



An Roinn Oideachais
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Pay and Conditions of Employment

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1. Application

This Practice Note sets out the ER's duties and obligations in relation to Pay and Conditions of Employment (both under the Contract and arising from these procedures).

It forms part of the **Design Team Procedures [5th Edition 2025]** and must be complied with.

The **Design Team Procedures [5th Edition 2025]** and any associated Practice Notes (published at www.education.ie) apply to all schools construction projects funded in part or in total by the Department of Education & Youth unless otherwise stated.

2. Pay and Conditions of Employment

2.1 Background

In traditional Construction Projects (not D&B) the use of one of the following Public Works Contracts is obligatory

- PW-CF1 - Public Works Contract for Building Works designed by the Employer
- PW-CF5 - Contract for Minor Building & Civil Engineering works designed by the Employer
- PW-CF6 - Public Works Short Form of Contract

The relevant clauses in the various forms of contract are as follows:

- PW-CF1 - Building Works designed by the Employer - **Clause 5.3**
- PW-CF5 - Minor Building & Civil Engineering works – **Clause 5.3**
- PW-CF6 - Short Form of Contract – **Clause 7.2**

The Contractor's obligation in terms of Pay and Conditions of Employment apply to not only his workers but also all other workers on site, and ensuring that their employers, or the persons for whom they are working are in compliance with the terms of Pay and Conditions of Employment under the contract.

2.2 Duties of the Contractor

The Contractor **must**:

- Prominently exhibit copies of the relevant sub-clause (i.e. 5.3 or 7.2 as appropriate) for the information of persons at the Site. The relevant clauses: workers means an individual employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site
- Ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented under the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act 2015, which have not otherwise been superseded). This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 as amended by Directive 2014/67/EU concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions in accordance with any sectoral employment orders, registered employment agreements or employment regulation orders implemented under the Industrial Relations Acts 1946 to 2015 does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union. The obligations in these sub-clauses 5.3 or 7.2 apply regardless of what rates the Contractor has tendered for adjustments to the Contract Sum..
- pay all wages and other money due to each worker
- ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
- pay all pension contributions and other amounts due to be paid on behalf of each worker
- make all deductions from payments to workers required by Law, and pay them on as required by Law
- Keep proper records [including time sheets, wage books and copies of pay slips] showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each

worker, and produce these records for inspection and copying by any persons authorised by the Employer, whenever required by the Employer

- produce any other records relating to the rates of pay, pension and other contributions, deductions from pay and their disposition, conditions of employment of, rest periods, and annual leave for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
- respect the right under law of workers to be members of trade unions
- observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act, 2005 to 2014 and all employment law including the Employment Equality Act 1998 to 2005, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015, and regulations, codes of practice, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements implemented under those Laws.
- If the Employer so requests, shall, within 5 working days after the receipt of the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same
- Give the ER with each interim statement under sub-clause 11.1 (PWCF 1& 2) & Clause 4(PWCF 6) a certificate in the form in the Works Requirements, that, in respect of the work to which the interim certificate relates, the Contractor has complied in full with this sub-clause (5.3 or 7.2 as appropriate).
- Ensure that in the event of an official of a trade union which is representing workers who are affected by a sectoral employment order, employment regulation order or which is a party to a registered employment agreement affecting workers having concerns in relation to the Contractors or Contractor's Personnel's compliance with the order or agreement, that official will have access to a designated member of the Contractor's management who shall engage constructively to resolve matters at this point

2.3 Duties of the Employer's Representative

The Employer's Representative as part of the scope of service under the 2025 Design Team Procedures and associated practice notes (including this one) and their duties as an ER must:

- Ensure that in the schedule PART 1 J - **Random Checks for Employment Records** the clause reads: "**Sub-clause 5.3.3A (2) shall be part of the Contract**". (This confers on the Employer's Representative a contractual right to conduct random checks within the Contract) but does not oblige the ER to carry out such checks unless he/she deems it necessary.
- Co-operate with Trade Union officials (See also [Co-operation with Trade Union Officials](#)) by providing to them the Name and Contact details of the designated person within the Contractor's firm to deal with compliance with Registered Employment Agreement compliance (supplied by the Contractor at Letter of Intent stage)
- Ensure that the Contractor prominently exhibit copies of the **Pay & Conditions of Employment** (Clause 5.3 or Clause 7.2 as appropriate) for the information of persons at the Site
- Withhold Payment Certificate for work relating to an **Interim Statement** under Clause 4.2 until such time as a valid **Pay and Conditions of Employment Clause certificate** stating that, for the work to which the interim statement relates, the Contractor has complied in full with the relevant Pay and Conditions of Employment Clause. The relevant forms are model forms reference MF 1.13 & MF 1.23- Rates of Pay and Conditions of Employment Certificate available on the Capital Works Management Framework website.
- Where there is substantive [evidence of non-compliance](#) with the **Pay and Conditions of Employment Clause**, The Employer shall estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and The Employer may deduct the estimated amount from any payment due to the Contractor, until the Employer is satisfied that all proper amounts have been paid (See Payment deductions below).

