



## The New requirement for Adjudication

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How many of you know about the Housing Grants, Construction and Regeneration Act 1996? It is an important piece of legislation that affects all those people and companies involved in the construction of buildings. The Act, amongst other things introduced statutory adjudication.

Adjudication is a form of dispute resolution brought into force with effect from 1st May 1998 under the Housing Grants, Construction and Regeneration Act 1996 ("the Act"). Further regulations were introduced as a result of the Act (the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("the Scheme")). The aim of the legislation is to provide a mechanism for resolving disputes quickly, and as a result, with less cost than

traditional forms of dispute resolution.

### When can you adjudicate?

Any party to a construction contract caught by the Act has the right to refer a dispute to adjudication at any time. The contract should provide a procedure for doing so. Where the contract does not then the statutory adjudication procedure contained in the Scheme will apply.

### Which contracts are caught by the Act?

Contracts caught by the Act not only include agreements to do building works but also architectural, design or surveying work, or to provide advice on building engineering, interior or exterior decoration or landscaping.

For the Act to apply the contract must:

- be entered into after 1st May 1998,
- be in writing (whether or not it is signed); or, the terms of the contract must be recorded in writing or, if made orally, recorded in writing with the authority of the parties to the agreement,
- not fall into a category of excluded works.

A construction contract may come into being through an exchange of correspondence detailing the terms of the contract (e.g. quote and acceptance letters).

Certain construction works are excluded (and may therefore prevent a dispute being referred to adjudication). These include :-

- contracts for works to a dwelling house which the other party occupies, or intends to occupy, as his or her residence.
- supply only contracts (unless the contract is also for installation)
- contracts which relate to the making, installation and repair or artistic works (sculptures, murals etc).

The parties may overcome these exclusions by including adjudication clauses in their contract or by using one of the standard forms of contract with adjudication clauses.

### Which provisions must be included in the contract to comply with the Act?

Every construction contract must:

- Enable a party at any time to give notice of his or her intention to refer a dispute to adjudication;
- Provide a timetable for an adjudicator to be appointed and the dispute to be referred to him or her within 7 days of the notice of intention;
- Require the adjudicator to reach a decision within 28 days of referral (it is open to the parties to agree a longer period);
- Allow the adjudicator to extend the period for his/her decision by up to 14 days but only with the consent of the referring party;
- Enable the adjudicator to take the initiative in ascertaining the facts and the law;
- Impose on the adjudicator a duty to act impartially; and
- Provide that the decision of the adjudicator is binding until final determination by litigation arbitration or subsequent agreement.

If the contract does not contain these provisions, then provided the contract is caught by the Act the Scheme will imply them.

### Commencing an Adjudication

The first step in commencing an adjudication is for the referring party to prepare a **Notice of Intention to Refer to Adjudication** which is served on the other party to the contract. The Notice should set out briefly the following:

- The nature and a brief description of the dispute and the parties involved;
- Details of where and when the dispute arose;
- The nature of the redress which is sought; and
- The names and addresses of the parties to the contract.

### The Adjudicator

The contract may specify who should act as an adjudicator or which professional body should nominate the adjudicator. If the contract is silent there are several adjudicator nominating bodies who can be requested to select an adjudicator (a fee will be payable) e.g. RIBA, RICS, CIOB. The choice of nominating body will be dependant on the nature of the dispute.

### The Referral Notice

As soon as the adjudicator is appointed the referring party has 7 days from the Notice of Intention to Refer in which to forward to him the Referral Notice. This document sets out the basis of the claim and specifies the remedy sought. It

should be accompanied by all of the documents which support the case and upon which the referring party wishes to rely. At the same time that this document is sent to the adjudicator a copy should also be sent to the other party.

## The Response

Upon receipt of the Referral Notice the adjudicator will usually write to both parties setting out when the other party should respond. The response should deal with every point in the Referral Notice and clearly set out the responding party's case. It should also annex any documentation on which the responding party relies. The adjudicator may also allow the referring party to reply and the responding party to give a further response.

