



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

# **Vision for the Regulation of Electrical Contractors with respect to Safety**

**A Decision Document**

**CER/07/ 203**

**8<sup>th</sup> November 2007**

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# **1. Background, Introduction and Overview**

## **1.1 Background**

On December 24<sup>th</sup> 2006, the Energy (Miscellaneous Provisions) Act 2006 (“the Act”) was signed into law. Section 4 of the Act provides the Commission for Energy Regulation (“the Commission”) with the statutory authority to “*regulate the activities of electrical contractors with respect to safety*”. The Act specifies the functions of the Commission associated with this authority<sup>1</sup>.

On 17<sup>th</sup> August 2007, the Commission published its consultation paper, entitled “Vision for the Regulation of Electrical Contractors with respect to Safety” (reference: CER/07/127). That paper set out the Commission’s proposals with respect to the introduction of a regulatory model for the regulation of the activities of electrical contractors with respect to safety further to the provisions of the Act.

The objective of the consultation paper was to elicit public and industry comment on the proposed approach of the Commission to the regulation of the activities of electrical contractors with respect to safety.

The Commission received a substantial response to its consultation. Further to the conclusion of the consultation process, the Commission has considered the responses received and is now publishing its decision (this decision, “the Decision Paper”), confirming the high level design of the regulatory model.

The Commission is publishing a separate paper dealing with its response to the comments received (“the Response Paper”, reference CER/07/204).

## **1.2 Introduction and Scope of Document**

The first step in the implementation of the requirements of the Act is the development of a Vision document (this document). This document outlines, at a high level, the Commission’s decision on how it intends to discharge the responsibilities bestowed upon it by the Act and sets out the key elements in the operation of the regulatory model. It outlines the objectives that the regulatory model will target and its scope, together with presenting the Commission’s views on certain key issues relating to it.

The Vision document is necessary in order to:

- articulate and confirm the objectives, scope, design and operation of the regulatory model;
- ensure that the general public has a clear view on how the Commission intends to implement and regulate the activities of electrical contractors with respect to safety in an effective and efficient manner; and,
- provide clarity and certainty to the electrical contracting industry and key stakeholders on the operation of the regulatory model.

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<sup>1</sup> A full transcript of the relevant provisions of legislation is provided in Appendix A

Further to this decision, the Commission will work towards the implementation of the regulatory model. This will involve several steps and will comprise of, in the main, the following projects (as per the blueprint requirements for the regulatory model outlined in the Act):

1. Development of a **Criteria Document**;
2. Development and Implementation of a **Designation Process** for the appointment/designation of a body or bodies;
3. **Specifying the Electrical Activities/Works** to be regulated – these will determine the scope of the regulatory model at the point of its commencement.

The high-level details on the above projects are outlined in this document as considered appropriate in order to present the Vision. However, the Commission will embark on separate consultation and decision processes concerning the detail of the above projects.

### **1.3 Document Structure**

This Decision Paper is structured as follows:

- Section Two presents the legislative requirements concerning the new regulatory system – this forms the basis of the remit, powers and obligations of the Commission concerning its function to regulate the activities of electrical contractors with respect to safety;
- Section Three presents the Commission’s decision on the objectives and its high-level approach to the design and framework for the new regulatory system for regulating the activities of electrical contractors with respect to safety;
- Section Four presents the Commission’s decision on the key elements of the new regime. It provides an outline of the design of these key elements, together with the considerations and issues associated with each;
- Section Five presents the Commission’s decision on its consideration of other issues complementary to the basic framework as set out in Sections Three and Four;
- Sections Six and Seven present the Commission’s decision concerning the legal framework and governance arrangements for the regulatory model; and,
- Section Eight presents the Commission’s conclusion on its Vision decision.

**Note:** *It should be noted that the terms “electrical contractors” and/or “registered electrical contractors” in this document refer to an electrical contracting entity. This may be either an individual sole trader operating as the electrical contractor or may be a larger operation, constituting many individual operatives. The terms relate to the party with whom the customer will have, or has, entered into the contract for the carrying out of electrical works.*

## **2. Legislative Requirements Concerning the Regulatory Model**

There are a number of Acts and Regulations which are relevant to the regulation of the electrical contractors with respect to safety. However, the single most important piece of legislation relating to this area is the *Energy (Miscellaneous Provisions) Act 2006* as this places direct requirements on the Commission concerning the regulation of electrical contractors.

The main requirements arising from the relevant legislation as relating directly to the regulation of electrical contractors are set out in this Section. These provisions and requirements form the blueprint for the design of the regulatory model.

### **2.1 Energy (Miscellaneous Provisions) Act 2006**

This Act places several new duties and functions on the Commission including specific functions concerning the regulation of both electrical contractors and gas installers with respect to safety. Section 4, sub-section (9)(C) of the Act states that:

*“It shall be a function of the Commission to regulate the activities of electrical contractors with respect to safety”.*

The Act includes specific provisions and responsibilities in broadly seven areas:

1. The role of the Criteria Document within the regulatory system;
2. The designation, functioning, operation, and monitoring of Electrical Safety Supervisory Body or Bodies (“the Designated Body”);
3. Obligations on electrical contractors who are registered with a Designated Body;
4. The implementation and operation of appeals procedures relating to a decision made by a Designated Body to suspend or revoke membership;
5. The determining of class or classes of work as works which require a Completion Certificate. Furthermore, the form and procedures relating to the issuance of a Completion Certificate, and the development of regulations by the Commission which makes it an offence for Non-RECs to undertake certain Restricted Works;
6. Third party inspections and Certification of Electrical Installations; and,
7. The appointment and powers of Authorised Officers and Appeals Officers.

Full details of the relevant sections of the Act are presented in Appendix A.

### **2.2 Other Legislation concerning Electrical Safety**

The following are other areas of legislation which will influence the regulatory model:

#### **Electricity Regulation Act (1999)**

The Commission was established under the Electricity Regulation Act, 1999. Under that Act, Section 9, sub-section (4) the Commission has the responsibility to *“have regard to the need...to promote safety and efficiency on the part of electricity undertakings”*

Thus, the Commission, in discharging its function to regulate the activities of electrical contractors with respect to safety, may support this approach via the promotion of safety and efficiency on the part of electricity undertakings.

Any new requirements which may be placed upon the DSO (and any other electrical undertaking licensed by the Commission) to support the regulatory model can be addressed through the Commission's powers of direction through the relevant licences.

**Other Legislation**

Whilst there are other pieces of legislation which will influence the operation of the regulatory model, they may not necessarily influence the design of the regulatory model and, hence, are not discussed here.

Such legislation includes the following:

- the *Safety, Health and Welfare at Work Act 2005*;
- the *Safety, Health and Welfare at Work (General Application) Regulations 2007*;
- *Qualifications (Education & Training) Act 1999*;
- the *National Standards Authority of Ireland Act 1996*; and,
- *Building Control Act 1990 and Building Regulations*.

In implementing and operating the regulatory model, the Commission will take cognisance of this other legislation and will engage with the parties with responsibilities for the enforcement of such legislation to ensure that there is no duplication of functions.

### 3. Regulatory Objective, Approach & Scope of Regulatory model

This Section presents the Commission’s decision on the Regulatory Objective for the regulatory model. The approach in the design of the regulatory model in order to achieve that Regulatory Objective is then presented, together with the key elements of the regulatory model. (Section 4 of this document presents the Commission’s outline design for each of those elements.)

This Section concludes with the Commission’s decision on the scope of the regulatory model at the point of commencement.

#### 3.1 Regulatory Objective

The fundamental objective of the Commission with respect to its function for electrical safety relates primarily to the protection of life and of property. (Section 3.4.1 discusses the concept of safety in this context.)

The Commission, in considering the above fundamental objective, together with the operation of the current regulatory system and the requirements of the Act, has decided on the following as being the overarching objective of the regulatory model, the “Regulatory Objective”:

*To protect the safety interests of customers with respect to electrical installation activities through creating a suitable regulatory system which provides for electrical works to be carried out, tested and certified in compliance with the appropriate technical rules/standards.*

#### 3.2 Approach to Achieving the Regulatory Objective

The Commission plans to achieve its Regulatory Objective through the following approach:

*The design and implementation of a regulatory system for the regulation of electrical contractors in line with the requirements of the legislation through:*

- *Putting in place, through a **Criteria Document**, appropriate rules and standards for the regulation of the day-to-day activities of electrical contractors with respect to the safety of specified electrical works;*
- *Seeking to ensure the effective operation of the appointed **Designated Body** (or Bodies) charged with the day-to-day activities of registration, audit and inspection of registered contractors as per the requirements of the legislation and the Criteria Document; and,*
- *The operation of the Commission’s **governance and enforcement arrangements** for the regulatory model.*

*The regulatory model established is to:*

- *Be stable and robust;*
- *Be subject to regular review with stakeholder involvement in order to fulfil the Regulatory Objective;*

- *ensure the Commission has the requisite powers, tools and capabilities to regulate the activities of electrical contractors with respect to safety;*
- *be supported through customer awareness programmes and promotions in order to ensure its success; and,*
- *evolve, over time, towards expanding on and improving on the activities of electrical contractors with respect to safety.*

The Commission will seek to ensure that its regulatory model should be clear and transparent and follow the principles of Regulating Better (necessary, effective, proportionate, transparent, consistent) with any requirements to be imposed being no greater than those that are required to ensure that safety standards are met.

### **3.3 Design of Regulatory model**

The Commission is of the view that:

- the existing regulatory model (as set out in Appendix B) has been instrumental in the application of and adherence to the National Wiring Rules, and consequently public safety, over the last number of years;
- there is a substantial amount of supporting infrastructure already in place, particularly relating to the Completion Certificate system; and,
- there is no generally accepted (internationally) ideal regulatory model in existence.

In light of the above, the Commission is to build on the strengths of the voluntary self-regulatory system in place up to the point of implementation of this new regulatory model. This will be achieved by the adoption of certain elements of the current system and incorporating appropriate amendments to same, in order that they are given statutory backing.

As such, the regulatory arrangements will be fundamentally consistent with previous arrangements and the blueprint requirements of the Act insofar as they are to be based on the five key elements of:

- The Criteria Document;
- The Technical Rules;
- The Designated Body;
- The Certification System; and,
- The Promotional Activities (“the Promotion”).

These are introduced below and each element is discussed in detail in Section 4.

