

Construction Law Update

NEC4 Amendments - What Do You Need to Know?

NEC has published a set of amendments to the NEC4 suite of contracts published in June 2017. Although released in March 2019, these amendments are referred to as the January 2019 amendments (the "Amendments"). This bulletin explains what the main changes include and the effects they have on the NEC4 suite of contracts.

Assessment of delay due to a compensation event

NEC has provided a guidance note assisting with the assessment of delay due to compensation events ("CE"). The guidance note explains the assessment should take into account events which happen between the date of the Accepted Programme and the dividing date for the CE being assessed. It also confirms that any delay caused by the CE, which is already in the Accepted Programme, should be taken into account in the assessment.

The new amendment to clause 63.5 does not change anything within the guidance note but it has been added to improve the clarity of the original clause. As a result of the amendment, the third paragraph has been deleted and substituted with:

"The assessment takes into account

- any delay caused by the compensation event already in the Accepted Programme and*
- events which have happened between the date of the Accepted Programme and the dividing date."*

This amendment should help parties overcome some of the difficulties that arise in cases where the Accepted Programme has not been kept up-to-date.

Termination table

The Termination table at clause 90.2 has been slightly amended. Now, where the Client terminates due to reasons R17 (released under law) and R20 (due to any

other reason) the correct termination procedure is P1 and P4. This makes the procedure for termination following certain 'no fault' events (R17 and R20) the same whether it is the Client or the Contractor who is the terminating party.

Agreement of Defined Cost

A few minor drafting changes have been made to clause 50.9 in the Engineering and Construction Contract Options C, D, E and F. These changes clarify that the finalisation is for the Defined Cost for a part of the works giving closure to both the Client and the Contractor in relation to these costs.

Changing the senior representatives

Previously there was no formal process under NEC4 contracts to change the Senior Representatives. A change could only be made by mutual agreement. The Amendments mean that under dispute resolution Options W1 and W2, a party can change its Senior Representative by merely notifying the other party of the change.

Professional indemnity insurance

Where secondary option X15 is incorporated, it requires the Contractor to take out and maintain professional indemnity insurance in respect of design. The Amendments introduce a new clause X15.6 which requires the Contractor to certify that the insurance is in place before the start of the works and on each renewal date.

Project Bank Account

Amendments have been made to Option Y(UK)1 Project Bank Account within the Supply Contract and the main forms of subcontract to remove the form of Trust Deed and Joining Deed. As a result, the Supplier or Subcontractor will become a member of the Project Bank Account created under the main contract and therefore, the main contract Trust Deed and Joining Deed will be used. This change means that the Supply Contract and main forms of subcontract now include

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entries in the Contract Data for the parties to identify the applicable deed.

Peoples rates

The Amendments have made changes to the Professional Services Short Contract in an attempt to clarify the difference between the work undertaken on a time charge basis as opposed to rates and lump sums.

The contract now specifies that “*the contract does not provide for the Consultant to be paid on a mixture of time charge and Prices*” and requires the client to select a specific option.

The Amendments have also clarified that where work is undertaken on a time charge basis the rates are subject to the addition of the Fee. This is in accordance with how CEs are assessed using people rates, when rates and lump sums are being used.

Analysis

The Amendments are minor improvements rather than radical changes and follow the same philosophy as the NEC3 to NEC4 changes of “evolution not revolution”. Whilst these amendments appear to only be minor, they are well worth being aware of if your contract incorporates them.

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