



THE CONSTRUCTION CONTRACTS ACT, 2013

The Department of Enterprise, Trade and Employment intends to hold a competition for the purpose of recommending person(s) for appointment by the Minister of State for Business, Employment and Retail to the following positions:

(A) MEMBERS OF THE CONSTRUCTION CONTRACTS ADJUDICATION PANEL

AND

(B) CHAIRPERSON OF THE CONSTRUCTION CONTRACTS ADJUDICATION PANEL

Background

The Construction Contracts Act, 2013 applies to certain construction contracts entered into after the 25th July 2016 in accordance with the 'Construction Contracts Act 2013 (Appointed Day) Order 2016 (S.I. No.165 of 2016)'. For new construction contracts entered into after the 25th July 2016, the parties to a contract covered by the Act must ensure that the contract conforms to the legislation.

Section 6 of the Construction Contracts Act, 2013 provides that if a payment dispute does arise between the parties to a construction contract covered by the Act, a party to the contract has a right to refer the payment dispute for adjudication. If the parties cannot agree on whom to appoint as Adjudicator to the payment dispute, a party to the contract may apply to the Chairperson of the Construction Contracts Adjudication Panel to appoint an Adjudicator to the dispute from the Ministerial appointed Panel of Adjudicators.

Section 8 of the Construction Contracts Act, 2013 provides that the Minister for Enterprise, Trade and Employment can appoint members to a Panel of Adjudicators who will act as Adjudicators in relation to payment disputes under construction contracts. The Minister shall also select a member of the Panel to be its Chairperson.

More information on the [Construction Contracts Act 2013](#) is available on the website of the Department of Enterprise, Trade and Employment.

Panel of Adjudicators under the Construction Contracts Act, 2013

Number of Appointments:	25 to 30
Remuneration:	In accordance with section 6(16) of the Construction Contracts Act, 2013, the parties to a payment dispute shall pay the amount of the fees, costs and expenses of the appointed Adjudicator under section 6(4) of the Act, in accordance with the decision of the Adjudicator on the payment dispute. Therefore, the Minister, the Department of Enterprise, Trade and Employment, and the Chairperson of the Construction Contracts Adjudication Panel have <u>no liability</u> to pay any fees, costs or expenses to an Adjudicator appointed under section 6(4) of the Act.
Time requirements:	<p>This is dependent on the number of cases assigned to an Adjudicator by the Chairperson of the Construction Contracts Adjudication Panel and the complexity of those cases. A person appointed as a member of the Construction Contracts Adjudication Panel will have no entitlement to sit on any particular case or number of cases. She/he may decline to be considered for appointment as Adjudicator by the Chairperson to any payment dispute.</p> <p>A member of the Construction Contracts Adjudication Panel should only accept an appointment as Adjudicator to a payment dispute by the Chairperson, under section 6(4) of the Construction Contracts Act, 2013, if she/he is able to give the adjudication the time and attention which the parties are reasonably entitled to expect.</p>
Term of Appointment:	To commence on a date to be determined for a period of five years.

Background

The Construction Contracts Act, 2013 provides, subject to some exceptions, new minimum contractual provisions concerning payment arrangements between the parties to a construction contract. Where payment disputes do arise between the parties to a construction contract, either party has the right to refer the payment dispute to adjudication under the Act, which will be concluded within a set timeframe. The Minister of State for Business, Employment and Retail at the Department of Enterprise, Trade and Employment is empowered, under section 8 of the Construction Contracts Act, 2013, to select persons to be members of a Panel to act as adjudicators in relation to payment disputes. Where the parties to a construction contract cannot agree as to whom to appoint as an adjudicator to a payment dispute arising under the Act in relation to their contract, either party may apply to the Chairperson of the Construction Contracts Adjudication Panel to appoint an adjudicator to the payment dispute.

Role

The role of a Member of the Construction Contracts Adjudication Panel is generally, having been assigned as an Adjudicator to a payment dispute by the Chairperson of Construction Contracts Adjudication Panel under section 6(4) of the Construction Contracts Act, 2013, to communicate directly with the parties to ascertain the facts; the law; and the quantum in relation to the dispute and to issue to the parties a reasoned decision within a set timeframe. The proceedings shall be conducted in private, and the appointed Adjudicator shall comply with the *Code of Practice Governing the Conduct of Adjudications* published under section 9 of the Act.

