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Construction Act Review

Construction Operations: Broad and Narrow Approaches

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Introduction

The writer previously dealt with much of the case law on construction operations in Construction Act Review (CAR)[1] in 2006. As noted at that time, the payment and adjudication provisions of the Housing Grants, Construction and Regeneration Act 1996 (the HGCR Act) are applicable to construction contracts.[2] "Construction contract" is defined by reference to construction operations; what are and are not construction operations is governed by s.105.

The way that s.105 works is that it sets out operations that are construction operations in s.105(1) and then sets out in s.105(2) operations that are not construction operations. The operations described in s.105(2) could also fall within the descriptions in s.105(1); the way this is resolved is that s.105(2) is overriding.

It is possible for a contract to apply both to construction operations and to matters which are not construction operations. In that case, the HGCR Act applies only to that part of the contract which relates to construction operations.[3]

This edition of CAR provides an update on case law since or not covered in the previous article. The principal developments are in relation to s.105(2)(c) and are considered after a brief summary of case law guidance on examples of construction operations.

Examples of construction operations

Groundworks and drainage works are construction operations pursuant to s.105(1)(a) of the HGCR Act.[4] Works preparatory to landscaping works are construction operations pursuant to s.105(1)(a) of the HGCR Act.[5] A contract for the fitting of carpets, including preparatory works to the floor and fitting vinyl to certain parts of the floor was a construction contract for

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[1] Construction Operations, (2006) 22 Const.L.J. 241.
[2] As defined in s.104 of the HGCR Act.
[3] S.104(5) of the HGCR Act. See also the discussion in CAR at (2006) 22 Const.L.J. 241 of *Comsite Projects Ltd v Andritz AG* [2003] EWHC 958 (TCC); (2004) 20 Const. L.J. 24 and *Gibson Lea Retail Interiors Ltd v Makro Self Service Wholesalers Ltd* [2001] B.L.R. 407 QBD (TCC).
[4] *Edenbooth Ltd v Cre8 Developments Ltd* [2008] EWHC 570 (TCC).
[5] *Edenbooth*, above.

construction operations under s.105(1)(c), as the works were "the installation in any building...of fittings forming part of the land".[6]

Operations which are not construction operations and s.105(2)(c)

S.105(2) describes operations that are not construction operations, so that where s.105(2) applies, the HGCR Act does not apply to a contract for such operations.

Under s.105(2)(c) the following are not construction operations:

> "assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery, on a site where the primary activity is-
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> (i) nuclear processing, power generation, or water or effluent treatment, or
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> (ii) the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel or food and drink".

The *Purac* case is an example of the application of s.105(2)(c), where there was a consortium agreement between parties providing a waste water treatment works.[7] The contract was for the assembly and installation of steelwork on a site where the primary activity was water or effluent treatment.

In *Hortimax v Hedon*,[8] Hedon was a commercial grower of cucumbers and other vegetables in its greenhouses. Hedon decided to extend its production of cucumbers. For this purpose, it was necessary to install artificial lighting and blackout screens (required to prevent or limit light pollution of the surrounding area) in the greenhouses and to improve the watering system used to water and feed the plants. There were irrigation feed units as well as two reservoirs and a water collection system. Hortimax was engaged to carry out the work. There were six adjudications between the parties under six contracts, and the jurisdictional issue arose as to whether these contracts were construction contracts.

Judge Gilliland Q.C. found first that the contracts were for the installation of plant. The HGCR Act does not contain any definition of the word "plant". The courts have held that it bears its ordinary meaning in tax statutes. This is a broad meaning which encompasses all the apparatus used for carrying on a business; not stock in trade nor the place or setting where the business is carried on, but all goods and chattels, fixed or moveable, live and

[6] *Barrie Green v G W Integrated Building Services Ltd* [2001] Adj. L.R. 07/18.
[7] *Purac Ltd v Byzac Ltd* [2004] ScotCS 247, 2005 SCLR 244.
[8] *Hortimax Ltd v Hedon Salads Ltd* [2004] Adj.L.R. 10/15.

dead, kept for permanent employment in the business.[9] Thus plant has been held to include knives, lasts used in manufacturing shoes, and a horse.

