

Property & Construction

Construction Contracts Act 2013

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New legislation significantly improves payment practices in the construction industry

New legislation that will significantly strengthen income protection for thousands of workers in the construction industry countrywide who find themselves under financial pressure, including carpenters, painters, plumbers and electricians, was enacted by the Oireachtas on 23 July 2013.

The *Construction Contracts Act 2013* (“the Act”), first introduced in the Seanad by Independent Senator Feargal Quinn, will greatly improve payment practices in the construction industry by providing clarity and transparency in the payment of monies due under construction contracts.

Senator Quinn explained that: *“Bringing in laws that strengthen payment practices in the construction industry will improve crucial cash-flow to those sub-contractors working in the industry, thereby helping companies involved in this vital sector to survive and keep people in employment during these particularly challenging economic times. Maintaining and growing employment in construction is crucial to our economic recovery. At the height of the boom, some 273,000 people were employed in the sector and now it has dropped to 96,000. The scale of the downturn in the economy and the difficulty in securing credit has left many sub-contractors who are involved in the construction industry facing huge cash-flow difficulties that are being compounded by the non-payment of debts”.*

The main points of the new legislation are as follows:

Thresholds

Early drafts of the Bill provided that the legislation would apply only to private contracts with a value in excess of €200,000 and public contracts with a value in excess of €50,000. These thresholds were considered to be too high and as a result the previous thresholds for both private and public contracts have been replaced by a single threshold of €10,000 that makes no distinction between public and private contracts.

The Act excludes contracts for works carried out on residential dwellings unless the property has a floor area in excess of 200 square metres.

Interim payments

All construction contracts will be required to include details of the following:

- a) The amount of each interim payment to be made under the contract;
- b) The amount of the final payment to be made under the contract;
- c) The payment claim date for each amount due under the contract; and
- d) The period between the payment claim date for each such amount and the date on which the amount is due.

Most formal contract arrangements usually provide for these in any event. However if a contract fails to make provision for the above, the Act sets out default intervals for stage payments of 30 days which will apply as well as the default formula for calculating the amount of an interim payment due at a particular claim date.

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Payment claim notices

The Act specifies matters to be included in contractors' payment claims which are as follows:

- a) The amount claimed;
- b) The period, stage of work or activity to which the payment claim relates;
- c) The subject matter of the payment claim;
- d) The basis of the calculation of the amount claimed.

If an employer wishes to dispute a payment claim, they must deliver a response within 21 days and give details of the following:

- a) The amount proposed to be paid;
- b) The reasons for the difference between the amount in the payment claim notice and the amount which it is proposed to be paid;
- c) The basis upon which the amount which it is proposed to be paid is calculated.

Pay when paid clauses

Clauses purporting to allow contractors to withhold payment to sub-contractors until they themselves are paid (so-called 'pay when paid' clauses) will not be permitted;

Suspension

Sub-contractors will be entitled to suspend work when payment has been withheld for completed work. However the suspension cannot continue once the dispute relating to payment (giving rise to the suspension) has already been referred to adjudication. This has the potential to dilute the effect of a threatened suspension of works and will also mean that a sub-contractor will have to continue works whilst the adjudication process is on-going.

Binding Adjudication

A new statutory dispute resolution procedure of adjudication will apply to payment disputes under construction contracts. This is designed to be a fast effective mechanism to secure payment. Either party will be entitled to refer a payment dispute to an adjudicator, who will be required to reach a decision within 28 days. This period may be extended by a further 14 days by agreement between the parties.

The decision of the adjudicator will be binding until:

- a) The payment dispute is finally settled by the parties; or
- b) Until a different decision is reached (i) following the reference of the payment dispute to arbitration by either party or (ii) in proceedings initiated in a court in relation to the adjudicator's decision.

The new legislation has been welcomed by the Construction Industry Federation (CIF) which said that the Bill represents a landmark for the construction industry. Tom Parlon, Director General of the CIF said: *"We have been pressing to have a system put in place that provides*

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easier access to payments for contractors who have carried out work. With contractors throughout the industry having experienced such hard times, we need to ensure that those problems are not exacerbated by payments being held up. This Bill will put a stop to that problem.”

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