

Ms Lilly Lotay,
The Scheme for Construction Contracts Consultation
Bay 185,
Construction Sector Unit,
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

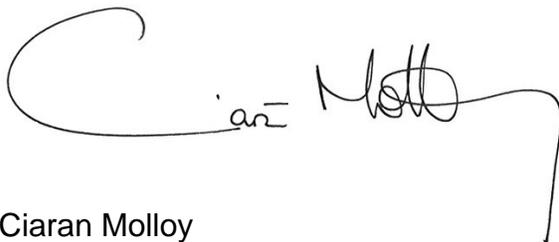
14 June 2010

Dear Sir/Madam,

Please find attached the Construction Industry Council response to the BIS consultation of March 2010 in relation to the Amendments to the Scheme for Construction Contracts (England and Wales) Regulations 1998.

The Construction Industry Council (CIC) is the representative forum for professional bodies, research organisations and specialist business associations within the construction industry. It provides a single voice for professionals in all sectors of the built environment through its collective membership of 350,000 individual professionals and 25,000 firms of construction consultants.

Yours sincerely,

A handwritten signature in black ink that reads "Ciaran Molloy". The signature is written in a cursive style with a large initial 'C' and a long horizontal stroke extending to the right.

Ciaran Molloy
Policy Executive
Construction Industry Council

Response from the Construction Industry Council to: Consultation on Amendments to the Scheme for Construction Contracts (England and Wales) Regulations 1998

Q1. Do you believe it appropriate and necessary for the Scheme to contain a provision allowing the adjudicator to apportion his fees and expenses between the parties to a dispute?

Yes subject to any amendment of 108(2).

Q2. Do you believe 7 days is an adequate period to allow for the correction of errors? If not, what would you suggest is an appropriate period and why?

No. The Construction Industry Council feels that the slip rule provision is for correction of clerical or typographical errors arising by accident or omission and, therefore, the corrections will not be complex. Therefore, corrections should be undertaken within 5 days of publication of the decision”.

Q3. Do you agree it is necessary to amend paragraph 21 of Part 1 of the Scheme to allow for a period of time within which the adjudicator’s decision should be complied with?

No. The suggested change would not be helpful. The existing position under common law is clear.

Q4. Do you agree that 8 days is an adequate period for compliance? If not, what would be an appropriate period?

This is not applicable in light of the response to Q3.

Q5. Do you agree that, paragraphs 9 and 10 aside, the Scheme requires no further amendment consequent to the changes to the Act’s payment framework? If not, would you set out what further amendments you believe to be necessary and explain why?

The Construction Industry Council believes that the scheme requires further amendment because they have missed the effects of 110(B) and 111.

Q6. Do you believe it is the right approach to continue with “payer- led” payment notice procedures in the Scheme provisions? Please give the reasons for your answer.

Yes, as the education exercise needed to change the scheme to one that is payee led would be very difficult.

Q7. Do you agree that the Scheme should require the “intention to pay less” notice to be issued 7 days before the final date for payment?

While the majority view is that the notice period should be reduced to five days on the basis that this is in line with JCT provisions, a minority view was expressed that seven days was better as the shorter period may not be appropriate for subcontractors.

Q8. Do you believe it is necessary to clarify the date of referral in paragraph 7 of the Scheme? Should it be 7 days:

- a) from the receipt of the adjudication notice by the adjudicator?*
- b) from the appointment of the adjudicator?*
- c) from some other event?*

The key consideration ought to be the receipt of notice by the responding party. The answer to all three points has to be No. The situation should be left as it is.

Q9. Are you content with the current position that an adjudicator cannot adjudicate related disputes unless both parties agree?

No. The view was that paragraph 8 ought to be removed although there should be something in the guidance to cover this point.

Q10. How often do you believe parties to an adjudication would wish the adjudication to be confidential on the grounds of:

- a) the fact of the adjudication?*
 - b) the matters that arise in it?*
- How might the Scheme be amended to better take account of this?*

“Blanket” confidentiality was felt to be the best approach. The wording should be along the lines of : Provision that the adjudication and all matters arising are to be kept confidential by the parties except in so far as necessary to implement or enforce any decision of the adjudicator or as may be required for the purpose of any subsequent proceedings.

Q11. Is there any practical problem which prevents the deletion of the words “unless the contract states that the decision or certificate is final and conclusive” from paragraph 20(a) of the Scheme?

There was no problem perceived.

Q12. Do you consider it appropriate for the Scheme to give the adjudicator a wider power to award interest than that currently conferred by the Scheme?

It was felt that there were gaps in the existing interest structure. It was felt that there should be a full discretionary power to award interest.

In relation to possible additional points, it was felt that issues in relation to the adjudicator’s resignation and the revocation of an adjudicator’s appointment had already been covered.

ADDITIONAL PROPOSALS

In relation to the issue of the reasons for a decision it was felt that if requested by one of the parties, the adjudicator shall provide reasons under the Scheme. Some other industry rules reflect this position, others provide that reasons should be given unless the parties agree otherwise.

In relation to issues around the “effects of the decision”, it was noted that there is now a specific TCC summary procedure for enforcement - paragraphs 23(1) and 24 are therefore out of step with the current position. In light of this it was proposed to delete them on this basis.

In relation to set off there is no need for change.