Appendix B:
Extension of Time and Money Claims
Under DOM/1

The following consists of extracts from the third edition of this book. Although DOM/1 is no longer recommended for use, it will no doubt continue in use for some time and for this reason it is included as an appendix, but without significant amendment.

B.1 Introduction

Domestic sub-contractors are work and material sub-contractors who are not nominated by the architect under clause 35 of JCT 80. The full title of this document, which is issued jointly by BEC, FASS and CASEC, is ‘The Standard Form of Sub-Contract for Domestic Sub-Contractors for use where the main contract is in one of the JCT Local Authorities/Private Editions either with or without quantities’ and, unlike the former Blue sub-contract form, which it has superseded, it is intended for use only with the JCT main form. The Blue Form could be used in conjunction with other standard form contracts, such as GC/Works/1. DOM/1 was published in 1980.

B.2 Extensions of time under DOM/1

Extensions of time are dealt with by clause 11, which reads as follows:

11 Sub-Contractor’s obligation – carrying out and completion of Sub-Contract Works – extension of Sub-Contract time

11.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the details in the Appendix, part 4, and reasonably in accordance with the progress of the Works but subject to receipt of the notice to commence work on site as stated in Appendix, part 4, and to the operation of clause 11.

11.2 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or any part

703 Anyone interested in the detailed provisions of the Blue Form should refer to Professor V. Powell-Smith’s The Standard (Non-Nominated) Form of Building Sub-Contract, 1980, IPC Building & Contract Journals Ltd.
thereof is being or is likely to be delayed, the Sub-Contractor shall forthwith give written notice to the Contractor of the material circumstances including, insofar as the Sub-Contractor is able, the cause or causes of the delay and identify in such notice any matter which in his opinion comes within clause 11.3.1.

2. In respect of each and every matter which comes within clause 11.3.1, and identified in the notice given in accordance with clause 11.2.1, the Sub-Contractor shall, if practicable in such notice, or otherwise in writing as soon as possible after such notice:

1. give particulars of the expected effects thereof; and

2. estimate the extent, if any, of the expected delay in the completion of the Sub-Contract Works or any part thereof beyond the expiry of the period or periods stated in the Appendix, part 4, or beyond the expiry of any extended period or periods previously fixed under clause 11 which results therefrom whether or not concurrently with delay resulting from any other matter which comes within clause 11.3.1; and

3. the Sub-Contractor shall give such further written notices to the Contractor as may be reasonably necessary or as the Contractor may reasonably require for keeping up to date the particulars and estimate referred to in clause 11.2.2.1 and .2 including any material change in such particulars or estimate.

11.3 If on receipt of any notice, particulars and estimate under clause 11.2 the Contractor properly considers that:

1. any of the causes of the delay is an act, omission or default of the Contractor, his servants or agents or his sub-contractors, their servants or agents (other than the Sub-Contractor, his servants or agents) or is the occurrence of a Relevant Event; and

2. the completion of the Sub-Contract Works is likely to be delayed thereby beyond the period or periods stated in the Appendix, part 4, or any revised such period or periods.

then the Contractor shall, in writing, give an extension of time to the Sub-Contractor by fixing such revised or further revised period or periods for the completion of the Sub-Contract Works as the Contractor then estimates to be reasonable.

11.4 .1 When fixing such revised period or periods, the Contractor shall, if reasonably practicable having regard to the sufficiency of the notice, particulars and estimate, fix such revised period or periods within the following time limit:

1. not later than 16 weeks from the receipt by the Contractor of the notice and of reasonably sufficient particulars and estimates, or

2. where the time between receipt thereof and the expiry of the period or periods for the completion of the Sub-Contract Works is less than 16 weeks, not later than the expiry of the aforesaid period or periods.

2. The Contractor, when fixing such revised period or periods, shall state:
11.2.1 which of the matters, including any of the Relevant Events, referred to in clause 11.3.1 he has taken into account; and

11.2.2 the extent, if any, to which the Contractor has regard to any direction requiring as a Variation the omission of any work or obligation or restriction issued since the previous fixing of any such revised period or periods for the completion of the Sub-Contract Works.

