



Construction Contracts Act, 2013

Code of Practice Governing the Conduct of Adjudications



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

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Code of Practice Governing the Conduct of Adjudications under Section 6 of the Construction Contracts Act 2013

This Code of Practice is made pursuant to section 9 of the Construction Contracts Act, 2013 and should be read in conjunction with that Act.

Definitions

1. A reference in this Code of Practice to:
 - a) “the Act” means the Construction Contracts Act, 2013;
 - b) “Adjudicator” means an Adjudicator who is appointed to a payment dispute in accordance with section 6 of the Act;
 - c) “Chairperson” means the Chairperson of the Construction Contracts Adjudication Panel who is appointed by the Minister under section 8(1) of the Act;
 - d) "Construction Contracts Adjudication Service" means the section of the Department of Jobs, Enterprise and Innovation responsible for, inter alia, processing applications to the Chairperson under section 6(4) of the Act and contact details are available at www.djei.ie;
 - e) "Minister" means the Minister or Minister of State with responsibility for the Construction Contracts Act, 2013;
 - f) "Notice of Intention" means the notice of intention to refer a payment dispute for adjudication, referred to in section 6(2) of the Act;
 - g) “Panel” means the panel of Adjudicators referred to in section 8(1) of the Act, the members of which are appointed by the Minister; and
 - h) “Payment dispute” has the meaning assigned to it by section 6 of the Act.

General

2. The procedures set out in this Code of Practice shall apply to each individual payment dispute arising under the Act. In accordance with section 6(9) of the Act, an Adjudicator may deal at the same time with several payment disputes arising under the same construction contract or related construction contracts.
3. No liability whatsoever shall extend to the Minister, Chairperson or to the Department of Jobs, Enterprise and Innovation in respect of this Code of Practice or for any loss that arises from the operation of this Code of Practice. The Minister reserves the right to make changes to this Code of Practice.

Preliminary

4. A party to the construction contract (known as “the Referring Party”) commences adjudication pursuant to section 6(2) of the Act by serving a written Notice of Intention on the other party or parties to the construction contract (known as the “Responding Party/Parties”) under which an individual payment dispute arises.
5. A Notice of Intention shall include:
 - (i) the name, address and contact details of each party to the construction contract;
 - (ii) relevant details of the payment dispute to include the amount in dispute (even if the amount is zero), the nature of the payment dispute, and the site address;
 - (iii) a copy of the relevant payment claim notice, and any response to that payment claim notice as provided for in section 4 of the Act; and
 - (iv) relevant details to identify the construction contract and any supporting information that may assist an Adjudicator in understanding the nature of the payment dispute. Where a written construction contract exists, this must be attached.

Prospective Adjudicator responsibilities to the parties to a payment dispute

6. A prospective Adjudicator should only accept an appointment to a payment dispute under the Act if he/she:
 - (i) is able to give the adjudication the time and attention which the parties to the payment dispute are reasonably entitled to expect;
 - (ii) believes that he/she is competent to determine the issues in dispute; and
 - (iii) is satisfied that no conflict of interest exists between him/her and the parties subject to paragraphs 11 and 20 of this Code of Practice.
7. A prospective Adjudicator shall not contact any party to a payment dispute under the Act in order to solicit appointment as an Adjudicator to that dispute.

