

# Coronavirus: Covid-19 and your Projects

There appears to be no let up in the Covid-19 situation. With each announcement, another potential for delay and interruption arises, both in day to day life as well as on site. What can you do to minimise the impact on your current projects, and what steps should you be taking to reduce the risk of potential claims and protect your commercial position?

## What can you do now?

Review your contract(s) and delay event and force majeure provisions.

Observe any periods set out; e.g. serving notices and providing adequate warning.

Remember, communication is key!

## Regardless of contract type, you should:

- Maintain thorough contemporaneous records; meeting minutes, timesheets, invoices and even photographs of the project showing no activity.
- Review and update the Risk Register, this will help to highlight any issues that should be raised to the Client.
- Note any potential delays and additional costs. These can be directly related to Covid-19 (staff sickness and absence) or implications of Covid-19 (material unavailability, employer or government ordered shutdowns). These will need to be raised to the Client.
- Raise a notification to the Client as soon as a notifiable event happens.
- Check all insurances relating to the project, either provided by you or the Employer.
- Check Collateral Warranties. If there is a specific date (other than upon completion of the works) then you will need to request that this is extended.
- Check Parent Company Guarantees, Performance Bonds and On-Demand Bonds for any specific notice, termination or force majeure provisions.



## Remember:

- Everyone is affected by the Covid-19 situation, Client, Employer, Project Manager and Supply Chain. Understanding that you're all in the same boat is important.
- Be open and honest with each other. Working together minimises unnecessary disagreements, as well as reducing the cost and delay effects of the project.
- Maintain good communication between all interfacing roles. Now is the time to act in the spirit of mutual trust and co-operation.

# Contract Specific Measures - JCT



For an **unamended** JCT contract, using the Standard Building Contract (SBC) as an example:

## Notification

Clause 2.27.1: Highlight the issue, refer to relevant clause if possible, state you will use best endeavours to mitigate delays.

## Further Particulars

Clause 2.27.2: Required at a later date. Unlikely many will know what the effect on their works is yet.

## Relevant Events (Clause 2.29): Claim Time But Not Money

**Statutory Powers (Clause 2.29.12):** the recent lockdown and other measures put in place may amount to the exercise of a statutory power not caused by the Contractor's default

***Example:** new policy introduced by UK Government or the local authority including but not limited to; travel restrictions, quarantine, lock down etc.*

**Force Majeure (Clause 2.29.14):** whether Covid-19 is a force majeure event is a topic of widespread comment at the moment and should be explored further.

***Example:** The impact on resources and supply chain caused by social distancing, self-isolation measures and carers leave etc*

