

New Amendments to NEC4 Contracts



NEC has just published a series of amendments to its NEC4 suite of contracts. The detailed amendments can be downloaded [here](#)^[1].

Don't panic. Most of the changes seem to be typo corrections and terminology tweaks – that said – there are a lot of them. The detailed amendments run in to 37 pages across the 14 contracts within the suite. The most popular form, the Engineering and Construction Contract, has around 7 pages of amendments, which is just inconvenient more than anything else.

One of the welcome changes is the clarification surrounding clause 63.5. This is the clause that deals with delays to the Completion Date due to compensation events. In the June 2017 edition of the NEC4, this clause introduced a bit of a curve ball with its wording. It set out that compensation events were to be assessed against the “Accepted Programme current at the dividing date”.

The industry took issue with this wording as sometimes an Accepted Programme could be massively out of date by the dividing date. Common sense would dictate that you would take into account things that happened since the last Accepted Programme was accepted. But this is not what the contract said!

NEC issued a guidance note to address this issue back in October 2017. If you haven't read it, I would recommend you do. It is a particularly good document that goes into detail on how to assess delays to the Completion Date (and Key

Dates of course). You can download a copy [here](#)^[2].

Anyway, the guidance note was designed to address the issue with the wording of the original clause 63.5. The new series of amendments does one better and translates this guidance in to contractual wording. The wording sets out that, when assessing delay, 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.

Quite straightforward and back to the common sense position. You still use the Accepted Programme when assessing compensation events, but you account for things that have happened up to the dividing date.

This is just a short article whilst this is hot off the presses. I may do a longer one if I discover any other nuggets of interest with the 37 pages of amendments.

[1] <https://www.quigggolden.com/wp-content/uploads/2019/03/NEC4-Amendments-January-2019.pdf>

[2] https://www.necontract.com/getmedia/1da5521b-c456-4c7e-9507-61a54dac241f/NEC4-ECC_Practice-Notes_standalone.pdf.aspx

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