

GETTING PAID UNDER THE CONSTRUCTION CONTRACTS ACT 2013



WHAT IS THE AIM OF THE ACT?

The aim of the Construction Contracts Act 2013 ("the Act") is to ensure the proper and prompt payment of all parties to construction contracts. However, the existence of the Act alone does not guarantee that construction firms will be paid in this manner. Construction firms will only benefit from the Act if they operate procedures set out in the Act and (if relevant) in their contract properly. Construction firms need to put procedures in place now to ensure they derive maximum benefit from the provisions of the Act.

WHEN DOES THE ACT TAKE EFFECT?

The provisions of the Act will apply to all construction contracts entered into after Monday 25 July 2016. This includes main contracts, sub-contracts and sub-sub-contracts.

IS YOUR CONTRACT A CONSTRUCTION CONTRACT?

A contract will be a construction contract for the purposes of the Act where a party is engaged:

1. to carry out or arrange for the carrying out of construction operations; or
2. where a party is providing labour, or the labour of others, for the carrying out of construction operations.

Construction operations covers the vast majority of what we would ordinarily understand to be part of the construction industry including work carried out by Architects, Engineers, Project Managers, other Consultants, Main Contractors, Sub-Contractors and Sub-Sub-Contractors. Notable exclusions include:

1. Supply only contracts (supply and fit contracts are included);

2. Construction contracts that are of a value less than €10,000;
3. Contracts relating to a dwelling, where the dwelling has a floor area less than 200m² and if one of the parties to the contract is a person who occupies or intends to occupy the dwelling; and
4. Public Private Partnership ("PPP") contracts.

CAN I AGREE NOT TO BE COVERED BY THE ACT?

Section 2(5)(b) prohibits parties to a construction contract from excluding or limiting the application of the Act. This means that, even if a contract specifically states that the Act does not apply, such a term will not be enforceable unless it fits within one of the exclusions set out above.

HOW DOES THE ACT AFFECT PAYMENT PROVISIONS?

One of the key effects of the Act is to outlaw pay when paid provisions. Section 3(5) of the Act prevents contracts from containing a term that makes payment of, for example, a sub-contractor conditional on payment being received by the main contractor from the employer.

In addition, Section 3 requires a construction contract to provide details as to the timing and quantification of amounts due under a contract.

Contracts must include either Payment Claim Dates for when amounts are due or set out an adequate mechanism for determining those dates. Payment Claim Date is defined in the Act as "the date when a payment claim in relation to an amount due under the construction contract is required to be made." The contract must also provide for the period between Payment Claim Dates.



To establish the amount to be paid on each Payment Claim Date, a construction contract must provide either, the amount of each interim payment and the final payment, or outline an adequate mechanism for determining these amounts.

WHAT IF MY CONTRACT DOES NOT CONTAIN THESE MECHANISMS?

The Act provides a Schedule ("the Schedule") that will apply to a construction contract if such mechanisms are not provided for. However, there is a distinction drawn between the use of this Schedule in a main contract and a sub-contract situation. Under a sub-contract, the Schedule will always apply unless the payment cycle agreed by the parties is more favourable to the sub-contractor than the Schedule. However, under a main contract the Schedule will only apply if that contract does not make provision for how Payment Claim Dates and amounts are calculated. This means that payment terms, less favourable to the main contractor than the Schedule can be agreed.

The Schedule provides for a 30 day payment cycle unless the total duration of the construction contract is estimated to be less than 45 consecutive days (in such circumstances the Payment Claim Date is 14 days after completion

