

**SUSPENSION RIGHTS:
DIVERGING PATHS
IN THE UK AND IRELAND**

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SUSPENSION RIGHTS: DIVERGING PATHS IN THE UK AND IRELAND

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Introduction

Suspension of works remains a dispute-prone right in construction contracts. It affects progress, disrupts sequencing, and carries financial and reputational consequences for all parties involved. Yet the right to suspend is not uniform: its availability and effect depend on the interaction between common law principles, statutory intervention, and the drafting of the contract itself.

At common law, suspension has no place unless expressly agreed. The legislative reforms that followed Sir Michael Latham's 1994 report sought to address this imbalance by introducing statutory rights to suspend for non-payment and to adjudicate disputes swiftly. The United Kingdom and Ireland have since adopted comparable but distinct regimes, each reflecting different policy choices about cash flow, performance, and proportionality.

This paper examines how those statutory rights operate alongside two contrasting standard forms: the NEC4 Engineering and Construction Contract, founded on cooperation and proactive risk management; and Ireland's Public Works Contract for Building Works Designed by the Employer (PW-CF1), which prioritises price certainty and administrative control. The comparison highlights how legislative intent and contractual philosophy together shape the fairness and practical use of suspension within modern procurement frameworks.

Common law and statutory context

At common law, the right to suspend performance does not exist unless it is expressly provided for in the construction contract. While specific contracts may grant contractors explicit rights if payments are not made, there is typically no general right under common law to suspend works if payment is unjustly withheld.¹

Any suspension undertaken without clear contractual authorisation is therefore likely to constitute a breach of contract.² This position reflects the traditional

¹ John Uff, *Construction Law* (13th edn, Sweet & Maxwell 2021).

² *ibid.*

principle of freedom of contract and the courts' reluctance to imply rights that alter the parties' agreed risk allocation.

This principle was tested in the English case of *Hall v Van Der Heiden*,³ where the contractor suspended works after being notified by the Architect that 'no further sums were due'.⁴ In this case, the contract required the contractor to give notice before suspending work, identifying the amount claimed and allowing the employer seven days to pay.⁵ The contractor failed to comply with this procedure, and the court held that the suspension and abandonment of the site amounted to a repudiatory breach.⁶ The same reasoning appeared in *Energy Works v MW High Tech*,⁷ which confirmed that there is no general right to suspend performance for non-payment under English common law. Together, these cases illustrate that suspension rights must be based on clear contractual wording.

To address this gap, the statutory right to suspend for non-payment was introduced by the Housing Grants, Construction and Regeneration Act 1996 (the 1996 Act). The change was prompted by Sir Michael Latham's report in 1994, entitled *Constructing the Team*,⁸ which recommended the improvement of payment certainty and support of cash flow throughout the construction supply chain, encouraging the government to introduce legislation that regulated construction contracts by promoting payment certainty.⁹ The Act created two important statutory mechanisms: the right to adjudicate disputes under section 108, and the right to suspend work for non-payment under section 112.¹⁰

Section 112 of the 1996 Act grants the contractor the right to suspend performance of any or all of the works for non-payment of a due sum.¹¹ The section also prescribes that the contractor must give at least seven days' notice of intention to suspend, specifying the ground relied upon (i.e. non-payment of a notified sum).¹² The right ceases once full payment is made.¹³ Furthermore, the contractor is entitled to a reasonable extension of time and to recover reasonable costs and expenses incurred as a result of the suspension, and the suspension period is excluded from any contractual completion period.¹⁴

³ *Hall v Van Der Heiden* [2010] EWHC 586 (TCC).

⁴ *ibid*, para [55].

⁵ *ibid* para [8(g)].

⁶ *ibid* para [56].

⁷ *Energy Works (Hull) Ltd v MW High Tech Projects UK Ltd* [2022] EWHC 3275 (TCC).

⁸ Michael Latham, *Constructing the Team: Joint Review of Procurement and Contractual Arrangements in the UK Construction Industry* (HMSO, 1994).

⁹ Lukas Klee, *International Construction Contract Law* (2nd edn, Wiley Blackwell 2018).

¹⁰ *ibid*.

¹¹ Housing Grants, Construction and Regeneration Act 1996 s 112(1).

¹² *ibid* s 112(2).

¹³ *ibid* s 112(3).

¹⁴ *ibid* s 112(3A)–(4).