## Powers of the Adjudicator

Under the Scheme the adjudicator is given wide powers in order to reach his decision including the following:

- Request any party to supply him with documentation;
- Meet and question any of the parties and their representatives;
- Make site visits and inspections;
- Carry out tests and experiments;
- Appoint experts, assessors or legal advisors - provided he has obtained the parties' consent to do so;
- Give directions as to the timetable for the adjudication and set limits on the length of written/oral submissions; and
- Open up, revise and review any decision taken or any certificate given unless the contract states that such a decision or certificate is final and conclusive.

## The Decision

The adjudicator must reach his decision **within 28 days** of receipt of the Referral Notice or **42 days if the referring party agrees**. In those Adjudications dealing with claims for payment the decision should state whether any payment is due from either party and specify a period within which it is to be paid. Under the Scheme the adjudicator does not need to give reasons for his decision unless requested to do so. The decision is an interim one and is binding on the parties until final determination by litigation, arbitration or agreement between the parties. However, it is often regarded by the parties as a final disposal of the dispute in question.

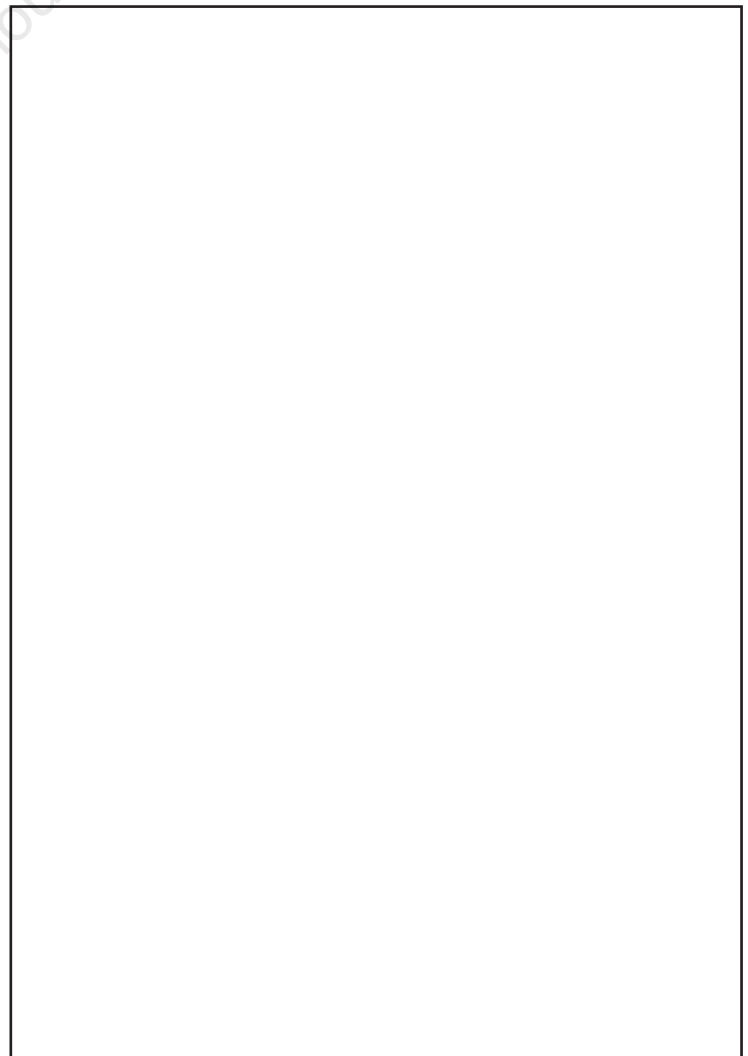
## Costs

An adjudicator will expect to be paid for his services. His fees are usually charged on a rate per hour basis and so the cost of the decision will depend on the complexity of the issues that he has to consider. The Adjudicator will in his Decision state which party is to pay his fees and it is usual for the unsuccessful party to be responsible for payment.

For further information on adjudication or any other legal matter can be obtained from, John Birch of Bevan Ashford, phone 01392 663388



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