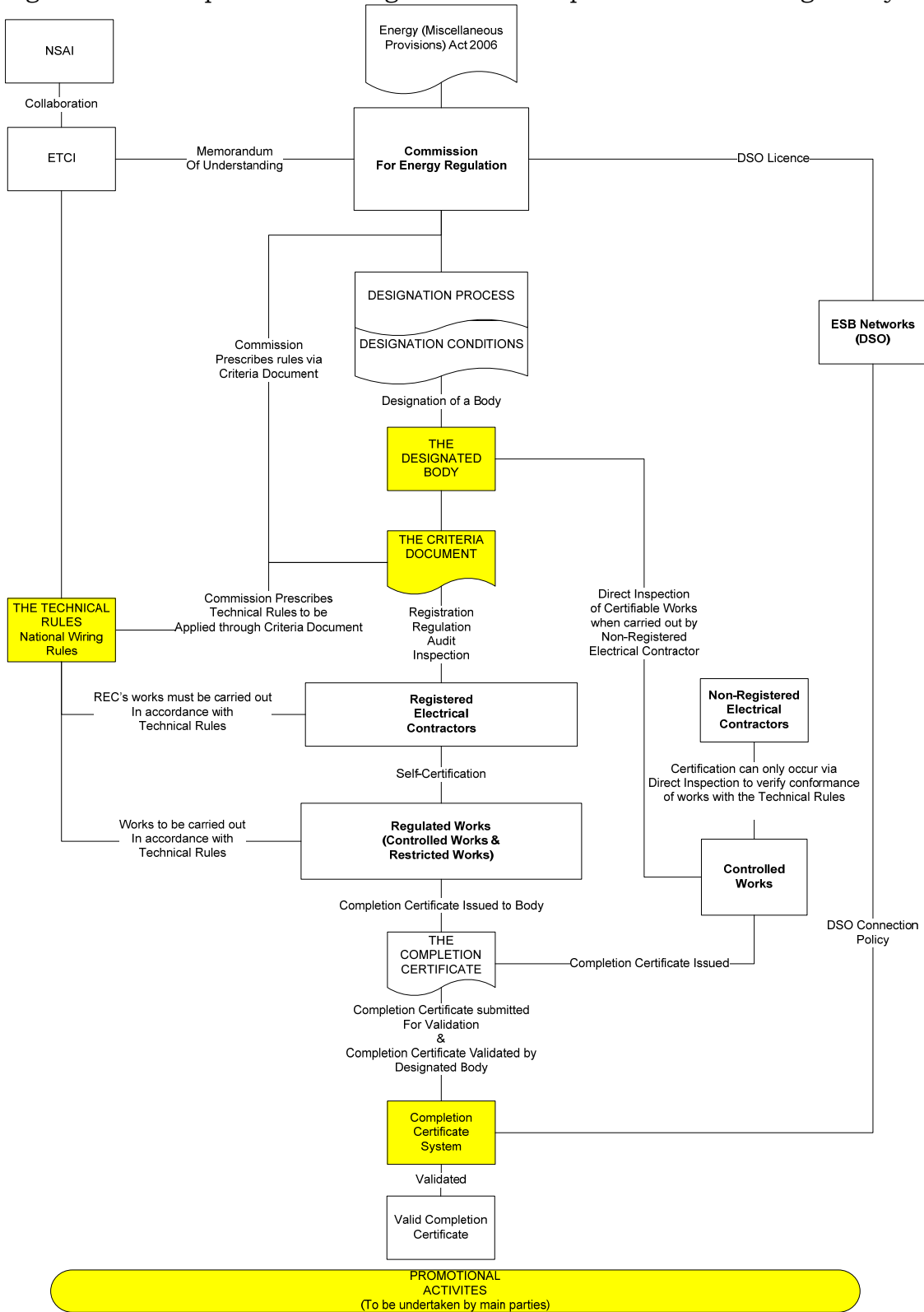
- **The Criteria Document** – this will prescribe the rules for the regulatory model and the minimum obligations placed on parties operating within that system. At a high level, this aims to:
  - Provide for a fit-for-purpose and risk-based approach for the registration and ongoing regulation of RECs by the Designated Body;
  - Establish and implement a transparent and equitable process for RECs to appeal suspension and revocation of registration decisions of the Designated Body;

- Establish relationships/agreements with other organisations and statutory bodies, where appropriate, in the interests of strengthening the regulatory system, thereby protecting public safety; and,
  - Make appropriate arrangements for dealing with the work of Non-RECs.
- **The Technical Rules** set out the technical rules to which an REC must work. The Commission will prescribe the National Wiring Rules as the technical rules for the installation work of RECs and, in prescribing these as the technical rules for electrical installation work, the Commission will provide a statutory basis for that obligation. At a high level, this work will entail:
    - Specifying the National Wiring Rules (and such other relevant ancillary/complementary Rules) published or approved by the ETCI as the electro-technical rules to which electrical works undertaken by RECs must conform;
    - Prescribing certain electrical works to be Specified Works and Designated Electrical Works which may or must be undertaken by RECs (as the case may be) (please refer to Section 3.4.3 where these works are explained and have been re-termed “Controlled Works” and “Restricted Works” respectively).
  - **The Designated Body** – the designation of a Body (or Bodies) to regulate RECs undertaking specified electrical works, and enforcing the prescribed technical rules and standards, based on minimum standards of competency and/or other requirements and to undertake an inspectorate role to ensure RECs conform with the minimum requirements as set out. At a high level, this will result in:
    - The designation of a person or persons to act as a Designated Body (“Designated Body”) to register and regulate RECs on a day-to-day basis;
    - The setting down of the regulatory standard to which a Designated Body and electrical contractors registered with it will be required to operate;
    - The monitoring and regulation of the Designated Body in an appropriate manner.
  - **The Certification System** will provide confirmation to the customer/ Designated Body/DSO that the installation has been installed and tested in accordance with the prescribed electro-technical rules (the National Wiring Rules). At a high level, this will:
    - Establish a robust self-certification of work system which allows the work and competence of an REC to be monitored;
    - Provide the customer with confirmation that the electrical work is carried out in accordance with the prescribed electro-technical rules (the National Wiring Rules).
  - **The Promotion** of the regulatory model in terms of raising awareness both within the electrical contracting industry and with the public in order to support the operation, enforcement and success of the regulatory model. At a high level, this will aim to:
    - Embark upon and subsequently sustain a comprehensive public and industry awareness campaign aimed at promoting awareness of and confidence in the regulatory model;

- Support the successful enforcement of the regulatory model.

In the Commission's approach to the design of the regulatory model, it will seek to address the identified weaknesses of the system in place up to the implementation of the new regulatory model. Such issues include the lack of statutory authority, clarification of roles and responsibilities and harmonisation of standards/procedures of the self-regulatory bodies (as outlined in Appendix B).

Figure 1 below presents a diagram on the operation of the Regulatory Model.



**Figure 1 –Regulatory Model (Key Elements in Yellow)**

### **3.4 Scope of the Regulatory Model**

In determining the scope of the regulatory model, the Commission has given consideration to the various elements within the Act.

The Act specifies the function of the Commission as being “*to regulate the activities of electrical contractors with respect to safety.*”

In light of the above, and in order to determine the scope of the function bestowed upon the Commission by the Act, it is necessary to examine these two areas of (1) Safety, and subsequently, in that context, (2) the Activities of Electrical Contractors.

The Commission’s decision on the scope of these two areas is discussed below.

#### **3.4.1 Safety**

The Act establishes the Commission’s function with respect to safety and therefore, any matters not related to safety or which are not complementary or ancillary to addressing safety matters are clearly outside the scope of the regulatory model (for example: commercial issues facing electrical contractors).

The Act is concerned with Public Safety as distinct from Occupational Health and Safety.

Occupational health and safety is the responsibility of the Health and Safety Authority. The Safety, Health and Welfare at Work Act 2005 is the main piece of legislation relating to occupational health and safety, with its primary focus on the prevention of workplace accidents, illnesses and dangerous occurrences.

The Commission is of the view that safety in the context of the regulatory model and its function relates to the safety of the electrical work (i.e. the outputs of an electrical contractor’s work) as opposed to the workplace safety of the electrical contractor. However, it is clear that the role of the HSA, operating with its remit, and that of the Commission in this context are highly complementary and the Commission will engage with the HSA on such complementary matters (see Section 6).

#### **3.4.2 Activities of Electrical Contractors subject to Regulation**

Within the above context of safety, the two key areas which determine the scope of the regulatory model are:

- the meaning of electrical contractors, which is not defined in the Act; and,
- the activities which are to be regulated with respect to safety.

“Activities” in this instance relates to electrical works as referred to in the Act but which are not defined. It is noteworthy that the Act provides for the Commission to prescribe the works which are to be regulated and, therefore, arising from prescribing such works, the activities of electrical contractors which are to be regulated.

The detailed scope of the regulatory model, within that broad landscape, is determined by the Commission’s decisions on the following parameters:

1. the Activities which are to be Regulated;
2. the interpretation of the term “Electrical Contractor”;

These are discussed in the following sections.

### **3.4.3 Activities which are to be Regulated**

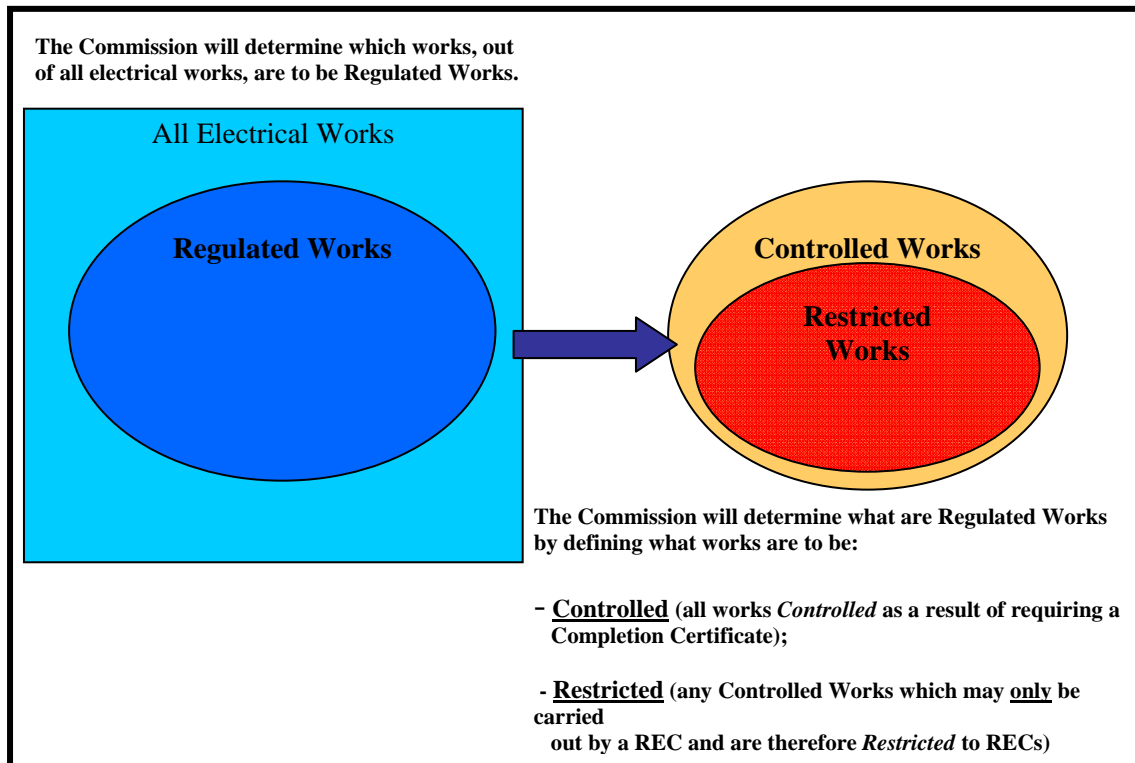
While the legislation refers to “activities” and “electrical works”, it does not define either term. It does, however, introduce the concept of Specified Works and Designated Electrical Works:

- *Specified Works* are works which require the issue of a Completion Certificate confirming certain requirements with respect to safety associated with those works. A certificate may issue under the following circumstances:
  - where the works were carried out by an REC, that contractor, following the successful completion of tests specified in the National Wiring Rules, self-certifies the work they have carried out in accordance with the National Wiring Rules;
  - where the works were carried out by a Non-REC, and further to passing an inspection by an Inspector of a Designated Body (carried out in accordance with the specified Agreed Procedure), the electrical contractor completes a certificate which is counter-signed by the Inspector;
- *Designated Electrical Works* are electrical works which may only be carried out by an REC.

