

Contractual Remedies For Adverse Weather

It was reported recently that some work on the Aquatics Centre at 2010 Olympic park had to stop due to the weather and, given conditions which have prevailed over much of the UK during January, this will not be the only site affected. This raises questions of what contractual remedies might be available for the delays and costs caused by the cold snap.

Remedies vary from contract to contract with some containing more generous provision than others so it is necessary to check the provisions applicable to each project individually.

The JCT and SBCC standard forms include as a Relevant Event, entitling Contractors to extension of time, “exceptionally adverse weather conditions.” This is not a Relevant Matter, however, and so there is no corresponding entitlement to loss and expense as a result.

That of course raises the question of what are “exceptionally adverse weather conditions”. This term is not defined in the contract but can probably be established by comparing current conditions to previous years’ weather records.

Bad weather on its own is not enough and it is of course also necessary to establish that there is a casual link between the weather and the delay – in other words to show that progress of the works has been delayed as a result of the weather. As always, record keeping will be key for this. It will be necessary to show what work should have been happening but was prevented due to the weather with reasons as to why it could not proceed. Site diary entries should record this and dated photographs can be helpful if these illustrate the point. If there is no local weather station then temperature or snowfall should be recorded. The obligation in JCT/SBCC contracts to use best endeavours to prevent delay in the progress of the works should be borne in mind so that if some work can reasonably proceed, despite the weather, then it should be carried out.

NEC 3 has a more elaborate provision based on an objective test. It includes as a Compensation Event that a weather measurement is recorded within a calendar month, before the Completion Date and at the place stated in the Contract Data, the value of which, by comparison with the weather data (specified in the contract) is shown to occur on average less frequently than once in 10 years. Only the difference between the actual weather and the average expected weather is taken into account to assess a compensation event which means the contractor remains on risk for weather which the weather data shows is likely to occur within a 10 year period.

On a procedural point, if you are considering a claim for delay as result of the weather, check the contract to make sure you comply with the notice provisions. Some contracts, particularly the NEC, go into some detail on requirements for notices including their timing and content.

The GC/Works/1 Edition 3 specifically excludes weather conditions from the list of matters entitling a contractor to an extension of time and GC/Works/7 does not

mention weather at all so that in these cases, weather would be at the contractor's risk.

Some contracts may contain a general provision allowing time for circumstances outside the contractors control and it will be a matter of considering each project on its own merits to decide whether this is likely to give any remedy for weather delays.

Shona Frame is a Partner in the Construction Group at MacRoberts and is accredited by the Law Society of Scotland as a specialist in Construction Law. For further information please e-mail shona.frame@macroberts.com

This article appeared in the January 2010 edition of Project Scotland.

[See our website for full Copyright notice and Disclaimer.](#)

© MacRoberts LLP 2009