The Appointment of an Adjudicator – by agreement of the parties

8. The parties to the construction contract may, within five days beginning with the day on which Notice of Intention is served, agree to appoint an Adjudicator of their own choice and he/she may be a person referred to in the construction contract to perform that role, a person from the Panel or he/she may be another suitably qualified person.
9. A person who is requested to accept an appointment as Adjudicator following an agreement by the parties to the construction contract in accordance with section 6(3) of the Act shall, within two days of such a request and prior to accepting the appointment, write to the parties to ask them to disclose any information indicating any potential conflict of interest that may arise from the person's appointment as Adjudicator. He/she shall draw the attention of the parties to the provisions of paragraph 32 of this Code of Practice. The prospective Adjudicator shall, at the same time provide the parties with his/her proposed terms and conditions of appointment, including the basis for his/her fees, costs and expenses.
10. Each party shall within three days of the communication from the prospective Adjudicator decide if the appointment of the prospective Adjudicator is to proceed and inform the prospective Adjudicator in writing of their decision.
11. If a potential conflict of interest is disclosed by any party, the prospective Adjudicator may subject to the consent of all the parties, and on satisfying any professional and/or ethical concerns he/she may have, accept the appointment.
12. If the appointment of the prospective Adjudicator is to proceed, the prospective Adjudicator shall write to each party to accept the appointment and the date of the letter of acceptance sent to the parties shall be deemed to be the date on which the appointment of the Adjudicator is made for the purposes of section 6(5)(a) of the Act. Such acceptance, anonymised in terms of the details of the parties to the dispute, shall be notified by the Adjudicator to the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation for the purpose of compiling statistical information relating to the Act.

The Appointment of an Adjudicator – by the Chairperson

13. Failing agreement by the parties to select an Adjudicator in accordance with section 6(3) of the Act, a party to the construction contract may apply to the Chairperson to seek the appointment of an Adjudicator from the Panel in accordance with section 6(4) of the Act. Relevant contact details are available on the website of the Department of Jobs, Enterprise and Innovation at www.djei.ie.
14. If an application is to be made under section 6(4) of the Act to the Chairperson, it shall be made not earlier than five days from and including the day on which the Notice of Intention was served.
15. An application to the Chairperson to appoint an Adjudicator from the Panel to a payment dispute shall be in writing and submitted to the Chairperson in accordance with the application procedures set out by the Construction Contracts Adjudication Service of the Department of Jobs Enterprise and Innovation from time to time. Such application, shall be copied by the applicant to the other party/parties to the payment dispute at the same time and shall include:
 - (i) the name, address and contact details of each party to the construction contract;
 - (ii) relevant details of the payment dispute to include the amount in dispute (even if the amount is zero), the nature of the payment dispute, and the site address;
 - (iii) a copy of the Notice of Intention including any accompanying documents attached to that Notice;
 - (iv) the date as to when the Notice of Intention was served on the Responding Party/Parties and how this was done; and
 - (v) relevant details to identify the construction contract and any supporting information that may assist an Adjudicator in understanding the nature of the payment dispute. Where a written construction contract exists, this must be attached.
16. The Chairperson and/or the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation may seek further information or clarification(s) from the applicant relevant to the nature of the dispute and such information or clarification(s) should be provided promptly by the applicant and copied to the other party/parties to the payment dispute at the same time. No additional or other supporting information should be submitted by the applicant without a specific request for such information from the above-mentioned in this paragraph.

17. The Chairperson shall, following receipt of a completed application from a party to the construction contract made in accordance with paragraph 15 of this Code of Practice and subject to paragraph 16 of this Code of Practice, appoint an Adjudicator from the Panel.
18. The appointment of an Adjudicator from the Panel shall be made by the Chairperson and notified in writing by the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation to the parties, normally within seven days after the receipt of the application to the Chairperson, subject to paragraph 16 of this Code of Practice. The date of the letter from the Construction Contracts Adjudication Service to the parties shall be deemed to be the date on which the appointment of the Adjudicator is made for the purposes of section 6(5) (a) of the Act.
19. An Adjudicator appointed by the Chairperson to a payment dispute shall, within two days of such appointment, request of the parties in writing to disclose any information indicating any potential conflict of interest that may arise from the person's appointment as Adjudicator. He/she shall draw the attention of the parties to the provisions of paragraph 32 of this Code of Practice. The Adjudicator shall at the same time provide the parties with his/her terms and conditions of appointment, including the basis for his/her fees, costs and expenses.
20. If the information disclosed indicates a potential conflict of interest, the Adjudicator may only proceed with the adjudication where he/she is satisfied that the disclosures are frivolous or vexatious; that no professional or ethical concerns arise; and that no actual conflict of interest exists.

