

Payment guide

The basics: mandatory payment provisions in construction contracts

What is a construction contract?

Payment provisions within all construction contracts, whether in writing, partly in writing or oral, must comply with the Housing Grants, Construction and Regeneration Act 1996 (commonly referred to as the 'Construction Act').

What is a “construction contract”? Key points to note:

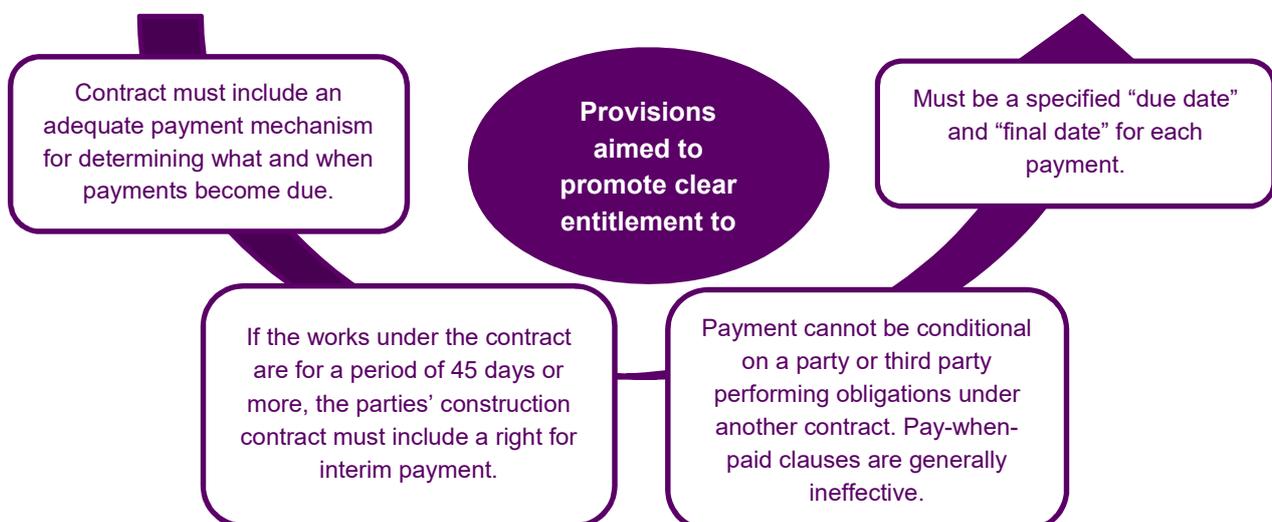
- The definition under section 104 of the Construction Act encompasses all agreements, including professional appointments and sub-contracts, under which “construction operations” are carried out.
- The term “construction operations” includes wide-ranging general construction-related work. However, “construction operations” does exclude some engineering projects (mining and power generation) and construction contracts with residential occupiers. These exceptions are important, as in these non-construction operation projects, the payment provisions in the Construction Act do not apply.

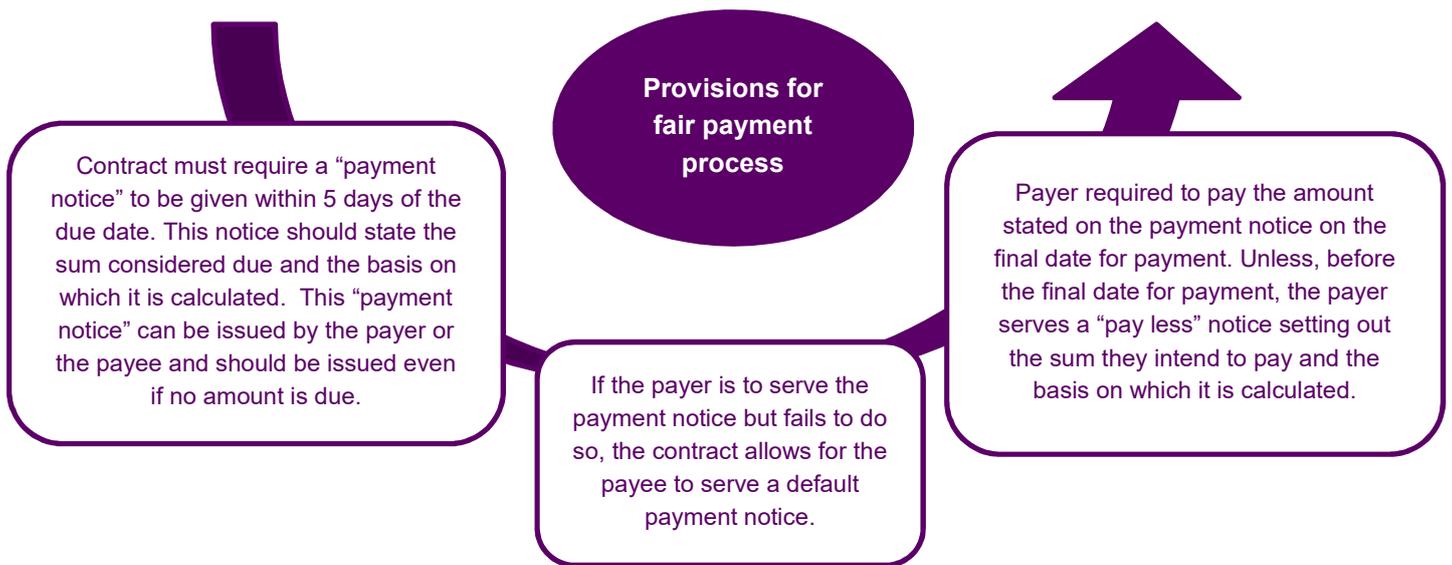
As you would expect, the payment provisions contained in the standard form construction contracts will comply with the Construction Act.