For ease of distinction between the two classes of works above in the minds of the industry and the public, the Commission proposes that these should henceforth be referred to as follows:

- Specified Works are to be termed “**Controlled Works**” (insofar as they will be controlled through the requirements surrounding certification);
- Designated Electrical Works are to be termed “**Restricted Works**” (insofar as these works are restricted to RECs only and cannot be undertaken by an unregistered party) ;

Controlled and Restricted Works are together the works/activities to be regulated by the Commission (“Regulated Works”). Therefore, defining these will determine the scope of works which will be regulated under the regulatory model. By doing so, the Commission will regulate electrical contractors with respect to safety in so far as their activities relate to Regulated Works. This is summarised in Figure 2 below.



**Figure 2 – Representation of Regulated, Controlled and Restricted Works.**

To summarise the approach to the scope of the regulatory model:

- The Commission will prescribe those works which will be categorised as Regulated Works (through defining, further to consultation, Controlled Works and Restricted Works);
- the legislation requires, in the case of Controlled Works, for these works to be certified and, in the case of Restricted Works, for these works to be carried out only by RECs;
- by requiring certification for Regulated Works, the Commission will also specify the requirements with respect to certification and entitlement to certify (the technical requirements to be applied to these works in order to be certified, competence/training and other requirements associated with registration, etc. ).

From the above, the Commission will therefore be prescribing on what basis works can be certified and who is entitled to certify them.

Through this, the Commission will be carrying out its function through regulating the activities of electrical contractors with respect to safety.

The scoping of Controlled Works and Restricted Works is discussed further in Section 3.5.

#### **3.4.4 Interpretation of Electrical Contractor**

As the term “electrical contractor” is not defined in the Act, the scope of the Commission’s responsibilities is dependent on the interpretation of that term.

However, the legislation clearly provides for recognition of works which are not carried out by RECs and in designing the new regulatory model, due consideration needs to be given to, and provision made, for such works.

The Commission interprets, for the purposes of the regulatory model, the term electrical contractor to mean “*Any party, meeting specified requirements, carrying on those activities which are within the scope of the regulatory model*”.

The “requirements” referred to in the above interpretation will be specified through the Criteria Document. At a high level, it is the Commission’s intention that these requirements will relate to competency and also the holding of appropriate insurance cover for the works being undertaken.

The Commission’s intention is to make a clear distinction between the various categories of parties who carry out electrical works, as follows:

- **Registered Electrical Contractors (RECs)** who meet all of the requirements of the Criteria Document and the regulatory system with respect to competency of personnel, insurance, test equipment etc. and who are entitled to self-certify works;
- **Unregistered Parties** being those parties who carry out electrical works but who are not registered with a Designated Body. This category is made up of the following:
  - **Non-Registered Electrical Contractors or Non-RECs** who have demonstrated, through the application procedure for a Third Party Inspection, that they meet the requirements with respect to competency and insurance and who shall be entitled to certify works (Controlled Works only) further to passing the Third Party Inspection (as carried out by the Designated Body) and with the Designated Body countersigning such certificates; and,
  - **Other Unregistered Parties** who do not meet the criteria to qualify for the Third Party Inspection service to be provided by a Designated Body and whose electrical installation works will not be recognised as meeting the safety requirements of the regulatory system.

Through the Criteria Document, Non-RECs will be recognised on the basis that their compliance with the criteria for Third Party Inspection is established (particularly, the competency criterion). Upon such compliance being established, their work will be entitled to be inspected by a Designated Body, as per the 2006 Act provisions for such inspections.

The work of Other Unregistered Parties, who, by definition, do not meet the criteria for the Third Party Inspection Service operated by a Designated Body, will not be recognised by the new regulatory system.

In such instances, where such work is a Controlled Work, it shall not be entitled to an inspection by the Body and therefore cannot be certified. Consequently, the installation concerned will be in breach of the requirements of the 2006 Act, the new regulatory system and the National Wiring Rules.

### **3.5 Technical Scope of Regulated Works**

The detailed scope of Regulated Works will be subject to separate consultations by the Commission. However, notwithstanding those consultations, it is appropriate, for the purposes of the Decision Paper, to now consider the broad scope of these.

The Commission has the following views:

- the development of the Act by the Government was in essence driven by the desire to put the previous self-regulatory system on a statutory basis;
- there are accepted industry technical rules and standards in place;
- the majority of electrical contractors are engaged in the low voltage area;
- there are currently regulations in place with respect to medium and high voltage electrical works through, among other things, the requirements of Health and Safety legislation and,
- it is widely accepted that the higher risks to public safety from activities in the electrical contracting industry arise in low voltage installations in new and existing domestic dwellings, apartments, offices, etc. .

In light of the above, the Commission considers it reasonable, in the first instance, to limit the broad scope of Regulated Works, and therefore, the Commission's role to the regulation of electrical works, at the point of commencement of the regulatory model, to be primarily focussed on electrical installation work on Low Voltage installations (Low Voltage as defined in the National Wiring Rules).

The rationale for this focus is that the Commission is of the view that Low Voltage work presents the highest risk to public safety and the regulation of the activities of electrical contractors in this regard currently only has limited statutory backing from Health and Safety legislation.

However, the Commission, in applying the scope of the new system, will seek to address aspects of MV and HV installation work in the new system. This will be achieved through the following:

- Firstly, the definition of Controlled Works will include all new connections and reconnections, irrespective of voltage level;
- Secondly, the ETCI is involved with CENELEC in harmonising the rules to cover MV and HV installations. The Commission is monitoring the progress in these areas and will reflect in the definition of Controlled Works any relevant developments with regard to including certain MV and HV installation works. In order to give effect to any such requirements within the regulatory system, the Commission will consult on the technical requirements for electrical works to be specified through Controlled Works;

- Thirdly, the process of defining an initial list of Restricted Works will target critical LV installations and relevant MV and HV installation works. Restricted Works will be, as set out in Section 3.5.2, a work item to follow the commencement of the system and the Commission plans to put same in place over the twelve month period following the implementation of the new regulatory model.

The Commission will confirm the specific aspects of the above scope through, initially, the consultation process on Controlled Works and then, subsequently, Restricted Works.

The supporting elements for the regulation of MV and HV installation works will need to be given further consideration as it is clear that elements necessary to support such regulation are not as evolved as they are for LV works (with respect to, for example, the National Wiring Rules and the certification system for MV and HV works).

Once the regulatory framework has been established and is operating within the above scope, the Commission will consider expanding the scope to further address electrical works in Medium and High voltage.

### **3.5.1 Approach to Detailing the Technical Scope of Regulated Works**

The above section introduced the proposals for the broad scope of the regulatory model and the concept of Regulated Works, constituting Controlled Works and Restricted Works. Further details on the Commission’s proposed approach to defining these elements of Regulated Works are presented below.

#### **Controlled Works**

The Commission will specifically outline in the Criteria Document those classes of works which it determines to be Controlled Works.

In determining what works should be classified as Controlled Works, the Commission will employ a risk-based approach to assess the safety risks associated with each class of electrical works. Subsequently, determining the scope of Controlled Works will be informed by:

- an analysis of the options of managing the specific safety risk posed by that work and whether classifying that work as “Controlled Works” is the most appropriate approach to manage the risk;
- the practicalities of enforcing such a system; and
- the need to counter against over-regulation for limited benefit.

However, at a minimum, the Commission proposes to specify in the Criteria Document that all installation work associated with new connections to the network are classified as Controlled Works (as is currently the practice – for example: those works currently covered by the ETCI Certificates 1, 2, 3).

The detailed scoping and definition of Controlled Works will be subject to a separate consultation by the Commission.

### **Restricted Works**

Under the Act, the Commission has the power to designate a class or classes of electrical works, by regulation, which may only be undertaken by an REC. Under the Act, it would be an offence for a Non-REC to undertake such works.

The intention of this provision is to designate only those classes of work which present what may be reasonably considered as a substantial public safety risk. As such, those risks are best managed by restricting who may undertake such work.

A similar approach to that outlined for determining Controlled Works above will be employed by the Commission in determining what works should be classified as Restricted Works (this will be a risk-based approach). The detailed scoping and definition of Restricted Works will be subject to a separate consultation by the Commission.

In order for the Commission to designate these works, it would be obliged to make draft regulations and get the approval of the Minister for Communications, Energy and Natural Resources for these, and then lay the draft regulations before each House of the Oireachtas. The regulations would not come into effect until approved by both Houses.

The Commission is of the view that it is appropriate that the definition and application/enforcement of Restricted Works is a work item to follow the commencement of the system and the Commission plans to put same in place over the twelve month period following the new system going live. As stated in the Consultation Paper, the Commission is of the view that it is important that the new regulatory system is fully operational, well understood and adopted by the industry, including a suitable training framework being operational, prior to implementing “Restricted Works”.

The Commission is of the view that this “due process” is considered necessary to provide industry participants the opportunity to understand the new system and the requirements to be imposed through the Criteria Document and requirements for and obligations further to being a Registered Electrical Contractor. This may be achieved only further to a reasonable period of operation which would allow them the opportunity to comply with such requirements. It is only then considered reasonable to define Restricted Works whereby it will become illegal for a party, other than a Registered Electrical Contractor, to engage in such works constituting Restricted Works.

In the period up to that, the Commission will prescribe “Controlled Works” which are deemed to be of such significance in terms of safety that they require certification and control. The eventual definition of Restricted Works will be a subset of Controlled Works.

### **3.5.2 Other Certification**

To support the regulatory model, and to build on other forms of certification employed in the current system, the Commission proposes that RECs will be required to certify all works carried out by them. Under the Criteria Document, where a Completion Certificate is not required (as the works in question completed are not Regulated Works), the REC will be required to issue to customers other forms of Certification (as appropriate). For example, Certification further to the inspection of an installation (Periodic Inspection Report) or where minor works are undertaken. It is proposed that the use of these certificates will be confined to RECs only.

The Commission believes that this approach is appropriate in order to:

- ensure that all work of an REC can be monitored by the Designated Body;
- protect the customer insofar as these other Certificates will be a confirmation from the REC that the electrical work was carried out in accordance with the National Wiring Rules;
- The ability to provide these other Certificates could be considered an additional key service which may be provided (exclusively) by RECs.

The procedures and processes to be followed and records to be maintained, by RECs and a Designated Body relating to these other Certificates will be outlined in the Criteria Document. However, at a minimum, the following is proposed to apply:

- These certificates will be managed by the ETCI in a similar manner to its role for Completion Certificates;
- the issue of such forms/certificates by the Designated Body will be restricted to RECs only and will be required to be controlled in a similar manner to Completion Certificates.

## 4. Overview of the Key Elements of the Regulatory Model

As presented in Section 3, the regulatory model will be posited on the five key elements of:

1. The Criteria Document;
2. The Technical Rules;
3. The Designated Body
4. The Certification System; and,
5. The Promotion of the regulatory model (targeting the electrical contracting industry and the public/customers).

This section presents the high-level design concerning each of these key elements.

**NOTE:** *Whilst it is the case that the Commission is to publish further consultations and decisions on some of the key elements (for example, the Criteria Document), the broad principles of the elements and functions of same are presented here.*

### 4.1 The Criteria Document

The requirement for the development of a Criteria Document is clearly specified in the Act (Section 4, subsection 5 (a)) which provides for the Commission to publish a Criteria Document relating to:

- electrical safety supervision;
- the safety standards to be achieved and maintained by electrical contractors; and,
- the procedures to be operated by a person appointed as a Designated Body.

The Criteria Document will be the key regulatory document in the regulatory model which will specifically outline how the model will operate and be governed on a day-to-day basis.

