

BIS | Department for Business
Innovation & Skills

**COMMON COMMENCEMENT
DATES**

Guidance for Policy Makers

AUGUST 2010

Introduction

The coalition Government has committed to continue with Common Commencement dates (CCD). CCDs were originally announced in Budget Report 16 March 2005, with a commitment that, by April 2006, CCDs would be extended for new regulations that will have an effect on business. This applies to the commencement of new simplification or other deregulatory measures that bear on business.

This initiative was introduced as a response to recommendation seven of the Better Regulation Task Force (BRTF) report, "Regulation – Less is More. Reducing burdens, Improving Outcomes", which the Government accepted in full.

This booklet explains how the system works, what is covered and the exceptions, such as legislation of European origin.

Under the CCD initiative, and except as detailed below, Westminster based regulation bearing on business will be commenced only on either 6 April or 1 October.

Departments and agencies are also required to send information on new and amended regulations to the Better Regulation Executive to help them prepare the Government's Forward Regulatory Programme, issued each January, indicating regulations expected to be commenced on the following 6 April and 1 October.

The purpose of CCDs, and especially the Forward Regulatory Programme, is to help business plan for new regulation and to increase awareness of the introduction of new or changed requirements. It also enables Ministers to take a strategic overview of its regulatory programme.

By reducing to two dates on which new regulation may be commenced, it is hoped that increased awareness by business of new or changed obligations will result in improved compliance levels.

Delivering regulation to a timetable can be demanding. Good planning is therefore essential. This guidance booklet contains material to help you prepare a project plan and advice on what to do if there are unexpected changes of plan.

Further advice and assistance should be sought from your departmental CCD co-ordinator. BIS's Enterprise Directorate and the Better Regulation Executive can also provide advice. Contact details can be found at Annex A.

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Common Commencement Dates (CCDs)

1. What areas of law are covered by common commencement dates?

Announced in PBR 2004, CCDs were extended to **all domestic** regulations bearing on business, made in Westminster, except where the legislation is of EU origin (though see paragraph below). The coalition Government has reaffirmed its commitment to the CCD process.

Common Commencement Dates at EU level

Following the European Commission's commitment in the 2008 'Small Business Act' for Europe, the Commission is trialling a project in selected sectors related to internal market legislation, that fall under Directorate General Enterprise and Industry, before a full launch of Common Commencement Dates.

At this stage, the scope of the project is mainly limited to Commission autonomous acts also known as implementing measures. The sectors chosen are automotive and explosives. Two common commencement dates have been fixed: **29 April and 29 October**. This would mean in practice that the acts included in the Common Commencement dates trial project will be applicable to businesses starting either on the 29 April or on the 29 October in any given year¹.

2. When are they?

Except in cases covered by Question 3 the dates for domestic policy are 6 April and 1 October. For the European Common Commencement Date trial project, the dates are 29 April or 29 October.

3. What if my new regulation only affects one sector?

If your regulation only affects one sector and there is already a long-standing convention to use a particular date, you may continue to commence regulation on that date. You may, however, wish to consult the sector on moving to one of the two CCDs or, agree not to set a sector date if that best meets the sector's needs. Regulation to be introduced on sectoral dates should be included in the new Forward Regulatory Programme (see paras 15 – 21 and Annex A).

¹ For further information visit the Commission CCD webpage - http://ec.europa.eu/enterprise/policies/sme/business-environment/common-commencement-dates/index_en.htm

4. How will I know if my regulation will impact on business?

Your economist advisors should be able to help if there is uncertainty but in most cases it will be clear that the regulation does impact on business. Evidence should have been collected as part of the Impact Assessment, and therefore the Small Firms Impact Test². Your CCD co-ordinator should be informed so that it can be included in the Forward Regulatory Programme.