Judge Gilliland Q.C. found that "plant" does not have such a broad meaning in the HGCR Act:

> "It is in my judgment clear that some limitation must be placed on the wide ambit of [10]'plant' in its ordinary sense when considering what meaning is to be given to the term in s.105(2)...the limitation on the breadth of the term is to be found in my judgment in the fact that the definition of construction operations in s.105(1) of the Act is concerned not with free standing or loose chattels but either with works which involve the actual construction of buildings or structures or the installation of plant in or of fittings which form part of the land or certain clearing or decorative and other works. The exclusion of 'plant' in s.105(2) must it seems to me be read in the light of the fact that s.105(2) is intended to exclude certain operations which would otherwise have been within the definition of construction operations in s.105(1). It is only such plant as would fall within s.105(1) which is excluded and then only if it at one of the specified sites...
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> In my judgment 'plant' in s.105(2) of the Act is to be understood as meaning apparatus which is used for carrying on the business. Plant however is to be distinguished from the place or setting in which the business is carried on and in the context of s.105(1) of the Act."[10]

Judge Gilliland Q.C. noted that the definition of "plant" as apparatus used for carrying on the business was applied in two previous cases, *Homer Burgess* and *Comsite Projects*.[11]

On the facts of the *Hortimax* case, the judge found that the lighting system used in the greenhouses was plant. It was not a system for illuminating the premises so that people could work there in the hours of darkness; it was an integral part of the system used to enable the cucumbers to be grown at all seasons of the year. Likewise the system for irrigation and feeding was an essential part of the apparatus used by Hedon to carry on the business of growing cucumbers. The blackout screens were also plant, intimately associated with the lighting system; the reservoir and water collection system were also plant, part of the apparatus used in Hedon's business.

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[9] *Yarmouth v France* (1887) 19 Q.B.D. 647; *J Lyons & Co Ltd v Attorney General* [1944] Ch. 281; *Hinton (Inspector of Taxes) v Maden and Ireland* [1959] 1 W.L.R. 875 (HL).
[10] *Hortimax*, above, at [7-8].
[11] *Homer Burgess Ltd v Chirex (Annan) Ltd* [2000] B.L.R. 124; (2000) 71 Con. L.R. 245; (2000) 16 Const. L.J. 242; [2000] C.I.L.L. 1580 Outer House, Court of Session; *Comsite Projects Ltd v Andritz AG* [2003] EWHC 958 (TCC); (2004) 20 Const. L.J. 24. For a detailed consideration of these cases, see the writer's previous article on construction operations at (2006) 22 Const.L.J. (No 4) 241.

The judge then considered whether Hedon's premises were a site where the primary activity was the production of food and drink. Cucumbers are obviously a food. The submission was made that a cucumber is not both "food and drink", but the judge found that "food and drink" in s.105(2)(c) is a generic term applicable to either food or to drink or to both. Finally, a submission was made to the effect that growing food is not production of food, which in s.105(2)(c) entails manufacturing or process. However, the judge found that Hedon's activities as a matter of ordinary English consisted of the production of cucumbers.

In *North Midland v Lentjes*,[12] A E & E Lentjes entered into four agreements with North Midland Construction: a contract for enabling works and a contract for civil works at each of two coal-fired power stations. The works were needed before flue gas desulphurisation units could be provided to the power stations, to reduce sulphur dioxide emissions.

The issue was whether the four agreements were for construction operations. It was not in dispute that the relevant works were being carried out at a site where the primary activity was power generation. The question was: did the enabling works and the civil works come within the description of assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery?

The judge made the following general observations in support of his narrow interpretation of s.105(2)(c).

> "As a matter of first impression, the description 'assembly, installation or demolition of plant or machinery' would not seem apt for the enabling and civil works which I have set out above. However, further consideration indicates that the application of s.105(2)(c) is not straightforward.
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> Before I turn to the decisions in which the sub-section has been considered, I shall deal with some general observations. First, as I have indicated above, the operations described in s.105(2) can generally be brought within the description of operations in s.105(1) so that the intention was to exclude a specific operation from the more general description of operations. For example, 'drilling for...oil and natural gas', excluded by s.105(2)(c), would be 'construction...of any works...including wells' within s.105(1)(b) and also 'operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations...including excavation, tunnelling and boring' within s.105(1)(e).
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> Equally, 'manufacture or delivery to site of...components...except under a contract which also permits for their installation' in s.105(2)(d) would be 'operations preparatory to' operations under s.105(1)(a), (b) or (c) and within s.105(1)(e).