In setting out the detailed rules which the regulated parties will be governed by, the Criteria Document will be the key tool for the Commission in regulating both RECs and the Designated Body/Bodies. The Criteria Document is intended to serve as an open and transparent means of:

- establishing the standards for parties undergoing the designation process to be measured against;
- outlining the rights, duties and functions to be fulfilled by the Designated Body (or Bodies) and RECs;
- specifying the technical rules that all RECs will be obliged to comply with;
- specifying the training and competency requirements associated with the certification of work carried out by RECs;
- specifying how the Completion Certificate process will operate;
- providing a basis for the on-going assessment/audit of a Designated Body and the registered electrical contactor;

- specifying the procedures to be employed at interfaces between industry participants necessary to ensure the operation of the regulatory system; and,
- specifying the overall governance arrangements to be applied in overseeing the regulatory system.

RECs and Designated Bodies will be required to accede to the requirements and procedures of the Criteria Document.

As provided for in the Act, the Commission will publish the Criteria Document and “*may review or amend the criteria as often as it considers necessary*”. The Criteria Document will act as the mechanism through which changes to the operation of the regulatory system, be they corrective actions or improvements, will be managed by the Commission.

To enable appropriate industry involvement in the development and on-going success of the regulatory system, the Commission intends to establish an industry forum, called the Electrical Contractors’ Criteria Review Panel (ECCRP). One of the functions of the ECCRP will be to act as the mechanism for the industry to propose and discuss modifications to the Criteria Document, which, ultimately, will be presented to the Commission for decision in a transparent and open manner. This is discussed further in Section 7.

#### **4.2 The Technical Rules**

The ETCI has developed and published *ET 101 – the National Rules for Electrical Installations*<sup>2</sup>, (the “National Wiring Rules”). It is the responsibility of the ETCI to:

- ensure that the National Wiring Rules continue to be appropriate in line with the relevant areas of international standards and as technology and accepted industry work practices change over time; and,
- provide clarity to industry stakeholders when issues of interpretation of the National Wiring Rules are raised.

The Commission proposes that the National Wiring Rules, under the governance of the ETCI, is to be used as the technical rules which RECs must work to for electrical installations.

Under the requirements of the Criteria Document, an electrical contractor will not be registered by a Designated Body unless, in accordance with the procedures of the Designated Body, it demonstrates that it has the appropriate training, qualifications and competence to carry out work in accordance with the National Wiring Rules.

It will be the responsibility of the Commission and, by extension, the Designated Body, to ensure that the National Wiring Rules are applied by RECs in carrying out Regulated Works. To this end, the Commission will specify in the Criteria Document that all electrical works carried out by RECs must be carried out in accordance with the National Wiring Rules. Furthermore, compliance with this

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<sup>2</sup> These rules are subject to revision from time to time. Any reference to the National Wiring Rules is to the latest published version of the National Wiring Rules

obligation will be a condition for maintaining registration with the Designated Body.

The Completion Certificate will act as the means by which adherence to the National Wiring Rules is formally certified by the REC, and subsequently can be audited/inspected by the Designated Body.

Where it is found that an REC has undertaken work which is not in accordance with the National Wiring Rules, he/she will be subject to disciplinary proceedings by the Designated Body.

Notwithstanding the above, the National Wiring Rules will change and develop over time. The Commission and the ETCI are to put in place arrangements to ensure that any changes to the National Wiring Rules are fully incorporated into the regulatory model. These governance arrangements are outlined in Section 7 of this document.

### **4.3 The Designated Body**

The Act provides for the Commission to appoint one or more Designated Bodies.

Section 4, subsection 9(D)(1)(a) of the Act states that:

*“The Commission may appoint a person or persons to be a Designated Body.....and such body may be referred to as an Electrical Safety Supervisory Body”.*

Accordingly, the Commission may appoint one or more persons as a Designated Body. The Designated Body (or Bodies) will have the primary role of registration and regulation of electrical contractors on a day-to-day basis.

The Act allows the Commission to appoint an employee to carry out the functions of a Designated Body on a temporary basis where it has not so appointed a person or persons. The Commission takes the view that on a long-term basis this option is not appropriate and proposes to commence a designation process in the near future.

The key functions which a Designated Body will be required to perform on behalf of the Commission, and to be outlined in the Criteria Document, will include:

- Registration of electrical contractors (including initial application and renewal of registration);
- Monitoring the ongoing performance and competence of RECs in line with the requirements of the Criteria Document. This will include monitoring, inspecting and auditing of the work and activities of RECs;
- Taking disciplinary actions and as appropriate, imposing sanctions on RECs (which sanctions may include suspension or withdrawal of their registered status);
- Control of the issuance, validation, sale and receipt of Completion Certificates for electrical installations;
- Arranging for the inspection of the work of Non-RECs where such work constitutes a “Controlled Work”;

- Engaging in promotional activities and providing information to the public; and
- Dealing with complaints from customers/the public regarding the safety of electrical works carried out by RECs.

Any Designated Body will be required to adhere to the Designation Conditions prescribed by the Commission (see Section 6) which will require, among other things, operating in accordance with the Criteria Document.

#### **4.3.1 Designating a Body**

In appointing a Body, the Commission is obliged under the Act to have regard to certain matters as follows:

- 1) In determining the number of persons to be designated, the Commission will have regard to the likely costs to be incurred by the Commission and the final customer; and,
- 2) The Act provides that in designating a Designated Body, the Commission must be satisfied that the Designated Body has or, will if appointed have, the capability and entitlement to:
  - (a) inspect any work carried out by an REC;
  - (b) monitor the training and safety standards of a person who is an REC;
  - (c) review training undertaken by a person engaged either as an employee or as an independent contractor of an REC;
  - (d) issue directions to an REC regarding the training to be given to or undertaken by a class or classes of persons engaged either as employees or as independent contractors;
  - (e) suspend the membership of an REC in a designated body where that REC is the subject of an investigation by that body into whether—
    - (i) work carried out by the REC concerned is unsafe or otherwise of an unsatisfactory standard;
    - (ii) the training of employees and independent contractors engaged by the REC concerned is materially inadequate; or,
    - (iii) the REC has acted in contravention of the criteria to a material extent;
  - (f) suspend or revoke the membership of an REC in the designated body where that body is satisfied that any of the matters specified in subparagraphs (i) to (iii) of paragraph (e) apply in respect of the contractor concerned.

Furthermore, the Act specifically states that a party acting as a trade association or performing representative functions cannot be appointed as a Designated Body.

The Commission is to design a designation process in a manner which will seek to ensure that the above matters can be taken into account in selecting a body or bodies. This is to involve setting minimum criteria which any party must satisfy in order to be Designated. These matters will also influence the Designation Conditions, discussed further in Section 6.

#### **4.3.2 Key Considerations for the Designation Process**

The key issues influencing the Commission's approach to and design of the designation process include the following:

1. Number of Bodies to be Designated;
2. the Term of Designation; and,
3. the requirements with respect to the Corporate Governance of a Designated Body.

The Commission's decision on these matters are now presented below.

##### ***Issue 1: Number of Bodies to be Designated***

As noted above, the Act allows the Commission to appoint more than one Designated Body.

In considering the number of bodies to be designated, the Act expressly provides that the Commission shall have regard to the costs likely to be incurred by the Commission in carrying out its functions (i.e. monitoring the Designated Bodies) and by final customers. The Act provides that these costs would include any amounts provided by the Commission to a Designated Body following its appointment to facilitate that body in establishing and carrying out its functions. Costs to final customers are relevant because the Commission may impose a levy to provide the relevant funding.

In determining the appropriate number of Designated Bodies, the Commission considers that the key considerations are both (i) ensuring safety and (ii) cost. However, it is clear that ensuring safety must always take priority.

There are several factors which are in favour of the appointment of more than one body. For example:

- In the event that one Body should lose its designated status (either further to a decision by the Commission or voluntarily), the remaining Designated Body would be required to assume the regulatory function for electrical contractors registered with the now de-Designated Body, thus providing continuity, support and assistance to the industry in such circumstances;
- Having more than one Designated Body would provide for a level of competition between the two parties acting as Designated Bodies in terms of the costs and delivery of services. A level of competition may assist in maintaining the quality of services of the Designated Bodies and minimising costs to the industry.

On the other hand, having a large number of Designated Bodies could be counterproductive to the proper regulation of electrical contractors and this could have negative implications for safety. This designation of bodies pursuant to the Act is essentially a delegation of a regulatory function. The more Designated Bodies that are appointed, the more substantial and complex the measures and efforts that may be required in order to control, monitor and regulate the Designated Bodies.

Also, the costs to the Commission and possibly end users (if the Commission funds the establishment of bodies through a levy) would, most likely, increase proportionately to the number of bodies appointed. For these reasons, the Commission is not proposing to allow an unlimited number of Designated Bodies.

The additional cost burden of regulating more than one Designated Body could be restricted by limiting the number of Designated Bodies. In doing so, and providing for more than one body, the benefits of having more than one can be exploited and the costs managed. The Commission's objective would also be to facilitate efficiency in terms of co-operation, co-ordination and ensuring consistency of standards across a smaller number of organisations.

**The Commission is to engage in a competition for selection of a limited number of Designated Bodies. The Commission is minded to enter into the process with the option to designate a minimum of two bodies. In doing so, the Commission will, further to the operation of the designation process, consider the costs associated with designation and determine (1) the number of bodies which meet its set criteria for designation and (2) the number of bodies to designate in light of cost.**

It should be noted that, regardless of the number of parties to be Designated (at the point of commencement of the operation of the regulatory model or subsequently), all Designated Bodies will be required to co-operate with each other as specified under the Criteria Document or as may otherwise be required by the Commission.

Notwithstanding the above, the Commission would reserve the right to designate less than or more than two bodies. The Commission is to keep the number of bodies under review and to ensure that at any time, the number of designated bodies assists in giving effect to the Commission's obligations under the Act.

### ***Issue 2: Term of Designation***

The Commission has considered whether the process for designation should be an open process, whereby the Commission may receive applications at any time or whether the Commission should employ a selection/designation process only at fixed intervals, relating to the term of appointment (example: if the term of appointment is five years, the Commission will only receive applications for designation and embark on a designation process every five years).

It is considered appropriate to engage in a selection process. This will limit the operation of the designation process to fixed intervals. These intervals will be determined by the term of appointment of each Designated Body.

The Commission considers that the initial term for designation should be seven years and every subsequent term shall be five years in duration.

This is on the basis that for the first term, as the regulatory model commences operation, an extended period is provided to allow for any special efforts associated with start-up etc. and to allow for the system to be fully adopted and successfully operating. By the expiry of this initial seven year term, the regulatory system shall be well established and, therefore, subsequent terms would be limited to five years.

Retaining designated status throughout the term would be subject to a Designated Body's continued compliance with the requirements for designation as specified by the Commission in the Criteria Document and Designation Conditions.

**Note:** Appendix C of this document sets out a very high-level guide to the Commission's proposed designation process.

### ***Issue 3: Corporate Governance of a Designated Body***

The Commission is to specify the requirements for the corporate governance of a Designated Body through the Criteria Document, the Designation Process and the Designation Conditions. The Commission intends to specify:

- the key provisions for inclusion within the Articles of Association and Memorandum of Association;
- the requirements with respect to the constitution and operation of the board of a Designated Body and, in particular, the requirements with respect to appropriate board representation by relevant stakeholders;
- the requirements for independence of the board and board members of any party registered by the Designated Body.