A comparable framework applies in Ireland under section 5 of the Construction Contracts Act 2013 (the 2013 Act), applicable to contracts entered into after its commencement on 25 July 2016.¹⁵ The Act provides that:

‘Where any amount due under a construction contract is not paid in full by the day on which the amount is due, the executing party may suspend work under the construction contract by giving notice in writing under subsection (2).’¹⁶

The 2013 Act mirrors the 1996 Act in requiring written notice and in obliging the contractor to resume work once payment is made. However, the Irish statute extends this obligation also when the dispute has been referred to adjudication,¹⁷ reflecting the Act’s overarching intent to prioritise continuity of performance. Like its UK counterpart, the period of suspension is disregarded for contractual time-limit purposes.

Despite these similarities, two material distinctions arise. First, the 2013 Act does not expressly entitle the suspending party to recover costs or losses incurred because of suspension. Any recovery must therefore depend on express contractual provisions. Secondly, the Irish right to suspend is limited by the Act’s close linkage to the adjudication mechanism, indicating a legislative preference for early resolution of disputes.

While the two regimes share the same intent – to promote fair payment and reduce financial risk in the supply chain – their practical effects differ. The UK framework offers more robust statutory protection by combining the right to suspend with the right to recover costs, giving contractors a clear statutory remedy when payment is withheld. The Irish approach, by contrast, provides a weaker remedy for the defaulted party, as it neither grants automatic cost recovery nor expressly protects contractors’ financial position during suspension. These distinct legislative approaches can influence the balance of interests between employers and contractors and, consequently, shape the strategies adopted to address suspension.

In practical terms, the UK framework affords contractors a broader statutory safety net, enabling recovery of demobilisation costs, idle labour, plant, and extended preliminaries associated with suspension. By contrast, the Irish statute’s silence on these heads of cost leaves contractors dependent on the contract’s payment and suspension clauses, as the statute alone may not be sufficient to safeguard their position.

¹⁵ As per S.I. No. 165/2016 – Construction Contracts Act 2013 (Appointed Day) Order 2016: The 25th day of July 2016 is appointed pursuant to section 12(2) of the Construction Contracts Act 2013 (No. 34 of 2013) and that Act shall apply in relation to construction contracts entered into after that date.

¹⁶ Construction Contracts Act 2013 s 5(1) (Ir).

¹⁷ *ibid* s 5(3)(b).

The NEC4 Engineering and Construction Contract (NEC4 ECC)

The New Engineering Contract (NEC), developed by the Institution of Civil Engineers, was first produced in 1991 and endorsed in Sir Michael Latham's 1994 report *Constructing the Team* for its purpose to establish a framework that promotes effective project management, fosters collaboration, and simplifies contractual administration.¹⁸

As observed by Rob Horne in Lukas Klee's *International Construction Contract Law*, the NEC contract is structured around three guiding principles: clarity and simplicity, flexibility, and good project management, all reinforced by the obligation to act 'in a spirit of mutual trust and co-operation'.

NEC Contracts marked a shift from traditional contracts focused on legal rights and liabilities towards a management-driven approach centred on collaboration, proactive risk management, and transparent communication. Mechanisms such as the programme, early warning, and compensation events are intended to anticipate and mitigate risks before they escalate into disputes.¹⁹

Although the first edition pre-dated the Housing Grants, Construction and Regeneration Act 1996, later versions incorporated the statutory adjudication and payment provisions required under that legislation.²⁰ The most recent suite, NEC4, issued in 2017, is intended for use across the full range of engineering and construction activities, including those excluded from the Act, thereby adapting it for wider international use.²¹

Suspension under the NEC4 ECC

Whilst NEC4 ECC does not expressly refer to 'suspension', Clause 34.1 allows the Project Manager to instruct the Contractor to stop or not start any work. This instruction is treated as a compensation event under Clause 60.1(4), which entitles the Contractor to claim time and cost adjustments where the instruction has an impact on the Defined Cost, Completion Date, or Key Dates. In such cases, the Project Manager notifies the compensation event and instructs the Contractor to submit quotations in accordance with Clause 61.2 and, once the quotation is accepted,²² the Prices and programme are updated accordingly.²³

The NEC4 ECC does not, however, grant the Contractor a contractual right to suspend the Works. Instead, Clause 15.1 enables the Contractor to give an early warning notice where an event such as non-payment may cause delay, additional cost, or affect performance.

