



GUIDANCE Note

BREXIT Risk Assessment

The UK was granted an extension to the Article 50 withdrawal period until 31 October 2019. The terms of the extension note that it should last only as long as necessary, and no longer than 31 October 2019.

This guidance note is intended to provide practical considerations for ECA Members in the coming weeks as to what level of risk their business may face as the UK prepares to leave the EU on 31 October 2019.

Brexit Risk Analysis for engineering services contractors

- Background
- Commercial considerations
- Government guidance
- Economic outlook
- Supply chain audit
- Existing contract audit

1. Background

The UK gave formal notification to the European Council of its intention to withdraw from the EU under Article 50 of the Treaty on European Union (TEU). Article 40 TEU provides a two-year period to negotiate the terms of the UK's withdrawal. This period may be extended by unanimous agreement. Article 50 TEU regulates the process by which the EU negotiates a withdrawing Member State's political withdrawal from the EU. It does not set out the detail of this process and future trading arrangements are dealt with separately under Article 218(3) of the Treaty on the Functioning of the European Union (TFEU).

The UK was granted an extension to the Article 50 withdrawal period until 31 October 2019. The terms of the extension note that it should last only as long as necessary, and no longer than 31 October 2019.

The Withdrawal Agreement may enter into force on an earlier date if approval and ratification procedures are completed sooner. On this basis, UK withdrawal would come into effect on the first day of the month following the completion of the ratification procedures or on 1 November 2019, whichever is the earliest.

Arguably, withdrawal is therefore separate to re-engagement and any agreement between the UK and the EU regarding its future trading arrangements should be made only once the withdrawal process has been completed and the UK becomes a third-state.

However, negotiations and arrangements for withdrawal under Article 50 TEU should take into account the 'framework' for the UK's future relationship with the EU. Without any precedent it is not clear to what extent. Not being in the EU may also mean the UK has to negotiate separate

deals with those countries which already have an overarching trade deal with the entire EU trade area.

Former Prime Minister Theresa May confirmed that the UK would not look to adopt an existing model or continued membership of the EU Single Market (on a permanent or transitional basis), but would seek the greatest possible market access on a fully reciprocal basis via a new free trade agreement with the EU. In addition, Theresa May warned that the UK will not want to be fully bound by the Customs Union common policy and external tariff, but will seek some form of bespoke customs agreement with the EU.

The UK government has so far made it clear that it is not seeking to adopt a relationship with the EU 'off the shelf', based on an existing model already in place between the EU and other third countries. Instead, it is seeking a unique strategic partnership with the EU, including an ambitious and comprehensive free trade agreement and a new bespoke customs arrangement. The government's red lines thus far for the future relationship include ending:

- freedom of movement for EU citizens into the UK
- jurisdiction of the Court of Justice of the European Union in the UK
- current contributions to the EU budget from the UK

In effect, these red lines mean the UK leaving the EU Single Market and the Customs Union.

Theresa May had set out five key tests for the future economic partnership between the UK and EU, which must:

- respect the EU referendum result—allowing the UK to regain control of its borders, laws and money
- endure after Brexit—to build a sustainable partnership without having to return to the negotiation table
- protect jobs, prosperity and security—cooperating to grow our respective economies and maintain our security
- strengthen union within the UK—acknowledging the PM's duty to represent the whole of the UK regions and devolved administrations
- align with the UK vision for a modern, open, outward looking and tolerant democracy

Under transitional arrangements agreed in principle and set out in the draft of the withdrawal agreement, the UK would continue to apply EU law, so that trade between the UK and EU would continue on current terms post-Brexit while new trade arrangements are finalised. The UK government's expectation is that the future relationship will be operational by the end of the transition/implementation period (ending March 2021), but it has also committed a backstop protocol to avoid a hard border between Northern Ireland and Ireland in any event. During this time, the UK Government would have no voting rights, and would have to impose new EU rules into UK law.

