

**ADJUDICATION UNDER THE CONSTRUCTION ACT
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CONSTRUCTION

ADJUDICATION UNDER THE CONSTRUCTION ACT

- Adjudication was specifically established under statute for the Construction Industry
- The Housing Grants, Construction and Regeneration Act 1996
- Came into effect for contracts entered into on or after 1 May 1998
- It was intended to assist cashflow in the Construction Industry

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- The Local Democracy, Economic Development and Construction Act 2009
- Came into effect for contracts entered into on or after 1 October 2011
- The Act sets out what each relevant Construction Contract should contain

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- The Act sets out what "construction contract" means
- It includes an agreement to do architectural, design or surveying work
- It does not apply to a residential occupier
- But does apply to oral contracts

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- A construction contract shall include provision in writing so as to:
 - enable a party to give notice at any time of his intention to refer a dispute (arising under the contract) to adjudication;
 - provide a timetable with the object of securing the appointment of the adjudicator and referral of the dispute to him within 7 days of such notice;

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- require the adjudicator to reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred;
- allow the adjudicator to extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred;
- impose a duty on the adjudicator to act impartially; and

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- enable the adjudicator to take the initiative in ascertaining the facts and the law.
- The contract shall provide in writing that the decision of the adjudicator is binding until the dispute is finally determined by legal proceedings, by arbitration (if applicable) or by agreement
- (The parties may agree to accept the decision of the adjudicator as finally determining the dispute)

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- The contract shall include provision in writing permitting the adjudicator to correct his decision so as to remove a clerical or typographical error arising by accident or omission
- The contract shall also provide in writing that the adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and that any employee or agent of the adjudicator is similarly protected from liability

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- if the contract does not comply with the above requirements, the adjudication provisions of the Scheme for Construction Contracts apply
- The Scheme for Construction Contracts (England and Wales) Regulations 1998
- The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011

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- Therefore, the Scheme includes all of those required provisions
- There are other Rules but they too must includes all of those required provisions
- Before starting the process there must be a crystallised dispute
- To start the process the Referring Party sends a Notice of Adjudication to every other Party to the contract

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- It should set out:
 - the nature and a brief description of the dispute and of the Parties involved;
 - details of where and when the dispute has arisen;
 - the nature of the redress sought, and
 - the names and addresses of the parties to the contract (including, where appropriate, the addresses which the Parties have specified for the giving of notices)

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- Then apply for the nomination of an adjudicator or contact any named adjudicator
- Some Adjudicators send their terms and proposed Directions
- Once an adjudicator is in place, send the other Party and the Adjudicator the Referral Notice
- Once the dispute has been referred to the Adjudicator, the process is at the discretion of the Adjudicator

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- The Adjudicator has broad powers to control the process
- He has to make the decision by the date, so needs to control the Parties so that he can make the decision by the deadline
- There is no prescribed format for a Referral Notice
- A referral can be narrower but not wider than that set out in the Notice of adjudication
- There is no limit to the size of the dispute

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- Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date upon which it was received (28 days starts)
- The Adjudicator may give Directions for service of:
 - a Response only
 - a Response and a Reply, or
 - a Response, a Reply and a Rejoinder

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- The Responding Party is often given 7 days to prepare the Response
- There may be challenges to the Adjudicator's threshold or internal jurisdiction
- Threshold relates to the Adjudicator not having jurisdiction to make any decision at all
- Internal jurisdiction relates to matters or evidence that he/she cannot consider

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- The Parties shall comply with any request or direction of the Adjudicator in relation to the Adjudication
- The Adjudicator shall consider any relevant information submitted to him/her by any of the Parties to the dispute
- The Adjudicator shall make available to the Parties any information to be taken into account in reaching his Decision
- The Adjudicator may decide to hold a meeting

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- A Party to the dispute may not be represented at the meeting by more than one person, unless the Adjudicator gives Directions to the contrary
 - That person does not have to be a solicitor
- The Adjudicator has to act within the rules of natural justice
- He who asserts must prove
- The Adjudicator decides on the balance of probabilities

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- As soon as possible after reaching the Decision the Adjudicator shall deliver a copy to each of the Parties to the contract
- In the Decision, the Adjudicator decides who should pay his fees
- Generally, there is no recovery of a Party's costs
- Any correction of a Decision under the slip rule must be made within 5 days of the delivery of the Decision to the Parties
- The Adjudicator must deliver a copy of the corrected Decision to each of the Parties to the contract

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- Enforcement of a Decision does not form part of this talk

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Contact

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Hereford	T. 01432 349 470	Thorpe House, 29 Broad Street, Hereford, HR4 9AR
London	T. 0203 949 8290	95 New Broad Street, London, EC2M 1NH
Thames Valley	T. 0118 911 1206	100 Longwater Avenue, Green Park, Reading, Berkshire, RG2 6GP
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