



Construction A-Z – Extensions of time

What are extensions of time?

Construction contracts usually contain a ‘completion date’ (or sectional completion dates where sectional completion applies), which refers to the date by which practical completion should be achieved. However, it is common in construction projects for the progress of the works to become delayed due to reasons outside of the contractor’s reasonable control.

In such cases, a contractor may be entitled to apply for an extension of time (also known as ‘EOT’), which will allow them to complete the works within a determined period after the original completion date without being liable to pay the employer liquidated damages (or general damages for delay if liquidated damages are not included in the contract).

Extensions of time under the JCT contracts

A contractor has no statutory or common law entitlement to an EOT if it is late in delivering a project. Therefore, it must rely on specific contractual provisions governing the circumstances in which a contractor is entitled to an EOT.

The common law position is that if the employer causes a delay, e.g. by issuing an instruction varying the works, then time is set “at large”. This means that any contractual completion date disappears, and the contractor only needs to complete the works “within a reasonable time”. Further, any liquidated damages mechanism would no longer apply, and any compensation for late completion would be general damages only.

The [JCT suite](#) of contracts, along with most standard forms of construction contracts, contain express provisions for extensions of time, allowing for the date for completion to be extended where an event occurs which prevents completion of the works by that date. For example, clauses 2.23 to 2.26 of the JCT Design and Build Contract 2016 and clauses 2.26 to 2.29 of the JCT Standard Building Contract 2016 set out the regime for and a list of ‘Relevant Events’ which will entitle the contractor to an EOT. These ‘Relevant Events’ include:

- exceptionally adverse weather conditions;
- force majeure;

- work carried out by statutory undertakers;
- employer's failure to give access to the site;
- compliance with employer's instructions;
- acts of prevention by the employer.

The JCT contracts also include a separate list of circumstances ('Relevant Matters') entitling the contractor to claim additional payment for loss and expense. Loss and expense claims relate to the additional costs incurred by the contractor as a result of disturbance to the regular progress of the works. Where the same events are listed as Relevant Events and Relevant Matters, the contractor may be entitled to both an EOT as well as loss and expense if the works are delayed. This, for example, includes compliance with the employer's instructions.

The list of Relevant Events and Relevant Matters can be varied within a Schedule of Amendments either in favour of the Employer/Contractor, or to address project-specific concerns.

Procedures to apply for an extension of time – overview

The contract should set out the procedure that the contractor must follow to obtain an EOT. It is extremely important for the contractor to meticulously follow the procedure described in the contract provisions, as any failure to do so could result in the employer challenging the validity of an application for an EOT. It is also crucial to keep thorough and accurate records of what is happening on-site and when in order to prove (or dispute) the contractor's entitlement to an EOT.

Contractor to notify the employer of the delay event

Usually, the first step of any such procedure is for the contractor to notify the employer that a 'delay event' has occurred, which it considers will cause (or is likely to cause) a delay, meaning that the works will not be completed by the completion date. The contractor should also set out an estimate of the expected delay, but the level of detail to be included in this initial notice will vary depending on the provisions of the contract.

In some cases, the contract may simply require the initial notice to alert the employer of the cause(s) of the delay and provide that the contractor shall submit further details and supporting documents in due course. More robust procedures may require the contractor to provide all information in one application, i.e., alerting the employer, providing details of the nature of the delay event(s), and predicting the impact on the progress of the works.

Some contracts, such as NEC and FIDIC, also require the contractor to notify the employer of the delay event(s)

within a certain defined period of time after becoming aware of such event (8 weeks or 28 days, for example). The JCT contracts only provide that the contractor should notify the employer 'forthwith' once it becomes reasonably apparent that the progress of the works is, or will be, affected, but it is not uncommon for the employer to amend this to insert a specific period of time.

Employer to respond to the contractor

Following the contractor's notice, the employer (or its agent) will consider the application and respond to the contractor indicating whether it will award an EOT and fix a new completion date. The contract may require the employer to respond to the contractor within a certain period of time, for example the JCT contracts require the employer to respond to the contractor as soon as is reasonably practicable and in any event within 12 weeks.

Tip – What should you consider when applying for an EOT?

Before entering into a contract, the parties should always carefully review the grounds on which the contractor is entitled to an EOT and adapt the wording on a project-specific basis. Particularly, it may be worth extending the list of circumstances where the contractor can claim an EOT to include more global phenomena which could impact the progress of the works, such as armed conflicts, pandemics, Brexit, etc.

As mentioned above, it is important to strictly follow the regime set out in the contract for claiming an EOT (and responding to any such applications), in particular, the relevant timing requirements and content of the notice/response. Depending on the precise contract requirements, a prudent contractor's notice ought to contain:

- the facts of the delay event;
- why the matter is a delay event under the provisions of the contract;
- how the delay event impacted on the works;
- how the delay event impacted on the programme, sequencing of the works, etc;
- the period of delay caused to the completion date.

Ensuring good record-keeping throughout the project will be useful when gathering evidence, which may be requested by the employer.

Finally, the contractor may be required under the contract to use reasonable or best endeavours (potentially requiring them to contribute resources and incur cost if necessary) to mitigate the impact of the delay, so it is

important to take all the necessary and possible steps to limit the impact of the delay event on the progress of the works.

If you would like further advice on construction contracts, please get in touch with our [construction](#) team via email at amy.lewis@la-law.com or call [023 8082 7502](tel:02380827502).