In the short term, even with a new Prime Minister, we must assume that while the UK hopes to negotiate the terms of withdrawal and reach agreement on the framework of its future relationship with the EU before the end of the Article 50 withdrawal period, with arrangements for a phased implementation (and transitional arrangements based on continuing existing arrangements until March 2021), it cannot be guaranteed that this will be achieved.

However, the current position is that a 'No Deal' scenario looms following the vote of the House of Commons, as the Brexit date is enshrined in UK law. There are a number of alternative approaches which may be pursued by British politicians in the meantime, but as of now, none have both Government support and a parliamentary majority in the House of Commons.

2. Brexit: planning – commercial considerations

Members should therefore consider the implications of Brexit on their businesses as they move through 2019 and beyond, including:

Business Risks

- Consider any purchasing, contract or other trading risks which could be affected by currency fluctuations. Currency fluctuations would impact on both input and output pricing and may also impact on any shareholder tax avoidance/parent company structures.
- If you receive any grant or other funding through the EU, you will want to contact the grant administrators to ensure funding will: (a) continue; and (b) continue under the same regulatory framework.
- When carrying out a supply chain mapping exercise, identify key/critical supply chains. Remember that suppliers that are sourced directly, or reliant on free movement from or through the EU and/or its nationals, should therefore include any project-specific requirements which could be affected by Brexit, such as:
 - products
 - services
 - labour
- Having identified key/critical suppliers, ask those suppliers about their own '*Brexit readiness*' plans and considerations and any assurances or undertakings as to the availability of key products, services or labour which will be directly or indirectly affected.
- Assess the company cash-flow position, to help deal with any increased supplier prices.
- Consider whether it is feasible to retain a stock pile of certain categories of products to help you manage the transition period in case of delays in critical supplies.

New work

- When tendering for projects, consider carefully, where projects are funded from overseas, any increased risk to the project being withdrawn. Also, carry out similar due diligence on your clients and their clients to ensure the source of your cash-flow is from within the UK and stable.
- Assess any tenders, contractual opportunities or ongoing contracts for the ability to vary prices on the basis of changing materials, labour or tax implications.
- Similarly, check contracts for your ability to recover both time and money where Brexit causes disruption to either your labour or materials, including:
 - Public sector
 - Consumer
 - Direct to end client contracts
 - Sub-Contracts
 - Sub-sub-Contracts
 - Framework/call-off/term works or maintenance contracts.

Note: there are likely to be many more considerations if a contractor is also a direct importer of goods from the EU.

3. Government Guidance

Although there is only a short time to go before the UK leaves the EU without a deal, the Government has stated "*the Government's priority is securing agreement on a deal but it is sensible that we and you take steps to mitigate risks that will arise in the event of no deal*".

As a result they have issued an EU Exit Readiness Online Tool with 7 questions which will automatically direct you to relevant Government published guidance documents on how a no deal

Brexit will impact matters such as: Accessing public sector contracts, VAT for businesses, or supporting EU citizens in applying for the EU settlement Scheme as an Employer.

<https://www.gov.uk/business-uk-leaving-eu>

HMRC Partnership Pack – December 2018

HMRC published a revised [Partnership Pack](#) which has specific advice to businesses on what planning is needed now to carry on importing and exporting in the event of a no deal. The bulk of the pack promotes the following actions/online guides:

- Get a UK EORI number to trade within the EU
- Ensure that your contracts and International Terms and Conditions of Service (INCOTERMS) with EU suppliers and customers can be amended to reflect that you would be an importer/exporter – they have therefore released an [import and export procedure step-by-step process guide and related guidance including checking goods, tariffs, licences and paperwork](#)
- Moving goods to and from the EU through roll-on roll-off road freight, including Eurotunnel
- Changes to business VAT
- Moving goods currently regulated at EU level, such as those with CE markings
- Guidance for controlled goods and materials requiring import/export licences, including certain categories of chemicals (see ‘Specialist Traders’ section at pages 78-99)

Do you intend to process your own customs declarations and/or need changes to your IT systems to comply with customs processes?