¹⁸ *Constructing the Team*, note 8.

¹⁹ Lukas Klee, *International construction contract law* (2nd edn, Wiley Blackwell 2018).

²⁰ John Uff, *Construction Law* (13th edn, Sweet & Maxwell 2021).

²¹ *ibid.*

²² NEC4 ECC, clause 66.1.

²³ NEC4 ECC, clause 66.2.

Where the Secondary Option Y(UK)2.5 is included, the Contractor may exercise the statutory right to suspend for non-payment under Section 112 of the 1996 Act, as amended by the Local Democracy, Economic Development and Construction Act 2009, and such suspension is treated as a compensation event. Nonetheless, even if this option is not expressly incorporated, the statutory right would still apply to projects governed by UK law.

As seen, the NEC4 treats risk management as a shared duty of cooperation rather than a unilateral allocation. However, as noted by Rob Horne in Lukas Klee's *International Construction Contract Law*, the effectiveness of the NEC depends on the parties' genuine commitment to its collaborative ethos. The contract's procedural mechanisms, particularly the early-warning and compensation-event processes, are designed to identify and manage risks proactively, requiring continuous communication and joint problem-solving. This requires a culture of transparency and free from adversarial behaviours; without such a culture, the contractual aspiration is likely to fail in practice.

Public Works Contract (PW-C)

Diverging from trends seen elsewhere, particularly in the UK, where emphasis has shifted towards more collaborative contract models such as NEC, the Irish Department of Finance, in early 2004, sought to increase cost certainty and reduce project overruns by restructuring the allocation of risk between employer and contractor.²⁴ To achieve this, the Government Construction Contracts Committee (GCCC) was established to replace the previously used IEE, RIAI, JCT, and FIDIC forms with a single suite of Public Works Contracts (PW-Cs).²⁵

The new public works contracts introduced a fixed-price, lump-sum structure that significantly altered the traditional balance of risk.²⁶ This represents a departure from the well-established principle that each risk should be borne by the party best placed to manage it.²⁷ As becomes evident when analysing specific provisions such as those governing suspension, the GCCC model transferred much of the contractual risk to contractors, regardless of their ability to foresee such risks at tender stage or manage them effectively during construction.²⁸

²⁴ C Mooney and E Mooney, 'Risk allocation in construction contracts – Irish public works' (2014) 167(2) *Proceedings of the Institution of Civil Engineers – Management, Procurement and Law* 68–74, doi: <https://doi-org.ezproxy.rgu.ac.uk/10.1680/mpal.12.00025>.

²⁵ *ibid.*

²⁶ H Fogarty 'Contractor perspective of the new Irish public works contracts' (2009) 162(1) *Proceedings of the Institution of Civil Engineers – Management, Procurement and Law* 29–34, doi: <https://doi-org.ezproxy.rgu.ac.uk/10.1680/mpal.2009.162.1.29>.

²⁷ *ibid.*

²⁸ Mooney and Mooney, note 24.

The commentary below relates to the Public Works Contract for Building Works Designed by the Employers (PW-CF1) in its latest version (1 May 2024) recommended by the Government of Ireland for contracts greater than €5m.²⁹

Suspension under the PW-CF1

Under the PW-CF1, the Employer's Representative may direct the Contractor to suspend all or part of the work at any time, regardless of fault or occurrence of any event.³⁰ While complying with this unilateral right, the Contractor must protect, store, and secure the suspended Works and maintain all relevant insurances to prevent deterioration, loss, or damage.³¹

Nonetheless, both the Contractor and the Employer's Representative must come together to inspect the affected works and assert if the Contractor is entitled to additional time or money due to the suspension, and any unavoidable deterioration or loss that occurred during the suspension.³²

In addition, where a suspension not caused by the Contractor continues for more than three months, the Contractor may seek permission from the Employer's Representative to resume work.³³ If no such permission is granted within 28 days, the Contractor may issue notice to the Employer's Representative either to treat the suspended portion as a Change Order omitting that part of the Works,³⁴ or, if the suspension concerns the entire Works, to terminate its obligation to complete the Contract.³⁵

As seen, PW-CF1 allows the Employer to suspend the Works irrespective of fault or event, reflecting a highly employer-oriented approach that affords a level of control not found in other standard forms such as JCT, FIDIC, or NEC. Under FIDIC, for instance, although the Engineer may instruct a suspension 'at any time', the instruction must state the date and cause of suspension, and the Contractor is expressly entitled to both additional time and cost.³⁶ This requirement provides a degree of protection for the Contractor, while also promoting transparency and accountability.