11.5 If, upon receipt of any notice, particulars and estimate under clause 11.2, the Contractor properly considers that he unable to give, in writing, an extension of time to the Sub-Contractor, the Contractor shall, if reasonably practicable having regard to the aforesaid notice, particulars and estimate, so notify the Sub-Contractor in writing not later than 16 weeks from receipt of the notice particulars and estimate, or, where the time between such receipt and the expiry of the period or periods for the completion of the Sub-Contract Works is less than 16 weeks, not later than the expiry of the aforesaid period or periods.

11.6 After the first exercise by the Contractor of the duty under clause 11.3, the Contractor may fix a period or periods for completion of the Sub-Contract Works shorter than that previously fixed under clause 11.3 if, in the opinion of the Contractor, the fixing of such shorter period or periods is fair and reasonable having regard to any direction issued requiring as a Variation the omission of any work or obligation or restriction where such issue is after the last occasion on which the Contractor made a revision of the aforesaid period or periods.

11.7 If the expiry of the period when the Sub-Contract Works should have been completed in accordance with clause 11.1 occurs before the date of practical completion of the Sub-Contract Works established under clause 14.1 or 14.2, the Contractor may

and

not later than the expiry of 16 weeks from the date of practical completion of the Sub-Contract Works, the Contractor shall:

either

1 fix such a period or periods for completion of the Sub-Contract Works longer than that previously fixed under clause 11 as the Contractor properly considers to be fair and reasonable having regard to any of the matters referred to in clause 11.3.1 whether upon reviewing a previous decision or otherwise and whether or not the matters referred to in clause 11.3.1 have been specifically notified by the Sub-Contractor under clause 11.2; or

2 fix such a period or periods for completion of the Sub-Contract Works shorter than that previously fixed under clause 11 as the Contractor properly considers to be fair and reasonable having regard to any direction issued requiring as a Variation the omission of any work where such issue is after the last occasion on which the Contractor made a revision of the aforesaid period or periods; or
11.7.3 confirm to the Sub-Contractor the period or periods for the completion of the Sub-Contract Works previously fixed.

11.8 The operation of clause 11 shall be subject to the proviso that the Sub-Contractor shall use constantly his best endeavours to prevent delay in the progress of the Sub-Contract Works or any part thereof, however caused, and to prevent any such delay resulting in the completion of the Sub-Contract Works being delayed or further delayed beyond the period or periods for completion, and the Sub-Contractor shall do all that may reasonably be required to the satisfaction of the Architect and the Contractor to proceed with the Sub-Contract Works.

11.9 No decision of the Contractor under clauses 11.2 to 11.7 inclusive shall fix a period or periods for completion of the Sub-Contract Works which will be shorter than the period or periods stated in the Appendix, part 4.

The following are the Relevant Events referred to in clause 11.3.1:

1. force majeure;
2. exceptionally adverse weather conditions;
3. loss or damage occasioned by any one or more of the Specified Perils;
4. civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works;
5. compliance by the Contractor with the Architect’s instructions (which shall be deemed to include compliance by the Sub-Contractor with the Contractor’s directions which pass on such instructions):
   1. under clauses 2.3, 13.2, 13.3, 23.2, 34, 35 or 36 of the Main Contract Conditions, or
   2. in regard to the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with clause 8.3 of the Main Contract Conditions and/or clause 4.3.1 (including making good in consequence of such opening up or testing) unless the inspection or test showed that the work, materials or goods were not in accordance with the Main Contract or the Sub-Contract as the case may be;
6. the Contractor, or the Sub-Contractor through the Contractor, not having received in due time necessary instructions, drawings, details or levels from the Architect for which the Contractor or the Sub-Contractor, through the Contractor, specifically applied in writing provided that such application was made on a date which having regard to the Completion Date or the period or periods for the completion of the Sub-Contract Works was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor or the Sub-Contractor to receive the same;
7. delay on the part of Nominated Sub-Contractors or of Nominated Suppliers in respect of the Works which the Contractor has taken all practicable steps to avoid or reduce;
Appendix B