If so, you may wish to apply for funding to help you train staff or update systems. Further details are available [here](#).

Immigration White Paper

The Home Office has published the future skills-based immigration system [white paper](#) which sets out the Government’s plans to introduce a new single immigration system, ending free movement. This also contains a proposal for a minimum salary threshold of £30K. The paper is currently out to consultation.

Information for Businesses on Data Protection

In the event of a no deal, UK businesses will need to ensure they continue to be compliant with data protection law.

For UK businesses that operate only within the UK there will be no immediate change.

For UK businesses that operate internationally or exchange personal data with partners in other countries (including cloud-based backup systems) there may be changes that need to be made ahead of the UK leaving the EU to ensure minimal risk of disruption. It is important for businesses to review whether they would be affected.

For those that would be affected, early action is advised as changes may take some time to implement.

You can find further information on data protection in the context of a ‘No Deal’ in the [Government’s Technical Notice](#). A policy statement on these issues giving further detail has also been [published recently](#). Government recommends that all businesses read over these documents carefully and follow the [guidance on these issues](#) that has been published by the Information Commissioners Office.

4. Economic outlook: Stats on the true picture for construction goods and materials

According to the January 2018 release by the Government ONS data service:

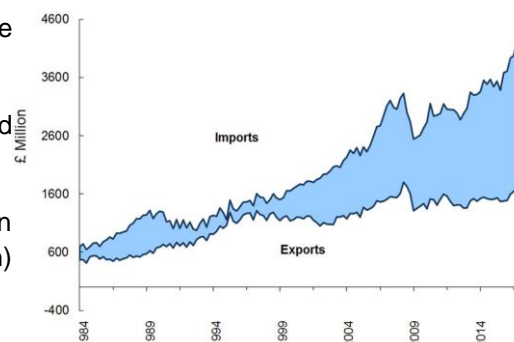
Exports and imports of construction materials, mapped against the value of British pound sterling, looks like this:

Imports of construction materials increased by £56 million (1.26%) in the third quarter of 2018 (to £4,512 million) compared to the previous quarter.

Exports of construction materials increased in the third quarter of 2018 by £52 million (to £1,963 million), a 2.7% increase.

As a result, the trade deficit widened by £4.52 million to £2,550 million in Quarter 3 2018, a decrease of 0.2%.

The trade deficit was historically at its smallest throughout the 1990s, with a mean of £0.3 billion over this period. This trade deficit was 24% of the value of imports. Currently (Quarter 3 2018), the trade deficit is £2,550 million, 57% of the value of imports.



Top-5 Exported and Imported Construction Materials in 2017				
£ million	Top-5 Exported Materials		Top-5 Imported Materials	
<p>The top five exported materials in 2017 accounted for 38% of total construction material exports and are dominated by items relevant to the engineering services sector.</p> <p>The top five imported construction materials in 2017 accounted for 30% of total construction material imports and are also dominated by items relevant to the engineering services sector.</p>	Electrical Wires	855	Electrical Wires	1,928
	Paints & Varnishes	669	Lamps & Fittings	991
	Plugs & Sockets	430	Sawn Wood > 6mm thick	859
	Lamps & Fittings	381	Air Conditioning Equipment	663
	Air Conditioning Equipment	374	Central Heating Boilers	641

UK Trade of Construction Materials with EU and Non- EU Countries, 2017			
£million (% of total trade)			
<p>Compared to pre- recession levels in 2007, the share of total UK construction material exports going to the EU has declined from 70% to 61%.</p>	All Building Materials & Components	EU	Non EU
	Imports	10,276	6,710
		60%	40%
	Exports	4,357	2,760
		61%	39%