[12] *North Midland Construction Plc v A E & E Lentjes UK Ltd* [2009] EWHC 1371 (TCC); [2009] C.I.L.L. 2736.

Secondly, the purpose of the Act was evidently to make improvements in the construction industry by providing both a rapid dispute resolution method and also more certain payment provisions for the construction industry. The provisions which have the effect of excluding particular operations from those provisions necessarily prevent those improvements applying to certain operations. It is to be expected that they do so for particular reasons which apply to those specific operations.

Thirdly, the provisions of s.105(2)(a) to (c) are aimed at excluding certain particular operations in specific industries: oil, gas, mineral extraction, nuclear processing, power generation, water or effluent treatment, chemicals, pharmaceuticals, steel, food and drink. Instead of saying that all operations which would otherwise be construction operations are excluded on sites where the primary activity is one of those industries, the exclusion is limited to particular operations.

Fourthly, the definition of operations in s.105(2)(c) has not been broadened by the use of such words as 'operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations', as has been done in s.105(1)(e).

Fifthly, the focus of s.105(2)(c) is 'plant or machinery'. In my judgment, there are some indications in s.105(2)(c) as to the meaning of 'plant or machinery'. There are two other references to that phrase in that sub-section. In s.105(2)(d) there is a reference to the manufacture or delivery to site of materials, plant or machinery. Particularly when read with the references to components in s.105(2)(d)(i) and (iii), this suggests that the plant is capable of manufacture and delivery to site and is more in the form of components or items of plant than the whole industrial plant. This is reinforced by the reference in s.105(2)(c) to 'steelwork for the purposes of supplying or providing access to plant or machinery'. Again this is more consistent with plant and machinery being components or items of plant rather than the whole industrial plant.

In addition, where appropriate the legislation has referred to 'industrial plant' as in s.105(2)(b). Equally if the reference to plant and machinery in s.105(2)(c) were intended to refer to a wider meaning of an industrial plant then the added reference to 'erection or demolition of steelwork for the purposes of supplying or providing access to plant or machinery' would have been unnecessary as it would be part of the industrial plant. There is no word such as 'including' to show that the additional operations were included in the previous description. Rather, in my judgment, it is a reference to additional operations of a narrow and specific type."[13]

The judge then referred to the previous decisions in *Palmers v ABB*,[14] *Homer Burgess*,[15] *ABB v Norwest Holst*,[16] *ABB Zantingh v Zedal*[17] and *Comsite*,[18] all of which have previously

[13] *North Midland v Lentjes*, above, at [22-29].

[14] *Palmers Ltd v ABB Power Construction Ltd* [1999] B.L.R. 426; (1999) 68 Con. L.R. 52; [1999] C.I.L.L.1543 TCC.

been considered by the writer.[19] Ramsey J noted that a narrow approach was taken by Judge Thornton in *Palmers v ABB* and a broad approach was taken by Judge LLoyd in *ABB v Norwest Holst*. Ramsey J's task was to resolve this difference, which he did in favour of the narrow approach.[20]

According to the narrow approach in *Palmers v ABB*, construction of buildings and concrete foundations for use with plant (assembly or installation of which came within the exception) would not come within the exception, nor would any painting of the internal or external surfaces of the plant. According to the broad approach in *ABB v Norwest Holst*, all the construction operations necessary to achieve the aims of the owner would be exempt, so that a sub-contractor providing paint to protect plant, for example, would be exempt from the operation of the HGCR Act.

Ramsey J's analysis for preferring the narrow approach was as follows.

