



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Background Document on Changes to an
Interim Criteria Document**

CER/06/247

11th December 2006

1.0 Overview

The Report of the Interdepartmental/Agency Review Group on Public Safety was published in 2000. It identified a number of shortcomings in the existing system for regulating the electrical contracting industry in Ireland. In response, the Commission for Energy Regulation was requested by the then Minister for Public Enterprise, Mary O'Rourke, to advise her on the potential of a role for the Commission in the regulation of the industry with respect to safety.

The Commission's initial work in this area culminated in the publication in 2004 of **CER/04/248**, the ***Criteria for Issue of a Regulatory Licence to an Electrical Contracting Licensed Regulatory Body*** (the "Criteria Document"), which was produced after an extensive period of consultation with the various industry stakeholders.

The Criteria Document seeks to clearly outline the roles and responsibilities of the various parties involved in the day-to-day safety regulation of the electrical contracting industry. Its ultimate aim is to safeguard the general public in their interaction with electrical installations, by ensuring that there is a co-ordinated regulatory approach.

At present, the Commission oversees this co-ordination and consults regularly with industry stakeholders in order to guarantee the ongoing effectiveness of the current voluntary regime. One of the key means of communication between the Commission and those stakeholders is the Electrical Contractors' Criteria Review Panel (ECCRP).

Since the panel's reinstatement in May 2006, a number of matters have been put forward for the Commission's consideration regarding specific provisions of the Criteria Document. Subsequent to seeking advice on these matters and undertaking appropriate consultation with relevant parties, the Commission today publishes Version 2.0 of Criteria Document (CER/06/248), which includes a number of changes as outlined in this Background Document.

2.0 Future Legislation

It should be noted that under the provisions of the Energy (Miscellaneous Provisions) Bill¹, currently before the houses of the Oireachtas, the Commission will be given statutory responsibility for the regulation of the electrical contracting industry in Ireland with respect to safety.

One of the Commission's duties will be to publish criteria which set down the respective roles and responsibilities of the different parties involved in the new regulatory regime. In accordance with this requirement, a thorough review of the Criteria Document will be undertaken and a new document published which fulfils all of the Commission's obligations under the legislation.

3.0 Explanatory Note

This document gives details of the clauses and appendix which have been reworded and / or included in Version 2.0 of the Criteria Document. The previous text has been quoted with items to be omitted struck through and added items underlined. In the case of the Disciplinary Procedure, the entire text has been added.

¹ Information on the content of the Bill and its progress through the Oireachtas can be found at - <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2006/1406/document1.htm>

4.0 Description and Background of Changes

4.1 Issue of Membership Transfer and “Clearance”

Relevant Clause

9.1.6. *The Registered Electrical Contractor shall not be a member of more than one Licensed Regulatory Body at any point in time, except where the Licensed Regulatory Bodies formally agree. A Licensed Regulatory Body shall not accept for membership any contractor who is subject to disciplinary procedures by another Licensed Regulatory Body. ~~A registered electrical contractor who wishes to transfer to another Licensed Regulatory Body shall get clearance from his/her present Licensed Regulatory Body. Such clearance shall not be unreasonably withheld. [See also 4.6.2.d, 15.9.1.c and 16.2]~~*

Background

The Commission sought legal advice on Clause 9.1.6 of the Criteria Document, specifically in relation to the requirement for an electrical contractor to seek “clearance” to join another regulatory body. This matter was raised at the May 2006 ECCRP meeting and it was queried as to whether the requirement could be deemed unconstitutional.

The advice received indicated that the requirement may be problematic in that it does not distinguish between cases where the contractor simply wishes to move to another body and the case where he is seeking to do so because he is subject to disciplinary proceedings in his current body.

It was outlined that any limitations on the freedom of movement of electrical contractors should be set out in the clearest possible terms in any future version of the Criteria Document.

In light of the legal advice received, the Commission has decided that the reference to clearance should be removed from Clause 9.1.6. of the Criteria Document.

NOTE: It is not proposed at this time to change the part of clause 9.1.6 which deals with the issue of dual membership. The current draft of the Energy (Miscellaneous Provisions) Bill does not allow for an electrical contractor to be a member of more than one regulatory body under any circumstances. However, until the legislation is enacted it would be inappropriate to make any such change to the Criteria Document.