5. What regulation is excluded?

Ministers have decided that exceptions to CCDs will be extremely limited. These rare circumstances may include:

- clear emergencies; for example those involving public or animal safety or health, which demand urgent action,
- anti-avoidance measures necessitating urgent closure of loopholes,
- measures which remove significant risk or detriment from business,
- instances where the costs of timing a measure to meet a CCD would be wholly disproportionate to the public purse and/or business,
- orders which commence other regulation on a CCD.

CCDs will not apply to:

- any regulation connected to new EU Regulations except for the trial project (see para 1),
- regulation implementing EU Directives Regulations except for the trial project (see para 1),
- air navigation orders,
- road closure orders,
- changes to welfare benefit and,
- any other regulation that has no impact on business.

6. What if the measure is of benefit to business?

Ministers have concluded that even when a regulation brings benefit to business it should be deferred to a commencement date. This is to ensure that the consistency the CCD approach seeks to create is not diluted.

² See SFIT guidance at www.bis.gov.uk/sfit

7. Should CCDs be used to announce implementation of simplification measures?

The Government accepted the recommendation in the BRTF report *Regulation: Less is More – Removing the burdens, improving the outcomes*³ that there was a need for even greater transparency and certainty for business on changes to regulation under the simplification process. Ministers agreed that they would further extend the roll out of CCDs to include simplification or deregulation measures. Timescales for implementation are to be included in the Forward Regulatory Programme. Changes should be made in accordance with CCDs processes wherever possible. Where this cannot be done, the Minister should set out the reasons for not waiting for the next CCD when seeking policy clearance.

8. What if my Minister wishes to introduce regulation other than on a common commencement date?

There may be occasions when Ministers need to act where there is a public need for urgent action beyond the exceptions already mentioned. Where, on exceptional occasions, a Minister proposes to introduce regulation that impacts on business outside the common commencement date timetable, s/he should set out the reasons for not waiting for the next CCD when seeking policy clearance, in line with existing arrangements when clearance is being sought. The plans for alerting business to the introduction of the regulation should also be explained. Some agencies, such as the Health and Safety Commission/Executive, are exempted from the Cabinet Committee write round process. If in doubt, please discuss with your CCD co-ordinator.

9. What if I encounter an unexpected delay that risks missing a CCD?

Consider why you are introducing the regulation in the first place. Weigh up the pros and cons of delaying introduction until the next common commencement date and discuss the matter with your CCD co-ordinator.

10. What if I do miss a common commencement date?

Consider why the regulation is needed and whether any harm may occur by delaying until the next common commencement date. If it is possible, wait until the next common commencement date to introduce the measure unless one of the exemptions will apply (see question 5). You should notify your CCD co-ordinator, so that s/he can update the Forward Regulatory Programme.

³ See recommendation 7, page 13 http://www.brc.gov.uk/government_responses/

11. I want my regulations to commence in April/October but it will be difficult to meet the CCD because of holidays and the Parliamentary recess. What should I do?

Your chances of successfully delivering your regulation will be greatly improved if you have a robust project and delivery plan and have timetabled appropriately. The key stakeholders, such as your legal teams, should be actively involved. Keeping to 'better regulation making principles' should mean that all key actions are taken before the holiday and recess period.

Do not leave things to the last minute. Never assume that your regulation will get through clearance or Parliamentary processes in the minimum possible time. The role of Parliament is to scrutinise regulation and the Government has committed to ensure Parliament sufficient time for consideration.

12. Will CCDs impact on SIs?

In order for CCDs to work effectively you must allow time for scrutiny by either the Joint Committee on Statutory Instruments (JCSI) or the House of Commons Select Committee on Statutory Instruments, and the House of Lords Merits of Statutory Instruments Committee. Working to a CCD timetable does not prevent you from laying instruments throughout the year, thereby allowing time for parliamentary scrutiny and, if appropriate, debate well in advance of commencement.