2.4 Evidence of apparent non-compliance

Substantive evidence includes information provided by the National Employment Rights Authority (NERA). NERA (www.employmentrights.ie) is the statutory body tasked with securing compliance with employment rights legislation and its remit includes both inspection and enforcement (and prosecution) services. Other such evidence would be incontrovertible public knowledge.

Where unsubstantiated allegations are brought to the attention of the Employer's Representative, he/she should first refer the person/organisation making the allegation to NERA.

Once it has been confirmed that the issue has been referred to NERA and that the allegations are currently under investigation the Employer's Representative (at his/her discretion) may separately wish to make a preliminary assessment of the possibility of an infringement against the Contract Clause.

Such a preliminary assessment may include consideration of:

- **Non-display** of the relevant Pay and Conditions of Employment Clause
- Current or previous delays in providing a valid **Pay and Conditions of Employment certificate**
- Non-compliance with Clause 5.3.9 Construction engagement with relevant Trade Union Official
- Other (verifiable) factual information provided to the ER by 3rd parties (including trade union officials)

2.5 Non- Display of Pay and Conditions of Employment Clause

If the Pay and Conditions of Employment Clause has not been exhibited prominently for the information of persons at the Site, the ER should first bring this to the attention of the Contractor (in writing or otherwise recorded, such as at a site meeting).

Where a Contractor fails within a reasonable time to remedy the clause contravention, the Employer's Representative may take this as prima facie evidence of a failure to comply with the entire clause and may invoke some or all of the powers of examination and inspection.

2.6 Failure to provide valid Pay and Conditions of Employment Clause certificate

Under sub-clause 11.1 (PWCF 1 & 2) and Clause 4 (PWCF6) the Contractor is required to provide the ER with each Interim Statement a certificate in the form in the Works Requirements, that, in respect of the work to which the interim certificate relates, the Contractor has complied in full with this sub-clause (5.3 or 7.2 as appropriate). The relevant forms is MF 1.13 and MF 1.23 - Rates of Pay and Conditions of Employment Certificate available on the the Capital Works Management Framework website.

Where the contractor fails to provide a valid certificate (as above) or where that certificate does not relate to all the personnel working on the project (including sub-contractors' personnel) the ER should withhold the Payment Certificate for work relating to that Interim Statement under Clause 4.2 until such time as a valid certificate is provided.

Where the Contractor repeatedly fails to provide the relevant certificate on time (i.e. with the Interim statement) or where the Contractor has failed to provide one valid certificate for a prolonged period of time, the ER may interpret this as evidence of substantive non-compliance and inform the Contractor that he/she (the ER) is considering invoking Sub-Clause 5.3.3.A(2), the right to make random checks

2.7 Random Checks for Employment Records

While the Employer's Representative may have the right (Sub-clause 5.3.3.A(2)) to make random checks, this right needs to be tempered by the complexity of such investigations, the nature of the alleged contraventions and the project size. Where such investigation is warranted, expert assistance may be required to ensure that such investigations are effective.

It is noted that the cost of such investigations might revert to the Employer where there is no reasonable evidence of substantive non-compliance. (Under the Conditions of Engagement, and the Construction Contract, the Employer's Representative's authority to expend monies other than as specified in either contract is limited).

The Employer's Representative may also may wish to raise the issue with the Contractor, reminding the Contractor of ER's rights under the Clause to estimate the amount (See [payment deductions](#) below) that should have been paid to work persons, and contributions that should have been made on their behalf, and to deduct the estimated amount from any payment due to the Contractor, until the Employer is satisfied that all proper amounts have been paid.

In addition to the sanctions under this clause the ER should inform the Contractor that:

- Any breaches under this Clause will be referred by the ER to the National Employment Rights Authority (NERA) for consideration (and prosecution if appropriate)
- Substantive compliance with the Pay and Conditions of Employment Clause will be a criterion for Performance Assessment of Contractors, and failure to comply with this clause with result in a negative assessment, the withholding of a certificate of satisfactory completion and may adversely affect the Contractor's capacity to qualify for future educational work.