Payment provisions under the Construction Act

The aim of the Construction Act's mandatory payment provisions is to facilitate a fair, timely and regular payment process across the supply chain of a construction project.

Key payment provisions set out in the Construction Act are detailed below: split between those that relate to entitlement to payment and those that relate to the payment process.





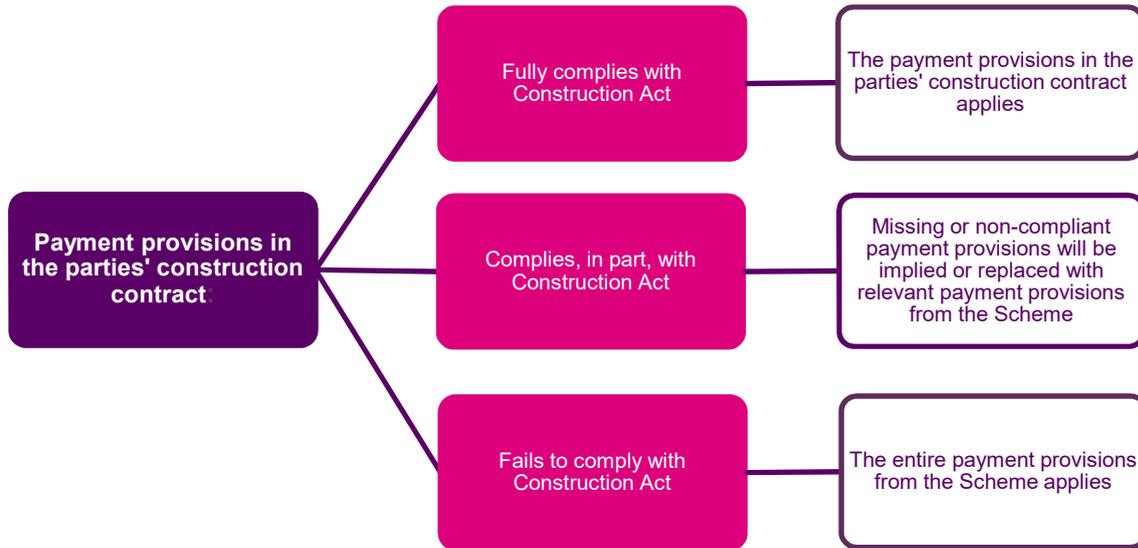
Provisions implied through the Scheme

If the payment provisions in the construction contract fail to comply with the Construction Act, the payment provisions contained in Part II of the Scheme for Construction Contracts (England and Wales) Regulations will apply (the ‘Scheme’). The payment provisions in the Scheme will apply to the extent necessary to achieve what is required by the Construction Act and can be applied on a piecemeal basis.

The key provisions are as follows:

1. If the parties’ construction contract fails, in full or part, to provide a mechanism for interim payments, and the works are or anticipated to be for a duration of 45 days or more, the following provisions will apply to the extent necessary to comply with the Construction Act:
 - a. Amount due. The payee is entitled to the difference between: (i) value of works done and/or materials supplied to date and/or due under the contract; and (ii) amount that has been paid to date.
 - b. Interim valuation period. Interim valuations to be reached every 28 days. This 28-day cycle will therefore keep running for the duration of contract.
 - c. Due date for interim payments. This is the later of: (i) 7 days after interim valuation period; or (ii) upon unpaid party issuing its payment application.
 - d. Final date for payment. This is 17 days after the due date for payment.
2. If there is no time period specified in the construction contract, any pay less notice should be issued by the payer no later than 7 days before final date for payment.

Summary



Get in touch



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