

Dummies Guide to Payment
under the
Amended Construction Contracts (Northern Ireland) Order 1997

The 1997 order has been amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 which comes into force on 14 November 2012.

Unfortunately the amendments to the statutory payment rules are not easy to follow. Set out below is a basic guide. As with all legislation, whereas a guide like this can be helpful, there is no substitute to reading the actual legislation in full. They can all be found at www.bailii.org. (or try the hyperlinks at end of this document)

The basic premise is that a construction contract will have a provision to give notice of the notified sum, that is the amount due on the payment due date, which shall then be paid by the final date for payment.

Notified Sum

The contracts can either specify that the Notice stating the amount due can be given either by

- the payer (or a specified person) this is a 9A(2) Notice, or
- by the payee, this is a 9A(3) Notice.

If the contract does not state who is to issue the notice, the payer is to.

Whoever gives the notice, it must

- be given not later than 5 days after payment due date
- specify the sum due at the payment due date and the basis on which it is calculated
- be given even if amount due is £0.00

The rules then specify what should happen if a payment notice should have been issued by the payer, or a specified person, but was not.

In that case the payee may serve a notice at any time after the payment notice should have been issued by the payer. The notice must comply with the requirements of 9A(3). However, the payee should act quickly as the final date for payment is postponed for same period as between default and 9A(3) notice.

Further, if the contract permits the payee to make an application and he does so then that application will become the 9A(3) Notice and no new one can be given.

Paying the Notified Sum

The notified sum is to be paid by the Final Date for Payment (10(1))

Payless Notice

A payer may serve a payless notice, if he intends to pay less than the notified sum.

A payless notice must be given before the prescribed period before the final date for payment (if the contract does not specify this period the Scheme states it is 7 days). The Notice must specify the sum due (even if £0.00) on the date of the notice and the basis on which it is calculated.

In Practice

As most payment disputes relate to sub-contracts, let us take a sub-contract which does not contain any payment terms, so the Scheme applies. Let us imagine the work commenced on site on 1 January 2013 and is due to last 6 months.

The first payment due date will be 7 days following 28 days, or on the making of an claim by the payee, whichever is the later.

Let us assume a claim is made on 1st February.

- The first payment due date is 5th February.
- Therefore the main contractor must give a Notice specifying how much was due on 5th February, and the basis on which it was calculated by 10th February.
- The final date for payment of this amount will be 17 days from the payment due date, that being 22nd February.
- If something occurs that means the contractor wishes to pay less, for example the sub-contractor burnt down the contractor's site hut, then the contractor must serve a payless notice by 15th February.

If the contractor failed to respond to the sub-contractors claim at all, then on 11th February the sub-contractor could serve his own payment notice and that amount will become the amount due, unless the contractor then serves a payless notice.

Moral

Any paying party must ensure they deal with all claims for payment within the time limits prescribed or face the possibility of having to pay the amount applied for in full.

For further information, please see the following links:

[Amended NI Order \(produced by Quigg Golden\)](#)

[Amended NI Scheme \(produced by Quigg Golden\)](#)

[The Construction Contracts \(Northern Ireland\) Order 1997](#)

[The Construction Contracts \(1997 Order\) \(Commencement\) Order \(Northern Ireland\) 1999](#)

[The Construction Contracts Exclusion Order \(Northern Ireland\) 1999](#)

[Construction Contracts \(Amendment\) Act \(Northern Ireland\) 2011](#)

[The Construction Contracts \(2011 Act\) \(Commencement\) Order \(Northern Ireland\) 2012](#)

[The Construction Contracts Exclusion Order \(Northern Ireland\) 2012](#)