

Clause 9: Tests on Completion

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The Contractor must now prepare a detailed test programme with timing and resources

The Engineer reviews it and the result is a NONO, deemed or actual, which permits the tests to begin. This should help to remove some of the uncertainties that often can surround tests on completion.

Clause 9.2 deals with delayed tests, whether the delays are caused by the Employer or Contractor. If the tests are "*unduly delayed*" by the Employer or Engineer or by a cause for which the Employer is responsible, it says clause 10.3 "*shall apply*".

This was problematic in 1999 and has not been fixed. Clause 10.3 provides a threshold of 14 days of prevention and does not refer to undue delay. A delay is "undue" presumably if it is not justified; the issue is the cause rather than the duration of the delay. So would an unjustified delay of, say, a week entitle a contractor to the remedies in clause 10.3, including a Taking-over Certificate? I suppose the answer is that the clauses need to be read together and "*undue delay*" has to be taken to mean 14 continuous or discontinuous days as provided in clause 10.3.

- Clause 9.2 also provides more procedures including three Notices. These may prove beneficial.
- Failure to pass Tests on Completion under clause 19.4 has been expanded to include rejection of a Section rather than of the whole Works. If rejected, the Employer is meant to recover his money as if the rejected Section had been omitted under clause 13.3.1. This may create difficulties as the variations clause does not envisage the valuation of "*omitted*" work which has been performed, albeit defectively.

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