Referral of a payment dispute to an Adjudicator

21. Following the appointment of an Adjudicator, the Referring Party shall in accordance with section 6(5) of the Act refer the payment dispute to the Adjudicator in writing within seven days of the Adjudicator's appointment, and the Referring Party shall provide a copy of all such documentation to the Responding Party/Parties at the same time.
22. The referral of the payment dispute to the Adjudicator shall include:
- (i) the name, address and contact details of each party to the construction contract;
 - (ii) relevant details of the payment dispute to include the amount in dispute (even if the amount is zero), the nature of the payment dispute, and the site address;
 - (iii) a copy of the Notice of Intention including any accompanying documents attached to that Notice;
 - (iv) the date when the Notice of Intention was served on the Responding Party/Parties and how this was done;
 - (v) the contentions on which the Referring Party intends to rely upon to support their case; and
 - (vi) relevant details to identify the construction contract and any supporting information that may assist an Adjudicator in understanding the nature of the payment dispute. Where a written construction contract exists, this must be attached.

Adjudication of a payment dispute – Procedures and Decision

23. The Adjudicator in any payment dispute under the Act shall be impartial, independent and only adjudicate where satisfied that no actual conflict of interest exists. He/she shall observe the principles of procedural fairness, which shall include giving each party a reasonable opportunity to put their case and to respond to the other party's case.
24. For the purposes of the adjudication proceedings, the Adjudicator may:
- (i) request any reasonable supporting or supplementing documents pertaining to the payment dispute detailed in the Notice of Intention and/or in the referral of the payment dispute to the Adjudicator;
 - (ii) take the initiative in ascertaining the facts and matters required for a decision and make use of his/her own specialist knowledge, if it is appropriate to do so. If the Adjudicator uses any such specialist knowledge he/ she shall disclose this to the parties as appropriate;

- (iii) appoint experts, assessors or legal advisers, provided that the parties have been notified of their identity and their terms of reference;
 - (iv) make site visits and inspections or carry out tests, subject to prior notification to the parties and obtaining any necessary consent from a third party or parties;
 - (v) invite written submissions/representations and evidence from the parties, if appropriate;
 - (vi) meet jointly with the parties and their representatives, if any, to enable further investigation;
 - (vii) hold a teleconference with the parties, with the consent of the parties; and
 - (viii) hold an oral hearing, where appropriate.
25. The Adjudicator shall upon receipt of the referral of a payment dispute from the Referring Party, inform the parties in writing of the date on which it was received by the Adjudicator. This date of receipt shall be regarded as the date on which the referral of the payment dispute to the Adjudicator has been made for the purposes of section 6(6) of the Act.
26. The Adjudicator shall, at the same time, also inform the parties of the procedures that he/she intends to apply during the adjudication process. This shall include directions as to the timetable for the adjudication and any deadlines to be adhered to by the parties and/or limits as to the length of written documents. The Adjudicator shall draw the attention of the parties to the provisions of paragraph 32 of this Code of Practice. The Adjudicator may revise his/her guidance to the parties on the above mentioned matters in circumstances where he/she considers it necessary to do so and he/she shall inform the parties of any such change as appropriate.
27. The Adjudicator shall ensure that the procedure adopted is commensurate with the nature and value of the payment dispute and he/she shall be mindful of whether or not an oral hearing is required having regard to matters such as to whether or not there is a conflict of fact or other relevant matter that requires such a hearing.
28. The Adjudicator shall use reasonable endeavours to process the payment dispute between the parties in the shortest time and at the lowest cost. He/she shall promptly notify the parties of any matter that will slow down or increase the cost of making a determination.
29. The parties may agree to revoke the appointment of the Adjudicator in accordance with section 6(18) of the Act and 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.