.8 .1 the execution of work not forming part of the Main Contract by the Employer himself or by persons employed or otherwise engaged by the Employer as referred to in clause 29 of the Main Contract Conditions or the failure to execute such work;

.8 .2 the supply by the Employer of materials and goods which the Employer has agreed to provide for the Works or the failure so to supply;

.9 the exercise after the Base Date by the United Kingdom Government of any statutory power which directly affects the execution of the Works by restricting the availability or use of labour which is essential to the proper carrying out of the Works, or preventing the Contractor or Sub-Contractor from, or delaying the Contractor or Sub-Contractor in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works;

.10 .1 the Contractor’s or Sub-Contractor’s inability for reasons beyond his control and which he could not reasonably have foreseen at the Base Date for the purposes of the Main Contract or the Sub-Contract as the case may be to secure such labour as is essential to the proper carrying out of the Works;

.2 the Contractor’s or Sub-Contractor’s inability for reasons beyond his control and which he could not reasonably have foreseen at the Base Date for the purposes of the Main Contract or the Sub-Contract as the case may be to secure such goods or materials as are essential to the proper carrying out of the Works;

.11 the carrying out by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;

.12 failure of the Employer to give in due time ingress to or egress from the site of the Works or any part thereof through or over any land, buildings, way or passage adjoining or connected with the site and in the possession and control of the Employer, in accordance with the Contract Bills and/or the Contract Drawings, after receipt by the Architect of such notice, if any, as the Contractor is required to give, or failure of the Employer to give such ingress or egress as otherwise agreed between the Architect and the Contractor;

.13 the valid exercise by the Sub-Contractor of the right in clause 21.6 to suspend the further execution of the Sub-Contract Works;

.14 where it is stated in the Appendix part 1, Section B that clause 23.1.2 of the Main Contract Conditions applies to the Main Contract, any deferment by the Employer in giving possession of the site of the Works to the Contractor.
B.3 Commentary

To all intents and purposes this parallels the provisions of NSC/C, clauses 2.2 to 2.6, so that the commentary thereon is relevant. However, the wording has differences in places, and the following points should be noted.

B.3.1 Progress

The words of clause 11.1 have been construed very broadly by contractors over the years as obliging the sub-contractor to work in accordance with the contractor’s progress on the works and that if the contractor’s progress slowed or quickened, the sub-contractor was obliged to follow suit. It is now established that, under clause 11.1 of DOM/1, the sub-contractor may plan and perform the work as he pleases if there is no indication to the contrary, provided that he finishes it by the time fixed in the contract. The sub-contractor’s only obligations so far as programming requirements are concerned are those requirements expressly contained in the sub-contract itself.\(^{704}\) It is likely that the same principle applies in the case of other similarly worded sub-contracts such as NSC/C.

B.3.2 Notice

In clause 11.2.1 the sub-contractor’s obligation to give notice of the material circumstances is a qualified one. The material circumstances are to include the cause or causes of the delay, insofar as the sub-contractor is able to identify them. In practice, it is thought that this qualification will make little difference.

B.3.3 Extension of time

The architect is not involved at all in granting extensions of time. The duty is the contractor’s alone. This apart, the procedure is the same as under NSC/C.

B.3.4 Time period

The time period within which the contractor must respond to the sub-contractor’s notice is 16 weeks, as opposed to 12 weeks in NSC/C; this time limit runs from receipt of notice and what the contractor considers to be ‘reasonably sufficient’ particulars and estimate.

B.3.5 Omissions

Omission directions given by the contractor can be taken into account.

B.3.6 Best endeavours

In clause 11.8, the operation of the extension of time provisions is made subject to the proviso that the sub-contractor shall ‘use constantly his best endeavours to prevent delay . . . and the Sub-Contractor shall do all that may reasonably be required to the satisfaction of the Architect and the Contractor to proceed with the Sub-Contract Works’. Why the architect should have been introduced at this point is not clear; but the dual obligation is of no practical significance because the architect has no right to require anything directly from a domestic sub-contractor.