Person Specification

Essential Requirements

The person to be appointed as a Member of the Construction Contracts Adjudication Panel must, in accordance with section 8(6) of the Construction Contracts Act, 2013, be:

- a registered professional as defined in section 2 (as amended) of the Building Control Act, 2007; or
- a chartered member of the Institution of Engineers of Ireland; or
- a barrister; or
- a solicitor; or
- a fellow of the Chartered Institute of Arbitrators; or
- a person with a qualification equivalent to the above duly obtained in any other Member State of the European Union.

In addition, the person must have:

- a proven track record of decision making in relation to disputes under construction contracts;
- an excellent knowledge of the Construction Contracts Act, 2013, and
- an ability to deliver decisions in a demanding time-sensitive environment.

Desirable experience and knowledge:

- any previous experience as a member of a Panel/Board involved in dispute determination/resolution;
- a knowledge of Alternative Dispute Resolution procedures; and
- a knowledge of the Construction Sector in Ireland.

Other Terms of Appointment

The other main terms of appointment for the role of Member of the Construction Contracts Adjudication Panel are set below.

The Member:

- must have up to date tax clearance, as provided by the Revenue Commissioners;
- will be free, as an independent contractor, to undertake activities and offer the same or other services to other parties, to the extent that such activities and provision of

services do not interfere with or conflict with obligations of the Member of the Panel under the Construction Contracts Act, 2013 including the *Code of Practice Governing the Conduct of Adjudications*;

- may at any time resign from the Panel by giving notice in writing to the Minister.

In accordance with section 8(3) of the Construction Contracts Act, 2013, the Minister may, for good and sufficient reason, remove a Member from the Construction Contracts Adjudication Panel, established under section 8(1) of the Construction Contracts Act, 2013.

The Department of Enterprise, Trade and Employment may specify such other terms of appointment as are considered necessary for the role of Member of the Construction Contracts Adjudication Panel.

Conflict of Interest

In order to qualify for appointment a person must not have any legal impediment or conflicts of interest likely to interfere with her/his ability to assume the role of Member of the Construction Contracts Adjudication Panel.

Panel of Suitable Candidates

The Department of Enterprise, Trade and Employment may, depending on the number of suitable candidates, provide a panel of suitable candidates in order of merit to the Minister of State for Business, Employment and Retail. This panel will expire at the end of 12 months from the date the panel is provided to the Minister by the Department.

There is a need to ensure that there are a sufficient number of suitable candidates drawn from the different professional categories as specified in section 8(6) of the Construction Contracts Act, 2013. This is an important consideration as payment disputes under the Construction Contracts Act, 2013 differ in complexity and the Chairperson of the Construction Contracts Adjudication Panel will have regard to the nature of a payment dispute in order to decide which member of the Construction Contracts Adjudication Panel should be appointed to a case, taking into account the person's professional background.

The Minister will make the final decision on those to be appointed as a Member of the Construction Contracts Adjudication Panel based on considerations of the order of merit, and the need to ensure there is gender representation.

Chairperson of the Construction Contracts Adjudication Panel

Number of Appointments: 1

Remuneration: €700.59 per diem.

Time requirements: The role of Chairperson of the Construction Contracts Adjudication Panel is not a full-time position, and the appointed person is free to engage in other professional or business activities.

The Chairperson must be available at short notice to select an Adjudicator for applications submitted under section 6(4) of the Construction Contracts Act, 2013 and which satisfy the requirements for such applications as set out in paragraph 15 of the *Code of Practice Governing the Conduct of Adjudications*. Paragraph 18 of the Code of Practice requires that the appointment of an Adjudicator shall be made by the Chairperson and notified in writing by the Construction Contracts Adjudication Service to the parties in dispute “normally within seven days after the receipt of the application to the Chairperson”.

Term of Appointment: To commence on the 1 January 2021 for a minimum contractual period of three years or such longer period as the Minister may determine.

Role

The role of the Chairperson of the Construction Contracts Adjudication Panel is to:

- appoint Adjudicators from the Panel of Adjudicators to payment disputes arising under construction contracts, pursuant to section 6(4) of the Construction Contracts Act, 2013;
- submit an annual report (with the support of the Construction Contracts Adjudication Service) to the Minister on the statutory adjudication process;
- to report to the Minister as required on the efficacy of the legislation and such other issues as may arise from time to time; and
- undertake other duties from time to time that are appropriate to the role of Chairperson of the Construction Contracts Adjudication Panel.