30. In accordance with section 6(17) of the Act, the Adjudicator may resign for reasonable cause at any time on giving notice in writing to the parties to the payment dispute. Such resignation, anonymised in terms of the details of the parties to the dispute, shall be notified by the Adjudicator to the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation for the purpose of compiling statistical information relating to the Act.
31. Upon such resignation the adjudication is at an end subject to the payment by the parties of the reasonable fees, costs and expenses incurred by the Adjudicator up to the date of resignation. 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.
32. If a party to the adjudication, without showing sufficient cause, fails to:
- (i) attend a meeting; or
 - (ii) comply with any directions of the Adjudicator made in accordance with paragraph 26 of this Code of Practice; or
 - (iii) disclose any information indicating a potential conflict of interest as required to do in accordance with paragraphs 9 and 19 of this Code of Practice; or
 - (iv) produce any document or written statement requested by the Adjudicator;
- the Adjudicator may:
- a) continue the adjudication in the absence of a party;
 - b) continue the adjudication without the document or written statement requested;
 - c) draw such inferences from that failure to comply as circumstances may, in the Adjudicator's opinion, be justified;
 - d) make a decision on the basis of the material properly provided; and
 - e) make a decision apportioning the fees, costs and expenses of the Adjudicator, as appropriate.
33. The Adjudicator shall, in accordance with the Act, 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. The Adjudicator may extend the period of 28 days by up to 14 days, with the consent of the Referring Party.
34. The decision of the Adjudicator on a payment dispute shall be in writing and it shall be signed and dated by the Adjudicator. Unless the parties agree otherwise in writing, the decision shall include the reasons for the decision.

35. The Adjudicator's decision shall allocate such fees, costs and expenses of the Adjudicator as he/she has authority to allocate under section 6(16) of the Act and under the provisions of this Code of Practice.
36. The Adjudicator's fees, costs and expenses shall be reasonable in amount having regard to the amount in dispute, the complexity of the dispute, the time spent by the Adjudicator and other relevant circumstances.
37. Any document or information supplied for and/or disclosed in the course of the adjudication shall be kept confidential by the Adjudicator. He/she will only disclose such document or information if required to do so by law, or pursuant to an order of a court, or with the consent of all the parties to the payment dispute.
38. The parties are responsible for their own legal and other costs incurred in connection with the adjudication in accordance with section 6(15) of the Act.

Reporting on the Conduct of Adjudication Cases

39. The Chairperson may seek or, put in place arrangements to seek, details of adjudication cases from Adjudicators and which shall not include the names of the parties to a payment dispute. An Adjudicator, regardless of whether appointed to a payment dispute under section 6(3) or 6(4) of the Act, shall provide such anonymised information to the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation on each adjudication case within 21 days of the completion of the case. This will be used for the purpose of compiling statistical information relevant to adjudications conducted in accordance with the Act.
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I, PAT BREEN, Minister of State at the Department of Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 9 of the Construction Contracts Act, 2013 (No. 34 of 2013) and the Construction Contracts (Transfer of Departmental Administration and Ministerial Functions) Order 2014 (S.I. No. 476 of 2014) (amended by the Construction Contracts (Transfer of Departmental Administration and Ministerial Functions) Order 2015 (S.I. No. 173 of 2015)) and the Jobs, Enterprise and Innovation (Delegation of Ministerial Functions) Order 2016 (S.I. No. 333 of 2016) make this Code of Practice.

The Construction Contracts Act 2013 Code of Practice Governing the Conduct of Adjudications made on the 5th day of July 2016 is revoked.

PAT BREEN,
Minister of State at the Department of Jobs, Enterprise and Innovation.

Date: 25th July 2016

The images on the cover of this document are of drawings by Gabriel Hayes who was commissioned in 1941 to design and complete a range of carved stonework for the facade of the Department of Industry and Commerce building at Kildare Street.

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