

had they wished to make any lifetime gifts). In their wills, they could each have left their respective shares of the partnership direct to the children, rather than to each other. In this case the property subject to CTT on the first death would amount to £37,500 (i.e. half the business), but no CTT would be payable as this is within the £50,000 exemption. On the second death, when the remainder of the estate passes to the children, property subject to CTT would be £87,500 (£37,500 + £45,000 + £5,000) and this would incur a levy of £13,500.

The difference between the tax bills in our example clearly shows how careful planning can reduce liability to CTT, and emphasises the importance for a family business proprietor of equalising assets between himself and his wife. It also highlights the importance of regularly reviewing a will in the light of changing legislation and family circumstances—something which any businessman would be well advised to do.

The gifts on marriage exemption from CTT is also very useful for the family businessman, as on the marriage of his son or daughter he may make them a gift of up to a limit of £5,000 (or assets to the value thereof)—and so, too, can his wife. They may also gift up to £2,500 each to any number of grandchildren on marriage. Thus, at a time when it is perhaps appropriate for a child or grandchild to become a partner or director in the family firm, there is scope for effecting this without incurring liability to CTT.

Regular gifts out of income are also exempt from CTT, provided normal living standards can be maintained without resort to capital. A popular way to use this

exemption is for the donor to take out an insurance policy written on his life for the benefit of the recipient. These premiums are gifts, but are kept within the exemption—and on the donor's death the proceeds of the policy do not form part of his estate and are therefore outside the scope of CTT.

Two further exemptions of interest to family business proprietors are 'business property relief' and 'agricultural relief'. The first applies in respect of lifetime or death transfers and can be up to 50% for transfers or interest in an unincorporated business or controlling shareholding. Agricultural relief is available on farm land and property (up to a limit of the greater of either £250,000 or 1,000 acres) provided the transferor is a full time working farmer, 75% of whose income is derived from farming in the UK. There are other important conditions to meet for each of these reliefs, and again it is wise to seek professional advice if you think you may be eligible.

#### Pitfalls

The CTT rules are, to say the least, extremely complicated and anyone seriously considering making a substantial lifetime gift or embarking on a long term scheme of avoidance should seek expert opinion. The exemptions outlined above can be used to your advantage, but they must be handled carefully.

For example many people make gifts ignorant of the fact that the measure of this gift will be assessed on the loss of value to their estate, and not the benefit conferred on the recipient. These are two very different things. Take the example of a man who owns

55% of a company and decides to give 10% to his son. The measure of that gift reflects the loss of control from a 55% to a 45% holding.

The potential extent of the pitfalls is crippling, but again a little know-how and planning can prevent the small family business proprietor from falling prey to disaster.

It is impossible to enter into all the ramifications of handing over business assets, or hope to put forward a definitive plan which would work for everyone. No such formula exists. We can only raise a few general points and hint at some possible solutions to the many problems which you may encounter. In practice each case has to be assessed individually, and advised accordingly.

But, where should you go to obtain this professional advice which we have stressed as being so important? If you have an accountant he will be able to help you—but, have you ever thought of asking your bank manager? You may be surprised to discover the wide range of services a bank can offer, and the wealth of expert advice on which your manager is able to call. Experts in the bank network will have kept abreast of changes in legislation and will be able to keep you informed as to how they affect your business.

By working with your bank, maximum use can be made of various tax exemptions and reliefs, and once this has been done, provision made—for example through suitable life assurance policies—to enable you or your heirs to cope with and survive your final bill to the Inland Revenue.

## Replacing the Blue Form

By Roger Wakefield of the NFBTE Legal Department

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With the publication by the Joint Contracts Tribunal of the JCT Standard Form of Building Contract, it was apparent that the old "Blue" Form for use with Non-Nominated Sub-Contractors would need considerable revision if it were to be considered suitable for use with the new documents. That revision has now taken place, and has resulted in the publication of the *Domestic Form of Sub-Contract, DOM/1*, so called because of the direct reference to Domestic Sub-Contractors in Clauses 19.2 and 19.3 of the JCT Standard Form 1980.

