

Health & Safety Authority Observations on

Commission for Energy Regulation Document
[“Consultation on the Proposed Definition for the Scope of Restricted Electrical Works”](#) as issued on the 29th April 2011 Ref. CER/11/077

Introduction

The HSA welcomes the opportunity to comment on the proposed definition for the Scope of Restricted Electrical Works as published by the Commission for Energy Regulation on the 29th of April 2011.

All comments below are made in the context of Section 2 (2) of the 2005 Safety Health & Welfare at Work Act, which stipulates that *“for the purposes of the relevant statutory provisions, a person is deemed to be a competent person where, having regard to the task he or she is required to perform and taking account of the size or hazards (or both of them) of the undertaking or establishment in which he or she undertakes work, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken”*. This in itself imposes a restriction that work, having implications for health and safety (in the workplace environment), must only be carried out by a competent person.

General Observations.

We note that the document sets out the intention to publish Regulations for consideration by the Minister after this consultation process. We are of the view that the wording of these Regulations will be highly important. The content of this legislation will govern many aspects of how the area of restricted works will be interpreted. While the document sets out a number of options regarding works that it is intended to deem as restricted, we feel that regulation will be necessary to clarify the exact nature of the works being restricted and to whom these restrictions apply. Although the document does set out that certain works will be restricted to Registered Electrical Contractors (REC's), it doesn't specify what legal entity is being restricted. For example, strictly speaking, an employee or a sub-contractor of an REC is not legally equivalent to the REC, so legal clarity is important to show the exact scope and scale of any restrictions being proposed. In addition, the document sets out a number of types of electrical installations which will be deemed to be restricted in certain circumstances. However there are many aspects of work, which might not be justifiably restricted to a qualified electrician. This includes activities such as chasing, duct installation, cable pulling etc. It could be deemed excessive to “restrict” these types of activities.

The Issue of Competence.

We are of the view that the issue of competence is of critical importance. Works which pose a risk to the installer or to a user of an installation, should be confined to a competent person. We are of the opinion that competence in relation to electrical installations is more associated with a person than with a company. The nature of a company, and its competence, can change radically in a short period by changes in personnel or by staff reorganisation. While it might be reasonable to state that, at a particular point in time, a company has competence to organise a particular activity, it is less clear that that this competence could be assured to remain in-house in the medium to long term. The competence a company can bring to bear on a particular task might also be a dependant the level of work that a company undertakes at a particular time. Furthermore there must also be a facility for a person to train under supervision to gain the requisite competence to carry out a task. One aspect of this training will inevitably be a practical hands-on element. The trainee will, by definition, not have the requisite competence to do the work alone, and so will need to carry out the task under the close supervision of someone who is competent.

Nevertheless, if it is deemed necessary that works should be restricted to a company rather than a person, then it appears reasonable that that company might be certified to a recognised safety standard such as OSHAS 18001 or Safe-T.

Questions Posed in the Consultation Document.

Q1: Do you agree or disagree with the introduction of Restricted Electrical Works? The HSA is of the opinion that works should be restricted to those that are competent, or be done under the close supervision of someone who is competent.

Q2: Has the CER considered all the appropriate options for the introduction of Restricted Electrical Works?

The HSA believes that additional clarification is needed, as set out above, as to the work that is being restricted and who, legally, the works are being restricted to.

Q3: Which option do you believe that the CER should adopt if it decides to introduce Restricted Electrical Works?

The HSA believes that restrictions imposed should relate to the competency of personnel rather than the competency of a company, which could be subject to change.

Q4: Is there a potential for regulatory overlap between the CER and the HSA, if the CER adopts a Broad or Intermediate Definition Approach?

Given that the CER has, in its 2009 document [Definition for the Scope of Controlled Works](#), classified much electrical work in both the domestic and the workplace environment as being “Controlled Works”, then the HSA is of the opinion that there is

currently a certain overlap between the Authority and the work of the CER (and its nominated Safety Supervisory Bodies (SSB's)) . The regulation of these "Controlled Works" (and those that carry them out) comes within the remit of the CER and their SSB's. In the domestic environment, after the installation is complete, the HSA will generally not be involved so there generally will be limited or no overlap between the HSA and the CER in this setting. However, in the workplace, all electrical works will come within the realm of the 2007 Safety Health & Welfare at Work (General Application) Regulations (among other pieces of legislation) in addition to being "Controlled Works" in accordance with the CER decision paper mentioned above. In this context, an obvious area of overlap already exists. However, with close co-operation between the HSA and CER, this can be successfully managed to the benefit of both organisations, the users of electrical installations and wider business community.

Q5: If you deem that there is the potential for regulatory overlap between the CER and the HSA, do you believe that this is necessary to achieve the desired safety outcomes?

The HSA believes that the potential for regulatory overlap can be successfully managed through close co-operation between the two bodies and through the implementation and development of the Memorandum of Understanding between the two bodies that has been in place since 2008.

Clarification.

The HSA is of the view that some clarification on Option 3 & Option 4: Defined Definition Approach would also be useful. This option generally appears to excludes "**Work in a commercial or work place**" but includes "**Specialist Installations (swimming pools, saunas, fountains, caravan parks & marinas);**" Given that most of the latter could in many instances be in workplaces, does Option 3 & Option 4 take the view that, where these "Specialist Installations" are in a workplace, they are included or excluded from Option 3 & Option 4?

Conclusion.

The HSA is available for discussion on the document and feels confident that, through regular interactions between the HSA and the CER, any areas of possible overlap can be successfully managed. We suggest that the HSA and the CER should confer on this document and associated regulations after submissions have been received, to review the issues that arise. In general, we would envisage the knowledge-base of both organisations operating in tandem to secure the safety of electrical installations.

If you have any queries regarding this submission please contact us at padraig_delaney@hsa.ie