For Statutory Instruments you should:

- avoid laying just before the 21 day minimum period before commencement,
- avoid laying negative instruments in the summer recess, as that can limit Members' opportunities to comment;
- remember that in the Lords, it is not possible for them to move a motion to approve an affirmative instrument before it has been reported on by the JCSI;
- wherever possible, lay negative instruments, as well as affirmatives, well in advance of commencement;
- be aware that an Act of Parliament should not be commenced sooner than two months after Royal Assent without obtaining the agreement of the Law Officers (which will be given only in exceptional cases).

13. What preparation do I need to make to ensure that I meet my chosen common commencement date?

- **Good project management and planning skills are key.** You should consult your departmental legal team and other stakeholders (e.g. the Devolved Administrations (see para 14)) when drawing up a project

plan and get their agreement to the chosen commencement date. Once you commit to a date you should stick to it.

- Timetable: Remember to build in time for:
 - a. consultation (minimum of 12 weeks and following the principles set out in the BRE's Code of Practice on Consultation);
 - b. if necessary, Impact Assessment clearance with your Departmental Better Regulation Unit, the BRE and RPC;
 - c. inter-departmental policy clearance by cabinet committee inc the RPC (6 days minimum) [Not applicable to HSE];
 - d. you should ensure the guidance is made available 12 weeks in advance of implementation and;
 - e. the Implementation Period itself (also 12 weeks although (d) and (e) are generally one and the same);
 - f. for the 1 October date, remember to take account of the summer holiday period, when colleagues, managers, departmental legal teams and Ministers are on leave.
 - g. Consult Office of Public Sector Information (OPSI) to ensure that they are aware and can fit you in to their print schedule.
- For 1 October, remember Parliament rises for the summer. The Joint Committee for Statutory Instruments or the House of Commons Select Committee on Statutory Instruments and House of Lords Merits of Statutory Instruments Committee will not look kindly on Departments or agencies that break the 21-day minimum period rule without good reason;
- Be realistic – your regulation may not pass any stage of clearance first time and this can have knock-on consequences for the timetable. Build in some flexibility.

CCDs and the Devolved Administrations

14. Some regulation on regulating business is reserved and therefore would normally be commenced on a UK basis though in certain sectors this is not so, e.g. food safety and labelling, environment, fisheries, agriculture, health and aspects of the legal system which affect business. However, a good number of UK Bills include devolved provisions that mean, for example, the Scottish Parliament's consent will be sought by the Scottish Executive for UK Parliament legislating in certain areas (in line with the Sewel Convention). It is not uncommon for example, for devolved provisions to be commenced for Scotland by Scottish Ministers, often aligning the commencement with the rest of the UK but sometimes not. You should, when drawing up your project and delivery plan, discuss and agree, where possible, commencement arrangements with officials in the Devolved Administrations.

Europe

15. What about European Directives and Regulations?

Approximately half of all regulation with an impact on business is of domestic origin. The rest comes from Europe and the deadline for commencement is usually set as part of the negotiation. Business, both in the UK and in Europe, have indicated that it would strongly favour the CCD approach being adopted for European legislation.

In handling measures under negotiation, Ministers have agreed that you should, when developing your negotiating objectives, consider whether it is feasible to aim to align the date of transposition or coming into effect with a CCD.

In many cases, the date for coming into effect of Regulations or the deadline for the transposition of Directives will not coincide with a UK commencement date. EU Regulations are directly applicable and consequential domestic Regulations, providing say for enforcement, need to come into effect at the same time. Once adopted, the date on which EU Regulations take effect cannot be changed.

In some instances it may be appropriate to transpose Directives before the latest possible date. Although some could see this as gold-plating, the CCD employment pilot back in 2004 showed that business will, in some cases, prefer commencement on a CCD, rather than being left to the final deadline. You should consult business for views as to whether implementation should occur on a CCD or to be left to the transposition deadline when consulting stakeholders on the options for implementation. The coalition Government is currently reviewing the issue of gold-plating.

