

# Defects list

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## Charles Blamire-Brown looks at practical completion and the status of the defects list

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**The contract administrator has issued a practical completion certificate with a defects list attached, stating that practical completion is subject to rectification of these defects. What is the status of the defects list?**

While a good administrative tool, a defects list will likely have little bearing on parties' underlying contractual obligations.

We must first understand what a "defects list" is. There are 4 scenarios when a contract administrator tends to use one:

1. prior to completion, setting out a list of the work that remains to be completed before a practical completion certificate (PCC) can be issued
2. on completion, issuing with the PCC a defects list, containing some very minor items of work still to be carried out
3. on completion, issuing with the PCC a defects list detailing major items of work that are still outstanding
4. after completion, as a tool for monitoring any defects that come to light and are not remedied by the contractor during the contractual defect rectification period.

The defects lists issued in the first, second and fourth examples are unlikely to be inconsistent with the terms of the underlying contract. Contrast this with the third example. As we will see, most standard forms of contract allow for "completion" to be achieved in instances where there are very minor defects, but not where there are major outstanding defects.

## Practical completion

Under a [Joint Contracts Tribunal \(JCT\) contract](#), the contract administrator is required to certify that practical completion has taken place. "Practical completion" is not defined, but case law provides that this occurs at the completion of "all the construction work that has to be done" or when the works are complete "for all practical purposes". There is unlikely to be an issue with regard to the first example; such a defects list would merely serve as a practical reminder of the defects that require rectification before achieving practical completion.

Similarly the defects list in example 2 is likely to be compatible with the criteria for practical completion under a JCT contract. Practical completion will still be achieved even with very minor defects, so long as works are substantially complete.

The issue comes with the list in example 3. It is not possible for practical completion to be achieved in cases where major defects are outstanding, and the contract administrator should not certify practical completion until these are remedied.

*A defects list can be a useful tool to help focus parties' minds on any outstanding works, both before and after completion. It will not, however, alter whether or not "practical completion" under JCT or "completion" under NEC has been achieved*

That said, you may want to consider formally varying your contract by agreement between the parties to allow for practical completion notwithstanding defects identified on a specified list. This will not be achieved with the defects list in example 3, but will require a formal amendment to the underlying contract.

## **Works information**

Under the [New Engineering Contract \(NEC\)](#), the project manager must certify completion within a week of this being achieved. Unlike JCT, NEC specifically defines completion: the contractor has, among other things, to complete all works that the works information requires them to by the completion date.

In practice, works specified in the works information tend to be very comprehensive, including provision of all operations and maintenance manuals and as-built drawings, for example. Failure to provide these, even if they do not stop the employer using the works, will mean that completion is not achieved.

In such circumstances it is possible that the defects list in the second example (as well as the third) may not be compatible with the underlying contract requirements relating to completion.

However, the project manager may consider issuing an instruction changing the completion requirements in the works information to avoid this issue. This instruction can be issued unilaterally and does not need the agreement of the contractor.

## **Practical tool**

A defects list can be a useful tool to help focus parties' minds on any outstanding works, both before and after completion. It will not, however, alter whether or not "practical completion" under JCT or "completion" under NEC has been achieved. If the defects listed in the current example are more than very minor, the contract administrator should not have issued the PCC. The defects list cannot be used to circumvent the contractual requirements in this way and will not have such an effect. As the PCC seems to have been issued, practical completion is deemed to be as per its date, notwithstanding the outstanding defects.

Accordingly, the defects list issued in this instance is no more than a record of the outstanding defects that the contractor is already required to rectify in line with its obligations under the contractual defects rectification period (as in example 4).

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## **Further information**

Related competencies include:

- [Contract administration](#)
- [Contract practice](#)

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