#### ***4.3.3 Regulating the Operation of the Designated Body***

Given that a Designated Body will be responsible for carrying out functions and activities on behalf of the Commission, the Commission must be in a position to satisfy itself that the requirements of the Designation Conditions and the Criteria Document are met by the Designated Body.

This will be achieved through a combination of the Designation Conditions, monitoring by the Commission and also the appointment by the Commission of an Appeals Officer as provided for under the Act, for hearing appeals on decisions of a Designated Body.

In order to allow the Commission to monitor compliance by a Designated Body, the Designation Conditions will contain appropriate and comprehensive reporting obligations on the Designated Body and audit rights for the Commission.

At a minimum, it is envisaged that this will include requiring a Designated Body to:

- submit an annual plan with respect to its audit and inspection activities/programmes;
- permit audit and inspection of its premises, documents and activities by the Commission as required and on at least an annual basis;
- report to the Commission on at least a quarterly basis on basic performance indicators (which would be prescribed by the Commission); and,
- report certain complaints or incidents to the Commission as they arise (and as would be prescribed by the Commission).

Provisions along these lines will assist the Commission in assessing performance by the Designated Body and to satisfy itself a body is acting in accordance with the Designation Conditions and the Criteria on an on-going basis.

Furthermore, the Commission will also use this process to:

- Guide future audits of the Designated Body, and its RECs, to those activities or risk areas which present the most likely danger to the public;
- Provide an input into the annual review and continuing improvement of the regulatory system<sup>3</sup>;
- Engender trust, confidence and greater awareness amongst the general public of the effectiveness in protecting their safety interests through the inclusion of a synopsis of the regulatory model in the annual report.

The Commission will also need to take into account and possibly investigate external factors, such as for example, complaints from RECs, applicants seeking registration with the Designated Body or from the public.

Consideration will also be given to the need to publish reports and information on the performance of a Designated Body.

The financial aspects of the regulation of the Designated Body are considered in Section 5.4.1.

#### **4.4 The Certification System**

One of the key elements of the regulatory model is the establishment of a self-certification of work system for RECs. The self-certification of work system should achieve the following:

- provides the customer/user with confirmation from their electrical contractor that the Regulated Works carried out are in compliance with the National Wiring Rules with respect to the actual installation work and the subsequent testing of the installation;
- Completion Certificates can only be issued by an REC with the requisite competency;
- responsibility for designating the installation as being safe is placed with the REC issuing the Completion Certificate;
- allow the work and competence of an REC to be audited/monitored/followed up by the Designated Body and the Commission;
- be mandatory for all Regulated Works and, in the context of new connections/re-connections, mandatory before ESB Networks will connect/energise the installation.

As such, the Completion Certificate will be fundamental to the effective operation of the regulatory model, insofar as it is the thread that links the work of the REC on the ground to the overall Regulatory Objective of the regulatory model, and certifies that the work has been carried out in accordance with the National Wiring Rules and therefore is satisfying the Criteria Document and therefore the statutory requirements.

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<sup>3</sup> The annual audit report of the Designated Body (with associated detail on any non-conformance and corrective actions required) will be shared and discussed with the Designated Body. Follow up audits will be undertaken to ensure the corrective actions are undertaken, thereby improving the regulatory system.

#### **4.4.1 Legislative Requirements**

Sections 9(D)(5)(b)(viii),(12),(14),(18) and (27) of the Act relate to or refer to a Completion Certificate.

The Act states that the Commission shall specify a form of Completion Certificate to be used for Regulated Works and that it may specify different forms for different circumstances or different classes of electrical work and it may make provision relating to procedures to be followed and records to be maintained by RECs and a Designated Body in connection with the issue of such certificates. Furthermore, the Act states that the Criteria Document shall include the matters to be covered by a Completion Certificate.

The Commission will outline the format Completion Certificates will take and the processes and procedures through which they will be sold, completed and verified/validated, as well as the types of records that must be maintained This will be done in conjunction with the ETCI.

The Commission is to build upon the strengths of the existing Completion Certificate System in the implementation of the Certification System for the new regulatory model. The following is to apply:

- The Commission will specify the form of Completion Certificates to be used for the regulatory model and will work with the ETCI in the development of these;
- the ETCI will continue to manage and own the systems and processes for the distribution and sale of Completion Certificates (including the IT system to support the sale/distribution of electronic Completion Certificates) and will fund the cost of management of the central IT system and producing the Completion Certificates through charging a fee;
- All Designated Bodies will be required to ensure that their IT systems interface with the ETCI's central IT system for the Completion Certificate Process and will be consulted on its operation and on-going development;
- The DSO and Designated Bodies will be obliged to interact with this central IT system and the Designated Bodies will furthermore be obliged to interface and interact with the DSO's system;
- Completion Certificates will only be made available to a Designated Body;
- A Designated Body will be allowed to sell Completion Certificates only to RECs;
- The procedures and processes to be followed and records to be maintained by RECs and a Designated Body relating to Completion Certificates will be outlined in the Criteria Document;
- The Completion Certificate will place responsibility for the safety of the installation work with the REC who issued it; and,
- The requirements concerning Completion Certificates and the associated documentation, procedures and processes will be reviewed on a regular basis and amended as deemed appropriate/necessary in the interests of regulating the safety of electrical installations.

The above will be subject to formal agreement between the ETCI and the Commission (see Section 6).

**NOTE:** *In light of the fact that the REC will be obliged, under the Criteria Document, to carry out all works in accordance with the National Wiring Rules and required to issue a Completion Certificate for all Controlled Works carried out, an REC who fails to or refuses to issue a Completion Certificate for such works, or issues a Completion Certificate which breaks the rules set out in the Criteria Document, will be subject to the disciplinary process, which may result in sanctions up to and including suspension or revocation of registration. (Sanctions resulting in the suspension or revocation of registration may be appealed to the Commission.)*

## **4.5 The Promotion**

The Commission considers the promotion of the regulatory model as a critical element to ensuring its success. Promotion of the regulatory model will entail two distinct strategies/objectives:

- *Promotion targeting the electrical contracting industry*  
This will be essential in order to ensure that all industry players are aware of the regulatory model and its operation and what are the obligations on electrical contractors. This relates not only to electrical contractors but also other relevant parties involved with or ancillary to the electrical contracting industry such as builders, surveyors, architects, etc.
- *Promotion targeting the public and customers*  
This is essential in order to ensure that the public and, specifically, customers of electrical installation services, are aware of the regulatory model in so far as it applies to them and to assist in the enforcement of the regulatory model. The following areas are to be promoted, targeting the public and customers:
  - Raising awareness of the necessity, importance and advantages of selecting an REC;
  - the entitlements of the customer with respect to using an REC (with respect to certification/declarations of conformance, etc. );
  - making complaints about RECs concerning the safety of electrical work undertaken and/or other relevant matters.

The Commission will consider the specific elements and steps towards designing and implementing a promotional system to achieve the above objectives prior to the commencement of the regulatory model. Promotional work will be coordinated with the Designated Body, the DSO and other relevant parties.

### **4.5.1 Branding of the Regulatory model**

The Commission is to give careful consideration to the branding of the regulatory model. This is particularly the case in an environment where more than one Designated Body may be operating and the Designated Bodies may change over time (as a result of potential de-designation and/or the appointment of additional bodies over time).

The Commission is of the view that it is important that one clear brand message is established and that this is critical to the success of raising public awareness of the new regulatory system.

However, there may be several options in this regard as to how the brand might be operated. On one extreme, it may be that the brand co-exists with the brand of the designated bodies who would operate under that brand. On the other, there may be one single brand and no public awareness identity for a Designated Body operating under that brand.

The Commission will give this matter, and the comments received, further consideration in preparing for the launch of the new regulatory system, after any Designated Bodies have been appointed.

The branding work must provide for the brand to be distinct and separate to the identity of any party operating under the brand (a Designated Body) and will be focused exclusively on the function of the regulatory model (the safety of electrical installations). This will assist in avoiding confusion (within industry and the public) as a result of:

- more than one Body being designated;
- a Designated Body being de-designated and/or the designation of another Body;
- the prior perception of the role of the Commission in terms of its other non-safety functions (concerning economic regulation).

## **5. Other Arrangements for the Regulatory model**

This section of the document sets out the Commission's decision on other arrangements ancillary to the regulatory model, plus further details on certain elements described in Section 4.

These are as follows:

1. The regulation of RECs;
2. The treatment of Non-RECs;
3. Enforcement of the Regulatory model and the Customer's Role;
4. Funding of the Regulatory model;
5. Training; and
6. Completion Certificates as Documents of Public Record.

Each of these issues is now discussed below.

### **5.1 Regulation of RECs**

Further to the Commission presenting its proposals for the five key elements of the regulatory model, this section sets out the arrangements for the regulation of RECs.

Under the regulatory model, any electrical contracting entity (be it a sole trader or larger commercial organisation) who wishes to have the right to self-certify Controlled Works, and ultimately have the right to undertake Restricted Works, must be registered with a Designated Body.

The Criteria Document will specify the requirements for registration of an electrical contractor. These will form the basis for assessment and verification by a Designated Body and will include requirements/specifications relating to:

- the appropriate levels of training and competence with respect to the certification of electrical works;
- ownership of specified testing and safety equipment which has been calibrated in accordance with the requirements specified in the Criteria Document;
- knowledge of relevant technical and electrical rules (the National Wiring Rules);
- a system in place which enables an adequate level of supervision of electrical work by employees (where relevant);
- other requirements relating to competency of individuals carrying out the electrical work, insurance cover and other operational matters (in terms of record keeping, etc. );
- the initial procedures, to be discharged by the Designated Body, when assessing an application for registration; and,
- a requirement upon the Designated Body to develop a risk-based approach to on-going competence assessment, audit and inspection of RECs.

RECs will be required to adhere to the Rules of Registration and, by extension, the Criteria Document. Principal among these will be the requirement to submit to audit and inspection by their Designated Body and to participate in any Disciplinary Proceedings brought against them.

The regulatory model will provide for protection of the rights of RECs. Among these is the right to appeal suspension/revocation of registration to the Commission and the right to fair, consistent and timely service from the Body with whom they are registered.

The Commission will require the Designated Body to publish and adhere to a quality customer service charter, will specify the minimum service levels to be provided by a Designated Body and will review/audit the performance of a Designated Body on a regular basis.

Other key aspects relating to the regulation of RECs are discussed below:

#### 5.1.1 Regulation of Activities of RECs

It is important to note that whilst the Criteria Document will specify the overall obligations which will apply to RECs, the Commission will regulate their works as follows:

- 1) As set out in Section 4, Regulated Works will require certification and it is this certification process that will act as the key control mechanism with respect to regulating the activities of electrical contractors;
- 2) By specifying that Regulated Works require a certificate and under what conditions such a certificate can issue (compliance with the National Wiring Rules), the Commission will therefore regulate the activities of electrical contractors through that certification process – this controlled certification process acts as the “check” in the process to ensure that the activities of the electrical contractor have been carried out in accordance with the prescribed requirements;
- 3) The Commission will specify the requirements resulting in the entitlement of an REC to self-certify. These requirements will relate to, among other things, the training, competence and activities of the individual employee carrying out the certification on behalf of the REC (to be known as the Qualified Certifier);
- 4) The Commission will impose an obligation on the REC (through the Criteria Document) to ensure that any parties that are engaged by the REC (electricians, apprentices, contractors, etc.) are competent with respect to the type and range of electrical installation work which they are carrying out in order that it is carried out in a safe manner and in accordance with, and meets the requirements of, the National Wiring Rules.

