

Clause 10: Employer's Taking Over

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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 then, 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.
- 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.



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