NEC4 has now been launched and the authors have promised "evolution not revolution". NEC have based the changes on industry feedback and step changes in delivery methods.

In this article, we review the main changes and what you need to know. The NEC drafting team has confirmed (as users would anticipate) that an overarching consideration has been to seek to reduce the number of Z clauses incorporated by users and so produce a more streamlined contract.

NEC4 - what are the key changes to the core clauses?

1. **Programme** - core wording now provides for deemed acceptance of the contractor’s programme if the project manager (PM) fails to respond within the prescribed timescales.

2. Updated **payment provisions** requiring the contractor to make an application for a periodic assessment. No payment is made if the contractor fails to make this application.

   (This provision previously applied in the short form NEC contracts but is now applied to all contracts.)

3. Changes to **compensation events** (CEs) within the core clauses:
   1. the option to include bespoke additional CEs within the Contract Data (rather than Z clauses)
   2. a new CE to compensate the contractor for the costs of preparing quotations that
are not accepted/instructed.

4. **Assessments** - in Options C, D, E and F (the cost based contracts) - a new process allowing the contractor to require a review of the Defined Cost - plus provision for deemed acceptance if the PM fails to comply with the prescribed timescales.

Similar provisions for final assessment: PM to issue a final assessment within four weeks of the issue of the Defects Certificate, failing which the contractor can do so. This final assessment will become conclusive if not challenged (as prescribed) within four weeks of issue.

5. New provisions allowing **proposals by the contractor** to propose changes including, for example, a change to the Scope or an acceleration.

6. **Liabilities and Insurance** - revamped as requested by insurers, dropping the "risk" and "indemnity" references, with contractor liabilities detailed (as opposed to included by exception).

7. **Dispute resolution** - to encourage negotiated settlement of disputes, a new tiered process is introduced including a four week period for escalation and negotiation before commencement of formal proceedings with a compulsory settlement meeting of senior representatives of each party.

Note: this tiered process is drafted to be:
1. consensual where option W2 applies (dispute resolution under the Housing Grants, Construction and Regeneration Act 1996 as amended - the HGA)
2. mandatory when option W1 is incorporated (where the HGA does not apply).

8. **Defined Cost** - this change applies to the Professional Services, Term Service and Supply Contracts in order to align these contracts with the core ECC wording and will replace the current concept of "Time Charged" in NEC3.

9. **Terminology changes** - including:
   1. "Client" instead of "Employer"
   2. Gender neutral wording
   3. "Early Warning Register" instead of "Risk Register"
   4. "Scope" instead of various descriptions for the work being provided such as Works Information in the Engineering and Construction Contract and "Service Information" in the Term Service Contract.

**NEC4 - what has been added to the core**
clauses?

1. New clauses relating to bribery and corruption including a right to terminate.
2. New clauses covering confidentiality and publicity, such as a restriction on the disclosure of project information.
3. New clauses covering the transfer of benefits i.e. the assignment of rights under the contract.
4. New clauses requiring the contractor to prepare a quality management plan/system.

NEC4 - new and amended secondary options

1. A Building Information Modelling (BIM) option which provides a clause to support the management of Information Model Requirements and deals with issues such as who owns the information and liability.
2. Early Contractor Involvement (ECI) - this new secondary option replaces the NEC ECI clauses issued in 2015 and provides for a procurement process which enables the early appointment of a contractor.
3. Undertakings to Others - this new option provides for collateral warranties.
4. Design Responsibility - has been brought more in line with market standard drafting.
5. Contractor’s Design Option - this option has been created to support design and build by the contractor, with the intention of aligning with industry standards. Provisions include clauses relating to intellectual property and professional indemnity insurance.
6. Contractor’s Proposals - this option supports gain share where the contractor has proposed a change to the Scope which has been accepted, resulting in costs reduction.
7. Dispute Avoidance Board W3 - can be used where the HGA does not apply, with provision for members of the Board to become familiar with the project from the outset and to make a recommendation if a dispute arises. If W3 is incorporated, formal proceedings would not commence unless the DAB recommendation has been considered and rejected.

NEC4 - are there any new forms of contract added to the NEC suite?

NEC4 includes two new forms of contract:
1. **Design, Build and Operate Contract** - to provide "a more integrated whole-life delivery solution" allowing for the inclusion of services after, or indeed before, the construction works are completed; as an example, to include facilities management services.

2. **Alliance Contract** - initially published in consultation form this is intended to offer a single set of performance based terms founded on alliancing best practice for use by fully integrated teams on an integrated risk and reward model driving all parties to act in the best interests of the project.

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The intention of the NEC contract remains to promote pro-active collaborative project management and, towards the production of NEC4, the authors have engaged with over 400 companies within the NEC3 Users Group in order to update and enhance the NEC suite of contracts.

We will report back on NEC4 in practice in due course.

If you have any queries on NEC or other construction issues, please contact Maxine Symington or Richard Green.

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