

March 2026

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 63: The 'dividing date' in assessing compensation events

Introduction

Training and development support is a key part of CECA's core offer for its membership and working in conjunction with GMH Planning it has delivered a programme of training events around the NEC Form of Contract across several CECA UK regions.

In addition to this training, a series of monthly NEC Contract Bulletins are being produced for both Contractors and Subcontractors to improve practical awareness on key topics within the NEC. The coverage, whilst not exhaustive, is intended as a general overview on some of the contractual principles to increase a wider understanding in support of more sustainable outcomes.

For the purposes of these bulletins a contractual relationship between a "Client" and "Contractor" is assumed. The same rules/principles also apply if the contractual relationship is between a "Contractor" and a "Subcontractor" and so the term "Contractor" will be used to describe both parties.

These bulletins are based on the latest NEC4 family of contracts, but the same principles and rules would apply where parties are engaged under an NEC3 form of contract.

Coming next month:

Bulletin Nr 64 - Producing Better Scope

Please respond to Lucy Hudson should you require any further information on the CECA NEC4 Bulletins via e-mail: lucyHUDSON@cecasouth.co.uk.

For further advice or guidance on the NEC details please visit www.gmhplanning.co.uk where you will find a wealth of free [NEC Guidance Notes](#), [NEC FAQs](#), and other helpful measures.

NEC Bulletin 63: The 'dividing date' in assessing compensation events

The 'dividing date' is a new term introduced into NEC4 contracts. It is only referenced in three separate clauses. This bulletin will explore what the dividing date is, when it applies and how it may influence the assessment of compensation events.

Clause 63.1: Assessing the change to the Prices: This clause states that the change to the Prices are assessed as the effect of the compensation event upon:

- the actual Defined Cost of the work done by the dividing date
- the forecast Defined Cost of the work not yet done by the dividing date and
- the resulting fee



The clause also confirms that for a compensation event that arises from the Project Manager giving an instruction or notification, issuing a certificate or changing a decision, the dividing date is the date of that communication. For any other types of compensation event, the dividing date is the notification of the compensation event.

This means that for any Project Manager instruction to change the Scope (statistically one of the most common reasons for a compensation event), these should only ever be based upon forecast Defined Cost and never actual Defined Cost. Even if by the time the compensation event is being assessed and the actual Defined cost is now available, it should not be used to cloud the judgement as to what would have been a fair and reasonable assessment of the forecast Defined Cost (including risk). In practice, this is a very difficult thing for a Project Manager to ignore, but like any aspects of the contract it is the responsibility of all Parties to apply the rules of the contract.

It also means that there should be no tendency for a Project Manager to want to delay the agreement of the compensation event process whilst they wait to see what the actual cost is, as it should not change the assessment. It equally means that the Contractor in that situation is not entitled to increase their quotation if it has not yet been agreed and the actual cost they now know was more than they had envisaged (unless the reason is due to a new and different compensation event).

Clause 63.5: Assessing the change to Completion Date (and any Key Date): This clause states that a delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the 'dividing date'. The same sentence is repeated for any Key Date movement on exactly the same basis.

The NEC4 2019 amendments then confirm in addition that "the assessment takes into account events which have happened between the date of the Accepted Programme and the dividing date".

This signifies that the last Accepted Programme needs to be brought up to date with progress and other compensation events that happened before (and up to) the point that the new compensation event was known about. This subject is covered in more detail in CECA bulletin 18 (Assessing a compensation event against the last Accepted Programme). If there has been a regular acceptance of the programme every period, this will not be such a big exercise, but if there have been several consecutive programmes not accepted, this becomes a more difficult and potentially subjective assessment.

Once a new compensation event has been identified, the last Accepted Programme should be brought up to date with progress and the effects of any other compensation events already in the system prior to the 'dividing date' and the programme rescheduled. That will determine where planned Completion (and any planned Key Date Completion) was

at the point the new compensation event was instructed or notified (interim programme 1). The new compensation event can then be added to the programme, logic linked and rescheduled, and any further impact on planned Completion will be the amount that Completion Date should be entitled to be moved as a result (programme 2). In this situation it would be useful to include the two programmes (filtered to show only relevant activities to the delay) within the compensation event quotation to show the two progressive steps. The quotation would then also need to include the cost of that delay in terms of 'preliminaries costs' for the period on site being extended.

Clause X1.5: Assessing compensation events in line with Inflation: Where secondary option X1 has been included, the Defined Cost for assessing compensation events is assessed using:

- the Defined Cost at base date levels for people and Equipment stated in Contract Data and
- for other amounts, the Defined Cost current at the dividing date used in assessing compensation events adjusted to the base date by dividing by 1 plus the Price Adjustment Factor (X1 defined term) for the last assessment of the amount due before that dividing date.

This means there is a factor to apply for certain elements of a compensation event when considering X1 inflation. The wider details of this secondary option is considered in more detail in CECA bulletin 25 (X1 inflation).

Summary: It is important to understand where and when the dividing date comes into play when assessing compensation events, and which events need to be considered before and up to that point. A regular Accepted Programme will limit the subjectivity that could otherwise arise if you are having to assess months of progress and other compensation events before a new compensation event can be assessed.