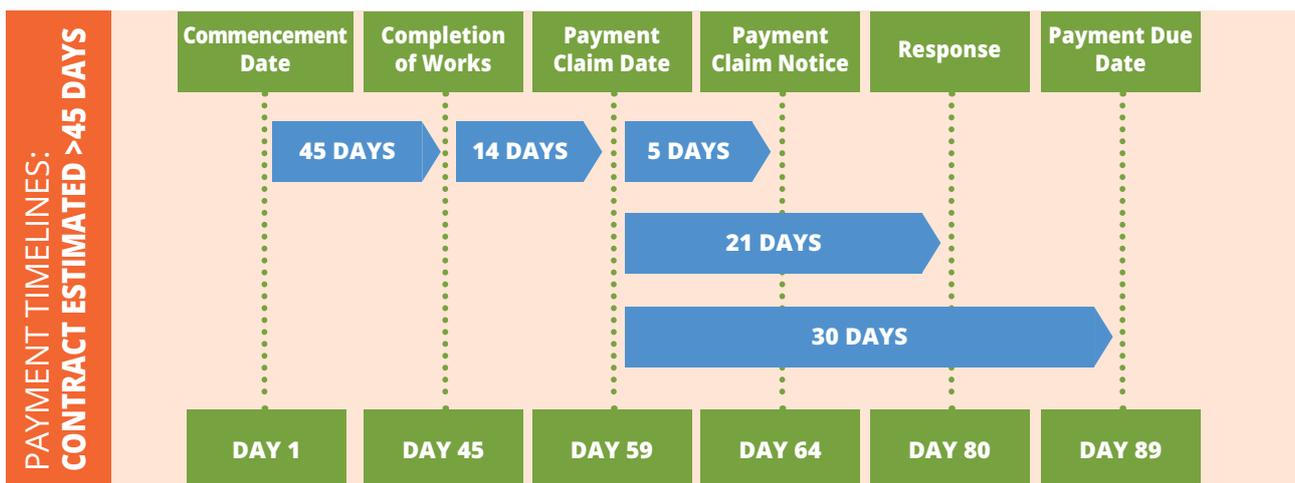
#### **The payment process if contract is less than 45 days**

- (3) The date on which payment is due in relation to an amount claimed under a construction contract shall be no later than 30 days after the payment claim date.

*This reaffirms a max 30-day payment cycle from claimed date to payment if Section 4 of the Act is followed.*



*The payment process if contract **exceeds** 45 days*



*The payment process if contract **is less than** 45 days*

- (4) The amount of an interim payment under a construction contract shall (subject to paragraph 5) be the difference between –
- (a) the aggregate of the gross value (determined in accordance with the construction contract) of the work done under the construction contract at the payment claim date concerned together with any additional amounts in the interim payment under the construction contract, less any deductions from payment provided for by the construction contract, and
  - (b) the aggregate amount of interim payments that have already been made at that payment claim date.
- (5) The aggregate of payments made under a construction contract shall not exceed–
- (a) the amount provided for in the construction contract as originally concluded, and
  - (b) amounts provided for by any amendments to that contract agreed between the parties.



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