Person Specification

Essential Requirements

The person to be appointed as Chairperson of the Construction Contracts Adjudication Panel must, in accordance with section 8(6) of the Construction Contracts Act, 2013, be:

- a registered professional as defined in section 2 (as amended) of the Building Control Act, 2007; or
- a chartered member of the Institution of Engineers of Ireland; or
- a barrister; or
- a solicitor; or
- a fellow of the Chartered Institute of Arbitrators; or

- a person with a qualification equivalent to the above duly obtained in any other Member State of the European Union.

She/he must be a member of the Construction Contracts Adjudication Panel, in accordance with section 8(1) of the Construction Contracts Act, 2013.

In addition, the person must have:

- a minimum period of three years' experience and expertise in dispute resolution procedures under construction contracts in Ireland and/or internationally;
- a proven track record of decision making in relation to disputes under construction contracts;
- an excellent knowledge of the Construction Contracts Act, 2013; and
- an ability to deliver decisions in a demanding time-sensitive environment.

Desirable experience and knowledge:

- any previous experience as a Chairperson, Deputy Chairperson or as a member of a Panel/Board involved in dispute determination/resolution;
- a knowledge of Alternative Dispute Resolution procedures; and
- a knowledge of the Construction Sector in Ireland.

Conflict of Interest

In order to qualify for appointment a person must not have any legal impediment or conflicts of interest likely to interfere with her/his ability to assume the role of Chairperson of the Construction Contracts Adjudication Panel.

Other Terms of Appointment

The other main terms of appointment for the role of Chairperson of the Construction Contracts Adjudication Panel are set below.

The Chairperson:

- must have up to date tax clearance, as provided by the Revenue Commissioners;
- will not assign cases to herself/himself for the duration of her/his term as Chairperson from applications under section 6(4) of the Construction Contracts Act, 2013 for the appointment of an Adjudicator from the Construction Contracts Adjudication Panel. It is however appropriate for her/him to adjudicate on cases during this period where the parties request her/him to do so (as an agreed Adjudicator);
- shall not advise or provide representation to any party in a case where the Chairperson of the Construction Contracts Adjudication Panel has appointed a member of the Panel of Adjudicators to the case;
- must continue to be a member of the Construction Contracts Adjudication Panel for the duration of her/his appointment as Chairperson. The Chairperson shall resign immediately by giving notice in writing to the Minister if she/he ceases to be a member of the Construction Contracts Adjudication Panel established under section 8(1) of the Construction Contracts Act, 2013;
- may, at any time, resign as Chairperson by giving notice in writing to the Minister;

- shall be responsible for all her / his own insurances, including, but not limited to, when travelling on official business in connection with her / his role as Chairperson; and
- shall decline to perform a function of the role of Chairperson if she/he has a potential conflict of interest unless she/he is satisfied that there are compelling reasons to perform the function. If the Chairperson considers that there are compelling reasons to perform the function, she/he must provide a statement in writing of the compelling reasons to the Principal Officer of the Construction Contracts Adjudication Service before performing the function or if that is not reasonably practicable, as soon as possible after performing the function.

In accordance with section 8(3) of the Construction Contracts Act, 2013, the Minister may, for good and sufficient reason, remove the Chairperson as a member from the Construction Contracts Adjudication Panel, established under section 8(1) of the Construction Contracts Act, 2013.

The Department of Enterprise, Trade and Employment may specify such other terms of appointment as are considered necessary for the role of Chairperson.

Panel of Suitable Candidates

The Department of Enterprise, Trade and Employment may, depending on the number of suitable candidates, provide a panel of suitable candidates in order of merit to the Minister of State for Business, Employment and Retail. This panel will expire at the end of 12 months from the date the panel is provided to the Minister by the Department.

Assignment to Areas

Applicants for inclusion on the Ministerial appointed Panel of Adjudicators may during the selection process, be requested to select locations in respect of which they would be willing to conduct cases. The Chairperson of the Construction Contracts Adjudication Panel will endeavour to allocate cases to the adjudicators appointed to the Panel of Adjudicators based on their expressed preference for geographical location. However, should the need arise the Chairperson reserves the right to assign an adjudicator to a case in a different location, where necessary. The Chairperson will act reasonably in relation to the allocation and distribution of case assignments should such a requirement arise.