It is important to note that the Commission will not therefore be prescribing the precise competence and training requirements of all parties carrying out electrical works but rather will only be specifying the particular requirements in terms of competency and training of those certifying Regulated Works – i.e. the Qualified Certifier. There will be a general obligation imposed on the REC with respect to parties carrying out the electrical installation work and this will be subject to

oversight and monitoring as part of the Inspection and Audit Programme operated by the Designated Body.

Thus, by imposing:

1. the requirements concerning the qualification, training and competency of the Qualified Certifier; and,
2. the requirements for, and grounds on which, a Qualified Certifier may certify an installation;
3. the obligation for the REC to engage competent parties,

the Commission is satisfied that electrical works will be carried out in a competent fashion (i.e. in accordance with the National Wiring Rules) and certified by a competent party and that this therefore forms an adequate mechanism for regulating the activities of electrical contractors.

#### 5.1.2 Audit and Inspection

The REC will be subject to audit and inspection on a periodic (and random) basis as may be determined by the Designated Body. Through the Criteria Document, that REC will be obliged to comply with the requirements of the audit and inspection.

In the instance where access to a site for the purposes of audit and/or inspection is refused (by the contractor, customer or any other party), the Act provides for the Commission to appoint an “Authorised Officer” who will have the entitlement to enter on to land/premises for the purposes of carrying out these activities.

#### 5.1.3 Disciplinary Procedures & Appeals

One of the most important powers of a Designated Body will be the power to discipline parties registered with it. This is essential in order to ensure that standards of safety are being maintained and that any REC who contravenes the provisions of the Criteria Document can be suitably disciplined and if necessary, expelled from a Designated Body.

The Criteria Document will specify the requirements for Designated Bodies with respect to disciplinary and appeals procedures, which will be based on the principles of natural justice and due process.

Furthermore, in order to ensure fair treatment of RECs, it is necessary to have a thorough appeals mechanism. Under the Act:

- all RECs will have the right to appeal disciplinary decisions resulting in the suspension or revocation of registration to the Commission;
- The Commission has a responsibility to appoint a person or persons to act as Appeals Officers; and,
- The Appeals Officer will duly consider and furnish a report to the Commission on any appeal submitted by an REC relating to a decision by a Designated Body to suspend or revoke the registration of that REC.

It will be of critical importance to the success of the regulatory model to ensure fairness, equity and consistency in the treatment of disciplinary matters across all Designated Bodies.

## **5.2 Treatment of Non-RECs**

As discussed in Section 3, the Act does not prohibit electrical works from being carried out by Non-RECs<sup>4</sup> but, rather, enables the Commission to determine, through the blueprint requirements concerning Regulated Works and the Certification System, what activities of electrical contractors should be regulated and how they should be regulated.

As proposed in the previous sections of this document:

- The scope of the Commission's regulation of the activities of electrical contractors relates to Regulated Works in the main – these being those works deemed significant enough, in terms of risk to safety, to require regulation by the Commission (i.e. Controlled Works and Restricted Works);
- Such regulation will be achieved primarily as a result of:
  - appropriate controls being exercised through the certification requirements associated with Controlled Works; and,
  - the outright prohibition in the Act on anyone except a registered (and regulated) electrical contractor carrying out Restricted Works;
- Where Controlled Works are carried out by an REC, that contractor may self-certify the works in question. Such self-certification entitlement will be subject to the adherence to stringent requirements as set out in the Criteria Document<sup>5</sup>.

However, consideration must also be given to the regulation of Controlled Works carried out by Non-RECs, as permitted by the legislation. The following is proposed:

- The extent to which electrical works will be covered by the regulatory model will be determined by the Commission's prescription of Regulated Works;
- Where Restricted Works are carried out by a Non-REC, that party will be guilty of an offence under the Act;
- Where Controlled Works are carried out by a Non-REC, they will not be entitled to self-certify such works and they will not have access to the ETCI Completion Certificates for self-certification (the only recognized and valid form of self-certification under the regulatory model);
- Under such circumstances, certification will require inspection/verification of compliance with the prescribed requirements;
- Only such parties meeting the criteria specified for inspection will be entitled to inspection. These criteria will be specified through the Criteria Document

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<sup>4</sup> With the exception of Restricted Works, which may be carried out only by an REC.

<sup>5</sup> An REC will be required to carry out all electrical works in accordance with the National Wiring Rules (insofar as they are applicable to such works);

- and the Designated Body's procedure for inspection and will include requirements relating to the competency of the Non-REC, insurance cover to be in place and the requirement for the Non-REC to attend the inspection;
- Works carried out by any party not meeting these criteria (Other Unregistered Parties) will not be entitled to inspection for the purposes of certification;
  - This inspection/verification will be carried out by the Designated Body upon the request of a customer. This will result in, broadly, two possible outcomes:
    - 1) Should such works be in compliance with the requirements as specified by the Criteria Document/Commission/Designated Body, a certificate will issue further to the inspection and in line with the procedure to be specified through the Criteria Document; or,
    - 2) Should such works fail to be in compliance with the requirements, notice of failure with associated details, will be issued to the customer by the Inspector of the Designated Body and no certificate will issue until an electrical installation is "passed" in accordance with (1) above.

The Commission proposes to regulate the activities of Non-RECs insofar as set out in the provisions above. It is important to note that:

- the Commission cannot fully regulate the activities of Non-RECs. Rather, it is proposing that it would limit its regulatory role to those works which are Regulated Works;
- the activities of Non-RECs, other than those relating to Regulated Works, will not fall within the scope of the regulatory model. However, as described in Section 3, the Commission will determine what works are to be considered Regulated Works on the basis of risk and the scope of such works will be reviewed on an annual basis, or as otherwise deemed necessary;
- furthermore, the Commission cannot fully regulate the activities of Non-RECs in carrying out such Regulated Works. However, by requiring the Completion Certificate and inspection of the Regulated Works by the Designated Body, and that such inspections will take place when the Non-REC meets the specified criteria for inspection, the Commission will be in effect requiring activities to be carried out in accordance with the National Wiring Rules in order for a Completion Certificate to issue on foot of a Non-REC having carried out such works.

### **5.3 Enforcement of the Regulatory model and the Customer's Role**

Critical to the success of the regulatory model will be the enforcement of the requirements set out under:

#### **1. The Act**

The Act establishes the Commission as being responsible for implementing a regulatory system which complies with the requirements of the legislation.

Furthermore, the Act contains provisions relating to the enforcement of the regulatory model which includes, among other things, the entitlement to

suspend or revoke registration and making it an offence for certain works to be carried out by Non-RECs and the prohibition on any party other than an REC carrying out Restricted Works.

**2. *The Commission's prescription of Regulated Works***

The Commission will specify what works are to be regulated and how these are to be regulated, as described previously in this document.

**3. *The Criteria Document***

The Commission will specify the detailed rules concerning RECs through the Criteria Document and the enforcement procedures for same (and will include disciplinary procedures).

**4. *The Designated Body***

The Designated Body will be responsible for the enforcement of the requirements of the Criteria Document with respect to RECs. This will be supported by an inspection and audit regime approved by the Commission.

**5. *Authorised Officer***

Under the Act, an Authorised Officer may be appointed by the Commission in order to carry out an inspection of Regulated Works.

**6. *Enforcement of the DSO Connection Policy***

The Commission will continue to require the DSO to only grant new connections where the electrical installations associated with such new connections have been certified in accordance with the regulatory requirements.

**7. *Enforcement by the Customer***

The above enforcement provisions will be supported by promotional activities intended to raise awareness (and adoption) of the regulatory model within the industry and also by customers. In terms of the operation of the regulatory model, the customer is seen as playing a central role in supporting the enforcement of the model.

This is particularly the case with respect to Controlled Works where such works may not be captured by the DSO connection policy (i.e. where Controlled Works entail works not involving a new connection, there may be no interaction with the DSO). Such works are required to be certified under the regulatory model.

The regulation of such works will therefore need to be supported by customers:

- engaging an REC for such works and their certification; or,
- by arranging for an inspection to be carried out by the Designated Body.

**5.4 Funding of the Regulatory model**

Under the provisions of the Act the Designated Body must be self-financing. Section 9(d)(10)(a) of the Act states that the tariffs, fees and charges imposed by a

Designated Body relating to registration, inspection and any other services are approved by the Commission and that the revenue from such charges should meet the expenses and costs of the Designated Body in carrying out its functions.

In order for the Designated Body to discharge its functions, in accordance with the requirements of the Criteria Document and the Designation Conditions, it must cover its costs through the revenue it earns from registration fees, inspections fees and fees for any other services it provides (with such services approved by the Commission). These fees will be approved by the Commission.

The Act also provides for the Commission to contribute to the start-up costs of Designated Bodies.

The details of the financial aspects of the regulatory model will be dealt with as part of the Commission's work on Designation. Arising from that work, the Commission will set out its approach concerning the:

- approval of fees and tariffs associated with the approved services as carried out/provided by the Designated Body;
- process for approval of costs of the Designated Body;
- proposals to deal with under-recovery or over-recovery, return on investment; and,
- Commission's approval of, and contribution to, start-up costs for regulatory model, Designated Body, etc.

Notwithstanding the above, the Commission is of the view that, in designing the financial aspects for the operation of the regulatory model, costs to the industry and the customer should be minimised whilst delivering on the Regulatory Objective.

#### 5.4.1 Financial Structure of the Designated Body

The Commission is to consider the requirements with respect to the economic and financial aspects of the new regulatory system – both in terms of the financial structures to be imposed on any Designated Body and also on the methodology/approach for the regulation of fees and charges applied by any Designated Body. These aspects of the system will be confirmed through the Designation Conditions.

However, the Commission is minded to require that any Designated Body operate on a not-for-profit basis and is to give further consideration to imposing a requirement for any Designated Body to be a company limited by guarantee.

Notwithstanding the intention to impose a not-for-profit requirement on a Designated Body, the Commission does recognise that provisions should be made to allow any Designated Body to accumulate funds in excess of its costs in any single year. Reasonable funds should be available, through the accumulation of a reasonable level of income in excess of costs, to the Designated Body to cover exceptional expenditures, unanticipated costs and to balance revenue recovery over the natural peaks and troughs to be experienced in revenue streams within a year and over the years.

However, it will be the Commission's objective in regulating the financial aspects of this new regulatory model that the costs of regulation to the customer and the industry are kept to a reasonable level and efficiency in the operation of any Designated Body is seen as a key objective and requirement in their on-going performance.

## **5.5 Training**

The regulatory model will require that electrical contractors meet specified criteria, to be set out under the Criteria Document, in order to obtain and maintain registration.

One such criterion will relate to the training, qualifications and competence of the electrical contractor. In order to support this, it is necessary that there are adequate facilities/provisions relating to the training, qualification and assessment of electrical contractors in order to meet the requirements of the Criteria Document in that regard.

Further to its work on the Criteria Document, the Commission will engage with stakeholders with a view to ensuring that there is an appropriate framework for the delivery of training to meet the needs of the regulatory system. It is imperative that, in order to support the regulatory model, there is adequate access to the requisite training and assessment, which in turn must meet the required standard.

This work will need to take cognisance of the issue of recognition of the training and qualifications of electrical contractors registered and/or trained in different jurisdictions insofar as this is an issue for the regulatory model.

## **5.6 Completion Certificates as Documents of Public Record**

In considering the functioning of the regulatory model in the context of public safety, the Commission is of the view that, first and foremost, the model aims to provide confirmation to the customer as to the safety of an electrical installation.

This is to be achieved by providing for the electrical installation works to be tested in accordance with the requirements of the National Wiring Rules and confirmation of compliance with same through the Completion Certificate.