Top 5 UK Export and Import Markets for Construction Materials in 2017				
<p>The top five export markets comprised 50% of total construction materials exports in 2017. The Republic of Ireland remains the largest market,</p>	Top-5 Export Markets	£million	Top-5 Import Markets	£million

despite having shrunk from a pre- recession peak of 27% of total exports in 2007, to 15% in 2017.	Republic of Ireland	1,037	China	2,849
	Germany	778	Germany	2,477
The top 5 import markets comprised 48% of total construction materials imports in 2017. 17% of all imports are from China.	USA	594	Italy	1,081
	France	590	Netherlands	847
	Netherlands	565	Spain	845

As the value of imports is more than double the value of exports, construction therefore operates at a trade deficit.



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BREXIT Risk Assessment

5. Supply chain audit

Commercial Risks		
Product, Input or Service	Possible Issues, Industry Comment and Mitigation	Risk Register Low/Med/High
Currency fluctuations	Currency fluctuations would impact on both input and output pricing and may also impact on any shareholder offshore/tax avoidance/parent company structures.	
Funding opportunities	If you receive any grant or other funding through the EU, you will want to contact the grant administrators to ensure funding will: (a) continue; and (b) continue under the same regulatory framework.	
Availability and delivery of materials	<p>The top five exported materials in 2017 accounted for 38% of total construction material exports and are dominated by items relevant to the engineering services sector. Whereas the top 5 imported construction materials in 2017 accounted for 30% of total construction material imports and are also dominated by items relevant to the engineering services sector, such as electrical wires, plugs & sockets, lamps & fittings, air conditioning equipment, central heating boilers.</p> <p>The top 5 import markets comprised 48% of total construction materials imports in 2017. 17% of all imports are from China. Which means that 40% of total construction materials imports in 2017 are from Germany, Italy, Netherlands and Spain.</p> <p>Stocks: The ordering of standard items of material and plant is often done just in time, which means that the UK suppliers have to hold a sufficient stock of product in UK warehouses. In order to militate against any delays at the ports under a no deal scenario, ask your UK suppliers to confirm that they will monitor supply and demand to ensure they continue to hold sufficient stocks.</p>	

	Tariffs: If UK – EU trade moved to WTO rules under a no deal scenario, import duties may change.	
Availability and delivery of labour	<p>Recent data suggests that in engineering services, contractors directly employ approximately 70 to 75% of their workforce and circa 14% of the workforce are EU nationals.</p> <p>What percentage of your labour is directly employed?</p> <p>What percentage of your contracts are sub-contracted – including labour-only self-employed?</p> <p>What percentage of your labour is supplied through non directly–employed systems, e.g. agency?</p>	
Plant and equipment availability	<p>Delays at ports: For some items of (especially where bespoke) plant and machinery a long term, high value capital purchase is involved will not be affected by any short-term customs delays. If the UK leaves without a deal, UK– EU trade moves to WTO tariffs, it is expected that any import duties would be consistent with present WTO figures, but international supply of goods contracts often put the risk of changes in law/currency with the buyer.</p> <p>Stocks of spare parts: Manufacturers provide service contracts for plant and machinery purchased by contractors that supply and install. They already hold stocks of spare parts in the UK. In order to militate against any delays at the ports, you should get confirmation that they will monitor the situation carefully to ensure they continue to hold sufficient parts in their UK warehouses (although this may be of little contractual comfort).</p> <p>Service engineers: Most service engineers are already located in the UK. Occasionally, additional service engineers may be brought in from the EU or elsewhere, meaning that the manufacturers should already familiar with UK visa processes, but will need to prepare for any changes that may ensue.</p>	
Contracts Audit		
Risk	Possible Issues, Industry Comment and Mitigation	Risk Register Low/Med/High
Time/Money	<p>Check contracts for your ability to recover both time and money where Brexit causes you delay and disruption to either your labour or materials.</p> <p>JCT Relevant Events give you grounds for claiming extra time, and Relevant Matters give grounds for claiming direct loss and expense. Under the published terms, you only have grounds for which you can claim time, but not money if ‘exceptionally adverse weather’. Under a Minor Works where you can claim delay due to ‘circumstances beyond your reasonable control’, your ability to claim an extension may be relatively simple – although you are, given the two year Article 50 notice period for departure from the EU, under a duty to mitigate delay, i.e. do that which is reasonable to minimise the delay. Otherwise, you will have to rely on <i>the exercise after the Main Contract Base Date by the United</i></p>	