The Form has been jointly prepared by the National Federation of Building Trades Employers (incorporating the Federation of Building Sub-Contractors), the Committee of Associations of Specialist Engineering Contractors and the Federation of Associations of Specialists and Sub-Contractors and is published with their approval. A note on the front cover makes clear the intended

use of the Form, which is where the Form of Main Contract is either the Local Authorities/Private Edition/With/Without Quantities Editions of the JCT Standard Form 1980.

#### In Two Parts

The Form, itself, is split into two parts: firstly, the Articles of Agreement containing Recitals and Articles, together with a detailed Appendix; secondly, the Sub-Contract Conditions for use with the Articles of Agreement which, though issued separately and though deemed to be incorporated in the Articles, may be actually attached to the Articles where the parties so wish. The style of the two Documents follows very closely that of the new JCT 80 Documents with decimal numbering, side-headings and an Index—even indeed, down to the size of the print.

Obviously, the decision to publish

DOM/1 in two parts is clearly dictated by the fact that the parties to a Domestic Sub-Contract will only need to concern themselves with those parts of the Form that actually need completion by the parties—primarily the Appendix. Assuming that contractors and sub-contractors quickly get used to the Form, the Sub-Contract Conditions should only need to be referred to on relatively few occasions.

#### Evenly Balanced Position

The general principle behind the drafting of DOM/1 has been to follow the principles of the old "Blue" Form, except where changes to those principles were made necessary as a result of changes or innovations in the JCT Standard Form 1980, or else where the parties agreed that an improvement to the existing wording was necessary or appropriate, and subject to using the format of the JCT 1980 Form.

Now that the Domestic Form has been published, the pundits will doubtless try to analyse it to ascertain whether the balance of power between the contractor and his domestic sub-contractor has been altered as a result. However, it is the considered view of those who were involved in the preparation of the Form that, as published, it represents on most points a fairly evenly balanced position for both the contractor and the sub-contractor. On other points, it is certainly the best compromise that could be achieved in all the circumstances. Possibly, on a simple comparison with the "Blue" Form the contractor gains in relation to the payment provisions insofar as he now has 17 days to make interim payments instead of 14. The sub-contractor will still get his regular monthly payments but there will be an additional three-day delay valuation and payment.

#### Advantages and Disadvantages

By virtue of the fact that the Domestic Form is intended for use in conjunction with the JCT Standard Form, the domestic sub-contractor does take the advantage of the improvements and innovations which have been set out in the JCT Form 1980—the additional relevant events for the purposes of extending the time for completion of the Sub-Contract Works, the revised rules for the valuation of variations, the detailed provisions regarding payments and the improved provisions dealing with fluctuations. At the same time, the domestic subcontractor also suffers a number of points to his disadvantage: he will now find that extensions of time can, in certain circumstances, be reduced in respect of variations requiring the omission of work, and he will also find that traditional fluctuations will be frozen when he is in default on completion of the Sub-Contract Works (Provided that the extension of time clause had not been amended in any way, and the contractor has given all necessary decisions on the Sub-Contractor's applications for extensions). Many of these points are passed down into DOM/1, not merely by the voluntary decision of those parties concerned with the Agreement, but rather by reason of the fact that JCT 80 itself required it (ie. with regard to fluctuations) or else because such provisions were necessary to protect the contractor's provision under the Standard Form (ie. the provisions with regard to notification of delays under the extension of time clause).

Here, then, is a brief commentary on DOM/1.

#### The Articles of Agreement

As mentioned above, these are published separately from the Conditions, it being intended that while the contractor and the sub-contractor will have to execute the Articles of Agreement, it should not be necessary to tie in the Conditions, unless they specifically decide to do so.

The articles contain four Recitals. The first three are similar to the "Blue" Form, while the Fourth Recital merely clarifies the position in regard to the Statutory Tax Deduction Scheme. There are three Articles: Article 1 deems the sub-contractor to have

notice of the Main Contract, requires him to carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Documents and incorporates the separately published Condition. Article 2 requires the statement of the Sub-Contract Sum or a Tender Sum—the latter applying if the parties have agreed that the Sub-Contract Works are to be completely remeasured and valued. Article 3 deals with arbitration and it should be noted that under 3.3.3 the question of extensions of time can now be the subject of immediate arbitration.

