AN BILLE UM CHONARTHAÍ FOIRGNÍOCHT, 2010
CONSTRUCTION CONTRACTS BILL 2010

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

ARRANGEMENT OF SECTIONS

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SCHEDULE

Provisions to Apply to Matters Regarding Payments

[No. 21*c* of 2010]

Bankruptcy Act 1988	1988, No. 27
Building Control Act 2007	2007, No. 21
Companies Act 1963	1963, No. 33
Companies (Amendment) Act 1990	1990, No. 27
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State Authorities (Public Private Partnership Arrangements) Act 2002	2002, No. 1

AN BILLE UM CHONARTHAÍ FOIRGNÍOCHT, 2010
CONSTRUCTION CONTRACTS BILL 2010

BILL

entitled

AN ACT TO REGULATE PAYMENTS UNDER CONSTRUCTION CONTRACTS AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

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;

"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;

"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;

"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;

"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.

(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.

(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 communications systems.

(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.

Construction contracts: exceptions, etc.

2.—(1) A contract is not a construction contract—

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

(*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.

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

(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.

(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.

(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

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

Payments under construction contracts.

3.—(1) A construction contract shall provide for— 5

(*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. 10

(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. 15

(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)*.

(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*. 20

(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. 25

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

(*a*) where the other person is a company other than an unregistered company— 30

(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, 35

(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; 40

(*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[1] on insolvency proceedings applies.

Payment claim notices.

4.—(1) This section applies where, not later than 5 days after the payment claim date, an executing party to a construction contract delivers a payment claim notice relating to a payment claim to the other party or another person specified under the construction contract.

(2) A payment claim notice is a notice specifying—

(*a*) the amount claimed (even if the amount is zero),

(*b*) the period, stage of work or activity to which the payment claim relates,

(*c*) the subject matter of the payment claim, and

(*d*) the basis of the calculation of the amount claimed.

(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

(*b*) 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.

(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

[1]OJ No. L160, 30 June 2000, p.1.

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.

(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.

Right to suspend work for non-payment.

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)*.

(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.

(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.

(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) 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.

(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.

(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.

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").

(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.

(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*.

(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*.

(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.

(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.

(7) The adjudicator may extend the period of 28 days by up to 14 days, with the consent of the party by whom the payment dispute was referred.

(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*.

(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.

(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.

(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 judgment or order of that Court with the same effect and, where leave is given, judgment may be entered in the terms of the decision.

(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.

(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.

(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.

(15) Each party shall bear his or her own legal and other costs incurred in connection with the adjudication.

(16) The parties shall pay the amount of the fees, costs and expenses of the adjudicator in accordance with the decision of the adjudicator.

(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.

(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 the revocation.

Right to suspend work for failure to comply with adjudicator's decision.

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)*.

(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.

(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.

(4) Where 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.

(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.

Selection of panel of adjudicators.

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.

(2) Persons selected under *subsection (1)* shall be 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.

(3) The Minister may, for good and sufficient reason, remove a member of the panel.

(4) A member of the panel may at any time resign by giving notice in writing to the Minister.

(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)*.

(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 of the European Union.

Code of practice for adjudication.

9.—The Minister may prepare and publish a code of practice governing the conduct of adjudications under *section 6*.

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.

(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. 5

(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. 10

Expenses.

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

Short title and commencement.

12.—(1) This Act may be cited as the Construction Contracts Act 2013. 15

(2) This Act applies in relation to construction contracts entered into after such day as the Minister may by order appoint.

Provisions to Apply to Matters Regarding Payments

1. The payment claim dates under a construction contract shall (subject to *paragraph 2*) be as follows:

5 (*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.

10 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.

15 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.

4. The amount of an interim payment under a construction contract shall (subject to *paragraph 5*) be the difference between—

20 (*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
25 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
30 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.