	<p><i>Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Sub-Contractor or any Sub-Contractor's Person but which directly affects the execution of the Main Contract Works.</i></p> <p>NEC Compensation events – events that lead to an ability to claim both time and money - will similarly need to be examined for the scope to claim either.</p> <p>Similarly, check all other contracts for your ability to recover both time and money where Brexit causes you disruption including:</p> <ul style="list-style-type: none"> • Supply only contracts • Franchise/ agency contracts • Public sector • Consumer • Direct to end client contracts • Sub-Contracts • Sub-sub-Contracts • Framework/call-off/term works or maintenance contracts. 	
Fluctuations	<p>When tendering for projects consider carefully, where projects are funded from overseas, any increased risk to the project being withdrawn. Also, carry out similar due diligence on your clients and their clients to ensure the source of your cash-flow is from within the UK and stable.</p> <p>Assess any tenders, contractual opportunities or ongoing contracts for the ability to vary prices on the basis of changing materials, labour or tax implications.</p> <p>JCT</p> <p>The JCT Standard Building Contract (SBC) and Design and Build Contract (DB) and corresponding sub-contracts provide for three fluctuations options:</p> <ul style="list-style-type: none"> • Option A (Contribution, levy and tax fluctuations) — allows the contract sum to be adjusted where contributions, levies or taxes payable in the contractor's capacity as an employer of workers change. In addition, if there is any change to rates of tax or duty payable on materials, goods, electricity, fuels, materials taken from the site, or other solids, liquids or gases used to execute the works, then the contract sum can also be adjusted. 	

- Option B (Labour and materials cost and tax fluctuations) — this option should be used where the parties have agreed to allow for labour and materials costs and tax fluctuations. If the cost of labour, which includes rates of wages and other expenses including holiday credits (and also contributions, levies and taxes payable as an employer), increases then the contractor is reimbursed. This will only really be applicable in practice - therefore where there are unions involved or other bodies which fix standard rates of wages etc.
- Option C (Formula Adjustment) — this option can be used where the parties agree that the contract sum will be adjusted in accordance with the JCT Formula Rules current at the base date. The Rules set out various formulae which may be applied to different work categories and also clarifies which amounts payable under the contract will not be subject to adjustment. Under the 2011 edition, where fluctuations Option C applies, the quantity surveyor must make an interim valuation before the issue of each interim certificate (clause 4.10.2 of the SBC 2011).

Fluctuations Options A and B also provide for the main contractor to incorporate fluctuations provisions in its sub-contracts (paragraphs A.3 and B.4 respectively).

In the 2011 editions of the contracts Options A, B and C are set out in schedule 7.

The 2016 editions of the contracts only set out Option A (in schedule 7), however the Contract Particulars make it clear that Options B and C can still be utilised, and the 2016 editions of these Options are available on the JCT website.

In both the 2011 and 2016 editions, there is also provision in the Contract Particulars for the parties to specify their own fluctuation or cost adjustment formula.

If no fluctuations option is selected in the 2011/2016 or 2011/2016 contracts then Option A automatically applies.

Clauses provided that fluctuations will be dealt with as provided for in the Schedules, and it was therefore common for schedules of amendments to delete the relevant clause and the whole of the relevant Schedules.

The JCT 2016 does not have an equivalent provision—the election to exclude fluctuations is now made in the Contract Particulars.

