

## Defective Design, Material, Workmanship Exclusions Explained

- The defective element exclusions, inherent in all construction policies, is the exclusion most likely to be a cause of confusion, dispute or friction in claim situations.
- The construction insurance market utilises generic defective element exclusion wordings produced by its market leaders. This wording has been tested and will often have Court adjudication precedents which can be relied upon in disputed matters. There is no denying that the defective element exclusion can sometimes be difficult to comprehend.
- There are three entirely different elements involved in the exclusion (being design, material and workmanship) which are treated identically for the purpose of dealing with defects in any of them. This article refers to these three elements collectively as “defective elements”.
- This article intends to explain the different defective element exclusions used and how they operate.
- There are two categories of defective element exclusions; the 1995 Defective Design Exclusion (or “DE”) version and the London Engineering Group (or “LEG”) versions – which are derived from the DE versions.
- Except for DE1 and LEG1, all other versions clarify that the mere existence of a defect (in the absence of damage) does not constitute damage in itself.
- The actual exclusions are printed at the end of this article for your reference.

### Comparison of Exclusions

<b>DE1/95</b> Excludes all loss or damage due to defective elements.	<b>LEG1/96</b> Excludes all loss or damage due to defective elements
<b>DE2/95</b> Excludes property that is defective and property that relies on the defective property for its support and costs to access the defective property (“access costs”). Covers other insured property that is free of defect but is damaged by the defective the property.	<b>No Equivalent LEG Clause.</b>
<b>DE3/95</b> Excludes property that is defective and access costs. Covers other insured property that is free of defect and is damaged by the defective property.	<b>LEG2/96</b> Excludes any component part or individual item that is defective and also access costs. Covers damage to property containing the defects and other parts of the insured property that are free of defect, provided there is damage to the defective portion.  To quantify cover, exclude the costs of correcting the defect, which would have been incurred, had this correction been carried out immediately before damage occurred.
<b>DE4/95</b> Excludes any component, part or individual item that is defective and also access costs*. But gives cover for other parts or items of the insured property that are free of defect and damaged by the defective part. *MECON provides \$100k cover for access costs.	
<b>DE5/95</b> Provides full cover for both defective and non-defective property provided there is damage to the non-defective insured property as a result of the defect. No cover is provided for the costs of improvements to the original design, plan, specification, workmanship or materials.	<b>LEG3/06</b> Provides full cover for both the defective and non-defective property provided there is damage to any portion of the property containing the defect as a result of the defect. No cover is provided for the costs of improvements to the original design, plan, specification, workmanship or materials.
Note: “Damage” in these exclusions is defined in the policies. Generally the policies define it as “physical loss or damage”	

## Easy Reference Chart

This chart shows the costs expected to be excluded with the application of the various exclusions for defective elements.

	DE1	DE2	DE3	DE4	DE5	LEG3	LEG2	LEG1
Costs to fix defects in the absence of damage	✗	✗	✗	✗	✗	✗	✗	✗
Costs to improve (original) Design, Plan, Specification, Workmanship or Material	✗	✗	✗	✗	✗	✗	✗	✗
Loss, damage or costs incurred in accessing defective element*	✗	✗	✗	✗	✓	✓	✗	✗
Costs to fix defective element itself	✗	✗	✗	✗	✓	✓	✗	✗
Costs to fix damage to (other) property supported by the defective property	✗	✗	✓	✓	✓	✓	✓	✗
Costs to fix damage to (other) property caused by the defective element	✗	✓	✓	✓	✓	✓	✓	✗

✗ Note: MECON Policy uses DE4 and additionally provides \$100,000 for access costs.

✗ means circumstances of claim dictate whether or not these costs will be included.

## The Actual Exclusions

- DE1 (1995): Outright defect exclusion**  
 'This Policy excludes loss of or damage to the Property insured due to defective design plan, specification, materials or workmanship'.
- DE2 (1995): Extended defect condition exclusion**  
 'This Policy excludes loss or damage to and the cost necessary to replace, repair or rectify:
  - Property insured which is in a defective condition due to a defect in design plan, specifications, materials or workmanship of such Property insured or any part thereof;
  - Property insured which relies for its support or sustainability on i. above;
  - Property insured lost or damaged to enable the replacement, repair or rectification of Property insured excluded by i. and ii. above.

Exclusions i. and ii. above shall not apply to other Property insured which is free of the defective condition but is damaged in consequence thereof.

For the purpose of the Policy and not merely this Exclusion the Property insured shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design plan, specification, materials or workmanship in the property insured or any part thereof'.

- DE3 (1995): Limited defective exclusion**  
 'This Policy excludes loss of or damage to and the cost necessary to replace, repair or rectify:
  - Property insured which is in a defective condition due to defect in design plan specifications, materials or workmanship of such property insured or part thereof;
  - Property insured lost or damaged to enable the replacement, repair or rectification of Property insured excluded by i. above.

Exclusion i. shall not apply to other Property insured which is free of the defective condition but is damaged in consequence thereof.

For the purpose of the Policy and not merely this Exclusion, the Property insured shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design plan, specification, materials or workmanship in the Property insured or any part thereof.

- **DE4 (1995): Defective part exclusion**

'This Policy excludes loss of or damage to and the cost necessary to replace, repair or rectify:

- i. Any component part or individual item of the Property insured which is defective in design plan, specifications, materials or workmanship;
- ii. Property insured lost or damaged to enable the replacement, repair or rectification of Property insured by i. above.

Exclusion i. above shall not apply to other parts or items of Property insured which are free from defect but are damaged as a consequence thereof.

For the purpose of the Policy and not merely this Exclusion, the Property insured shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design specifications, materials or workmanship in the Property insured or any part thereof.

- **DE5 (1995): Design improvement exclusion**

'This Policy excludes:

- i. The cost necessary to replace, repair or rectify and Property insured which is defective in design plan, specifications, materials or workmanship;
- ii. Loss or damage to the Property insured to enable replacement, repair or rectification of such defective Property insured.

But should damage to the Property insured (other than damage as defined in ii. above) result from a defect, this Exclusion shall be limited to the costs of additional work resulting from and the additional costs of improvements to the original design plan, specifications, materials or workmanship.

For the purpose of the Policy and not merely this Exclusion, the Property insured shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design plan, specification, materials or workmanship in the Property insured or any part thereof.

- **LEG1/96 model 'outright' defects exclusion**

'The Insurer(s) shall not be liable for Loss or Damage due to defects of material, workmanship, design plan or specification'.

- **LEG2/96 model 'consequences' defects exclusion**

'The Insurer(s) shall not be liable in respect of:

All costs rendered necessary by defects of material, workmanship, design plan or specification and should damage occur to any portion of the Insured Property (Contract Works) containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if the replacement or rectification of the said portion if the Insured Property (Contract Works) had been put in hand immediately prior to the said damage.

For the purpose of this Policy and not merely this exclusion it is understood and agreed that any portion of the Insured Property shall not be regarded as damaged solely by virtue of the existence of any defect of material, workmanship, design plan or specification'.

- **LEG3/96 model 'improvements' defects exclusion**

'The Insurer(s) shall not be liable in respect of:

All costs rendered necessary by defects of material, workmanship, design plan or specifications and should damage occur to any portion of the Insured Property (Contract Works) containing any of the

said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material, workmanship, design plan or specification.

For the purpose of this Policy and not merely this exclusion it is understood and agreed that any portion of the Insured Property shall not be regarded as damaged solely by virtue of the existence of any defect of material, workmanship, design plan or specification.