



PROJECTS AND CONSTRUCTION

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# Construction Contracts Update: New 2017 Editions of the RIAI Contracts

by **Seanna Mulrean**

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The Royal Institute of Architects Ireland (the RIAI) have recently released amended editions of the yellow form and blue form construction contracts.

The new editions are introduced as part of the ongoing work by the RIAI Contracts Drafting Group (**CDG**) to overhaul and modernise these construction contracts which are widely used in the Irish Construction market.

In updating the form of contracts the CDG sought input from various industry stakeholders; clients as employers, clients' legal advisors, the Construction Industry Federation, various construction professionals including insurance and sureties professionals and relevant regulatory authorities.

The following is a summary of some of the key features of the new editions and the amendments made to the earlier 2012 editions of the forms of contract.

## **1. Amended definition of "Works"**

Condition 1B extends the definition of "Works" contained in the Articles of Agreement to provide that execution and completion of "Works" are deemed to include compliance by the Contractor with the Building Regulations and Building Control Regulations under the Building Control Acts 1990 to 2007 and the Code of Practice for Inspecting and Certifying Buildings and Works published by the Department of Housing, Planning, Community and Local Government.

## **2. Amendments to address the Construction Contracts Act 2013 (CCA)**

The CCA introduced statutory adjudication (a new fast track dispute resolution process for payment related disputes), suspension rights for contractors and subcontractors as well as new payment regime for the industry. Pursuant to Section 31 of the CCA, a Construction Contract must provide for the amount of each interim payment and the final payment to be made or alternatively for an adequate mechanism for calculating those amounts. Parties to a Construction Contract (which is defined broadly in the CCA) may not limit or exclude the application of the CCA. A number of amendments have been made to incorporate such terms and reflect this legislation in the new RIAI forms of contract. These include the following:

### **(a) Statutory Notices under the CCA**

The CCA provides for the delivery of a number of statutory notices including; payment claim notices, notices of suspension of works and notice of intention to refer a payment dispute to an adjudicator. A new Article 5 has been included in the Articles of Agreement of the RIAI contracts to provide that all notices arising under the CCA will be delivered by registered post. Article 5 further provides that where the contractor issues a payment claim under Section 4 of the CCA that this may be delivered by the Contractor to the Architect by email;

### **(b) Payment Claim Notices - Adequate Mechanism for Determining Payment Claim Dates**

Condition 35B now provides that within one calendar month of the actual date of possession of the site and subsequently at the period of interim certificates, the Contractor is entitled on producing a progress statement (which may include a Payment Claim Notice under Section 4 of the CCA) to receive within five working days a certificate from the Architect setting out the amount due to the Contractor from the Employer. Once the certificate is presented to the Employer, the Employer must pay the amount due within seven working days. Where the amount certified by the Architect differs from the amount set out by the Contractor in the progress statement, the Contractor is automatically entitled to an explanation from the Architect specifying the reasons for the difference and the basis on which the amount certified for payment is calculated. Under the 2012 edition the Contractor is not entitled to this explanation unless he or she requested it specifically;

### **3. Amendments to Condition 38, Avoiding and Resolving Disputes**

Condition 38 does not expressly refer to adjudication. The right to refer a dispute to adjudication is a statutory right provided for under Section 6 of the CCA and it applies to all construction contracts entered into after 25 July 2016. The RIAI have therefore taken the view that it is not necessary to amend Condition 38 to specifically refer to adjudication as an available means of formal dispute resolution. The statutory right of the parties to refer a payment related dispute to adjudication exists independently of the contract and regardless of what is provided for in the contract.

Conciliation is the first option for dispute resolution under Condition 38 in the event that the dispute is “not resolved by negotiation”.

Condition 38B provides that any dispute may be referred to arbitration. This part of the contract has been simplified to reflect certain changes under the Arbitration Act 2010 as well as recent case law.

### **Plans for further edits to the Forms of Contracts**

The RIAI have stated in their guidance note relating to the revised forms that they have tried to minimise the changes to the RIAI contracts and keep the edits as simple as possible pending further work on the next editions.

As construction contracts and the laws that govern them become increasingly complicated due to modernisation, technical advances in the industry and changes in the regulatory landscape, the need for further updates and amendments to these and other standard forms used within the Irish market will most likely continue.

*For further queries or information please contact [Seanna Mulrean](#).*

## About the Author



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