



Technical

NEC Amendments - The New Construction Act

Date: 31 Oct 2011

The Construction Act and NEC 3

1. On the 15 September 2011 the Institution of Civil Engineers issued the amendments to the NEC 3 suite of contracts to take account of the Local Democracy Economic Development and Construction Act 2009. The amendments make revisions to both the adjudication and payment conditions.
2. The changes required to the adjudication provisions are made by way of amendments to Option W2 for most of the contacts. In the short contacts additional conditions have been added. Changes to the requirements for payment have been made by way of amendment to Y(UK)2 for the most part. With the short contracts additional conditions have been added.

The Amendments in Summary

3. As required by the Act the contract must include in writing provision for the correction of slips by an adjudicator in the making of his decision. This deals with correction of typographical errors and clerical mistakes. This must be done within 5 days.
4. A new section has been added dealing with allocating the adjudicator's costs.

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5. The Act substantially amends the previous arrangements for notice of payment and withholding notices and the NEC contracts have been amended to reflect these changes. The NEC contracts have of course also been amended to reflect the changes to the right to suspend the works and the recovery of costs of suspending where necessary.

Amendments to the NEC 3 Engineering and Construction Contract

6. The most important changes are those relating to payment and these have been brought about by amendments to Y(UK)2. Under the provisions of the New Construction Act a notice of payment of the amount due to the contractor must be issued. Clause Y2.2 has been amended so that the Project Manager's Certificate is also the notice of payment and this must specify the amount due at the payment due date (becoming the notified sum) and also state the basis on which the amount was calculated.
7. The timescales for payment are unaltered. The date on which a payment becomes due is 7 days after the assessment date and the final date for payment is 14 days after the date on which a payment becomes due (unless this is altered in the Contract Data).
8. Clause Y.2.3 which dealt with withholding notices has been replaced with the requirements for the payless notice. If either party intends to pay less than the notified sum it must notify the other party no later than 7 days before the final date for payment. The paying party must state the amount considered to be due and the basis on which that sum is calculated in a payless notice.
9. In accordance with the Act if a payment notice and a payless notice are not given by the Project Manager then the amount of the Contractor's application should be paid in full.

NEC 3 Engineering and Construction Sub-Contract

10. Again the most significant amendments are those dealing with payment and again these are made by way of amendments to Y(UK)2.
11. Under the provisions of the sub-contract the date on which payment becomes due is 14 days after the assessment date and the final date for payment is 14 days after the due date. The period for payment can be different to the 14 days if this is stated in the Sub-Contract Data.

12. Similar to the main contract the Contractor's Certificate is the notice of payment to the Sub-Contractor specifying the amount due at the payment due date.
13. Y.2.3 has been amended to take account of the payless regime and this has been done in a similar way to that for the main contract.
14. In accordance with the Act if a payment notice and a payless notice are not given by the Contractor then the amount of the Sub-Contractor's application should be paid in full.

The New Construction Act - What you need to know

15. If you require further guidance on the Construction Act then please refer to our article *The New Construction Act - What you need to know* which is available on our website. You may also be interested to know that we are presenting our *10th annual Seminar on 10 November 2011 at Pride Park in Derby* covering some of the practical issues arising out of The New Construction Act and the amendments to the JCT and NEC Suites of Contracts. Ramskill Martin is also providing more detailed guidance and training for Contractors and Sub-Contractors to suit individual businesses' requirements. If you require any help with this please contact Clive Ramskill (details below).

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