

A-Z Guide

CONSTRUCTION CONTRACTS ACT 2002



What is the Construction Contracts Act?

The Construction Contracts Act 2002 gives protection to building sub-contractors in the construction industry. The Act applies to commercial construction, and residential construction with some exceptions.

The definition of construction provided by the Act is wide, such that it includes any kind of development or redevelopment that may take place above, below, on or adjacent to land. It also includes the installation of fittings, preparatory work, and finishing work.

Effective October 5, 2023, new regulations on withholding retention money were introduced. These changes allow subcontractors to access retention funds without requiring a court order in cases where a head contractor becomes insolvent. The new rules apply solely to commercial contracts signed on or after October 5, 2023, as well as to existing contracts that are renewed from that date forward. They do not extend to construction contracts with homeowners or residential occupiers.

Nothing in this Act applies to “employees” or “employment” as defined by the Employment Relations Act 2000.



What protections does it offer?

The Act protects building sub-contractors by:

- Outlawing conditional contracts.
- Providing a default mechanism for the calculation of progress payments that may be avoided only by an agreement between the contracting parties on progress payments that have been expressed in writing.
- Requiring payers to provide reasons in writing for not paying the entire sum claimed in a payment claim if it is not paid within 20 days (or the time specified in an agreed) of the payment claim being made.
- Stipulating that payers who do not pay will remain liable for the outstanding sum on a payment claim and any costs of recovery associated with it; and
- Stipulating that payees who are owed an outstanding sum on a payment claim may suspend their construction work in respect of the contract

How is it enforced?

The Act also provides a mechanism for the resolution of disputes in respect of construction contracts. Where the parties have not agreed to submit their dispute, then the dispute will proceed to adjudication. The Act specifies what may and may not be determined by adjudication proceedings and that the orders made by an adjudicator under this Act may be enforced in the District Court.

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get EMA Legal or one of our consultants to draft an agreement template that's tailor-made for your business.

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