

***Consultation on Amendments to the  
Scheme for Construction Contracts  
(England and Wales) Regulations***  
BIS Consultation March 2010

**Response from the Adjudication Society**

**June 2010**

**CONSEQUENTIAL AMENDMENTS**

**ADJUDICATION COSTS**

**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. The existing provisions are appropriate**

**THE SLIP RULE – POWER TO MAKE CORRECTIONS**

**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?

**5 days is sufficient.**

**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. In arbitration there is no grace period given while a correction is made.**

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

**See answer to Q3.**

**SUPPLEMENTARY PROPOSALS -  
Date of referral (Scheme para 7(1))**

**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?.

**No**

**Joinder (Scheme para 8)**

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

**Yes. It is a matter for the parties.**

### **Confidentiality (Scheme para 18)**

**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?

**Adjudication is not a consensual process it should not be given any greater confidentiality than the existing provisions.**

### **Final and conclusive (Scheme para 20(a))**

**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?

**No.**

### **Award of interest (Scheme para 20(c))**

**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?

**Yes. The adjudicator should be given full discretion to award interest on such terms as he thinks fit.**

## ***ADDITIONAL PROPOSALS***

**In addition, The Adjudication Society makes the following additional proposals**

### **Reasons (Scheme para 22)**

**Reasons should be given, unless the parties agree otherwise, and paragraph 22 should be amended accordingly.**

### **Effects of the decision (Scheme para 23)**

**Paragraph 24 should also be deleted: it is never used and the courts have a well developed system for enforcement.**

## **Simplification of the Adjudication Provisions**

**A draft of a simplified version of the Scheme is attached. It contains some additional powers such as power for the adjudicator to determine his own jurisdiction, and to call for payment of his fees and expenses.**