

THE NEC4 IS HERE!



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I am equal measures pleased and intrigued to hear the NEC4 will be launched this June. The announcement came today at the SCL lunch in Leeds. For most, this will come as a complete surprise, but we have been told that there has been muted consultation across the industry. We are told that the NEC4 suite will be available to punters following the NEC Users Group Annual Seminar on 22 June 2017.

The message seems to be “*evolution not revolution*” in relation to the changes that have come about, but it is no surprise in the urgency of the announcement today when looking at the series of amendments from the JCT 2016 and the FIDIC Rainbow Suite Amendments 2016.

Besides from the 2009 and 2013 NEC3 amendments, we haven't had anything substantive that has affected the suite (save the *PSSC* and *ECI* contracts) since 2005! It is a welcome relief that these changes have happened, to keep the NEC at the forefront of the engineering and construction industry.

So, what do you need to know about the NEC4?

Well, we finally have proper D&B Secondary Option Clauses. This has long been one of my gripes with the NEC3, and existence of “*proper*” D&B options is one where the main rivals of the NEC3 proves more favourable time and again. How these D&B Secondary Options will affect the functionality of the ECC and how they over replace existing Clauses 21-24 is subject to be seen, however, I am extremely pleased that calls for this change have been answered.

We are also going to see the first NEC DBO Contract as well. I imagine this will come as a welcome surprise to a lot of our public sector clients, most certainly in Ireland.

Our old friend Defined Cost remains, with no sign of reversion back to Actual Cost from NEC2. I think this is only a good thing. We also now have Defined Cost in the Term Service Contract (TSC), Professional Services Contract (PSC) and most importantly for me, in the Short Contract (ECSC). How the NEC4 will deal with the ECSC in general, I wait with bated breath. I stand by my sentiment, the drafters of the NEC3 mistook fewer words with ease of administration and management, this gave us an ECSC that had too many holes for people to fight over; let us hope that that same folly is not repeated.

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Final Accounts, but not as we know it? It seems we are going to be given some form of finality of assessments. This is something myself and Quigg Golden have been preaching for years, and finally we now have, what sounds like the NEC equivalent of a final account.

The only other substantive changes that we know about yet that have put a smile on my face is the acceptance of the programme, if the PM fails to respond within the period of reply. Due to the extreme importance of the programme under the NEC, notwithstanding Clause 50.3 (25% reduction of PWDD), the Contractor can now rest easy knowing that there will be an accepted programme on the table. Now, whether or not this will stop the manipulation a PM can assert when rejecting or requesting revised programmes for the purpose of assessing CE's is subject to be seen, and not even the mighty NEC drafters will be able to stop; an awkward PM will always be an awkward PM.

And of course, we couldn't talk about updates and contract amendments without mentioning BIM. Ultimately, it is for the industry to catch up with our BIM requirements, and the drafters must leave enough space to evolve whenever we as an industry understand the edges of BIM. It is therefore likely that the NEC4 will follow the JCT 2016 model and say *"It's BIM, you do as you see fit"*.

What else are they changing?

We of course also have the fillers in terms of changing the Risk Register and Works Information being replaced by an Early Warning Register and Scope respectively. These to me are just different names for what was already being used in practice and it is subject to be seen as to how the changing of terminology and definitions will effect actual day to day administration. There seems to be more of an emphasis as well on Contractor's involvement and in value engineering, which will surely place more importance on if, if not ECI, at least Contractor's proposals in identifying risks and problems with the NEC4 Scope.

The NEC Users Group also state that the NEC4 is designed for more international use. And although always marketed as an international Contract, it has always been based on UK contract law and statute (look no further than the Y Options and Clause 5). With the work I am doing in Dublin with numerous public sector bodies, as well as work my colleagues are doing on the Project Management and Procurement side of NEC3 contracts, it is going to be extremely interesting to see how the likes of payment will be reflected (internationally) to take account of the likes of the Construction Contracts Act 2013 and BIM Requirements in Ireland.

Ultimately, there is going to be a lot of rhetoric around what these changes are going to mean and how they will affect you. At Quigg Golden we are involved heavily both in the contract, project management and procurement of NEC contracts and projects. I am delighted that some of the real misgivings with the NEC3 have been addressed, however it is how the industry will react to the publishing of the NEC4 and, for some, how they will deal with the kneejerk announcement that in less than four months we will have a new suite of contracts some have waited over a decade to see.



For more advice on the NEC4 and how it will affect you please get in touch with myself, James Golden or anyone of the NEC team at Quigg Golden in our London, Dublin and Belfast offices. Also, watch this space for myself and James' thoughts on the NEC3 ECSC: as now is the time that these changes will need to be addressed.



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