4.2 Common Fee

Relevant Clause

15.3.4. *The Licensed Regulatory Bodies shall only provide a nation-wide inspection and certification service to non-registered contractors, who are competent persons and insured, at a ~~common~~ fee which appropriately reflects the cost of providing the service which shall be approved by the CER. (See also 14.2.2.)*

Background

This issue was raised at the August 2005 ECCRP meeting. Specifically, it was queried whether the requirement on the regulatory bodies to charge a “common fee” for the provision of an inspection and certification service to non-registered contractors could be seen as price fixing under competition law.

It was agreed that the Commission would seek advice from the Competition Authority on this matter and a meeting was held in September 2005 to this effect.

The view of the Competition Authority is that regardless of whether or not the regulatory bodies can be classed as “undertakings” under the Competition Act 2002, the introduction of the common fee as envisaged under the Criteria would be classed as price fixing. This conclusion is based on the Competition Authority’s view that:

- 1) It restricts competition between the two bodies while not being necessary to achieve the goal of improved safety.
- 2) It could prevent the regulatory bodies from passing on cost reductions due to the introduction of efficiencies into the inspection process and, therefore, there is no benefit to the consumer.

If the common fee were to be implemented, the Competition Authority indicated that they would consider it as price fixing under Section 4(1) where the licensed bodies were deemed to be undertakings. This would be the case where they were determined to be engaged in economic or commercial activity.

In the case where the regulatory bodies are not deemed to be undertakings, the Competition Authority would advise the Minister under Section 30 of the Competition Act 2002 that the implementation of Clause 15.3.4 is not necessary to achieve the stated objective, is not a proportional measure, provides no incentive to the bodies to keep costs down and therefore, is of no benefit to customers.

Taking into account this advice from the Competition Authority, the Commission has decided that the word “common” be removed from 15.3.4 of the Criteria Document.

4.3 Insurance Issues

It has been decided to make the following changes to the various clauses in the Criteria Document which reference insurance:

9.1.8. Insurance: *The Registered Electrical Contractor shall hold employers (if applicable) and public/products liability insurance. The Licensed Regulatory Body shall specify the minimum amount of cover that shall be provided.*

The onus to hold insurance cover over and above the specified minimum rests with the Registered Electrical Contractor in such cases where it is appropriate to the work being carried out.

The minimum level of cover to be held is currently set at €6.35 million.

14.2.2. *The Licensed Regulatory Body shall only provide a nationwide inspection and certification service for non-registered contractors:*

a) who are competent persons (see also 3.1.1, i.e. hold a National Craft Certificate or equivalent, as recognised by FETAC), and

b) who shall hold employers (if applicable) and public/products liability insurance that includes indemnity for the Licensed Regulatory Body. The minimum amount of cover provided shall be specified by the Licensed Regulatory Body.

The onus to hold insurance cover over and above the specified minimum rests with the electrical contractor in such cases where it is appropriate to the work being carried out.

The minimum level of cover to be held is currently set at €6.35 million.

The cost of this service to the contractor must appropriately reflect the cost of providing such a service.

18.1 *The Licensed Regulatory Body itself shall arrange public liability insurance up to a limit of €6.35 million and ensure that the policy shall indemnify the CER, or any body acting on its behalf.*

18.2 *The Registered Electrical Contractors shall arrange public liability insurance, to an amount of €6.35 million, to indemnify the CER, or any body acting on its behalf.*

The specified levels of insurance cover to be held shall be subject to review from time to time, as appropriate.

Background

The Commission sought advice in relation to the issue of levels of insurance cover to be held by electrical contractors. The matter had been raised by the regulatory bodies in relation to minimum levels of such cover to be held.

The advice received recommended that the Commission specify a minimum amount of cover in the relevant sections of the Criteria Document, and state that the onus to have cover in place above and beyond this level, appropriate to the works being carried out, rests with the individual contractor.

4.4 Common Disciplinary Procedure

Decision Regarding Appendix 5

The Commission has decided that the disciplinary procedure, as agreed by the regulatory bodies, be appended to the Criteria Document.

Background

The aim of this procedure is to ensure that disciplinary matters between the regulatory bodies and their members are conducted in an open, fair, transparent and consistent manner. To this end, the regulatory bodies embarked on the process of drafting a common procedure, facilitated by the ETCI. The final text of the procedure was discussed and accepted by all parties at the November 2006 meeting of the ECCRP.