> "As I have observed, the scheme in s.105 is that s.105(1) contains a very wide definition of construction operations and s.105(2), as drafted, contains specific exclusions. In these circumstances where s.105(2) has intentionally been drafted in terms of specific limited exclusions, I consider that a narrower approach to the construction of s.105(2) would generally be appropriate. As I have observed, if the intention had been to exclude all construction operations on a site where the primary activity was power generation then that could easily have been done or if it had been intended to exclude all preparatory activities, then a sub-section similar to s.105(1)(e) could have been added.
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> It is also necessary to consider what the practical effect is of construing s.105(2) narrowly or more broadly. Take the present case. On any view the main contract with AEE includes a significant amount of work which can plainly be described as 'assembly, installation...of plant or machinery'. A narrow construction of that phrase will mean that the other parts of the work consisting of civil works would not fall within the exclusion. That this might happen is envisaged by s.104(5) of the Act.[21]

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[15] *Homer Burgess Ltd v Chirex (Annan) Ltd* [2000] B.L.R. 124;(2000) 71 Con. L.R. 245; (2000) 16 Const. L.J. 242; [2000] C.I.L.L. 1580 Outer House, Court of Session.

[16] *ABB Power Construction v Norwest Holst Engineering* [2000] T.C.L.R. 831; (2001) 17 Const. L.J. 246 QBD (TCC).

[17] *ABB Zantingh Ltd v Zedal Building Services Ltd* [2001] B.L.R. 66; (2001) 17 Const. L.J. 255 HC (TCC).

[18] *Comsite Projects Ltd v Andritz AG* [2003] EWHC 958 (TCC); (2004) 20 Const. L.J. 24.

[19] These cases are described in the writer's previous article on construction operations at (2006) 22 Const.L.J. (No 4) 241.

[20] Correctly, it is respectfully submitted. The same view was expressed by the writer at (2006) 22 Const.L.J. (No 4) 241.

[21] Regarding s.104(5), see introduction above and fn 3 above.

> In such circumstances, unless any dispute is limited to civil works, rather than being a more general dispute as to payment, delay or disruption of the works overall, it will be impossible to apply, for instance, the adjudication provisions of the Act to only part of the dispute. Whilst a broader construction would exempt the whole of such operations, the practical effect is likely to be much the same for both a narrow and broad approach: the provisions of the Act would not be applied. However the Act would apply, on a narrow construction, where particular construction operations fell outside the exclusion.
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> When considering the position of sub-contractors in the chain below AEE, then where a sub-sub-contractor to a civil works sub-contractor is carrying out construction operations in the form of, say, site clearance preparatory to the placing of concrete, that would clearly come within the description of site operations under s.105(1) and be difficult to bring within the description of assembly or installation of plant or machinery. A narrow construction of s.105(2) would recognise this and would mean that the provisions of the Act would apply whereas a broad construction would mean that the Act would not apply.
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> In general I consider that the intent of the Act was that it should generally apply to construction operations within s.105(1). The broad construction would deprive the Act of effect in many cases and would lead to a strained construction of the words 'assembly, installation...of plant or machinery'. On the other hand, the narrow construction would give effect to the Act by applying it only in cases where the work was assembly or installation of plant or machinery. On that basis I consider that the narrow construction is to be preferred."[22]

Ramsey J reached this conclusion without considering any Parliamentary material. However, he found there was an ambiguity in the form of the difference between the broad and the narrow construction to s.105(2)(c) and that the words 'erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery', particularly the reference to steelwork, were obscure, curious and odd. Therefore, on *Pepper v Hart*[23] principles, it was proper for the court to consider Parliamentary material. Ramsey J found that the relevant material in Hansard also supported the narrow interpretation.[24]

As to the facts of the case in *North Midland v Lentjes*, the enabling works consisted of temporary roads, foundations for temporary site offices, temporary services and demolition of buildings and would come within s.105(1). On a narrow construction of s.105(2)(c), it was not possible for them to be described as "assembly, installation or demolition of plant or machinery". They could only come within that description if the overall works on the project as a whole were broadly defined, rather than considering the operations constituting the

[22] *North Midland v Lentjes*, above at [49-53].
[23] [1993] A.C. 593.
[24] The relevant passages from Hansard are set out in *North Midland v Lentjes*, above, at [58-61].

enabling works. The judge accordingly found the enabling works were construction operations.

The civil engineering works were not so straightforward, although the result was the same. The works were foundations, concrete buildings and concrete structures. The concrete structures included reinforced concrete silos and it was argued that these were essentially pieces of plant, which like the pipework to which Lord Macfadyen referred to in *Homer Burgess*, were part of the plant without which the equipment would not operate.[25] The analysis at this point becomes a little less clear; the judge thought there was some force in this argument but there was no specific evidence about the silos and quite why they might be regarded as plant is not apparent.