While obliged to comply with this unilateral right, a Contractor under the PW-CF1 must maintain insurances and protect the Works, thereby incurring ongoing costs during the suspension, even when the cause lies entirely with the Employer. This illustrates how the PW-CF1 broadly allocates risk to contractors, given the absence of any automatic entitlement to financial recovery arising from suspension.

²⁹ <https://cwmf.gov.ie/en/pillars/pillar-1/choose-your-contract/>.

³⁰ PW-CF1 Contract v2.8 01-05-2024, clause 9.2.1.

³¹ *ibid.*

³² *ibid.*, clause 9.2.2.

³³ *ibid.*, clause 9.2.3.

³⁴ *ibid.*, clause 9.2.3(1).

³⁵ *ibid.*, clause 9.2.3(2).

³⁶ FIDIC, Yellow Book 2017, clause 8.9.

The question of risk-allocation balance also arises when analysing Clause 9.2.2. One might argue that a joint inspection of the affected Works and the assessment of the Contractor's entitlement to additional time or money is a fair practice.

However, it is important to note that PW-CF1 contains no express reference to impartiality, independence, or fairness in relation to the Employer's Representative. By contrast, JCT, FIDIC, and NEC, though also entrusting an employer-appointed administrator with key decision-making powers, embed conceptual and procedural safeguards such as duties of impartiality, collaborative mechanisms, and early-dispute procedures.

This raises legitimate concerns regarding potential bias and the fairness of time-and-cost assessments under PW-CF1. While this approach may align with the Irish government's intention to improve cost certainty in public procurement, it inevitably reduces commercial flexibility, thereby potentially narrowing the pool of contractors willing to tender for public works and, consequently, inflating tender prices – ultimately, going against the Irish government's aims of either 'greater cost certainty' or 'better value for money'.³⁷

Finally, the unbalanced approach of the PW-CF1 is further reflected in the provisions governing prolonged suspension. Beyond the extended period before the Contractor may seek permission to resume (and the additional 28-day period before issuing notice to omit or terminate), the Contractor has no automatic entitlement to extra time or money. Any such entitlement remains largely subject to the Employer's Representative's discretion, underscoring the contract's emphasis on administrative control and cost predictability for the public client, rather than commercial protection for the Contractor.

Conclusion

The right to suspend is more than a procedural device; it reflects the underlying balance of risk, bargaining power and trust between the parties.

Under the UK framework, Section 112 of the Housing Grants, Construction and Regeneration Act 1996 protects contractors' cash flow by linking suspension with the right to recover time and cost. It functions as both deterrent and corrective, deterring employers from withholding payment and restoring equilibrium when they do. The provision reinforces the policy objective identified by Sir Michael Latham: improving payment certainty and stability in the supply chain.

The Irish Construction Contracts Act 2013, by contrast, adopts a narrower stance. While it recognises the right to suspend, it omits an express entitlement to recover costs and promotes continuity through adjudication.

³⁷ Fogarty, note 26.

This divergence reveals the distinct intent of each legislature. The UK model prioritises contractor protection, whereas the Irish approach values continuity and cost discipline. Both illustrate increasing legislative interventionism in construction law and an acknowledgment that reliance on contractual freedom had failed to ensure payment certainty.

Contractually, these viewpoints are mirrored in the standard forms. The NEC4 Engineering and Construction Contract promotes shared risk management through early warnings, compensation events, and continuous communication. It performs best when the parties uphold transparency and act in a spirit of mutual trust and cooperation.

The PW-CF1, conversely, centralises authority in the Employer's Representative and permits unilateral suspension without automatic relief for the contractor. Although this structure aligns with public-sector objectives of predictability and budget control, it limits flexibility and shifts commercial pressure onto the contractor.

These contrasting frameworks summarise opposing viewpoints: collaboration versus control, flexibility versus certainty. Both aim to preserve progress, but by different means: one through partnership, the other through prescription. The continuing challenge is to reconcile these competing aims so that suspension remains a measured response, applied within a fair and transparent framework that maintains progress while safeguarding commercial balance.

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