Finally if the Employer's Representative is of the view that a more detailed investigation is warranted, he/she should first inform the Employer that he/she (the Employer's Representative) intends to invoke the powers under Pay and Conditions of Employment Clause to:

- Request the Contractor to produce (within 5 days) a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same. (Clause 5.3.4 / Clause 7.4)
- Seek information for the purpose of ensuring the obligations described in the Pay and Conditions of Employment Clause have been properly discharged (Clause 5.3.4 / Clause 7.4)

2.8 Payment Deductions

If the Employer's Representative (as above) is aware of or becomes aware of substantive [evidence of non-compliance](#) with the Pay and Conditions of Employment Clause (including non-payment of pension contributions), under that sub-clause he/she is empowered to carry out [random checks](#) as above

If upon investigation it is demonstrated to the Employer's Representative satisfaction that the Contractor has not complied with this clause (or has failed to provide evidence of compliance), the Employer's Representative may (without limiting his/her other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and withhold the estimated amount from any payment due to the Contractor, until the required amounts have been paid.

2.9 Co-operation with Trade Union Officials

Clause 5.3.9 / 7.9 states that the Contractor shall ensure that in the event of an official of a trade union which is party to a registered employment agreement affecting workers having concerns in relation to the Contractors or Contractor's Personnel's compliance with the agreement, that official will have access to a designated member of the Contractor's management who shall engage constructively to resolve all matters at this point.

The ER should co-operate with those trade union officials by providing those officials with the name and Contact details of the designated person within the Contractor's firm to deal with compliance with Registered Employment Agreement compliance provided to that ER prior to the issue of the letter of acceptance (See also **DTP-2025 Construction Stage 4**).

The normal format for interaction between the Contractor and relevant Union Officials is as follows:

- Request the Contractor to produce (within 5 days) a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of
- Site visits where Union Officials wish to speak to workers at 10 am break & 1 pm break. At other times Officials will engage with site management.
- Union Official presents at the site compound, identifies to site management (contracts mgr/foreman/QS)
- Union Official requests update list of sub-contractors engaged (approx. number of workers engaged), current and proposed.
- Union Official speaks to workers on the REA(s) including pay rates, pensions, etc., H&S.
- Union Official inform the principle contractor on site that any concerns regarding compliance
- Union Official will inform the client of the nature of the non-compliance if unresolved at local level.

The ER has no function or input to these visits.

Where the Contractor fails to engage constructively with the Union Official as provided for in the Contract, the Union Official may inform the ER of same. Such non-compliance may be taken into consideration by the ER as [evidence of non-compliance](#) with the Pay and Conditions of Employment Clause.

Where the Union Official has evidence of non-compliance he/she may elect to give that evidence to the ER who may consider it as [evidence of non-compliance](#).

Such evidence must be (verifiable) factual information (in writing) backed by written evidence together with written confirmation that this same evidence has been provided to the National Employment Rights Authority (NERA). Where this evidence is deemed by the ER to be substantive [evidence of non-compliance](#), the ER should consider [Random Checks](#) and [Payment Deductions](#) as above