Following a list of the Sub-Contract Conditions which are deemed to be incorporated (included for ease of reference) there is a 14-part Appendix which it is vital for the contractor and sub-contractor to complete in its entirety so as to ensure that many of the matters which are at present possible areas of dispute are resolved before the Sub-Contract is entered into.

**The Sub-Contract Conditions** are as follows:

*Clause 1.* Like JCT 80, this contains a detailed list of definitions.

*Clause 2.* In line with the principles of the "Blue" Form, the Sub-Contract Document takes precedence over the Main Contract, in case of any conflict. However, because of the greater details with regard to the completion of the Appendix and the inclusion of other Sub-Contract Documents, the provision now deals with any possible conflicts that might appear between or with those items. Clause 2 contains a provision dealing with any discrepancies in or divergencies between the sub-contract documents generally.

*Clause 3.* In line with JCT 80, this clause requires that any amounts which are ascertained and agreed will be included in the next interim payment due to the Sub-Contractor.

*Clause 4.* This clause used to be Clause 8 of the "Blue" Form and reflects an attempt to keep the Domestic Sub-Contract completely independent of the Main Contract. Thus, references to the architect have been kept to a minimum and any architect's instructions to the domestic sub-contractor are deemed to be directions of the contractor. Also, Clause 4 notes that no variations required by the contractor shall vitiate the Sub-Contract—a surprising omission from the "Blue" Form.

*Clause 5.* This deals with sub-contractor's liability under the provisions of the Main Contract, and is more restricted in scope compared with that to be found in the "Blue" Form, simply because specific reference is only made to those Main Contract Conditions not dealt with in greater detail elsewhere in DOM/1.

*Clauses 6–10.* The insurance provisions that are contained in these clauses generally follow the style of NSC/4 and NSC/4a in order to tie in more precisely with the provisions of JCT 80.

*Clause 11.* This deals with extensions of time, and requires the sub-contractor to carry out and complete the Sub-Contract Works in accordance with the details which the parties have entered in the Appendix. In the event of delay, the sub-contractor has to give immediate notice and identify whether

any of the causes of the delay is either a relevant event or the act, omission or default of the contractor. He has to give particulars, estimates and, where appropriate, further written notices. In turn, the contractor has to give an extension of time if a delay is caused either by a relevant event or his own act, omission or default, within either 16 weeks or before the completion of the Sub-Contract Works, whichever is the shorter. As with JCT 80, the contractor can take into account variations omitting any work, and there is provision for the contractor to review his extensions of time immediately after completion of the Sub-Contract works. As with NSC/4 and NSC/4a, the clause contains a list of all the relevant events for which the Sub-Contractor may obtain an extension of time. This provision is obviously a long way from the rather superficial reference, that was contained in the "Blue" Form, to the fact that the sub-contractor could have obtained an extension under the Main Contract. However, it must be emphasised that the most important feature of these Conditions is the requirement for the sub-contractor to keep the contractor informed of any delays—so that the contractor can, in turn, pass on the information to the architect.

*Clause 12.* This is a new provision which follows NSC/4 and NSC/4a in stating that, if the sub-contractor is in default on completion, the contractor should notify the sub-contractor in writing and will only thereafter be entitled to be paid any loss or damage that he has suffered as a result.