If the parties intend to incorporate one of the fluctuations options, they have to include additional details in the Contract Particulars. The relevant percentage addition for Options A and B is to be inserted in the Contract

Particulars and for Option C the 'base month' for the Formula Rules will also need to be included along with any non-adjustable element.

If the contractor is in delay in completing the works, where Option A or B applies, there is no price adjustment after completion date (paragraphs A.9.1 and B.10.1 respectively). If Option C is selected, any adjustment made after the intended completion date is made on the same basis of the adjustment as at the completion date, so that the contractor does not benefit from any rise in price after it should have completed the works.

The Intermediate Building Contract 2011/2016 and Minor Works Building Contract 2011/2016 also allow for fluctuations but only for contribution, levy and tax fluctuations (i.e. Option A in the larger contracts).

NEC

The price payable under the NEC3/NEC4 Engineering and Construction Contract can be adjusted for inflation by selecting Option X1 in the secondary option clauses. Option X1 should be selected if the employer agrees to accept the risk of inflation.

This option can only be selected where the parties are using main pricing Option A (priced contract with activity schedule), B (priced contract with bill of quantities), C (target contract with activity schedule) or D (target contract with bill if quantities).

Option X1 is irrelevant to pricing Options E and F (cost reimbursable and management contracts) as the employer already takes the risk of inflation because the current cost payable under those contracts will take account of changes in price since the contract was signed.

Where Option X1 is selected the parties need to insert into the Contract Data:

- the products which will be subject to adjustment (e.g. equipment, plant, fuel, etc)
- the proportion of the total value of the works to be linked to the index for each of the products (which should add up to 1 in total—including any non-adjustable element for which the contractor bears the risk of inflation)
- the base date for the indices
- the identity of the organisation that publishes the indices

	<p>To adjust the prices for inflation, the parties calculate a 'price adjustment factor' by applying a formula, in the relevant proportions, using the latest available index before the base date, and the latest available index before the relevant date of assessment (clause X1.1). Clauses X1.3 and X1.4 in NEC4 cover how the price adjustment is made for Options A/B, and C/D respectively (the equivalent clauses in NEC3 are X1.4 and X1.5).</p> <p>For any price adjustments after the date that the contractor should have completed the works, the parties use the price adjustment factor calculated at the intended completion date. The contractor therefore takes the risk of inflation where it is in delay (clause X1.2).</p> <p>Clause X1.5 in NEC4 (X1.3 in NEC3) deals with assessing the defined cost in the event of a compensation event using the price adjustment factor.</p> <p>Under NEC4, where there is a change in an index that has been used in the price adjustment factor calculation, the calculation is not repeated using the new index—unlike NEC3 which required the calculation to be redone with the new index.</p>	
Price	Most prices are fixed, but for adjustment or re-valuation, but you may wish to consider in term, maintenance, call-off or framework arrangements at least, ensuring a pricing mechanism is linked to RPI or CPI.	
Termination	<p>If your contracts have a right for the other party to terminate at will – which should be removed as highly onerous in any event – you will need to keep immaculate records for contract management and manage the relationship so that this clause does not get utilised if Brexit issues cause the parties to disagree. Once you have completed your internal Brexit analysis and put in place a risk management strategy, you might wish to consider sharing the headline strategy with your most valued clients by way of reassurance.</p> <p>NEC3 provides for termination at will, by the employing party. In NEC4, this provision is an option.</p>	
Change in law/statutory requirements	You should review changes of law and technical standards clauses in your existing contracts and ascertain who will be expected to take the costs of such a risk.	
<p><i>ECA wishes to identify and inform the engineering services sector and ECA Members' decisions on what represents 'fair, reasonable and good contractual practice'. ECA remains committed to fair and open competition and this document is not designed to in any way dictate what may be an appropriate risk allocation, or act as a substitute for ECA Members obtaining project and context specific legal advice and making their own commercial decisions.</i></p>		

6. Contract audit

a. Do I need special Brexit drafting?

