

Webinar - NEC4 transition: how to move from NEC3 to NEC4

14th July 2017

Q&A session

Here are the questions that were not answered during the webinar session.

You can find the full recording here: www.neccontract.com/NEC4transition

Q: Agreeing Defined Cost is a good idea, but with poor administration skills, this can become another major roadblock to proper administration!

A: We agree. The poor administration skills need raising to highly competent administration skills, frankly for any form of contract used. This is not an NEC specific issue.

Q: Any plans to address the commonly raised issue of which accepted programme to use for assessing compensation events? This question is often mentioned in recent forums discussing NEC4.

A: NEC4 has addressed this question - it is the Accepted Programme current at the dividing date (see eg. NEC4 ECC clause 63.5 wording).

Q: Are the NEC4 Contract Data forms available for non-NEC User Group download? I am considering broad implementation by public sector users who would not be part of NEC User Group!

A: The Contract Data forms for NEC4 contracts are available to members of the NEC Users' Group or purchasers of digital NEC4 products. Joining the NEC Users' Group gives access to a range of benefits and services including a dedicated helpline delivered by NEC experts.

Q: Are there some documents that identify the changes from NEC3 to NEC4 available as promotional material?

A: This webinar should help along with a [whitepaper produced by Matthew Garratt available here](#). The [NEC Users' group newsletter April 2017](#) was also a special issue which explains the main changes between NEC3 and NEC4 contracts.

Q: Can you envisage a timeframe that will take for the full transition to NEC4 Suite?

A: A difficult question to answer, depending entirely on the situation you are in and how you intend to use the contracts, either individually or corporately. Hopefully this webinar has helped determine your views that the changes are evolutionary and well within the grasp of those familiar with NEC3 contracts.

Q: Can you expand on Corrupt Acts mentioned in the nec4 contract?

A: There is a basic definition of what is a Corrupt Act, an obligation for the Contractor not to do a Corrupt Act, requirements for these provisions to be inserted in any subcontract, a duty to take action if a Corrupt Act arises and the Client has a right to terminate in the event of a Corrupt Act.

Q: From a Client's perspective, and in the light of what seem to be predominantly Contractor friendly amendments, especially around deeming provisions, do you not consider that Clients will look to use the Z clauses to revert back to an NEC3 approach?

A: All of the changes introduced are to improve the outcome of projects or programmes, not individual parties. We cannot prevent Z clauses but ask users to carefully consider amendments to a well thought through contract. We think that users will be smart enough to see that the changes will drive improvements in the way projects are managed.

Q: Has there been any modifications to Contract Data parts across the NEC4 suite?

A: Yes. We believe these to be much more user-friendly than previous versions. Please let us know your thoughts in time.

Q: Have the NEC considered ways to dissuade Clients from amending the standard NEC provisions with Z clauses?

A: We did research common Z clauses and some of those have found their way into the NEC, eg anti-corruption. We have had webinars, Users' Group Newsletter articles and the likes on the perils of ill thought out Z clauses. We try!

Q: How is Defined Cost treated that is incurred beyond the date of Completion?

A: Assuming this relates to NEC4 ECC then Defined Cost (eg a late Subcontractor invoice/payment) may well arise after Completion. We are not closing the book down at Completion, it is the Contractor that kick starts the new deemed acceptance process and there are 13 weeks or so after notification to close such things down - we believe this to be a completely adequate timescale.

Q: How will NEC4 compete with the likes of FIDIC?

A: We will continue to suggest better and alternative ways of creating contracts, and to support users who need to make improvements in the delivery of their projects and programmes of work.

Q: If the Subcontractor applies its % uplift, does this % become a cost to the main Contractor and the allowing the main Contractor to apply its own %?

A: Assuming this relates to NEC4 ECC then yes, that is the case, providing this meets the clause 52.1 open market requirements.

Q: Is a deadline to close the books to be included in the Contract Data or it is a generic timescale?

A: This is stated in the contract conditions so not a discretionary timescale through the Contract Data.

Q: Is Defined Cost defined the same for works, services, professional services and supply contracts?

A: There are a lot of similarities; however there are some differences which are appropriate to each type of contract. It is worth gaining a careful understanding for each.

Q: Is there any LinkedIn forum being set-up for nec4?

A: You can join our official LinkedIn forum: <https://www.linkedin.com/groups/3378841>

Q: New to NEC so sorry if this is a foolish question - what has driven the desire to reintroduce the ability for additional compensation events? Is there an evidence base supporting it?

A: There is an evidence base supporting both of the two new compensation events found in NEC4 ECC. The ability for Clients to introduce additional compensation events provides more flexibility, allowing the contract to be tailored to specific circumstances and the most appropriate allocation of risk.

Q: Is there no PSC Option G anymore?

A: That is correct. If you wish to procure a Consultant on a term basis the advice is to use the NEC4 Term Service Contract (TSC).

Q: We understand the NEC recommends a 12 month period before the NEC4 will be recommended by the NEC - is that correct?

A: No such advice is given by NEC - we believe that users should use NEC4 contracts as and when they are ready to do so. That could take a few weeks or considerably longer for those not yet in the 'NEC' zone!

Q: What does the contract say about treatment of VAT and VAT invoicing?

A: This is dealt with in eg clause 51.5 of the NEC4 ECC.

Q: When will the NEC4 Alliance Contract be formally rolled out, it is currently in consultation stage?

A: It is expected to be published during 2018, but it will depend on the consultation feedback.

Q: Why do you not have different fee percentage for different options on things like TSC where you may have multiple options?

A: We are not sure of the question here. Different Fee percentages may well arise through the choice of Options A, C or E, that's the nature of different forms of contract.

Q: Why introduce a consequence of failure in relation to the acceptance of a programme (the deemed acceptance) but not introduce consequences of failure on other issues (e.g. the introduction of default payment notices etc)?

A: That is a good question. We believe we should not provide a failure consequence for every last aspect of NEC4 contracts, just the ones that are most likely to lead to better outcomes.

Q: Will this final account mechanism ie - the PM misses the 4 week period become conclusive and trump earlier time barred claims?

A: The final account process in clause 53 (ECC) does not permit the Contractor to include a claim for payment which is not permitted by the contract. The Contractor must include its assessment of the "final amount due". If, for example under clause 61.3, the Contractor has not notified a compensation event within eight weeks of becoming aware that the event has happened, the Prices are not changed. Accordingly, the Contractor cannot claim for payment which would change the Prices. The procedure in clause 53 provides for the Contractor or the Project Manager to identify the amount due under the contract, not calculate an entirely different amount.

Q: Why should I choose NEC training over another supplier?

A: Although there are different training organisations and trainers, NEC is the only organisation that can provide Accreditation to use NEC Contracts. Also, our training offer has been developed and it is delivered by the contracts and user guides' developers and drafters, who have solid and unique knowledge of the NEC4 and NEC3 suite.

Answers by **Matthew Garratt**, New Contract Board Member and Costain, and **Robert Gerrard**, NEC4 drafter and NEC Users' Group Secretary.