The judge then stated as follows.

> "There will obviously be certain aspects of every contract which at the boundaries may either be argued to be construction operations or be argued to be within the exclusion. I respectfully agree with Judge Bowsher Q.C. in *ABB v Zedal* at paragraph 27, cited with approval at paragraph 37 of *Comsite*, that 'one cannot make sense of the Act by a minute analysis of the work to see what was plant and what was not. One must look at the work broadly.' This is not the same as giving the words of s.105(2) a broad or narrow meaning. What is required is for the works overall to be looked at broadly to see whether they come within the s.105(2) exception.
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> The issue is a matter of fact and degree and inevitably there will be grey areas. I do not consider that it was the intention of the Act for there to be a minute analysis to find an item which arguably was a construction operation or was within the exclusion, so as to defeat the purpose of giving or excluding the rights of the Act to what on a straightforward and common sense analysis is a contract for construction operations within s.105(1) or excluded operations under s.101(2)."[26]

Two principles (both of which, it is respectfully submitted, are correct) may be derived from this case. First, that the words of s.105(2) are given what is described as a narrow interpretation. This means, in the writer's view, that the words are given their natural meaning and not a broader meaning that the wording of the statute does not support. The "narrow" interpretation is best understood by reference to the "broad" interpretation. The test is not the broader one that all of the construction operations necessary to achieve the purpose of the owner fall within s.105(2). For example, in relation to s.105(2)(c), there may be a contract for assembly or installation of plant on a site where the primary activity is power generation; work which is broadly connected with the plant, such as enabling work or painting, under another contract, does not fall within s.105(2)(c), because that broad approach does not apply.

[25] For a discussion of the *Homer Burgess* case, see the writer's earlier article at (2006) 22 Const.L.J. 241.
[26] *North Midland v Lentjes*, above at [80-81].

One then comes to the separate question whether on the facts of each case the work falls within one of the exceptions or not. Here, what is described as a "broad" approach is taken! However, all that this means is that the tribunal analyses the work to see if one of the exceptions in s.105(2) applies or not. It is self-evident that common sense should be applied, as with all judicial processes. A "minute analysis" is a pejorative term suggesting an enquiry that goes beyond common sense; again, self-evidently, that is not the correct approach, but a proper analysis of the nature of the work is needed. All that is meant, as the writer understands it, is that if, for example, a contract is for construction operations which do not fall within s.105(2)(c), except that a very small part of the work is indeed installation of plant (on a site where the primary activity is, for example, power generation), then the contract will not be treated as one to which s.105(2)(c) applies.

Ramsey J revisited the broad and narrow approaches in the *Cleveland Bridge* case.[27] Whessoe Volker Stevin Joint Venture (the Joint Venture) engaged Cleveland Bridge as sub-contractor to carry out works at the Dragon liquefied natural gas terminal at Milford Haven. Cleveland Bridge's works comprised project preliminaries, supply, fabrication, delivery and erection of steelwork in the form of pipe racks and pipe bridges, the construction of a Local Equipment Room and Process Area Compressor House, including cladding and the painting of all steelwork.

Cleveland Bridge sought to enforce an adjudicator's decision in its favour and the question whether the parties' sub-contract was not a construction contract because certain operations fell within the exception in s.105(2)(c) was relevant to jurisdiction. The Joint Venture resisted enforcement on the basis that the adjudicator did not have jurisdiction.

Cleveland Bridge contended that all the work came within the definition of construction operations in s.105(1) and that only the erection works for the steelwork in the form of pipe racks and pipe bridges potentially came within s.105(2). They submitted that if this element of the work came within s.105(2), it was so small an element that the works were not excluded by s.105(2). They assessed this erection work as 18.2% of the final account value.

The judge found that even if this assessment were correct, there was significant and substantial erection of steelwork, *i.e.* 18.2% is significant. When the works were considered broadly, as the judge had indicated in *North Midland v Lentjes* was the correct approach, there were works which fell within s.105(2). The steelwork to the pipe racks and the pipe bridges came within the description of "steelwork for the purposes of supporting or providing access to plant or machinery, on a site where the primary activity is...(ii) the production, transmission, processing or bulk storage...of...gas..."

