

Payment under the “new” Construction Act

The 2009 Construction Act requires every “construction contract” entered into on or after 1 October 2011 to comply with amended provisions. If your terms and conditions do not comply then the relevant provision of the amended statutory Scheme for Construction Contracts will apply by default to your contract as an implied term. So, your payment terms may not mean what you think they do!

Under the new Act the following matters must be covered	The amended Scheme for Construction Contracts
	If any of the matters opposite are not agreed this is what your contract will really say
<p>1 Stage Payments</p> <ul style="list-style-type: none"> Unless the work is expected to take less than 45 days the contractor or consultant is entitled to be paid in instalments The amounts and intervals must be capable of being ascertained 	<p>1 Stage Payments</p> <ul style="list-style-type: none"> If instalments do not apply the price is due 30 days after completion, or when claimed, whichever is the later If instalments apply, the period is every 28 days from commencement of work
<p>2 How much and when?</p> <ul style="list-style-type: none"> Your contract must provide “an adequate mechanism” for determining what amount is due. You must show how the amount is to be calculated You must also show when that amount is due. As shown below the payment due date is not the same thing as the date by when it must be paid 	<p>2 How much and when?</p> <ul style="list-style-type: none"> The amount payable is in respect of the value of work performed since commencement until the end of the 28 day period, including materials on site and any other sums specified as payable by the contract. The total cannot exceed the contract price Interim payments are due 7 days after the end of the 28 day period, or when claimed if later The final payment is due 30 days after completion or when claimed if later
<p>3 The final date for payment</p> <ul style="list-style-type: none"> The contract must provide for the final date for payment of each interim and final application. This is the last date by when payment must be made 	<p>3 The final date for payment</p> <ul style="list-style-type: none"> The final date for payment is 17 days after the sum became due
<p>4 The payment notice</p> <ul style="list-style-type: none"> The contract must provide for the paying party or agent to give a notice identifying the amount it considers is due together with the basis of that assessment; or for the payee to give the notice Either notice must be given no later than 5 days after the payment due date. You can make it less than 5 	<p>4 The payment notice</p> <ul style="list-style-type: none"> If the contract fails to provide for one of the parties to give the payment notice, then under the Scheme the responsibility lies with the payer Notice of the amount and basis of calculation is to be given no later than 5 days from the payment due date

<p>5 The default notice</p> <ul style="list-style-type: none"> Where no payment notice is given the payee may give a payee notice in default. This has the effect of postponing the final date for payment by the number of days delay in giving the notice 	<p>5 The default notice</p> <ul style="list-style-type: none"> There is no payee default notice under the amended Scheme
<p>6 The pay less notice</p> <ul style="list-style-type: none"> If the paying party wants to pay less than the notified sum it must serve a pay less notice stating how much it considers to be due and the basis of the assessment The contract has to specify how long before the final date for payment this notice is to be given <p>Each party should then know the amount that is to be paid at the final date for payment.</p>	<p>6 The pay less notice</p> <ul style="list-style-type: none"> Any pay less notice has to be no later than 7 days before the final date for payment

The diagram below shows the interim payment period. Under the Scheme it takes 52 days from the start of work to get paid.