B.3.7 Completion date

Clause 11.9 is vital; it parallels clause 25.3.6 of JCT 80 and means that, no matter how much work is omitted, the sub-contractor is always entitled to his original sub-contract completion date.

These points apart, the provision operates in the same way as the corresponding clause in NSC/C.

B.4 Direct loss and/or expense claims under DOM/1

This matter is dealt with in clause 13 and is the matching provision to NSC/C clauses 4.38 to 4.41. The text reads as follows:

13 Matters affecting regular progress – direct loss and/or expense – Contractor’s and Sub-Contractor’s rights

13.1 If due to deferment of giving to the Contractor possession of the site of the Works where it is stated in the Appendix part 1 Section B that clause 23.1.2 of the Main Contract Conditions applies to the Main Contract or the regular progress of the Sub-Contract Works is materially affected by any act, omission or default of the Contractor, his servants or agents, or any sub-contractor, his servants or agents (other than the Sub-Contractor, his servants or agents), or is materially affected by any one or more of the Relevant Matters referred to in clause 13.3 and if the Sub-Contractor shall within a reasonable time of such material effect becoming apparent make written application to the Contractor, the agreed amount of any direct loss and/or expense thereby caused to the Sub-Contractor shall be recoverable from the Contractor as a debt. Provided always that:
B.4 Direct loss and/or expense claims under DOM/1

1. the Sub-contractor’s application shall be made as soon as it has become, or should reasonably have become, apparent to him that the regular progress of the Sub-Contract Works or of any part thereof has been or is likely to be affected as aforesaid; and

2. the Sub-Contractor shall submit to the Contractor such information in support of his application as is reasonably necessary to show that the regular progress of the Sub-Contract Works or any part thereof has been or is likely to be affected as aforesaid; and

3. the Sub-contractor shall submit to the Contractor such details of such loss and/or expense as the Contractor requests in order reasonably to enable that direct loss and/or expense as aforesaid to be agreed.

13.2 If, and to the extent that, it is necessary for the agreement of any direct loss and/or expense applied for under clause 13.1, the Contractor shall state in writing to the Sub-contractor what extension of time, if any, has been made under clause 11 in respect of the Relevant Events referred to in clause 11.10.5.1 (so far as that clause refers to clauses 2.3, 13.2, 13.3 and 23.2 of the Main Contract Conditions) and in clauses 11.10.5.2, 11.10.6, 11.10.8 and 11.10.12.

13.3 The following are the Relevant Matters referred to in clause 13.1:

.1 the Contractor, or the Sub-Contractor through the Contractor, not having received in due time necessary instructions, drawings, details or levels from the Architect for which the Contractor or the Sub-Contractor specifically applied in writing provided that such application was made on a date which having regard to the Completion Date or the period or periods for completion of the Sub-Contract Works was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor or the Sub-Contractor to receive the same;

.2 the opening up for inspection of any work covered up or the testing of any work, materials or goods in accordance with clause 8.3 of the Main Contract Conditions and/or clause 4.3.1 (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with the Main Contract or the Sub-Contract as the case may be;

.3 any discrepancy in or divergence between the Contract Drawings and/or the Contract Bills and/or the Numbered Documents;

.4 the execution of work not forming part of the Main Contract by the Employer himself or by persons employed or otherwise engaged by the Employer as referred to in clause 29 of the Main Contract Conditions or the failure to execute such work or the supply by the Employer of materials and goods which the Employer has agreed to provide for the Works or the failure so to supply;

.5 Architect’s instructions issued in regard to the postponement of any work to be executed under the provisions of the Main Contract or the Sub-Contract, which shall be deemed to include Contractor’s directions issued under clause 4 in respect of such matters;
13.3.6 failure of the Employer to give in due time ingress to or egress from the site of the Works, or any part thereof through or over any land, buildings, way or passage adjoining or connected with the site and in the possession and control of the Employer, in accordance with the Contract Bills and/or the Contract drawings, after receipt by the Architect of such notice, if any, as the Contractor is required to give or failure of the Employer to give such ingress or egress as otherwise agreed between the Architect and the Contractor;

13.3.7 Architect’s instructions issued under clause 13.2 of the Main Contract Conditions requiring a Variation or under clause 13.3 of the Main Contract Conditions in regard to the expenditure of provisional sums (other than work to which clause 13.4.2 of the Main Contract Conditions refers), which shall be deemed to include Contractor’s directions issued under clause 4 which pass on such instructions.

