

Construction Law Update

COVID-19 – Construction Contract Providers JCT, NEC and FIDIC Publish User Guidance

Since the COVID-19 outbreak began, we at Hawkswell Kilvington have endeavoured to alleviate pressure on our clients by providing written updates in relation to the impact of COVID-19 on construction contracts, providing free webinars on issues we believe are key during this time and answering specific queries any of you may have. In this update, we provide links to useful guidance recently published by JCT, NEC and FIDIC that we believe may be of assistance.

JCT

JCT has published an article, which can be accessed via the link below, giving guidance on the impact of COVID-19 on ongoing projects and addressing contractual issues which may arise. The article is relevant to construction projects in England and Wales using a variety of JCT contracts. Key points to take away include: simply walking off site could constitute a repudiatory breach of contract; regardless of the circumstances the Contractor must be able to show it has constantly used best endeavours to prevent delay in order to obtain an extension of time; and if the Works are suspended longer than that stated in the Contract Particulars, either party may give notice of termination of the Contractor's employment.

[JCT article - click here](#)

NEC

NEC has published an article explaining the ways in which NEC4 contracts address potential issues caused by COVID-19. Although the article generally discusses NEC4 Engineering and Construction Contracts, it explicitly states it similarly applies to other NEC contracts.

This article can be accessed via the link below along with a number of guidance videos and a question and answer series. Key points to take away include: an early warning of the issue should have already been given by either the Contractor or the Project Manager; and in severe cases, where the whole of the works has had to

be stopped or suffers delay because of the virus, clause 19 – prevention may apply.

[NEC article - click here](#)

FIDIC

FIDIC has issued a detailed memorandum which provides guidance on which conditions of FIDIC standard forms may be relevant to those scenarios likely to arise as a result of COVID-19. This memorandum can be accessed via the link below. Key points to take away include: a contractor holds specific health, safety and environment obligations including ensuring “suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics”; and timely compliance with communication and notice obligations will be key.

[FIDIC article - click here](#)

Other Useful Guidance

Other necessary reading for all in the construction industry at this time is the latest Government recommended Construction Leadership Council's Site Operating Procedures Version 3 which was published on 15 April 2020. This provides guidance on how construction sites should operate in order to remain safe during the COVID-19 pandemic. This guidance can be accessed via the below link.

[Site Operating Procedures - click here](#)

Comment

Whilst the above links provide general assistance we believe may be helpful, we strongly recommend that parties seek legal advice as to specific contracts which are likely to be affected.

This article contains information of general interest about current legal issues, but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.

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