## Relevant Matters (Clause 4.22): Claim Time And Money

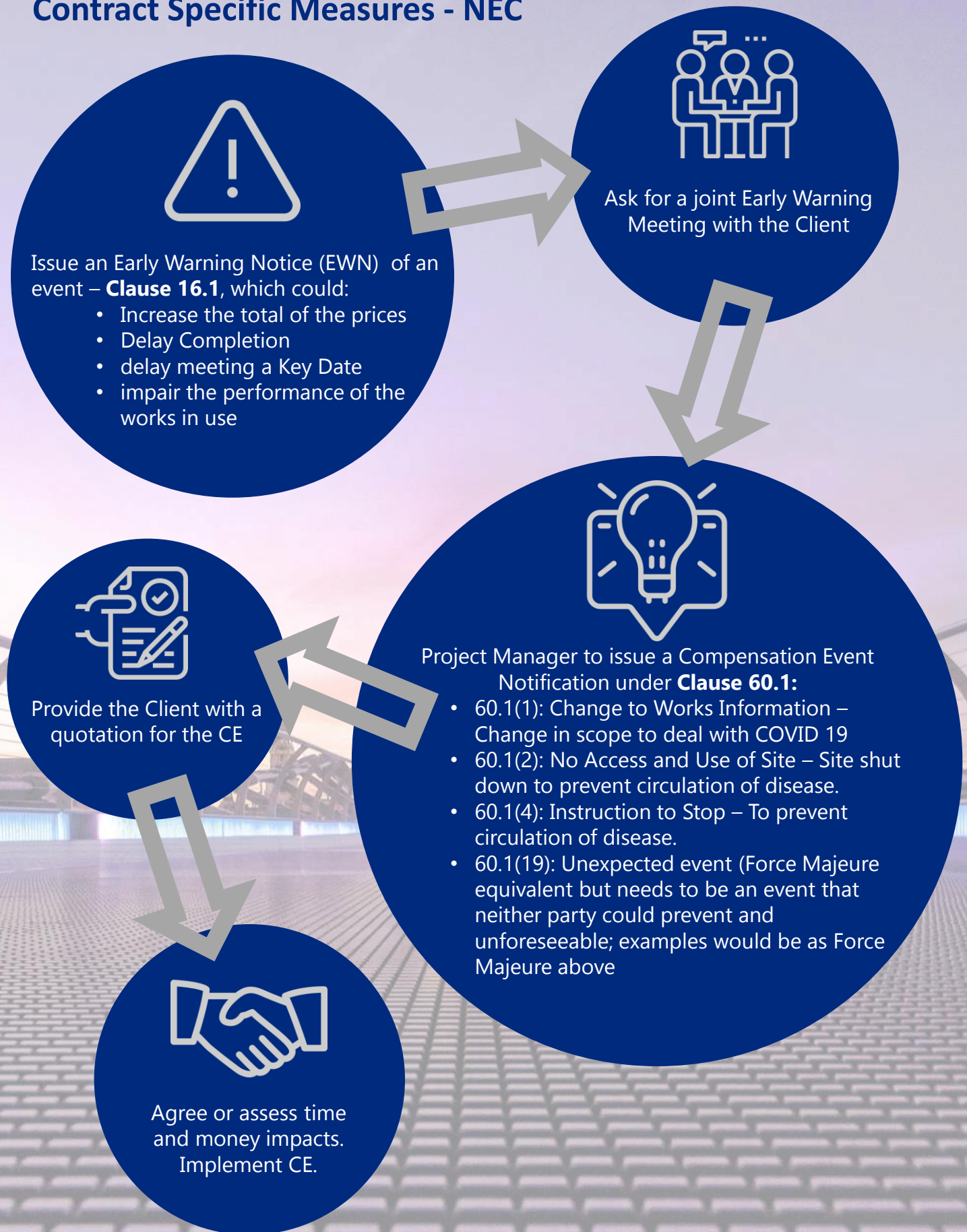
Unclear whether loss and expense can also be claimed, but consider:

**Variation (Clause 4.22.1):** It is arguable that if the Employer, Architect/Contract Administrator, etc issues an instruction that the site is now closed, this could amount to a variation

**Impediment or Prevention (Clause 4.22.5) by Employer:** This Clause is widely drafted as any impediment. If a site is closed at the Employer's decision (Especially if before government directives have been issued requiring this), it could be argued that the Employer has impeded progress.

**ALA remains fully operational and are available to provide contractual and commercial support to help you protect your position and preserve your entitlement.**

## Contract Specific Measures - NEC



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## And finally...



The Covid-19 pandemic means that the entire industry is in uncharted waters.



No one is quite sure how to act or how the time and cost impact of this issue is to be treated contractually or commercially.



It is likely that there will be a raft of court cases to clarify the proper application of these issues. Or perhaps there will some guidance from Parliament. At the moment, no one should be confidently making predictions on what will happen next.



All that can be done is to review your contract, take all steps that seem reasonable and prudent in the circumstances such as issuing notices to the best of your ability, and protect your position as best possible.



For those who are considering closing a site imminently, please also review our Practical Site Considerations document. If claims are to be compiled remotely, where for Covid-19-related issues or for other issues experienced on site, it is vital that you have all the resources in place to properly pursue entitlement.

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