Where Directives are concerned, the Government's policy is to transpose so as to achieve the objectives of the European measure, on time and in accordance with other UK policy goals, including minimising the burdens on business. It is not acceptable for Departments to opt for late transposition of a Directive merely in order to meet a CCD. However, at times, Departments may find themselves implementing late for other reasons. In that case, legal advice should be sought about the possibility of aligning with a CCD when implementation does take place.

Please note that following the European Commission's commitment in the 2008 'Small Business Act' for Europe, the Commission is trialling a project in selected sectors related to internal market legislation, that fall under Directorate General Enterprise and Industry, before a full launch of Common Commencement Dates.

At this stage, the scope of the project is mainly limited to Commission autonomous acts also known as implementing measures. The sectors chosen are automotive and explosives. Two common commencement dates

*have been fixed: **29 April and 29 October**. This would mean in practice that the acts included in the Common Commencement dates trial project will be applicable to businesses starting either on the 29 April or on the 29 October in any given year⁴.*

The Forward Regulatory Programme

16. What is the Forward Regulatory Programme?

The Forward Regulatory Programme is the means used to inform business and the public of when the CCDs are; what new/amended regulations will be introduced and, where further information can be obtained.

17. Who publishes the Forward Regulatory Programme?

Departments and their agencies have responsibility to provide information to the BRE to maintain an up-to-date list of forthcoming regulations.

⁴ For further information visit the Commission CCD webpage - http://ec.europa.eu/enterprise/policies/sme/business-environment/common-commencement-dates/index_en.htm

18. Who, within the Department/agency, should co-ordinate this?

It is up to each Department or agency how they handle this. Your Departmental Better Regulation Unit (BRU) may be best placed to co-ordinate its return to the BRE. The co-ordinator should trawl policy makers (or departmental directorate regulatory champions, if they have one) to request them to identify measures to be included within the statement.

19. When should the Forward Regulatory Programme be published?

In January each year.

20. Do I need to review the Forward Regulatory Programme during the year?

As a matter of good practice, CCD co-ordinators should review their entries with officials, six months after publication, to see if there have been any slippages or changes. If there are changes, an updated statement should be issued and the relevant parties notified.

21. Glossary/Explanation of key terms used in making regulation.

When preparing regulation of either generic nature (e.g. employment law) or sectoral regulations (e.g. HACCP – Hazard Analysis Critical Control Points) a number of dates are significant:

"Royal Assent". This is the date a statutory instrument is signed by the Minister or an Act receives Royal Assent. The measure becomes a piece of legislation at this point. It is rare for a measure to come into immediate effect. An Act will say when each of its provisions will come into effect or, more commonly, provide for a subsequent commencement order to be made specifying the commencement date.

The "laying date" this is the date on which a statutory instrument is formally laid in both Houses of Parliament. For negative instruments Parliament then has 40 sitting days (not including Recesses) to comment on it.

The "commencement date". This is the date when a provision of an Act or statutory instrument takes legal effect. A statutory instrument will specify the date when each of its provisions will come into effect. As with an Act, different provisions may come into effect on different dates. Except for emergencies (i.e. relating to tax, war or health issues, not you running out of time) instruments normally take effect a minimum of 21 days after they have been laid. However that is a **minimum**: it is much more helpful to the potential

users of the regulation to allow them longer to understand its effects and what they must do to satisfy it.

The "compliance date". If a provision of a measure has a phased-in nature it will have legal effect from the commencement date but certain things may remain lawful/unlawful until some later compliance date. For example an order might allow progressively heavier lorries on the road after a series of dates or require radio transmitters of different types to be substituted with new equipment as time passes.

What the Government is seeking to achieve is co-ordination of commencement dates. It is not possible to co-ordinate the making dates of primary legislation, and making statutory instruments at different times throughout the year is helpful both to Departments and to Parliamentary committees. It is the commencement date which is key for business. Where different parts of an Act or statutory instrument imposing obligations on business come into force on different dates, it is envisaged that each date will coincide with a common commencement date of 6 April or 1 October.

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Useful contacts and links to other background information

Advice on CCD policy and address to send Annual Statements

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