This depends on the nature of the contract, but certainly parties should now be considering it for any contract which will be in force after Brexit occurs, or which is likely to be sensitive to Brexit-related developments in the intervening period. It will be most important for contracts where the cost of performing the contract, or the ability to perform the contract, is likely to be negatively impacted.

b. What is the purpose of a Brexit clause?

Any Brexit contract drafting should:

- trigger a change in the parties' rights and obligations as a result of the defined event occurring.
- If the parties consider that the impact will be wide-ranging, it could involve a requirement that the parties attempt to renegotiate the affected parts of the contract.
- it may attempt to define certain consequences arising from specific events surrounding, labour, materials and/or other supplies.

A Brexit clause is not much different from any other type of clause which seeks to make provision for what happens when the legal or commercial environment is subject to change during the currency of the contract. The risk of a change in circumstances as a result of Brexit is likely to affect contractors much more than employers.

c. How prescriptive should I be?

It is unlikely that you will be able to anticipate every eventuality that may arise. There are two basic options:

- identify a specific event or events, and provide for a consequence to follow, for example the specified event could be a currency fluctuation, for which the consequence would be a price adjustment; or
- identify a trigger or triggers, following the occurrence of which the party affected is able to request a negotiation. If the renegotiation is unsuccessful, the party affected has the option to terminate.

Option 1 is generally going to be more acceptable than Option 2; very few employers would want the risk of being faced with a choice between accepting less favourable terms than the original contract, or facing an early termination. Equally, contractors may not want the uncertainty of not knowing if they will be able to conclude a successful renegotiation.

d. What about existing clauses - 'force majeure'?

Although construction clauses often contain 'force majeure' clauses, which operate in circumstances where performance of the contract is rendered impossible by circumstances beyond the control of the parties, these are unlikely to assist with the effects of Brexit. Force majeure clauses are generally drafted for a temporary situation which could not have been anticipated when the contract was entered into. The effects of Brexit are something that the parties arguably should be planning for.

Any party seeking to claim force majeure would be looking to show that it is excused from its contractual obligations as a result of a disruptive event outside that party's reasonable control. A

force majeure clause will usually include a list of stated examples and, although it is very unlikely that contracts entered into pre-Brexit will include specific reference to the UK's exit from the EU, there may be a more generic listed example under which it could be said to fall, e.g. 'the act or order of any governmental or regulatory body'.

Importantly, in order to claim force majeure, a party must show that there were no reasonable steps that could have been taken to avoid or mitigate the event or consequences. Further, the performance has to have become physically or legally impossible, not merely difficult or unprofitable. Therefore force majeure is likely to allow for Brexit unless expressly provided for.

Although it is unlikely that any specific drafting would have been included in contracts signed prior to the vote result, there may be rights to terminate for convenience or break clauses which can be triggered. Otherwise, there may be clauses providing for termination in the event of material adverse change or similar.

e. Fluctuations clauses

Fluctuations clauses are used in long term contracts to deal with the impact of a change in, for example, costs of supply of labour, materials, changes in regulations, exchange rates, or interest rates.

Where fluctuations clauses are included in a construction contract, the contractor could be entitled to be reimbursed some or all of any additional costs caused by rising prices.

Calculating the increased cost may be achieved by using an index based formula, or by using a published list of market prices for various items.

Due to low rates of inflation in the UK for several years, generally fluctuations provisions have been deleted from the standard forms through bespoke amendments, and it would be unusual to see fluctuations provisions included in contracts for most projects.

However, uncertainty surrounding Brexit has led more contractors to request fluctuations' provisions.

For help and assistance with the contents of this document or its implementation within your business please email c&c@eca.co.uk or ring 0207 313 4800.



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ECA, Rotherwick House, 3 Thomas More Street, St. Katharine's & Wapping, London E1W 1YZ
Tel: 020 7313 4800 Email: info@eca.co.uk www.eca.co.uk

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