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What is Practical Completion?  
*A guide for renovators*

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## What is Completion under a Building Contract?

### Practical Completion, Substantial Completion, Completion of the Works, Completion of Making Good Defects and Legal Completion

#### Completion under a Building Contract

In standard forms of building contract, completion is a varied and qualified concept which embraces: 'sectional', 'practical', 'substantial', 'works', 'defects' and 'legal' completion. Each form can have an effect on responsibilities for defects and on the correct procedures for dealing with them.<sup>[1]</sup>

#### Sectional completion (or phased completion)

This is an option which may be selected in certain contracts. Its meaning and effect will be that given to it in the contract. Typically it is similar to practical completion but restricted to a part of the works only.



#### Practical completion

This is a term used in JCT contracts. It corresponds to terms such as 'substantial' completion in other contracts. Its meaning is not defined by the JCT. It is discussed more fully below.

#### Works completion

This is the end of the construction phase when the physical work is completed. This may or may not coincide with practical completion, and is a matter of fact rather than a term defined in the contract. It is, for example, the meaning of completion of the construction phase under the Construction (Design and Management) Regulations.

#### Defects completion

This occurs at the end of the defects liability or maintenance period when the listed patent defects have been made good.

#### Legal completion

This occurs when the paperwork is done and the final account paid. In legal terms the contract has been performed on both sides.

#### Practical Completion



A point may be reached where the work is for all practical purposes sufficiently complete to be put into use but is not necessarily fully complete in all respects. This is acknowledged in many standard forms of contract. It is referred to in the JCT family of contracts as 'practical completion' and defined as coming into existence either when certified by the person so authorised or, in certain stated circumstances, as a consequence which flows from the taking over a part or parts of the works. In other standard forms it is referred to by other names and commences either by certification or as a result of certain events. However it is described, it has the effect of splitting completion of the building work into two stages.

The definition of 'practical completion' is often debated. Early versions of the JCT contracts defined practical completion by reference to the architect's certifying when the works were '*practically completed*' [2], an expression that has subsequently been dropped from the standard form. Whilst the meaning of 'practically completed' can readily be construed in plain English, 'practical completion' has no clear meaning in ordinary usage. For example in *Westminster Corporation v J. Jarvis and Sons* (1970), Lord Salmon LJ stated that; "*The obligation on the contractors under clause 21 to complete the works by the date fixed for completion must, in my view, be an obligation to complete the works in the sense in which the words 'practically completed' are used in clause 15 and clause 16 of the contract. I take these words to mean completion for practical purposes, i.e. for the purpose of allowing the council to take possession of the works and use them as intended. If completion in clause 21 meant down to the last detail, however trivial and unimportant, the clause 22 would be a penalty clause and unenforceable.*" In the same case a further definition was given by Lord Dilhorne who said; "*The contract does not define what is meant by Practical Completion. One would normally say that was practically completed when it was almost but not entirely finished, but practical completion suggests that this was not the intended meaning and what is meant is the completion of all the construction that has to be done...*". The JCT have long dropped the term 'practically complete' so this expression is no longer written into the contract allowing such references to common usage. 'Practical completion' is now more than ever an undefined but key term to the administration of the JCT family of contracts.

Most independent authoritative guidance is based on the consequences of certification and the provisions under the contract to deal with these consequences. From this it has been argued that, in respect of JCT contracts, a Practical Completion Certificate may safely be issued where there is some outstanding work but not if there are any patent defects. Other guidance offers that minor defects are not grounds for withholding certification of practical completion. Some argue that putting the work into use or the employer's taking possession is overriding evidence that practical completion has been achieved.

Any certificate of completion can alter the rights of the contracting parties with respect to defects, insurance and damages for late completion. In view of this, certification while there are patent defects can cause difficulty. The practice, for example, of certifying practical completion but attaching to the certificate a schedule of outstanding and defective work may not stand up to legal scrutiny. Unless the contract allows for the issue of qualified practical completion certificates, such qualified certificates may be invalid or the attached schedules of no effect.

Following legal precedents it is clear that the courts have had difficulty with the meaning of practical completion but a review of case law has led to the following definition: '*practical completion occurs when the works are at such a stage that they are capable of being used by the employer for the purpose for which are apparently required, such that liquidated damages (if the works were to be, or are, in delay) are no longer justifiable*'. [3]

Where a contract is subject to independent supervision, the supervisor's certification of completion can evidence the discharge by the contractor of their obligations in respect of those matters covered by the certificate. This may restrict the employer's rights to require the correction of defective works which were patently defective when practical completion was certified and leave open no recourse but to require the employer's representative whether described as: project manager, contract administrator, supervisor, etc. to pay for the correction of defects where their negligent certification has shielded the contractor from liability.

