

Northern Ireland's Central Procurement Directorate issues standard Z clauses for the NEC3



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The Central Procurement Directive in Northern Ireland has standardised the use of NEC Z clauses for central government construction work in Northern Ireland. The Guidance Note is an extremely valuable resource and is a model of how Z clauses should be incorporated.

Procurement Guidance Note 01/15 dated 8 May 2015 is an excellent example of how Z clauses for the NEC should be incorporated. Z clauses are frequently used to improperly transfer risk or to totally (if unintentionally) confuse the use of the NEC form of contract. However, they are not without merit. With the support of the NEC Users Group and the construction industry parties that engage with them in Northern Ireland, CPD has done a remarkable job of making the process of drafting Z clauses easier.

The Guidance Note is not copyrighted and in my view is a model for how others can and should adopt Z clauses. It includes a section for 28 typical Z clauses. The Note describes the "purpose" of each clause and gives some guidance as to how it is to be adopted. Some of the clauses are compulsory (for those subject to the Northern Ireland Procurement Policy) and others discretionary.

The Z clauses include many * that are relatively non-contentious and it goes some way to dealing with tricky issues such as two stage contracting (where there is a design which must be accepted before build commences) and the incorporation of a contractor's quality submissions into the contractual framework.

However, it is arguable that further clarity could have been provided. The document could have:

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1. Clarified Secondary Option W2 on dispute resolution to make sure that it aligns with the law on adjudication; and
2. Removed any ambiguity around the definition of a defect when the problem is the contractors' service and/or his failure to comply with constraints rather than the actual work done.

Discretionary amendments to the compensation clauses are extremely light touch. There is no standardised amendment to the often changed Clause 19 and the only substantive change to the compensation event system is to move the risk of unforeseen physical conditions in 60.1(12) to the contractor in certain, tightly defined circumstances.

Back on the positive side, the control of subcontractors, particularly in relation to those nominated by a contractor in a tendering process, is tightened up and the Employer is given an express right to terminate for contraventions of bribery, fraud and the like – although this last point is prefaced as being optional which may cause the Employer some difficulties. The “purpose” element of each Z clause, with the corresponding descriptions of intention, could be tightened up to make it clearer when a public authority should use the clauses but there can be absolutely no doubt this is a massive step forward for all in the industry.

The Guidance Note is available at the link below and is essential reading for all NEC3 practitioners and procurers alike.

For further information, please see the contact details above.

Further reading

[Procurement Guidance Note 01/15](#)

[The NEC Users' Group](#)

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