However, in addition to providing that direct confirmation to certain parties (such as the DSO), the Commission is of the view that consideration needs to be given to the wider use and dispersal of issued Completion Certificates. The Commission is of the view that the issued Completion Certificate should become a document of public record such that any party may request a copy of the Completion Certificate from a Designated Body or confirmation of the issue of a Completion Certificate (as deemed appropriate)<sup>6</sup>. Such documentation/evidence of such documentation might be requested in the following circumstances, for example:

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<sup>6</sup> "as deemed appropriate" relates to the consideration of the release of such information in the context of Data Protection legislation and other such matters relating to confidentiality. This consideration may influence whether or not a party requesting a copy of certificate receives either (1) a certified copy of the original certificate issue or (2) confirmation from the Designated Body that a certificate has issued (with such confirmation also providing information on the non-personal data elements of the original certificate issued).

- Where a customer has lost or destroyed the original copy of the Completion Certificate issued;
- Where the customer may have been unable to obtain the original “Customer Copy” of the Completion Certificate – for example, where the developer/builder of the house has not provided a copy;
- Where a party is purchasing a house/premises and wishes to ascertain whether or not the original electrical installation was certified; or,
- Where a party is renting/leasing a premises and wishes to obtain confirmation or ascertain whether the original electrical installation was certified or wishes to obtain a copy of the most recent Completion Certificate or Inspection Certificate/Report issued.

Making Completion Certificates available in such a manner as that proposed will assist the promotion and use of Completion Certificates and emphasise their importance in the minds of the electrical contracting industry and the public.

It is clear that in achieving the above, consideration will have to be given to the requirements concerning the Completion Certificate, the information it contains (for example, compliance with Data Protection legislation) and the recording and administration associated with certificates in light of this requirement. Consideration would also have to be given to the reasonable costs, and therefore reasonable charges, associated with this.

## **6. Legal Framework**

The statutory basis upon which the Commission will discharge its function to regulate the activities of electrical contractors with respect to safety is provided for in the Act. As has been presented in this Decision Paper, this will require placing obligations on a number of parties and entering into appropriate arrangements to ensure the full discharge of the Commission's duties under the legislation. It is therefore necessary for the Commission to have the appropriate formalised legal arrangements with all of the actors/participants in the regulatory model in order to support and enforce this function and achieve the Regulatory Objective.

The above is of critical importance in ensuring the success of the regulatory model.

In order for the core regulatory system to operate effectively, the Commission proposes to implement a regulatory framework involving:

1. Designated Body (or Bodies);
2. The Distribution System Operator;
3. RECs;
4. Authorised Officers;
5. Appeals Officers; and,
6. Other arrangements (as appropriate).

The underpinning legal arrangements are outlined below.

### **6.1 Designation Conditions**

The Designation Conditions will constitute the terms and conditions of appointment of a Designated Body and provide the legal underpinning of the designation decision.

By requiring compliance with the Designation Conditions specified, the Commission, in designating a Body, will require each Designated Body to accede to those conditions and be bound by them. This is the key requirement entitling the Body to describe itself as a Designated Body and to have all associated privileges and responsibilities with that role.

It is envisaged that the Designation Conditions would include, among other things:

- the functions and duties of the Designated Body;
- restrictions on the activities of the Designated Body;
- non-conflict provisions;
- an undertaking to adhere to the obligations set out in the Criteria Document;
- the required legal structure for a Designated Body (which may include, if considered appropriate, that it form a company limited by guarantee);
- the term for which the designation applies;
- reporting/audit requirements;
- sanctions to be imposed by the Commission in the event of breach of the Designation Conditions (including de-designation)

- procedures and obligations in the event of de-designation to provide for smooth hand-over to another Designated Body;
- obligations with respect to interaction, and co-ordination of activities, with any other Designated Body or bodies and other relevant organisations/bodies (such as the DSO and the ETCI); and,
- the obligation to implement any decision of the Commission in relation to an appeal of a decision by the Designated Body.

The Designation Conditions will be designed to enable the effective and efficient regulation and supervision of a Designated Body (and by extension RECs) by the Commission on an on-going basis post-designation.

## **6.2 Rules of Registration**

The “Rules of Registration” are those which an REC will be bound by. These will provide the legal basis upon which the Designated Body will allow registration and allow an applicant to describe themselves as a “REC” with all the associated rights and responsibilities including the right to undertake Restricted Works.

By accepting the Rules of Registration, the REC is agreeing to accede to:

- The rules of registration of the Designated Body with which they are registered;
- All requirements of the Criteria Document; and,
- Disciplinary proceedings that will be undertaken by the Body in the event of non-adherence to the Rules of Registration.

## **6.3 DSO Licence**

In accordance with S.I.445 of 2000, in exercise of the powers conferred by the Electricity Regulation Act, 1999, the Commission has licenced ESB Networks to act as the DSO.

In the context of the DSO’s role in relation to the regulatory model, it may be deemed necessary to amend the DSO licence to include a provision requiring the DSO to adhere to the Criteria Document. The requirements surrounding this will be considered once the details of the Criteria Document, and the requirements therein relating to the role of the DSO, are finalised.

This will subsequently act as the legal basis upon which the DSO will be required to undertake any responsibilities specified under the Criteria Document.

## **6.4 Authorised Officer - Certificate of Appointment**

The Act provides for the Commission to appoint a party to be an Authorised Officer and requires that such a party should be provided with a certificate confirming that appointment. By issuing an *Authorised Officer - Certificate of Appointment*, the Commission is formally entrusting all the powers, rights and responsibilities of an Authorised Officer to a named individual.

At a minimum, the *Certificate of Appointment* will contain:

- Name of Authorised Officer and Designated Body of which they are an employee (or otherwise, as the case may be);
- Date of issue and expiry and Location(s) upon which it is to be used.

The Criteria Document will outline the process for the appointment of an employee of a Designated Body as an Authorised Officer, the procedures they must follow, and the responsibilities of all stakeholders towards an Authorised Officer.

### **6.5 Completion Certificate**

Under the Rules of Registration, an REC may be given the right of self-certification<sup>7</sup>. An REC can only exercise this right in accordance with the Criteria Document. Where an REC carries out electrical works, they will certify those works and issue the certificate to the person who requested the works to be carried out, the customer<sup>8</sup>, in accordance with the statutory requirements as required and enforced through the Act, Criteria Document and Rules of Registration.

Through the issuing of a Completion Certificate to a customer, the REC is providing a declaration that the work undertaken is verified and certified as complying with the National Wiring Rules. As such, the Completion Certificate is fundamental to the effective operation of the regulatory model, insofar as it is the thread that links the work of the REC on the ground to the Regulatory Objective of the regulatory model.

### **6.6 Other Arrangements:**

- *CER - ETCI Arrangements*  
Through the development of a Memorandum of Understanding and, potentially, a Service Level Agreement, the Commission and the ETCI will confirm the arrangements for their interaction and the respective responsibilities of each in this relationship. It may include specifying the form of Completion Certificates to be used and conditions of their use (further to the statutory responsibilities placed on the Commission in that regard), the IT system supporting the Completion Certificate process, confirming changes to the National Wiring Rules and other relevant matters.
- *Arrangements with Other Parties*  
The Commission is to enter into further dialogue and suitable arrangements, as deemed necessary and agreed with other relevant parties. These are parties which undertake roles that are ancillary, complementary or supportive of the regulatory model.<sup>9</sup>

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<sup>7</sup> Unless such party is subject to disciplinary procedures/sanction or under-going initial registration assessment

<sup>8</sup> Which would include a party acting on behalf of the customer or such other appropriate party

<sup>9</sup> Such parties may include NSAI, HSA, Fás, FETAC and the Department of the Environment.

## **7. Governance Arrangements**

The Commission has overall responsibility for the effective and efficient operation of the regulatory system in order to achieve the Regulatory Objective of the regulatory model, as presented in Section 3 and has outlined how it intends to achieve this throughout this document.

The Commission now sets out, at a high-level, the governance arrangements supporting this regulatory model – these are the means by which the Commission will review and make changes to the key elements of the regulatory model. These have been identified as being:

1. Governance of a Designated Body;
2. Electrical Contractors' Criteria Review Panel; and
3. Electrical Installation Safety Review Panel.

The details of each of the above are now presented.

### **7.1 Governance of a Designated Body**

The Commission will meet formally with any Designated Bodies every quarter. The purpose of this meeting will be:

- discussion on reports from the Designated Body pursuant to the reporting obligations under Criteria Document and/or Designation Conditions;
- Audit issues;
- discuss other issues of relevance to the regulatory model; and,
- review of annual plans and progress on the delivery of these.

### **7.2 Electrical Contractors' Criteria Review Panel**

The Commission will act as owner and manager of the Criteria Document and “*may review or amend the criteria as often as it considers necessary*”. The Commission will establish an industry forum, called the Electrical Contractors' Criteria Review Panel (“ECCRP”). This will act as the mechanism for the stakeholders, to propose modifications to the Criteria Document.

The Commission proposes that the ECCRP will be constituted of representatives from the following stakeholders/stakeholder groups:

- Designated Bodies;
- RECs;
- the DSO;
- the ETCI.

The roles and responsibilities of the Commission in relation to the Criteria Document will be:

- to be the owner and manager of the Criteria Document;
- to make decisions relating to the Criteria Document in line with its statutory authority and responsibilities;

- to manage the process whereby ECCRP Members and Other Unregistered Parties may propose modifications;
- to be the final decision maker in relation to any modifications that are made to the document;
- to communicate matters in relation to the Criteria Document to all stakeholders through the ECCRP in the first instance and provide for wider communication and consultation as appropriate.

The Commission intends for the ECCRP to meet on a quarterly basis (or more frequently, as may be decided by the Commission).

The Commission will work on the establishment of the ECCRP further to the finalisation of the Criteria Document and prior to the commencement of the operation of the regulatory system.

### **7.3 Electrical Installation Safety Review Panel**

The governance arrangements for safety monitoring involves the appointment of a body with responsibility for the collection and review of pertinent information on incidents, accidents and activities from various sources relating to the safety of electrical installations (on the customers' side of the meter) and their impact on the safety of the public, analysis and review of such reports and the production of summary reports and recommendations to improve standards and promote safe practices. This body is to be known as the "*Electrical Installation Safety Review Panel*" (EISRP) and will be established by the Commission and will operate as set out below.

#### *Objectives*

The objective of the EISRP will be to monitor the levels of safety in installation practice and the efficiency of regulation in this area. This will involve the collection of information and the establishment of a database of comparable data to allow monitoring of safety trends in electrical installations. It is intended that this will entail the identification of high-risk groups, sectors and activities for focussed attention and the underlying causes of poor performance.

Reports and recommendations arising from these activities will subsequently influence the Commission with respect to the on-going operation of the regulatory model with respect to such areas as the scope of the regulatory model, the scope of Regulated Works, the requirements specified through the Criteria Document, the requirements/obligations/procedures of the Designated Body, electrical safety promotion and/or other areas.

#### *Methodology*

The methodologies adopted in collecting and analysing information should conform to best practice in this area with a view to facilitating international comparison of performance.

The types of basic information required should be carefully defined to identify where the safety failure occurred and any damage or injuries arising, the identification of the cause, and information on the nature and seriousness of the incident. Duplication in the collection of data should be avoided.

