

	March 2005 Consultation paper proposals	January 2006 Analysis of responses. Proposals subject to further consultation	June 2007 Second consultation	
General	1	"We do not intend to consult" on extending the act to cover oral and partly oral contracts	Future consultation "likely"	Extend the act to cover oral and partly oral construction contracts
	2	Remove the need to serve payment notices and require withholding notices to state the remaining amount that the payer intends to pay after withholding the amount notified	It is unnecessary to redefine the content of withholding notices (including to require them to state more detailed grounds)	Payment notices should state the amount to be paid, what sums are being withheld owing to non-compliance with the contract, abatement and/or set off and the grounds for doing so. They might act as withholding notices, too, unless the payer wishes to withhold more before the withholding notice is due
	3	Payment mechanisms to include terms on: what amounts constitute the payment; when a payment is to be assessed; how amounts will be determined; the time that should elapse between assessment date and final payment date; and what information is to be shared	Require a statement of what is due in a certificate issued by one of the contracting parties or a third party. Where the contract does not provide for certification of the sum due, it is determined by the payee's payment application	Interim certificates issued by someone other than the payer may act as payment notices. In contracts not providing for certificates, where the payer has not issued a payment notice, the sum due would be the payee's claim (but a withholding notice may still be given)
Payment	4	Payees to be entitled to submit payment applications at any time; payers only obliged to pay that which is due under the contract	March 2005 proposal remade	Previous proposal not mentioned so presumably abandoned
	5	Retain the exception to the ban on pay-when-paid clauses in cases of upstream insolvency	March 2005 proposal remade	Previous proposal not mentioned so exception presumably to be kept
	6	Pay-when-certified clauses should require each upstream certificate to identify the subcontract works valued by the certificate and entitle the payee to see each certificate	Ban pay-when-certified clauses	Ban pay-when-certified clauses - which may be invalid anyway after the Midland Expressway (No 2) case
	7	Pay-what-certified clauses should require each upstream certificate to value each subcontract works package and entitle the payee to see them.	Ban pay-what-certified clauses by enacting proposal 3 above	Previous proposals presumably abandoned
	8	Add right to costs of suspending and remobilising, and extension of time for remobilisation, where payee suspends after to non-payment	March 2005 proposal remade	March 2005 proposal re-remade. Also, the suspending party need not suspend all its duties
	9	Make contractual provisions on cross-contract set-off ineffective except where there is a close relationship between the contracts	Change to the act abandoned. Better suited to guidance	March 2005 proposal not mentioned so confirms any act changes abandoned
	10	Amends the Scheme to allow stage payments to be made for off-site materials and work on them in advance of their arrival on site	Amendment to the Scheme abandoned. Better suited to guidance	March 2005 proposal not mentioned so confirms Scheme amendment abandoned
	11	Parties to adjudication should bear their costs, unless they agree after referring the dispute that the adjudicator decides costs liability. This would ban clauses requiring the referring party to pay both sides' costs, win or lose. An adjudicator would still decide liability for his fees	March 2005 proposal remade	March 2005 proposed re-remade. Also, the parties may agree after referral of the dispute that one of them should pay the costs of the other and the adjudicator's fee
	12	Entitle the adjudicator to payment when they resign owing to lack of jurisdiction	March 2005 proposal remade	Parties should be jointly and severally liable for the adjudicator's fees unless their appointment ends as a result of their default or misconduct
	13	Empower adjudicators to overturn "final and conclusive" certificates and decisions where they are of substance to interim payments only	March 2005 proposal remade	Ban clauses that make any interim payment decision conclusive unless the parties agree to make it conclusive after they know its amount
Adjudication	14	Ban trustee stakeholder accounts other than when the payee is insolvent	Ban trustee stakeholder accounts even when the payee is insolvent	Change to the act abandoned. Better suited to guidance
	15	Empower adjudicators to decide finally aspects of their jurisdiction	Change to the act abandoned. Better suited to guidance	March 2005 proposal not mentioned so confirms any act change abandoned
	16	Extend adjudicators' immunity under the act to claims by third parties	As above	As above
	17	Require adjudicators to be independent (in addition to existing requirement of impartiality)	As above	As above