CONTRACT GROUP®

Pay less notice checklist

Six points to check on a pay less notice you have received, under section 111 of the Construction Act (England and Wales). A notice that fails one of them may not reduce the sum you are due. This checklist does not tell you whether a notice is valid: use it to see what to look at, and take advice before you act on it.

Job and application:	
Final date for payment:	**Notified sum:**
Days the contract allows for the notice: ___ (if it is silent, the Scheme's 7)	**Latest day for the notice:**
Notice received on:	**Received by (email, letter, other):**

- [ ] **1. Is it in writing?** A letter or email usually counts, unless your contract requires a particular method. A phone call or a conversation on site is not a notice. — s115(6)
- [ ] **2. Did it arrive in time?** It must be given no later than the period your contract sets before the final date for payment, or 7 days before it under the Scheme if the contract sets none. Section 116 leaves out Christmas Day, Good Friday and bank holidays when counting the Act's periods. How that works when counting back from the final date, or for a period your contract sets, is not settled, so if the notice is close to the line, take advice before relying on lateness. — s111(5)(a), s111(7), s116, Scheme para 10
- [ ] **3. Does it state the sum due?** It must state the sum the payer considers due on the day the notice is served. Zero is allowed. A list of deductions on its own may not be enough. — s111(4)(a)
- [ ] **4. Does it explain how that sum is worked out?** It must set out the basis of the calculation: a valuation, a list of deductions, or a reference to a document that sets them out. Whether the basis is right is a separate argument. — s111(4)(b)
- [ ] **5. Did it come from the right party?** It must come from the payer (or someone acting for them), or a person the contract names or provides for (such as a quantity surveyor or contract administrator). — s111(3)
- [ ] **6. If the sum due comes from your own notice, did it come after it?** Where the notified sum is set by your application or your default notice (because no payment notice came in time), a pay less notice cannot be given before your notice. — s111(5)(b)

What to do next

- Write down the dates and keep the emails and letters together now, while they are easy to find.
- A notice that passes all six can still have the wrong figure. Where a valid notice is given, the sum it states is what must be paid by the final date for payment, and you can challenge the value separately, for example in adjudication.
- Keep working under the contract. The right to suspend exists, but its notice procedure is precise, so take advice first.
- These rules apply where the Construction Act covers your contract. Some contracts are outside it, such as a contract made directly with someone for work on the home they live in or plan to live in. A subcontract with a main contractor on a house is usually still covered. If you are not sure the Act applies, take advice.

Check a notice online: contractgroup.co.uk/tools/pay-less-notice-checker works out the latest day for you and lists the points to look at.

Not sure? Talk to us. The first call is free and there is no obligation. 0161 240 6996 (Monday to Friday, 8:30am to 5:30pm) or contractgroup.co.uk/contact-us

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Sources: Housing Grants, Construction and Regeneration Act 1996, ss106, 110A, 110B, 111, 112, 115 and 116, as amended by the Local Democracy, Economic Development and Construction Act 2009; the Scheme for Construction Contracts (England and Wales) Regulations 1998, Part II paragraph 10, as amended (legislation.gov.uk). For contracts made on or after 1 October 2011. Contracts made before then, and contracts in Scotland or Northern Ireland, follow different rules: take advice. The insolvency exception in s111(10) is not covered here. General information, not legal advice.