

New NEC4 suite of contracts includes dispute resolutions

NEC4, the next generation of the NEC suite of standard form contracts, including the widely used engineering and construction contract, will be released on 22 June 2017. This updates the current NEC3 suite of contracts which has, aside from some minor modifications, been around since 2005.



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Dispute resolution provisions

NEC4 will bring about a raft of changes as well as introduce two new contracts, the NEC4 design build operate contract (DBO) and the NEC4 alliance contract (ALC).

One of the key changes which will be introduced by NEC4 relates to the dispute resolution provisions contained in option W1 of NEC3 (which provides for a two-stage dispute resolution mechanism of adjudication followed by arbitration) and option W2 (used in the United Kingdom when the Housing, Grants, Construction and Regeneration Act 1996 applies).

NEC4 will introduce provisions aimed at the avoidance of disputes and a more consensual approach to dispute resolution in line with the theme of the NEC which requires the parties to act in a spirit of mutual trust and co-operation. NEC4 will introduce a mandatory provision in option W1 (consensual in option W2), which requires designated senior representatives of each party to meet (over a period of four weeks) and try to reach a negotiated resolution of a dispute before any formal dispute resolution proceedings commence.

Dispute avoidance board

NEC4 will also introduce a new option W3, which provides for the appointment of a dispute avoidance board by the parties at the time when the contract is concluded.

The board (which could comprise one or three members) will become familiar with the project from an early stage by making visits to the project site at regular intervals or when requested by the parties, and in the event of a dispute arising will meet with the parties in order to try to find a solution. If the dispute is not resolved during this process, the board will provide its recommendations (which will not be binding) to the parties on how to resolve the dispute.

Only in the event of the parties not accepting these recommendations, may the dispute be referred to the tribunal (either litigation in court or arbitration - the dispute avoidance option makes no provision for adjudication).

The standard NEC3 adjudicator's contract will also be changed to provide for the use of option W3 and will be renamed the dispute resolution service contract.

The introduction of these provisions should facilitate a more efficient process of dispute avoidance and resolution for NEC4 users.

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