The text of the procedure is as follows:

Appendix 5

Requirements for a Disciplinary Procedure for Electrical Contracting Licensed Regulatory Bodies

All Electrical Contracting Licensed Regulatory Bodies will have a disciplinary procedure which will meet the following requirements:

1.0 General

A licensed Regulatory Body will immediately inform the other Licensed Regulatory Bodies at the commencement of its disciplinary procedure against any registered contractor and will also inform the other bodies of the outcome of such procedures.

A Registered Electrical Contractor will not be a member of more than one Licensed Regulatory Body at any point in time, except where the Licensed Regulatory Bodies formally agree.

A Licensed Regulatory Body will not accept for membership any contractor who is subject to disciplinary procedures by another Licensed Regulatory Body.

2.0 Actions by Registered Contractors which will invoke the Disciplinary Procedure

The following is a list of actions by a Registered Electrical Contractor which will give rise to action being taken against the contractor under the Disciplinary Procedure.

- Breach of the rules of the Licensed Regulatory Body.
- Furnishing incorrect or misleading information in an Application for Membership or subsequent renewal application.
- Failure to furnish proof of valid policy of insurance when requested.
- Failure to comply with the requirements of the ETCI wiring regulations particularly where such failure could lead to the danger of death or injury or damage to person or property.
- Conduct likely to bring the Licensed Regulatory Body or the industry into disrepute.
- Certification by a registered contractor of a new installation not constructed by him/her without specific authority of the Electrical Contracting Licensed Regulatory Body.
- A change in the ownership of the business which affect the conditions under which the registered contractor was enrolled or the contractor becomes insolvent or has a receiving order made against him or commences to be wound up for reasons other than voluntary winding up for the purposes of reconstruction or carries on business under a receiver for the benefit of his creditors or if he has ceased to trade.
- The departure of a Principle Duty Holder or Qualifying Supervisor from employment with the contractor who is not replaced by another Principle Duty Holder or Qualifying Supervisor acceptable to the Electrical Contracting Licensed Regulatory Body.

3.0 Sanctions against Registered Contractors

If a contractor is found in breach of the disciplinary code of his Regulatory Body, one or more of the following sanctions will be applied:

- Fine
- Withdrawal of self-certification facility
- Suspension of Registration
- Cancellation of Registration

4.0 Disciplinary Procedure

Complaints against a registered contractor will be investigated by the Electrical Contracting Licensed Regulatory Body.

A preliminary inspection may be carried out without the contractor being present.

Notice of complaint will be advised to the electrical contractor.

The electrical contractor will be invited to attend at the complainants premises on the day of inspection.

On receipt of an inspectors report, the Electrical Contracting Licensed Regulatory Body may set up a panel to consider the inspectors findings and the defence submitted by the contractor.

A contractor will be given a minimum of 14 days notice of the hearing.

A contractor may choose to attend the hearing in person or submit a written defence.

The decision of the panel will be notified to the contractor without delay.

5.0 Appeal

A contractor will have the right of appeal to an Appeals Tribunal, provided that notice of intention is lodged within 30 days of the decision of the panel.

The appeal will be heard and decided by a Tribunal of three persons to be nominated on the invitation of the Licensed Regulatory Body by the President of the Institute of Engineers of Ireland or the President of the Law Society.

An appeal will be heard in so far as is reasonably possible, within 30 days of the appeal being lodged and the results shall be announced as soon as possible thereafter.

The Appeals Tribunal may confirm, reject or vary the order of the panel and may make such additional orders as it sees fit.

The decision of the Appeals Tribunal will be final.

The rights and benefits of membership of the Registered Contractor shall not be withdrawn while the Appeal is pending except for the self-certification facility which may be withdrawn should the Regulatory Authority deem it necessary in the interests of safety.

6.0 Cancellation of Registration or Withdrawal of Self-Certification Privileges

When a Licensed Regulatory Body cancels a contractor's registration or withdraws the privilege of self certification or when a contractor's certification

ceases, the Licensed Regulatory Body will notify the other Licensed Regulatory Bodies and the DSO of the name and address of the contractor. This shall be confirmed by e-mail and or fax on the day when any of the above occur and shall be followed up with written confirmation on the next business day.

The DSO will not accept a certificate from a contractor whose registration has been cancelled or whose self certification privileges have been withdrawn by a Licensed Regulatory Body.