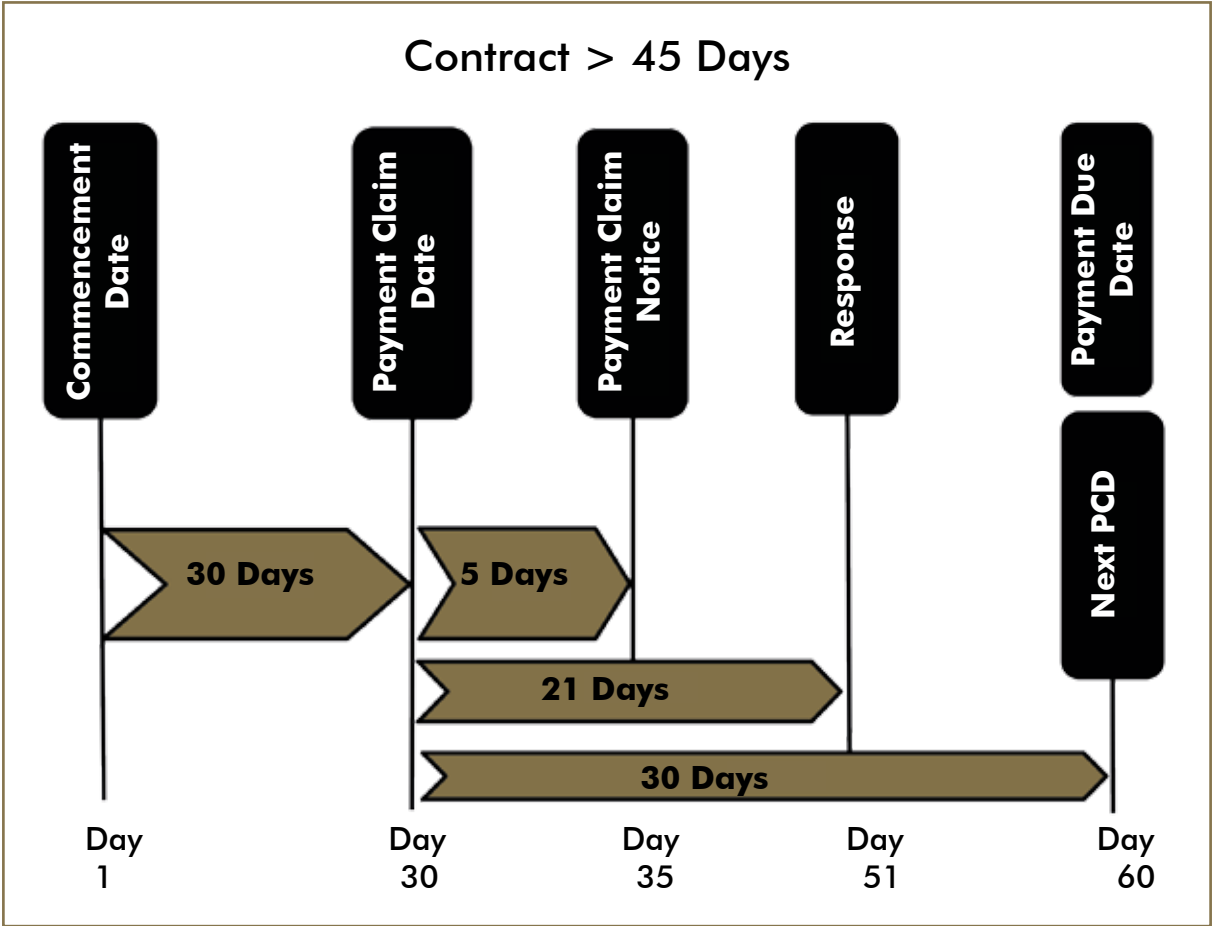
of the work under the construction contract). This 30 day payment cycle will apply to sub-contracts even in circumstances where a main contract has a different payment cycle.

HOW DO THE PAYMENT PROVISIONS OPERATE?

Section 4 of the Act states that a party seeking payment under a construction contract will, not later than five days after the Payment Claim Date, provide to the other party a Payment Claim Notice specifying:

1. The amount claimed (even if the amount is zero);
2. The period and stage of work or activity in which the payment claim refers;
3. The subject matter of the payment claim; and
4. Basis of the calculation of the amount claimed.

Where a Payment Claim Notice is received and the other party disputes that the full amount claimed is due, then that party must, no later than 21 days after the Payment Claim Date, issue a response stating the amount proposed to be paid, the reason or reasons for the difference, and the basis on which the amount referred



to is calculated. Unless a deal has been done in relation to the amount for payment prior to the amount becoming due, then the amount specified by the paying party must be paid on the date it becomes due.

Both the Payment Claim Notice and response need to provide all the details set out above in order to provide the full benefits/protection of the Act.

HOW DO I ENSURE COMPLIANCE WITH AND/OR GET MAXIMUM BENEFIT FROM THE ACT?

The first step is to conduct a review of your standard payment procedures to check for compliance with the provisions of the Act. This should be a review that considers both arrangements with parties that pay you and parties you pay.

In the context of these arrangements, you should develop pro forma "Payment Claim Notices" and "Responses", which will minimise the disruption and maximise the benefits to your business. These documents should

reference your own contract terms and, more importantly the Act.

WHAT DO I DO IF I AM NOT PAID?

Parties who have not been paid, without cause or for reasons they dispute, have two options under the Act to enforce payment. A party who has not been paid by the date the amount is due may suspend works after giving seven days' notice of that intention. However, issues exist with the wording of this provision and the ability of the paying party to prevent a suspension by the issuing of a notice of adjudication. This means it is more likely that enforcement via adjudication will be more commonly used.

Adjudication is a fast track dispute resolution method, which allows a "payment dispute" to be referred to an adjudicator for a decision 28 days after referral. It is not a process to be entered into underprepared but in the right circumstances and if properly managed it can be hugely beneficial to all parties.



QUIGG GOLDEN CONSTRUCTION CONTRACTS ACT SERVICES

Quigg Golden's extensive experience of dealing with similar legislation in the UK since 1996 means we are ideally placed to advise you on the Construction Contracts Act. We can;

- advise parties on the proper drafting of contracts and claim documentation to ensure compliance with and access to the benefits of the Act;
- train your team on the application of the mechanisms within the Construction Contracts Act;
- represent you in Adjudication. We have acted for Clients, Contractors and Sub Contractors in over 200 adjudications to date.

For further details please contact:

James Golden, Partner
James.Golden@QuiggGolden.com

Pauric Marray, Director
Pauric.Marray@QuiggGolden.com

Brian Quinn, Associate
Brian.Quinn@QuiggGolden.com

David McNeice, Associate
David.McNeice@QuiggGolden.com



James Golden



Pauric Marray



Brian Quinn



David McNeice