APPENDIX A - PW-CF1 and PW-CF5 Pay and Conditions of Employment Clause 5.3

- 5.3.1 The Contractor shall prominently exhibit copies of this sub-clause 5.3 for the information of persons at the Site. In this sub-clause 5.3 **Worker** means an individual employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site.
- 5.3.2 The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented under the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act 2015, which have not otherwise been superseded). This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 as amended by Directive 2014/67/EU concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions in accordance with any sectoral employment orders, registered employment agreements or employment regulation orders implemented under the Industrial Relations Acts 1946 to 2015 does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union. The obligations in this sub-clause 5.3 apply regardless of what rates the Contractor has tendered for adjustments to the Contract Sum
- 5.3.3 The Contractor shall in respect of
- (i) workers employed by, or otherwise working for, the Contractor and
 - (ii) all other workers, ensure that their employers, or the persons for whom they are working, do all of the following:
 - (1) pay all wages and other money due to each worker
 - (2) ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
 - (3) pay all pension contributions and other amounts due to be paid on behalf of each worker
 - (4) make all deductions from payments to workers required by Law, and pay them on as required by Law
 - (5) keep proper records [including time sheets, wage books and copies of pay slips] showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
 - (6) produce any other records relating to the rates of pay, pension and other contributions, deductions from pay and their disposition, conditions of employment of, rest periods, and annual leave for inspection and copying by any persons authorised by the Employer, whenever required by the Employer
 - (7) respect the right under law of workers to be members of trade unions
 - (8) observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act, 2005 to 2014 and all employment law including the Employment Equality Act 1998 to 2005, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015, and regulations, codes of practice, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements implemented under those Laws.
- 5.3.3A (1) Sub-clause 5.3.3A(2) shall only be included in the Contract if the Schedule, part 1J says so, and if not, neither sub-clause 5.3.3A(2) nor its omission shall be taken into account.
- (2) The Employer shall be entitled to make random checks requiring production of records under sub-clauses 5.3.3(5) and (6).
- 5.3.4 If the Employer so requests, the Contractor shall, within 5 working days after the receipt of the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 5.3.5 The Employer may seek information under sub-clause 5.3.3 only for the purpose of ensuring the obligations referred to in this sub-clause 5.3 to work persons have been properly discharged. All documents and records received under sub-clause 5.3.3 shall be returned to the person providing them or destroyed if the Employer is satisfied that the relevant employer has complied with legal obligations to work persons.
- 5.3.6 If the Contractor has not complied with this sub-clause 5.3, the Employer shall [without limiting its other rights or remedies] be entitled to estimate the amount that should have been paid to work persons and contributions that should have been made on their behalf, and the Employer may deduct the estimated amount from any payment due to the Contractor, until the Employer is satisfied that all proper amounts have been paid.
- 5.3.7 The Contractor shall give the Employer's Representative with each interim statement under sub-clause 11.1 a certificate in the form in the Works Requirements, that, in respect of the work to which the interim certificate relates, the Contractor has complied in full with this sub-clause 5.3.
- 5.3.8 If the Contractor does not comply with this sub-clause 5.3, it shall pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.
- 5.3.9 The Contractor shall ensure that in the event of an official of a trade union which is party to a registered employment agreement affecting workers having concerns in relation to the Contractors or Contractor's Personnel's compliance with the agreement, that official will have access to a designated member of the Contractor's management who shall engage constructively to resolve all matters at this point.

APPENDIX B- Short Form of Contract Pay and Conditions of Employment Clause

7 Pay and conditions of employment of work persons

- 7.1 The Contractor shall prominently exhibit copies of this clause 7 for the information of persons at the Site. In this clause **Worker** means a person employed by, or otherwise working for, the Contractor or the Contractor's Personnel on or adjacent to the Site.
- 7.2 The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented in accordance with the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act 2015, which have not otherwise been superseded). This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 as amended by Directive 2014/67/EU concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions in accordance with an applicable sectoral employment order, registered employment agreement or employment regulation order under the Industrial Relations Act 1946-2015 does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union..
- 7.3 The Contractor must, and must ensure that the employers of all workers, do all of the following:
- pay all wages and other money due to each worker
 - ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
 - pay all pension contributions and other amounts due to be paid on behalf of each worker
 - make all deductions from payments to workers required by law, and pay them on as required by law
 - keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by persons authorised by the Employer, whenever required by the Employer
 - produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Employer, whenever required by the Employer
 - respect the right under law of workers to be members of trade unions
 - observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act 2005 to 2014, and all employment law including the Employment Equality Act 1998 to 2015, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015 and regulations, codes of practice, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements determined under those laws.
- 7.4 If the Employer so requests, the Contractor must, within 5 working days after the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers, not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 7.5 The Employer may seek information under the above provisions of this clause only for the purpose of ensuring the obligations described in this clause to workers have been properly discharged. All documents and records received under the above provisions of this clause will be returned to the person providing it or destroyed if the Employer is satisfied that the person providing the information has complied with legal obligations to workers.
- 7.6 If the Contractor has not complied with this clause, the Employer may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may withhold the estimated amount from any payment due to the Contractor, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time the Defects Certificate is issued, the estimated amount is deducted from the Price.
- 7.7 The Contractor must give the Employer's Representative with each statement under clause 4.2 and 4.3 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the certificate attached to these Conditions, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given the time the Defects Certificate is issued, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.by.
- 7.8 If the Contractor does not comply with this clause, it must pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.
- 7.9 The Contractor shall ensure that in the event of an official of a trade union representing workers who are affected by a sectoral employment order, employment regulation order or which is a party to a registered employment agreement affecting workers having concerns in relation to the Contractor's or Contractor's Personnel's compliance with the order or agreement, that official will have access to a designated member of the Contractor's management who shall engage constructively to resolve all matters on this point.