



## The JCT 2005 Sub-contracts

**I**t cannot have escaped the notice of anyone involved in the construction industry that last year the Joint Contracts Tribunal undertook a major revision of their entire suite of contracts and published a range of 2005 contracts. In addition to the Main Contracts, JCT has also published new 2005 sub-contracts which are designed to be used back to back with the new main contracts.

The main advantage of using one of the JCT 2005 standard forms of sub-contract is that contractors can more easily ensure that their sub-contractors meet all of the conditions imposed on them by the main contract.

The JCT has published a suite of sub-contracts designed to be used with the various main contracts. The sub-contracts published are as follows:

- Standard Building Sub-Contract
- Standard Building Sub-Contract with sub-contractor's design
- Design and Build Sub-Contract
- Major Project Sub-Contract
- Intermediate Sub-Contract
- Intermediate Named Sub-Contract
- Intermediate Sub-Contract with Sub-Contractor's Design
- Short Form of Sub-Contract (ShortSub)
- Sub sub- contract

Some of the main changes are as follows:

### Layout

As with the main contracts, the most obvious change, on first inspection of the new sub-contracts as compared to DOM1 and DOM2 is that the layout has been significantly altered. It is hoped that this will render the contract more user friendly for all parties.

As with the Main Contract, the Appendix is replaced by "Contract Particulars" which is now found at the front of the document.

### Professional Indemnity Insurance

In respect of the sub-contracts with a sub-contractors design element and design and build sub-contract itself provision has been made for a requirement on the Sub-contractor to maintain professional indemnity insurance.

### Omissions

Items omitted from the Main Contracts have also been omitted from the Sub-Contracts.




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In particular you will note the following omissions:

- Provisions relating to VAT and the Construction Industry Scheme. Both VAT and CIS regulations are both imposed by statute and as such parties are still required to comply!
- Performance Specified Work provisions. The JCT considers that is Performance Specified Work is required the most appropriate way of achieving this is to use the Standard building contract with Sub-Contractor's design.

### Time

As with the Main Contracts, extension of time is now known as Adjustment of Completion Date. Essentially the provisions are broadly the same although you will



note that the list of relevant events has changed. The list of sub-contract events generally mirrors the relevant events in the Standard Building Contract.

Certain events, such as late instruction by the Contractor, failure by the employer to give in due time access to site, and inability to secure materials or labour by the Sub-Contractor have been removed.

The latter two events, namely inability to secure materials and labour were commonly deleted by Main Contractors. Late instruction and failure by the employer to give access are now covered by a mop up clause which state that any impediment, prevention or default by either the Employer or the contractor or their agents are relevant events.

### Payment provisions

The first interim payment due under the Sub-Contracts shall be due on the date for issue of the Interim Certificate under the Main Contract immediately following the commencement of the Sub-Contract Works and further payments are due monthly thereafter.

This reflects the position in the little used Domestic Sub-Contract

or DSC (published by the JCT in 2002 but rarely used by the industry). Under Dom/1 however, the first payment is due not later than one month after the date of commencement of works on site and interim payments are then due monthly thereafter.

The potential advantages of this are twofold. Firstly it may ease the burden on the Main Contractor in that payments to Sub-Contractor will be falling due at the same time as payments under the Main Contract. It may also benefit the Sub-Contractor as his first and interim payments may fall due earlier than they would have done under Dom/1.

However, whereas under Dom/1 the final date for payment is 17 days after the due date, under the 2005 Sub-Contract the final date for payment is now 21 days after the due date which means the Sub-Contractor has to wait longer before he gets his hands on this money.

### Dispute resolution

The Sub-Contract still allows for Arbitration to be selected as a means of resolving disputes. The default position has, however, changed in that if the contract does not clearly state that arbitration

shall apply, then all disputes will be determined by court proceedings instead.

Note as well, that like the new JCT 2005 Main Contracts the Sub-Contract also contains, for the first time, a reference to mediation and states that the parties may, by agreement seek to resolve any dispute or difference arising under the Sub-Contract through mediation.

In summary, you will note that whilst the layout and some wording has changed, in terms of the substantive provisions there remain considerable similarities with DOM/1.

Although we are all sometimes resistant to change, the contract certainly appears more user friendly.