*Clause 13.* This provision dealing with the recovery of loss and/or expense, again shows a considerable departure from the simple cross-references to be found in the "Blue" Form. If the Sub-Contract Works are materially affected by any act, omission or default of the contractor or by one of the "Relevant Matters" which are set out in detail in Clause 13, then the sub-contractor has to make written application to the contractor within a reasonable time, and is thereby entitled to recover his loss and/or expense, though this is subject to the proviso that the sub-contractor has made his application within a reasonable time of the delay becoming apparent, that he submits any further details in respect of that claim and the details of loss and expense as are requested by the contractor. Naturally the contractor is given similar rights against the sub-contractor in respect of any disturbance of the regular progress of the Works, caused by the sub-contractor. Further, the clause now allows the sub-contractor to ask the contractor to state the extent, if any, to which extensions of time that he is given under Clause 11 apply to certain specified relevant events, which are in turn reflected in the list of relevant matters, being grounds for claims for loss and expense set out in Clause 13.

*Clause 14.* This provision dealing with practical completion of the sub-contract works and liability for defects, shows very little change from the "Blue" Form, apart from the point that where the Contractor has given written notice of dissent to the sub-contractor's suggested date for practical



completion and where the contractor and the sub-contractor have failed to agree such a date, then, in order to provide a backstop, it is provided that practical completion will be deemed to have taken place on the date of practical completion of the main contract works.

*Clause 15.* This provision deals with the price for the Sub-Contract Works, according to whether it is to be calculated by reference to a Sub-Contract Sum, or where the Sub-Contract Works are to be completely re-measured, by reference to an Ascertained Final Sub-Contract Sum.

*Clause 16.* This clause deals with the valuation of variations and provincial sum work. It is drawn primarily from the similar provision in NSC/4 and NSC/4a, and therefore takes the benefit of certain improvements in the provisions that were introduced by the JCT. For instance, work carried out under a variation instruction can only be valued using bill rates where that work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of the work which is set out in the bills. The clause also now deals with the situation where work has to be re-valued due to its being carried out under different conditions due in turn to the fact that a variation order has been issued in respect of other work. It should be noted that this clause does not now include any provision dealing with the sub-contractor's recovery of any direct loss/or expense resulting from any disruption to the regular progress of the Sub-Contract Works caused by the variation. This is now dealt with in Clause 13, the loss and expense provision.

*Clause 17.* This provision is similar to Clause 16, referred to above, except insofar as it is concerned with the valuation of all work comprising the Sub-Contract Works, as it applies where all the work is to be re-measured.

*Clause 18.* This provision states that any bills of quantities will have been prepared in accordance with the SMM, so that any departure from SMM requirements will be treated as if it were a variation required by a direction of the contractor.

*Clauses 19 and 20.* These clauses deal with VAT and the statutory tax deduction scheme, respectively, and as they do not reflect any substantive changes there is no need to consider them at length here.

*Clause 21.* This provision deals with the question of payment of the sub-contractor, and, in principle, follows very much the "Blue" Form. However, in order to assist contractors to get over possible shortfalls between the date when they are entitled to be paid under the main contract, and the date for payment of the sub-contractor under the "Blue" Form, the period when first and interim payments have to be made has been extended from 14 to 17 days after the date when those payments become due. The provision then goes on to follow the style of NSC/4 and NSC/4a by setting out, in the form of a check-list, the precise constituents to be considered for each interim payment: at the same time, there is a precise statement as to how retention and any cash discount is to be deducted, and from which amounts.

The clause retains the sub-contractor's right to suspend execution of the Sub-Contract Works (but see the note on Clause 30 below); and also goes on to provide check-lists for calculation of the Sub-Contract Sum or the Ascertained Final Sub-Contract Sum, whichever is applicable. For the first time, the provision also deals with the question of a Final Payment: setting out the amount due in it, the date by which it should be made, and the effect of making it. However, it is generally considered that most of the monies due to the sub-contractor should already have been paid, and the Final Payment is only intended as a clearing up provision to catch any payments that have not been made previously.

*Clause 22.* This reflects Clause 14 of the old "Blue" Form, by giving the sub-contractor any rights or benefits of the main contract, which are available to the contractor.

*Clauses 23 and 24.* These deal with the contractor's right to set-off, and the appointment of an adjudicator where the contractor's claims are not agreed by the sub-contractor. Little change has been made in these clauses, but it should be noted that, as a result of the change made to the period for payment by the contractor under Clause 21, the requirement for notice of set-off in Clause 23 has been extended from 17 to 20 days.

