

SCHEDULE

THE SCHEME FOR CONSTRUCTION CONTRACTS

PART II— PAYMENT

Entitlement to and amount of stage payments

1. Where the parties to a relevant construction contract fail to agree—

- (a) the amount of any instalment or stage or periodic payment for any work under the contract, or
- (b) the intervals at which, or circumstances in which, such payments become due under that contract, or
- (c) both of the matters mentioned in sub-paragraphs (a) and (b) above,

the relevant provisions of paragraphs 2 to 4 below shall apply.

2.—(1) The amount of any payment by way of instalments or stage or periodic payments in respect of a relevant period shall be the difference between the amount determined in accordance with sub-paragraph (2) and the amount determined in accordance with sub-paragraph (3).

(2) The aggregate of the following amounts—

- (a) an amount equal to the value of any work performed in accordance with the relevant construction contract during the period from the commencement of the contract to the end of the relevant period (excluding any amount calculated in accordance with sub-paragraph (b)),
- (b) where the contract provides for payment for materials, an amount equal to the value of any materials manufactured on site or brought onto site for the purposes of the works during the period from the commencement of the contract to the end of the relevant period, and
- (c) any other amount or sum which the contract specifies shall be payable during or in respect of the period from the commencement of the contract to the end of the relevant period.

(3) The aggregate of any sums which have been paid or are due for payment by way of instalments, stage or periodic payments during the period from the commencement of the contract to the end of the relevant period.

(4) An amount calculated in accordance with this paragraph shall not exceed the difference between—

- (a) the contract price, and
- (b) the aggregate of the instalments or stage or periodic payments which have become due.

Dates for payment

3. Where the parties to a construction contract fail to provide an adequate mechanism for determining either what payments become due under the contract, or when they become due for payment, or both, the relevant provisions of paragraphs 4 to 7 shall apply.

4. Any payment of a kind mentioned in paragraph 2 above shall become due on whichever of the following dates occurs later—

- (a) the expiry of 7 days following the relevant period mentioned in paragraph 2(1) above, or

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(b) the making of a claim by the payee.

5. The final payment payable under a relevant construction contract, namely the payment of an amount equal to the difference (if any) between—

(a) the contract price, and

(b) the aggregate of any instalment or stage or periodic payments which have become due under the contract,

shall become due on the expiry of—

(a) 30 days following completion of the work, or

(b) the making of a claim by the payee,

whichever is the later.

6. Payment of the contract price under a construction contract (not being a relevant construction contract) shall become due on

(a) the expiry of 30 days following the completion of the work, or

(b) the making of a claim by the payee,

whichever is the later.

7. Any other payment under a construction contract shall become due

(a) on the expiry of 7 days following the completion of the work to which the payment relates, or

(b) the making of a claim by the payee,

whichever is the later.

Final date for payment

8.—(1) Where the parties to a construction contract fail to provide a final date for payment in relation to any sum which becomes due under a construction contract, the provisions of this paragraph shall apply.

(2) The final date for the making of any payment of a kind mentioned in paragraphs 2, 5, 6 or 7, shall be 17 days from the date that payment becomes due.

Notice specifying amount of payment

9. A party to a construction contract shall, not later than 5 days after the date on which any payment—

(a) becomes due from him, or

(b) would have become due, if—

(i) the other party had carried out his obligations under the contract, and

(ii) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts,

give notice to the other party to the contract specifying the amount (if any) of the payment he has made or proposes to make, specifying to what the payment relates and the basis on which that amount is calculated.

Notice of intention to withhold payment

10. Any notice of intention to withhold payment mentioned in section 111 of the Act shall be given not later than the prescribed period, which is to say not later than 7 days before the final date for payment determined either in accordance with the construction contract, or where no such provision is made in the contract, in accordance with paragraph 8 above.

Prohibition of conditional payment provisions

11. Where a provision making payment under a construction contract conditional on the payer receiving payment from a third person is ineffective as mentioned in section 113 of the Act, and the parties have not agreed other terms for payment, the relevant provisions of—

- (a) paragraphs 2, 4, 5, 7, 8, 9 and 10 shall apply in the case of a relevant construction contract, and
- (b) paragraphs 6, 7, 8, 9 and 10 shall apply in the case of any other construction contract.

Interpretation

12. In this Part of the Scheme for Construction Contracts—

“claim by the payee” means a written notice given by the party carrying out work under a construction contract to the other party specifying the amount of any payment or payments which he considers to be due and the basis on which it is, or they are calculated;

“contract price” means the entire sum payable under the construction contract in respect of the work;

“relevant construction contract” means any construction contract other than one—

- (a) which specifies that the duration of the work is to be less than 45 days, or
- (b) in respect of which the parties agree that the duration of the work is estimated to be less than 45 days;

“relevant period” means a period which is specified in, or is calculated by reference to the construction contract or where no such period is so specified or is so calculable, a period of 28 days;

“value of work” means an amount determined in accordance with the construction contract under which the work is performed or where the contract contains no such provision, the cost of any work performed in accordance with that contract together with an amount equal to any overhead or profit included in the contract price;

“work” means any of the work or services mentioned in section 104 of the Act.