

FIDIC 2017: Clause 10 - Employer's Taking Over

The main changes in Clause 10 are the express reference in Sub-Clause 10.1 [*Taking Over the Works and Sections*] to the supply of 'As-Built Records, Operation and Maintenance Manuals and Training' as a requirement of Taking Over.

In the 1999 Yellow Book the requirement to provide training and these documents was hidden in Sub-Clauses 5.5 to 5.7. This express reference is then coupled with a requirement for the Engineer to issue a Notice of No-objection for the As-Built Records and the Operation and Maintenance Manuals.

There cannot be a deemed Taking Over under Sub-Clause 10.1 without these Notices. The second main change is the addition of the words in Sub-Clause 10.3 [*Interference with Tests on Completion*], of the failure to carry out any "performance test that is not possible due to available operating conditions during trial operation".

The unavailability of operating conditions may not be due to the fault of the Employer; for example, there may have been a drought which resulted in water levels being too low for the testing of a dam. However, where this occurs, subject to the Contractor issuing a Notice, there will be a deemed Taking Over of the Works or Section. Interestingly, because of the changes in drafting of Sub-Clause 10.1, it appears that deemed Taking Over occurs even without the As-Built Records, Operation and Maintenance Manuals and Training.

Other changes to note include:

"Part" has now become a defined term meaning:

'a part of the Works or Section (as the case may be) which is used by the Employer and deemed to be taken over under Sub-Clause 10.2.'

That when the Taking Over of Part of the Works occurs the Engineer must immediately issue a Taking-Over Certificate for this Part, which identifies the outstanding work to be completed (including Tests on Completion) and/or defects.

In Sub-Clause 10.3 [*Interference with Tests on Completion*], the 14-day period of prevention can either be a continuous period or multiple periods which total more than 14 days.



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The referral of a claim for an Engineer's Determination, under Sub-Clause 3.7, has been omitted from Sub-Clause 10.3.

Sub-Clause 10.4 has not been changed; however, the requirement to reinstate all parts of the Site is now expressly dealt with in Sub-Clause 11.11.

Please get in touch at victoria.tyson@howardkennedy.com with your thoughts or to discuss any concerns.