*Clauses 25 and 26.* These reflect Clauses 17 and 18 of the "Blue" Form, dealing with the rights of access of the contractor and the architect, and the question of assignment and sub-letting.

*Clause 27.* This clause generally follows the provisions set out in Clauses 19 and 26 of the "Blue" Form. However, the reference to the contractor providing free facilities for storage and use of the sub-contractor's materials, has been altered to clarify that the contractor will provide space on the site for the storage of materials for use on the site, and that any other facilities required by the sub-contractor from the contractor free of charge must be specified in Part 9 of the Appendix. The change must not be considered surprising in view of the contractor's problem when faced with a very wide variety of demands for different facilities under this provision. The provision also goes on to deal specifically with the question of the workshops of the sub-contractor, a point which was not covered in the "Blue" Form.

*Clause 28.* This reflects Clause 20 of the "Blue" Form and requires that the contractor and sub-contractor will not make wrongful use, or interfere with the property of the other.

*Clause 29.* This deals with the determination of the employment of the sub-contractor by the contractor due to the sub-contractor's default, and follows Clause 21 of the "Blue" Form, adding the additional ground entitling the contractor to determine where the sub-contractor has failed to comply with the provisions in Clause 26 regarding assignment or sub-letting and in Clause 32 regarding fair wages. Further, where such determination has taken place, the contractor may use all the temporary

buildings, plant, tools, equipment, goods and materials intended for the works by the sub-contractor; in addition, the contractor can require the sub-contractor to assign to the contractor the benefit of any agreements for the supply of materials or goods, or the execution of any work.

*Clause 30.* This deals with determination of the employment of the sub-contractor under the sub-contract by the sub-contractor himself due to the default of the contractor. The provision is similar to that in Clause 22 of the "Blue" Form, subject to the point that where the sub-contractor has already suspended further execution of the Sub-Contract Works under Clause 21, the sub-contractor will not then be entitled to issue notice of determination in respect of any default under this clause until 10 days after the date of commencement of the suspension under Clause 21.

*Clause 31.* This clause again follows very closely that set out at Clause 23 of the "Blue" Form, and deals briefly with the question of determination of the employment of the sub-contractor under the sub-contract where the contractor's employment under the main contract has been determined.

*Clause 32.* Fair wages. In the "Blue" Form, at Clause 24, the sub-contractor was merely required to comply with any provisions in the main contract relating to the payment of fair wages—it was presumably thought that this implied that the sub-contractor was required to pay fair wages to the main contractor's employees. Thus, in this new provision, the draftsmen have set out a full fair wages provision.

*Clause 33.* This is a completely new provision taken from NSC/4 and NSC/4a, to emphasise the point that where the works are affected by strike action, then neither the contractor nor the sub-contractor shall be entitled to make any claims against the other. It is not considered that this provision adds anything to the interpretation of Clause 13 dealing with loss and/or expense, and indeed, some may consider this an unnecessary provision.

*Clauses 34 to 38.* Clause 34 simply states that fluctuations will be dealt with according to whichever of Clauses 35, 36 or 37 is specified in the Appendix. Clause 35 deals with tax fluctuations only, Clause 36 is traditional fluctuations and Clause 37 is formula fluctuations. If nothing is stated in the Appendix, then Clause 35 will apply.

Because the fluctuation provisions in the sub-contract have to be in similar terms to those of the main contract, if the contractor is to recover the sub-contractor's increases under the main contract. Clauses 35, 36 and 37 are very similar to the provisions in NSC/4 and NSC/4a. The one notable difference is that fuel price increases are only allowable under Clauses 35 and 36 where the contractor and sub-contractor have specifically so agreed.

Copies of the *Domestic Form of Sub-Contract, DOM/1* can be obtained from the Publications Department, NFBTE, 82 New Cavendish Street, London, W1M 8AD. *Articles of Agreement* only: £2 for members, £2.50 for non-members. Plus VAT in both cases. *Conditions* only: £2.75 for members, £3.25 for non-members. No VAT payable.