

# CONSTRUCTION : BULLETIN

## Adverse Weather Conditions

What are your contractual rights when adverse weather delays your works?  
How can you maximise your entitlement to additional time and cost?

It is almost inevitable that adverse weather conditions will affect the progress of construction projects during the winter. Whilst many contractors and sub-contractors will have a contractual right to an extension of time and/or to recover the extra costs they have incurred due to delay, the rights and remedies available will vary from contract to contract. It is essential for construction firms to understand the rights available to them and the contractual processes which must be followed before any extension of time or additional payment will be authorised.

In this bulletin, we outline how adverse weather is dealt with in JCT and NEC contracts and provide practical tips on handling adverse weather claims.

### **JCT Contracts & Sub-Contracts**

Under JCT contracts and sub-contracts, “exceptionally adverse weather conditions” are classed as a Relevant Event, potentially giving rise to an extension of time.

“Exceptionally adverse weather conditions” is not defined by the JCT and there is no universally accepted definition of what this term means. However, the JCT extension of time procedure operates in such a way that the meaning of “exceptionally adverse weather conditions” will ultimately be at the discretion of the party granting the extension of time. It will therefore be necessary to ensure

that any extension of time claim you submit is comprehensive and will stand up to scrutiny.

In order to establish “exceptionally adverse weather”, it will be necessary to compare the current weather conditions to weather records from previous years. This can be done by taking or obtaining measurements of the current weather conditions and comparing these with previous weather reports from the weather station closest to the site.

JCT contracts require that notification of delay to the works must be given forthwith when the delay becomes reasonably apparent. When making a claim for an extension of time, it is a requirement that the Relevant Event is identified and details of its expected effects are provided. It will be necessary to establish what effect the weather conditions had/are having on the works. This might be done using photos of the disruption caused or by relying on records such as the site diary to document the works which were affected and the steps which were taken to mitigate this.

It is important to note that adverse weather conditions are not classed as a Relevant Matter under JCT contracts and sub-contracts. As a result, there is no entitlement to loss and expense and the financial risk of adverse weather lies with the contractor/sub-contractor.



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## NEC3 Contracts & Subcontracts

Under NEC3 contracts and subcontracts, adverse weather conditions can be classed as a compensation event, potentially giving rise to additional time and money for contractors and subcontractors. The NEC approach to analysing the effects of adverse weather is much more prescriptive and objective than the JCT approach.

Adverse weather will only constitute a compensation event if a weather measurement which is shown to occur on average less frequently than once in 10 years is recorded within a calendar month. It is important to remember that only the “extra” adverse weather (i.e. the difference between the weather measurement that has been recorded and the “usual” weather conditions recorded in the weather data) will be taken into account.

Details of the types of weather to be measured and the place where measurements are to be taken should be set out in the Contract Data. The default weather measurements are cumulative rainfall, the number of days with rainfall over 5mm, the number of days with minimum air temperature of less than 0°C and the number of days with snow lying on the ground at a pre-agreed time. The measurements can be supplied by a weather station (if there is one sufficiently close to the site) or recorded on the site. The weather data which is used for comparison can be obtained from an independent weather authority like the Met Office.

The contractor or subcontractor will bear the risk of any adverse weather which does not fall within the strict criteria for a compensation event. It may be sensible for the parties to agree other weather conditions which will be treated as a compensation event, such as high wind or ice, depending on the nature

of the works and the location of the site.

It is important to bear in mind that adverse weather is only measured by reference to calendar months. If bad weather is spread across 2 calendar months, there is a possibility that the measurements in each individual month may not be adverse enough to be classed as a compensation event.

Contractors and subcontractors must ensure the compensation event procedure is followed correctly in order to secure their entitlement to additional time and/or money. Notification of the compensation event must be given within 8 weeks (7 weeks for subcontracts) of the contractor becoming aware of the event. This is a condition precedent and any entitlement to additional time and money will be lost if this deadline is not met.

The contractor or subcontractor’s subsequent quotation must contain details of the proposed changes to the Prices and the expected delay to the Completion Date and any Key Dates, along with a revised programme. It will be necessary to justify how the works have been affected by the adverse weather.

### Practical Tips

- If you are engaged under a bespoke contract or sub-contract, or if there are bespoke amendments to a standard form contract, it will be necessary to review the terms of the contract to ascertain the available rights and remedies in the event of adverse weather.
- It is crucial to check for conditions precedent to an extension of time/additional payment. NEC3 contracts include a condition precedent as standard, but it is fairly common for JCT contracts to be amended to include a similar time limit.

- Ensure you are complying with the requirements of the contract when making a claim. You should check when the notice must be given, what information it must contain, how it must be served, who it must be addressed to and whether it needs to be followed up with further information.
- In order to demonstrate the impact of the weather conditions on the works, it is essential to keep full records, including (as appropriate) information about the weather conditions, the works which were affected, any additional costs which were incurred and details of any steps which were taken to mitigate delays and losses.
- Whilst you might have been informally assured that you will be granted an extension of time for adverse weather, always ensure that the contractual procedure for an extension of time is followed. This will protect your position if a dispute about your entitlement to additional time arises later on.

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