Any changes to the sub-contract conditions should be undertaken with care to ensure that it still meets the obligations imposed by the main contract.

## Ashfords

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*This update is for general information only and does not constitute legal advice. For specific advice on contract law you should always consult a specialist lawyer.*



## Asbestos update: mesothelioma

**O**ur National President, Ian Rea, recently sent a letter, which had been drafted by John Lawrence of South West Region, to Rosie Winterton at the Houses of Parliament, drawing attention to the fact that a drug (Alimta), which could offer an easing and even improvement for sufferers, was available but not “sanctioned” by NICE. Although not directly related, hopefully, this lobbying may have had some influence on the recent announcement by John Hutton, the Secretary of State for Work and Pensions, that financial assistance would be

made available to sufferers. At present it is only people who actually contract the disease from exposure at work who can obtain assistance but the present proposals provide for an up-front payment (within six weeks) to people who were not directly exposed to asbestos. This group could include exposure from contaminated clothing such as overalls, those who had lived near a factory using asbestos in a process and the self-employed who may be unable to exactly pinpoint the source of exposure. John Hutton said “No amount of money will ever make up for the suffering

and loss to individuals and families caused by mesothelioma but no-one should have to worry that they or their family will have to wait years before they see a penny of compensation. Especially as in many cases people do not have years to wait. That is why we are committed to ensuring that everyone with mesothelioma can receive compensation, irrespective of their employment history. This legislation would mean that, once diagnosed, every sufferer should receive substantial payment within six weeks of making a claim.”

*Ed.*



# HOW GREEN IS YOUR VALLEY?

Green roof technology arrived in the United Kingdom over 25 years ago but it is not until recent years that green roofs have become widely used and accepted by building owners. On the back of the green revolution and the heightened awareness of environmental issues, green roofs are becoming a “must-have” for many businesses and individuals wanting recognition from their peers, or possibly needing to tick the right boxes. In London however a “green” roof is most likely to be a Planning requirement and designers struggling to meet the “Merton Rule” for sustainability, find this form of roof an important tool for compliance.

My own first encounter with a green roof was during the redevelopment of the old Derry and Toms building in London, where the existing roof garden was adapted to accommodate the new structure for Regine's night club. This was a typical traditional approach to the problem and involved a heavy concrete structure to support what was basically a fully functioning garden area with pockets of deep soil. Things have moved on considerably and lightweight systems, which need very little additional support are readily available. These systems, referred to as extensive green roofs place the insulation, waterproofing and drainage layers below a pre-grown sedum blanket which is delivered to site in rolls and which 'carpets' the main areas of the roof. The upstands and verges are left clear to keep the vegetation contained and to assist drainage, neatness and inspection. If the project is large enough it is even possible to spray a wet mix of growing medium and seeds onto the roof.

A version of the extensive roof, which is gaining popularity in urban environments, dispenses with the sedum blanket and uses recycled crushed aggregate and masonry from the site and provides a much better environment on the finished roof for the wildlife which inhabited the site before development. These bio-diverse roofs have become known as “brown” or “rubble” roofs. There are obvious advantages with this type of roof in transport miles and embodied energy. Caution must be exercised to ensure that any recycled material is suitable for the purpose and is free of contaminants. If the area is large enough, a varying depth of rubble and the introduction of (drained) pockets of growing medium encourage diversity in the vegetation.

Extensive and brown roofs do not exclude the provision of a “traditional” garden on the roof. These roofs are referred

to as “intensive” green roofs and mature trees are not out of the question. Subject to suitable guarding, the roof could be fully utilised as a relaxation area for the building occupiers with mown lawns paths and trees. Although the installed landscaping is considerably heavier than that of the extensive roof, modern technology in the development of water-retaining filter layers and lightweight “soils” makes the intensive green roof a viable option given the ecological and amenity gains.

An added benefit of providing green roofs in the centre of town is the reduction in the “heat island” effect, which raises the temperature in urban areas and exacerbates the often-stifling atmosphere of towns in summer.

It is important to advise the building owner that a green roof is not a fit-and-

forget item. This is a particular requirement of intensive roofs where a full year of post-installation maintenance should be included in the installer's price.