Making an Application:

If you wish to apply for the role of member of the Panel of Adjudicators under section 8 of the Construction Contracts Act, 2013, or be considered for appointment also as Chairperson of this Panel, **please complete the official application form**, which is available [here](#).

Please send the completed application form to competition2020.ccas@enterprise.gov.ie **no later than 3 p.m. on Friday 11th December 2020.**

Candidates must use **their own** valid email address. Email addresses from third parties will **not** be accepted and may invalidate your application. The Department of Enterprise, Trade and Employment will only communicate application information with the candidate and not with any third party.

It is strongly recommended that you do not change your email address or mobile phone number in the course of this recruitment campaign, as any email/text message notification will be sent to the email address/telephone number originally supplied by you.

If you do not receive an acknowledgement of receipt of your application within two working days of applying, please email ccas@dbei.gov.ie. Candidates should note that support will be available during office hours until the closing date.

More information on the [Construction Contracts Act 2013](#) is available on the website of the Department of Enterprise, Trade and Employment.

Selection Process

The Department of Enterprise, Trade and Employment will process expressions of interest from applicants who are interested in being recommended as suitable for inclusion on the Ministerial appointed Panel of Adjudicators.

The Department of Enterprise, Trade and Employment process may include:

- (a) the short-listing of all qualified applicants based on the information submitted on their completed application form;
- (b) an interview and
- (c) any other test/selection methodology deemed suitable or appropriate by the Department of Enterprise, Trade and Employment.

Following the assessment of suitability for appointment to the Panel of Adjudicators by the Department of Enterprise, Trade and Employment, which will consider qualifications, skills, experience, and gender of applicants, the Department of Enterprise, Trade and Employment will furnish list(s) of candidates that it deems suitable for appointment to the Minister of State for Business, Employment and Retail.

The Minister of State for Business, Employment and Retail will make the final decision on those to be appointed to the Panel of Adjudicators, based on considerations of qualifications/skills/experience, gender, and the need for adjudicators to be available to cover particular geographical locations. The Minister intends to appoint such number of members to the Panel of Adjudicators as is appropriate having regard to:

- (a) the estimated need for such adjudicators; and
- (b) the need for adjudicators to be available to cover particular geographical locations.

An applicant will be disqualified if he or she engages in canvassing at any stage of the process.

Application Process

Applicants must submit a completed application form and **must**:

- (a) complete all sections of the application form correctly and fully. An applicant shall be disqualified from the application process if her/his application is incomplete, illegible or is not received by the deadline for applications;
- (b) satisfy the requirement set out in section 8 of the Construction Contracts Acts, 2013 to be a person of any of the following descriptions:
 - (i) registered professional as defined in section 2 of the Building Control Act 2007;

- (ii) a chartered member of the Institution of Engineers of Ireland;
 - (iii) a barrister;
 - (iv) a solicitor;
 - (v) a fellow of the Chartered Institute of Arbitrators; or
 - (vi) a person with a qualification equivalent to any of those specified in (i) to (v) duly obtained in any other Member State of the European Union;
- (c) be able to demonstrate the competence, knowledge and skills to act as an adjudicator in construction disputes, encompassing listening skills, information gathering, interviewing and related interpersonal skills, analytical skills, sound judgement and decision making;
- (d) have relevant qualifications, experience and expertise in dispute resolution procedures in construction contracts. Examples include membership of dispute resolution institutions whose remit includes determining disputes under construction contracts and experience of appearing before such institutions; and
- (e) indicate entitlement to work legally in the State.

Applicants who do not comply with the above requirements shall not be considered further in relation to this selection process. **It is therefore in the interest of the applicant to provide a detailed and accurate account of her/his qualifications/experience on the application form.**

The onus is on all applicants to make themselves available on the date(s) and time(s) specified by the Department of Enterprise, Trade and Employment in connection with the selection process, and to make whatever arrangements are necessary to ensure that they receive communications sent to them at the contact details specified on their application form.

Criteria for Short-listing of Applications

Applicants must submit a completed application form to be considered for short-listing and must satisfy the requirements and all the attributes referred to in the Person Specification section.

A selection panel will examine the application forms received against the published criteria based on the requirements of the role of adjudicator under the Construction Contracts Act, 2013. This is not to suggest that applicants who are not short-listed are necessarily unsuitable or incapable of undertaking the role, rather that there are some applicants, who based on their application form, appear to be better qualified than others and/or have more relevant experience.

