

STRATEGIC PLANNING & PLACE BUILDING CONTRACT DIRECTIVE

DATE: October 2016

Copyright Reserved

REFERENCE

PROCEDURES RELATING TO PRACTICAL COMPLETION, DEFECTS LIABILITY, THE ISSUE OF THE FINAL CERTIFICATE AND LATENT DEFECTS ON PROJECTS

Although this procedure has been written for larger works most of the procedures will also be relevant on smaller works.

1. Inspection Prior to Practical Completion of the Main Contract

About two weeks before the date when practical completion of the contract is due, the Consultant is to arrange a meeting on site with the WSCC Project Manager and WSCC FM representative. Where a building services consultant has been involved in the design he should also be in attendance. Any minor additions or modifications that the contractor is required to carry out prior to practical completion can be agreed provided funding is available. In the case of educational projects the Playing Fields Grounds Maintenance Adviser must be invited to attend during the inspection of landscaping/playing field works. If no landscaping or playing field works have yet taken place arrangements should be made for a further meeting to inspect these works. In these circumstances it may be appropriate for a certificate of Partial Possession to be issued on completion of the main works.

About the same time the intended occupier should be invited to a walk round the building the Consultant should then confirm the anticipated date for practical completion with the contractor, taking into account any outstanding items of work, and then inform the Project Manager quoting the date for practical completion and asking that insurance cover be arranged. The Project Manager will notify the WSCC Legal Services (litigation, insurance and risk management team) to enact the insurance arrangements.

WSCC FM representatives and main contractor for the building will have the opportunity to meet the premises officer and acquaint themselves with the new building and the services installations.

A draft copy of the O&M manuals shall also be made available for inspection.

2. Practical Completion of the Works

When the contractor informs the Consultant that the works are complete the Consultant will arrange a meeting with the contractor to satisfy himself that all of the work has been completed to the standard laid down in the contract documents. If the inspection reveals outstanding items or defects resulting in practical completion not being achieved on the due date the Project Manager must be immediately informed. If the Project Manager and occupiers are prepared to receive the building in an incomplete state the certificate, when issued, should incorporate a qualification confirming that the contractor undertakes to remedy or complete such specific items within a specified timescale. The items must be listed and attached to the certificate and a copy of the list passed to the Project Manager and occupiers.

The handover checklist should be completed by the Consultant and handed to the Project Manager for the record.

BCD 55

[Form D400](#)

Before a Certificate of Practical Completion is issued the Consultant must have in his possession the Building Information Schedule (Form D292), the Engineering Operating and Maintenance Manuals which shall include the Electrical Installation Certificate and all relevant commissioning and certification documentation, the Fire Officer's clearance certificate, and the Health & Safety File.

The Certificate of Practical Completion, when issued is to be accompanied by a completed Form E441 giving details of meter readings and four copies passed to Capital & Infrastructure Energy & Data Manager via the Project Manager.

3. **Partial Possession**

Where, with the consent of the contractor, the occupier takes possession of part of the work in the contract, the action set out above must be applied to each part as though it were itself a complete building. Retention money will be released in the same ratio as the cost of the part to the whole and, in the same way, the defects liability period will apply to each part as it is taken into possession by the occupier. Separate Certificates of Partial Completion and of Making Good Defects will also be required for the whole of the works (in addition to the certificates for the last completed part of the work).

It is important to distinguish carefully between Partial Possession and Sectional Completion. The former is an event that was not specifically envisaged and provided for when the contract was entered into. The latter is an event that was specifically provided for in the use of the Sectional Completion Supplement. It is for this reason that provision is made on the Certificate of Partial Possession for the insertion of an estimate of the value of the relevant part of the works. In the case of Sectional Completion this is unnecessary as the values of the various sections are already defined in the contract documents.

4. **Sectional Completion**

When the Standard Form of Building Contract has been specifically amended for completion in sections by the use of the Sectional Completion Supplement, a duty is imposed upon the contractor to complete in stages in accordance with the contract. Separate Certificates of Sectional Completion and of Making Good Defects will be required for each section of the works. A Certificate of Practical Completion and a Certificate of Making Good Defects will also be required for the whole of the works (in addition to the certificates for the last completed section).

FOOTNOTE: Unless the contract is very exceptional, the dictates of the season will override the contract provisions to some extent when dealing with seeding and planting. Usually common sense and goodwill prevail, but it is most important to liaise with the client department about maintenance of the grass and borders.

6. **Final Completion**

Within 14 days of the expiration of the defects liability period, the Consultant is to provide the contractor with a Schedule of Defects that the contractor must rectify, at this own cost. A timescale/programme for the remedial works must also be agreed as above. If the contractor fails to perform he should be given an ultimatum by the consultant that the works be carried out by a set date, and that if this requirement is not met others will be employed to carry out the works with all costs incurred deducted from monies due to him. This timescale may need to be varied in some circumstances where due to the nature of the works it is more appropriately carried out in school holiday periods.

7. **Post End of Defects Liability Period Responsibilities**

On the expiration of the Defects Liability Period the Consultant is to forward a copy of the schedule of defects, as issued to the contractor, to the Project Manager. Subsequently upon completion of the making good of defects a copy of the Certificate is to be forwarded to the Project Manager.

8. **Issue of the Final Certificate**

In view of the legal implications that relate to the issue of the final certificate, and possible impact upon the position of the Council, an advance draft copy of the impending final certificate issue is to be forwarded to the Project Manager for comment.

9. **Distribution of Practical Completion Certificates.**

As soon as the Practical Completion Certificate is issued a copy should be sent to the following -

Legal Services (insurance)
 Capital & Infrastructure Procurement Officer
 Capital & Infrastructure Property & Asset Records
 Capital & Infrastructure Valuation & Estate Management
 Capital & Infrastructure Energy & Data Manager

10. **Latent Defects**

Construction projects can have faults and defects occur that are caused by failures in design, workmanship or materials that may not become apparent until years after completion of the project. This is known as a latent defect. If the latent defect cannot be resolved by mutual agreement then the employer must seek redress in an action for damages, breach of contract or negligence. The rights of action are time limited to 6 years from the date of the breach for a simple contract and 12 years for a contract under seal.

For WSCC projects where a potential latent defect becomes apparent a latent defect report should be prepared using the standard latent defects **Form D431** and forwarded to the original contractor to resolve via the Latent Defect officer. Any allegation of a latent defect must be clearly substantiated including investigation by the reporting Officer of any contract documentation. Records of routine maintenance will often be requested if there is a failure of items of plant or equipment.

[Form D431](#)

CONCLUSION