A further issue between the parties was whether the excluded operations comprised all the work to the "steelwork for the purposes of supporting or providing access to plant or machinery" (the broad approach, contended for by the Joint Venture) or whether it was

[27] *Cleveland Bridge (UK) Ltd v Whessoe-Volker Stevin Joint Venture* [2010] EWHC 1076 (TCC).

limited to the "erection" element of that steelwork (the narrow approach, contended for by Cleveland Bridge). Not surprisingly, Ramsey J took the narrow approach, consistently with his decision in *North Midland v Lentjes*, stating:

> "As I observed in *North Midland v Lentjes*, the operations described in section 105(2) can generally be brought within the description of operations in section 105(1) so that the intention was to exclude a specific operation from the more general description of operations. The provisions of s.105(2)(a) to (c) are aimed at excluding certain particular operations either generally or in specific industries. For those industries, instead of saying that all operations which would otherwise be construction operations are excluded, the reference is to particular operations on sites where the primary activity is one of the industries. The exclusion is therefore limited to those particular operations. The definition in s.105(2) has not been broadened by the use of such words as 'operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations...', as has been done in s.105(1)(e). In addition for the reasons set out in *North Midland v Lentjes*, the phrase 'assembly, installation...of plant or machinery' in s.105(2)(c) should be construed narrowly by applying it only in cases where the work was assembly or installation of plant or machinery. All of those observations would suggest that the word 'erection' in s.105(2)(c) should be given a narrow meaning.
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> The relevant services under the sub-contract in this case...included fabrication drawings including connection design; the purchase of structural steelwork including connection plates and all consumables; painting; delivery of fabricated steelwork to site and off loading and the erection of fabricated steelwork.
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> It is evident that this work would all form construction operations within s.105(1) as being construction of buildings or structures (s.105(1)(a)), construction of any works including industrial plant (s.105(1)(b)), 'operations which form an integral part of or are preparatory to or are for rendering complete such operations as are previously described' (s.105(1)(e)) and 'painting the internal or external surfaces of any building or structure' (s.105(1)(f)).
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> By comparison the reference in s.105(2)(c) to 'assembly, installation...of plant or machinery' and to 'erection...of steelwork for the purposes of supporting or providing access to plant or machinery' are much more limited. It is difficult on a natural meaning of 'erection' to include fabrication drawings and connection design, fabrication of steelwork off-site or the delivery of fabricated steelwork to site. Erection of steelwork essentially covers the operations of lifting the steelwork into position and connecting it together."[28]

[28] *Cleveland Bridge*, above, at [45-48].

The judge found that in addition to wording of s.105(2)(c) supporting the narrow approach, there were no other contrary indications in the remainder of s.105.[29] On this occasion the *Pepper v Hart* criteria did not apply so as to make Parliamentary material admissible. The question was whether the word "erection" only covered operations in lifting and connecting the steelwork after it had been delivered to site or whether it also included the preliminary stages starting with the fabrication drawings, leading to the steelwork fabrication and then the delivery of the steelwork to site. The judge found the wording to be unambiguous and that there was no absurdity in limiting the excluded operations in s.105(2)(c) to operations carried out on-site at the process engineering site. The judge further found, that if he were wrong about the admissibility of the Parliamentary material, then the Parliamentary material did not indicate that the narrow approach was incorrect.

The position was accordingly that the parties' contract consisted in part of construction operations within s.105(1) of the HGCR Act and in part of operations which were not construction operations by reason of s.105(2)(c)(ii). Only one dispute had been referred to the adjudicator, who only had jurisdiction to deal with the dispute in so far as it arose under the part of the sub-contract which related to construction operations. The adjudicator decided she had jurisdiction over the whole dispute and made a decision on the whole dispute. In these circumstances, the adjudicator's decision was not valid and could not be enforced. The position on severability, which the writer has considered in detail previously,[30] is, in brief,[31] that a decision which is in respect of a single dispute and made partly without jurisdiction is not severable so as to allow the valid part to be enforced.

[29] *Cleveland Bridge*, above, at [49-53].
[30] See Severability of Adjudicators' Decisions at (2004) 20 Const.L.J. No.2 at 71; Severability of Adjudicators' Decisions: Revisited at (2009) 25 Const.L.J. No.5 at 376.
[31] The position on severability in detail is outside the scope of this article and will be revisited in a future edition of CAR.