Qualifications

Those applicants who are short-listed will be required to supply a copy of their relevant qualifications after the short-listing exercise.

Prior to recommending any applicant for consideration for appointment to the Panel of Adjudicators, the Department of Enterprise, Trade and Employment on behalf of the Minister of State for Business, Employment and Retail, will make all such enquiries as are appropriate

to verify information provided by the applicants. Until all stages of the selection process have been fully completed a final determination cannot be made nor can it be deemed or inferred that such a determination has been made.

Disqualification from Panel of Adjudicators

In addition to the grounds for disqualification from the application process as identified above, a person shall be automatically disqualified from membership of the Ministerial appointed Panel of Adjudicators if, at any time, she/he:

- (i) does not hold relevant qualifications where required or he or she is not lawfully entitled to work in the State;
- (ii) is adjudged bankrupt or makes a composition or arrangement with his or her creditors; and
- (iii) is sentenced by a Court of competent jurisdiction to a term of imprisonment

Fees, Costs and Expenses of an Adjudicator

In accordance with section 6(16) of the Construction Contracts Act, 2013 the parties to a payment dispute under the Act shall pay the amount of the fees, costs and expenses of the adjudicator directly to the adjudicator appointed to the dispute in accordance with the decision of the adjudicator.

An adjudicator may resign at any time on giving notice in writing to the parties to a payment dispute and the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the adjudicator up to the date of resignation.

The parties to a payment dispute may at any time agree to revoke the appointment of the adjudicator and the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the adjudicator up to the date of the revocation.

Therefore, the Department of Enterprise, Trade and Employment, the Minister of State for Business, Employment and Retail, and the Chairperson of the Construction Contracts Adjudication Panel have **no liability** to pay any fees, costs or expenses to an adjudicator on the Ministerial appointed Panel of Adjudicators.

Code of Practice Governing the Conduct of Adjudications

An adjudicator appointed to the Panel of Adjudicators will be required to abide by the statutory Code of Practice governing the conduct of adjudications published by the Minister of State for Business, Employment and Retail under section 9 of the Construction Contracts Act, 2013.

Code of Conduct for Adjudicators

An adjudicator appointed to the Panel of Adjudicators will be required to abide by any Code of Conduct relating to the behaviour of adjudicators appointed to the Ministerial Panel that may be in force from time to time and may be required to sign a document agreeing to this requirement.

Other General Information

The members of the Panel of Adjudicators will be appointed by the Minister of State for Business, Employment and Retail at the Department of Enterprise, Trade and Employment. A person to be appointed to the Panel of Adjudicators will be required to provide a current Tax Clearance Certificate to the Department of Enterprise, Trade and Employment prior to appointment to the Panel.

A person selected to be a member of the Panel of Adjudicators will be required to accept the terms of appointment to the Panel of Adjudicators drawn up by the Department of Enterprise, Trade and Employment prior to her/his appointment to the Panel.

On receipt of an application by the Chairperson of the Construction Contracts Adjudication Panel requesting the appointment of an adjudicator from the Panel to a payment dispute, the Chairperson will assign individual cases to adjudicators on the Panel, pursuant to section 6 of the Construction Contracts Act, 2013.

The onus will be on an adjudicator appointed to the Panel to be available to undertake cases and she/he should only accept an assigned case if she/he is able to give the adjudication the time and attention which the parties are reasonably entitled to expect. As stated at paragraph 2.4 above, an adjudicator appointed to the Panel has no entitlement to sit on any particular case or cases and an adjudicator may also decline to be assigned to a case.

It is acknowledged that as an independent contractor, a member of the Panel will be free to undertake activities and offer the same or other services to other parties, to the extent that such activities and provision of services do not interfere with or conflict with obligations of the member of the Panel under the Construction Contracts Act, 2013, the statutory Code of Practice governing the conduct of adjudications published by the Minister of State for Business, Employment and Retail under Section 9 of the Act, the Code of Conduct for members of the Panel that may be in force from time to time and the terms of appointment to the Panel of Adjudicators.

A member of the Panel, for the duration of their membership of the Panel, shall not advise or provide representation to any party in a case where the Chairperson of the Construction Contracts Adjudication Panel has appointed a member of the Panel of Adjudicators to the case.

The Chairperson of the Construction Contracts Adjudication Panel may, taking into account the confidential nature of adjudication cases, request information from adjudicators in order to assess and report on the effectiveness of the adjudication process under the Construction Contracts Act, 2013.