Typical “settling-in” items will be:

- Replenishment of any settled growing medium
- Pruning, weeding mowing
- Application of fertilisers
- Replacement of failed plants
- Adapting drip-feed irrigation systems to suit the plants

This will ensure that the occupier takes over a viable and luxuriant area of vegetation.

A fully detailed maintenance and inspection regime should be included in the Building Operation Manual handed over at completion of the contract.

*Ed.*



*“delivery and installation of sedum rolls and detail of abutment” (Courtesy of Bauder Ltd)*



*“a recently completed green-roofed extension to a listed building in Sussex, by the author”*

## Letter from the editor

Dear colleagues

Those of you who follow these matters closely will have noticed that there has been no spring issue of Viewpoint this year. I apologise to you for this lapse in the normal service but I am finding it more and more difficult to obtain a quality lead article for each issue; without that "anchor" it would be very difficult to produce a Viewpoint of suitable status. If any member has a special interest, or a contact who could supply a thousand or so words on a subject of interest to the members but not specifically a construction related matter, I would be most grateful to hear from them. Smaller articles are also an important part of Viewpoint and show the breadth of experience of our members: I can never have too many of these. If you are able to send me something, it would be most helpful if it is on a disk or Email and in Word. Anything however will do and a photo or two always helps to provide colour and extra interest. Sue, my wife and long-suffering Viewpoint typesetter would be able to scan-in photos and type out your manuscript if you don't have access to a computer. I will be happy to work with you to edit an article, so why not give it a try? My contact details are below.

*Clive Feather*

## HMRC Speak in many tongues

In recognition of the fact that there is more than just a handful of Polish Plumbers working within the construction industry, HMRC (HM Customs and Revenue) have issued translations of the popular fact sheets covering the change to the new Construction Industry Scheme (CIS) for the collection of taxes from sub-contractors.

The scheme started on the 6th April this year and the translations into Albanian, Czech, Hungarian, Latvian, Lithuanian, Polish, Portuguese, Rumanian, Russian, Slovakian and Turkish gives some indication as to HMRC's stance on where the foreign workers will be coming from. "All sub-contractors in the construction industry will need to know how the changes after 6th April will affect them; both in terms of their employment status when they are taken on by a contractor and how they are paid. We recognise that a growing proportion of construction industry sub-contractors do not have English as a first language and we are pleased to be able to help them

understand the new arrangements" – Doug Tweddle, HMRC CIS Programme Sponsor.

The fact sheets which have been translated are:-

- CIS 342 Registering for new CIS - advice for sub-contractors
- CIS 343 Applying to be Paid Gross - advice for sub-contractors
- CIS 344 Getting Paid by a Contractor - advice for sub-contractors

For those of us on the other side of the fence there is a lot of information to be found at [www.hmrc.gov.uk/new-cis/languages.htm](http://www.hmrc.gov.uk/new-cis/languages.htm)

## THE INSTITUTE OF CONSTRUCTION MANAGEMENT



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## Diary dates

### July 2007

- 11 Southern Region CPD lecture  
New CDM Regulations 2007  
Update by Vic Lander FICConstM
- 16 South West Region CPD lecture  
single ply roofing – 8pm  
Stephens Dance Centre – free buffet
- 28 (Saturday) New Forest Picnic

### September 2007

- 10 South West Region CPD lecture  
(speaker to be arranged)  
Calne Wiltshire – free buffet
- 12 Southern Region CPD lecture  
Quadriga

### October 2007

- 8 South West Region CPD lecture  
Part F for domestic buildings – 8pm  
Stephens Dance Centre – free buffet
- 10 Southern Region CPD lecture  
Aluminium Roofline Products (ARP)
- 12 Southern Region skittles evening  
HMS Dryad Golf Club Southwick
- 20 South East Region skittles evening  
Vic Lander 01903 763885

*Note: all Southern Region lectures are CPD accredited and certificates will be issued. Food is made available following each lecture. The lectures are held at The Mountbatten Centre Alexandra Park Portsmouth 7.45pm for 8.00pm Contact Eric Richards 02392 618049*

VIEWPOINT is the newsletter of the Institute of Construction Management (ICM) and is for circulation to the members of the Institute. Articles or comments for inclusion are very welcome and in any form.

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