13.4 If the regular progress of the Works is materially affected by any act, omission or default of the Sub-Contractor, his servants or agents, and if the Contractor shall within a reasonable time of such material effect becoming apparent make written application to the Sub-Contractor, the agreed amount of any direct loss and/or expense thereby caused to the Contractor may be deducted from any monies due or to become due to the Sub-Contractor or may be recoverable from the Sub-Contractor as a debt. Provided always that:

1. the Contractor’s application shall be made as soon as it has become, or should reasonably have become, apparent to him that the regular progress of the Works or of any part thereof has been or is likely to be affected as aforesaid; and

2. the Contractor shall submit to the Sub-Contractor such information in support of his application as is reasonably necessary to show that the regular progress of the Works or of any part thereof has been or is likely to be affected as aforesaid; and

3. the Contractor shall submit to the Sub-Contractor such details of such loss and/or expense as the Sub-Contractor requests in order reasonably to enable the ascertainment and agreement of that direct loss and/or expense as aforesaid.

13.5 The provisions of clause 13 are without prejudice to any other rights or remedies which the Contractor or Sub-Contractor may possess.

**B.5 Commentary**

**B.5.1 Sub-contractor’s claims**

Again, the commentary on NSC/C clauses 4.38 to 4.41 is relevant, as is the discussion of the position under clause 26 of JCT 80705.

---

705 See Chapter 12, section 12.2.
Here, however, the draftsman has not slavishly followed the wording of the similar clauses in other forms, although it seems to have the same effect. The text should be compared and contrasted with NSC/C and the following points should be noted:

(1) Clause 13.1: The wording indicates that compliance with the provisions as to written notice is a condition precedent. The sub-contractor must make written application to the main contractor ‘within a reasonable time’ of the material effect on progress becoming apparent. Proviso.1 adjusts the requirement so that the sub-contractor must make application ‘as soon as it has become, or should reasonably have become apparent’. The timescale in the proviso is stricter than that in the introductory part of clause 13.1 and, in our view, it would be enforceable.

(2) The sub-contractor’s obligation is to ‘submit . . . such information in support of his application as is reasonably necessary to show that . . . regular progress . . . has been or is likely to be affected . . .’.

(3) He is also to submit ‘such details of such loss and/or expense as the Contractor requests in order reasonably to enable that direct loss and/or expense . . . to be agreed’, i.e. moneyed-out claims backed up by supporting evidence.

(4) Clause 13.2, like JCT 80, clause 26.3, appears to link extensions of time to direct loss and/or expense claims and the list of relevant events should be noted.

(5) Clause 13.1 refers to ‘Relevant Matters’, i.e. grounds giving rise to a potential claim. Apart from acts, omissions, or defaults of the main contractor or those for whom he is responsible in law, the ‘Relevant Matters’ are listed in clause 13.3.

B.5.2 Main contractor’s claims

Clause 13.4 deals with claims by the main contractor against the sub-contractor in respect of ‘disturbance of regular progress’ of the main contract works. Unlike the corresponding provision in NSC/C (clause 4.40) sub-sub-contractors are not included. The contractor is required to make written application to the sub-contractor (and not merely to give written notice): the main contractor’s right to claim is subject to the same three conditions as is the sub-contractor’s right to claim against him.

Clause 13.5 preserves the common law rights of both contractor and sub-contractor.

The contractor’s right to set-off is dealt with by clause 23, and the adjudication provision is in clause 24\textsuperscript{706}.

\textsuperscript{706} Subsequently amended by the Housing Grants, Construction and Regeneration Act 1996.