*Remit of the EISRP.*

The composition of EISRP should include representatives from other relevant organisations. Working with other bodies is a key requirement involving collaborations and partnerships as appropriate and with access to sources of information. The role of the EISRP should be proactive as well as reactive with activities ranging from safety information dissemination (websites, advertising, media) to supporting initiatives which may be embarked upon with other relevant organisations/bodies (running Safety Awards Schemes, Safety Weeks, undertaking surveys, etc. ).

Possible sources of information include the ETCI, Insurance Industry, Fire Officers' Reports, Designated Bodies (including Audit statistics), Government Departments, Coroners' Offices, RECs (example: for material defect problems, unsafe practices by other service providers).

*Structure/Composition of the EISRP*

The EISRP will be chaired by the Commission and its composition will be confirmed further to the completion of the Criteria Document. However, the Commission proposes that it will comprise of representatives from at least the following:

- the ETCI;
- the DSO;
- Designated Body/Bodies;
- RECs;
- Other relevant parties, including:
  - o Consumer organisation representatives;
  - o Electrical Wholesalers representatives;
  - o Other bodies as deemed appropriate.

## 8. Conclusion

The Commission recognises that the objective of the 2006 Act and the common objective of the key stakeholders within the electrical contracting industry is to protect customers and the public by providing a system which aims to regulate activities with respect to safety on a risk-basis.

In achieving this, the Commission's objective with respect to its decision on the framework for the regulation of electrical contractors with respect to safety is to provide a system:

*To protect the safety interests of customers with respect to electrical installation activities through creating a suitable regulatory system which provides for electrical works to be carried out, tested and certified in compliance with the appropriate technical rules/standards.*

In deciding the high-level framework to achieve this objective, the Commission has engaged extensively with stakeholders and is committed to the development of the key regulatory tools in an open and transparent manner.

The priority of the Commission is to implement a workable framework which achieves its objective and addresses the weaknesses of the voluntary, self-regulatory system and to ensure that this is successful in terms of its adoption and operation. In doing so, the Commission anticipates this regulatory framework will evolve over time – both in terms of the design and operation of its key elements and in terms of the scope of activities to be regulated. The Commission is committed to ensuring that at least the same standard of installation safety and regulation of electrical contractors is achieved as that achieved under the pre-existing system (in place prior up to the implementation of the provisions of the 2006 Act).

Each party involved, be it the DSO, the Designated Body, the REC or the Customer, has a critical part to play in delivering a successful system for the regulation of safety.

The detail of the various elements of the regulatory system will be presented through the Commission's decisions with respect to this Vision, the Criteria Document, Regulated Works, the Certification System and the Designation Conditions in particular.

Finally, this Vision is designed to provide a high-level overview of the system's operation. It is anticipated that this Vision of the Commission will be updated over time, in light of experience and other developments, and will act as a guide to the principles, the objectives and the operation of the regulatory system.

## **Appendix A - Legislation**

### **Sections 9C – 9E of the Energy Regulation Acts 1999 and 2000, as inserted by the Electricity (Miscellaneous Provisions) Act 2006**

#### **Function of Commission relating to Electrical Safety**

**9C.** —It shall be a function of the Commission to regulate the activities of electrical contractors with respect to safety.

#### **Regulation of Electrical Contractors**

**9D.** —(1) (a) The Commission may appoint a person or persons to be a designated body for the purposes of this section and such body may be referred to as an Electrical Safety Supervisory Body.

(b) Where the Commission has not appointed a person or persons to be a designated body, or a designated body is, in the opinion of the Commission, no longer able to carry out its functions under this section, the Commission may, with the consent of the Minister, appoint an employee of the Commission to carry out those functions on a temporary basis.

(2) (a) In determining the number of persons appointed under subsection (1) the Commission shall have regard to the costs likely to be incurred—

(i) by the Commission in carrying out its functions under this section, and

(ii) by final customers.

(b) Paragraph 16 of Schedule 1 shall apply to any costs incurred by the Commission in carrying out its functions under this section.

(c) In paragraph (b) the words ‘any costs incurred by the Commission’ includes any moneys provided by the Commission to a designated body, following its appointment under subsection (1), to facilitate that body in establishing and carrying out its functions.

(3) A person shall not be appointed to be a designated body, or if so appointed shall cease to act as a designated body, if that person is or becomes a trade association or performs representative functions on behalf of persons working in the electrical industry.

(4) A person who does not for the time being stand appointed as a designated body shall not describe himself or herself as an Electrical Safety Supervisory Body or in a manner likely to suggest that such person is a designated body for the purposes of this section.

(5) (a) The Commission shall publish criteria (in this section referred to as ‘the criteria’) relating to—

- (i) electrical safety supervision,
- (ii) the safety standards to be achieved and maintained by electrical contractors, and
- (iii) the procedures to be operated by a person appointed as a designated body.

(b) The criteria to be published in connection with paragraph (a) shall include, but shall not be limited to, the following information:

- (i) the procedures to be adopted by a designated body for the registration of its members;
- (ii) the procedures to be followed by a person applying for membership of a designated body;
- (iii) the services which a designated body may carry out on behalf of its members to facilitate the performance of its functions;
- (iv) the National Wiring Rules of training and safety to be achieved and maintained by members of a designated body and the procedures to be followed by a designated body in monitoring such standards;
- (v) the procedures to be followed by a designated body for the inspection of any work carried out by one of its members, or by a person who is not an REC;
- (vi) the procedures to be followed by a designated body in connection with the suspension or revocation of the membership of one of its members;
- (vii) the matters to be covered by a Completion Certificate in respect of different categories or classes of electrical works and the circumstances in which each such class of certificate shall be used;
- (viii) the type of accounts to be kept by the designated body, and the manner in which such accounts should be audited;
- (ix) the method by which the accounts kept under subparagraph (viii) should be published; and
- (x) the procedures to be followed, and the records to be maintained, by a designated body or its members (where appropriate), in connection with subparagraphs (i) to (ix).

(c) The Commission may review or amend the criteria as often as it considers necessary.

(6) The Commission shall not appoint a person to be a designated body unless it is satisfied that the person is capable of complying with the criteria, and as respects each person who is a member (in this section referred to as a 'REC') of

that designated body that the body has, or will have if appointed, the capability and entitlement to—

- (a) inspect any work carried out by an REC,
- (b) monitor the training and safety standards of a person who is an REC,
- (c) review training undertaken by a person engaged either as an employee or as an independent contractor of an REC,
- (d) issue directions to an REC regarding the training to be given to or undertaken by a class or classes of persons engaged either as employees or as independent contractors,
- (e) suspend the membership of an REC in a designated body where that REC is the subject of an investigation by that body into whether—

- (i) work carried out by the REC concerned is unsafe or otherwise of an unsatisfactory standard,
- (ii) the training of employees and independent contractors engaged by the REC concerned is materially inadequate, or
- (iii) the REC has acted in contravention of the criteria to a material extent,

(f) suspend or revoke the membership of an REC in the designated body where that body is satisfied that any of the matters specified in subparagraphs (i) to (iii) of paragraph (e) apply as respects the contractor concerned.

(7) (a) Where a designated body decides to suspend or revoke the membership of an REC in that body, such designated body shall inform, in writing, both—

- (i) the Commission, and
- (ii) the REC concerned,

of its decision to suspend or revoke the membership of an REC in the designated body.

(b) AN REC, the subject of a decision under paragraph (a), may submit an appeal, in writing, of the decision to the Commission within 28 days of being informed of the decision.

(8) (a) The Commission shall appoint one or more persons ('Appeals Officer') to—

- (i) duly consider, and
- (ii) furnish a report to the Commission on,

any appeal submitted by an REC relating to a decision made by the designated body to suspend or revoke his or her membership in the designated body.

(b) The Commission shall have regard to the report of the Appeals Officer under paragraph (a) and shall advise the designated body, the Appeals Officer and the REC concerned of its decision to confirm, vary or set aside the decision of the designated body concerned.

(c) An appeal shall not be considered under this subsection if—  
(i) it relates to any matter the subject of proceedings before a court or other tribunal, until those proceedings are determined, or  
(ii) it is not submitted to the Commission within 28 days of the REC concerned being informed of the decision.

(9) Notwithstanding the generality of subsections (7) and (8), the Commission may specify the procedures to be followed by:

(a) the Appeals Officer in considering the appeal;

(b) the Appeals Officer in drafting his or her report to the Commission;

(c) the designated body when suspending or revoking the membership of an REC; and

(d) an REC who is the subject of a decision by the designated body to suspend or revoke his or her membership in the designated body, in the criteria published under subsection (5).

(10) (a) The tariff of fees and charges imposed by a designated body relating to—

- (i) membership of an electrical contractor in that body,
- (ii) registration of an electrical contractor as a registered electrical contractor,
- (iii) inspections of electrical works, and
- (iv) any service provided to a member of a designated body by or on behalf of that body, shall be subject to the approval of the Commission.

(b) All expenses and costs incurred by a designated body in carrying out any of its functions under this section shall be defrayed by the designated body out of funds at its disposal which are obtained in accordance with paragraph (a).

(11) A person may not be a member of more than one designated body.

(12) Where an REC carries out electrical works, the works shall be carried out in accordance with the safety requirements approved by the Commission from time to time.

(13) Where an REC carries out electrical works, which by reason of a determination by the Commission under subsection (27) are specified works, the REC concerned shall issue a Completion Certificate to the person who requested the works to be carried out.

(14) Where specified works are carried out by an electrical contractor who is not a member of a designated body, the person on whose behalf the specified works are being carried out shall request a designated body to arrange for the carrying out of an inspection of the works and, if the works meet the safety requirements approved by the Commission, for the issue of a Completion Certificate.

(15) A designated body which receives a request under subsection (14) shall arrange for the carrying out of the inspection as soon as practicable and, if appropriate, the issue of a Completion Certificate.

(16) Subject to subsection (17), a designated body shall be entitled to payment of fees and charges in respect of the inspection of the works, and those fees and charges shall be no greater than is set out in the tariff of fees and charges published by the designated body concerned.

(17) The tariff of fees and charges referred to in subsection (16) shall not have effect until approved by the Commission, which approval shall not be given unless the Commission is satisfied that the fees and charges are calculated on the basis of the reasonable costs attributable to the carrying out of inspections under this section.

(18) The Commission shall specify a form of Completion Certificate to be used for the purposes of this section and may specify different forms for different circumstances or different classes of electrical work and may make provision relating to—

- (a) procedures to be followed, and
- (b) records to be maintained,

by RECs and a designated body in connection with the issue of such certificates.

(19) (a) The Commission may conduct an inspection or audit of a designated body to verify compliance by the designated body with the requirements of this section, the terms and conditions of appointment and the criteria of the Commission.

(b) The Commission may appoint a person to assist it in performing inspections or audits referred to in paragraph (a).

(20) The Commission may determine the appointment of a designated body—

- (a) in accordance with the terms and conditions of the appointment,
- (b) where the Commission is of the opinion that an act or default by the designated body is a cause of serious danger to the public, with immediate effect, or
- (c) where it is, in the opinion of the Commission, in the interests of consumers that the appointment be determined, and paragraph (b) does not apply, on giving not less than 3 months notice or such shorter period as may be specified in the terms and conditions of appointment in that respect.

(21) The Commission may appoint a person, including a person who is an employee of a designated body, to be an authorised officer for the purposes of carrying out inspections of electrical work—

- (a) of RECs on any land where the authorised officer believes such work is being or has been carried out by such a contractor, or
- (b) which has been the subject of a Completion Certificate, but an authorised officer who is an employee of a designated body shall not exercise the powers conferred under this section as respects the work of a person who is a member of a designated body other than the designated body by which the authorised officer concerned is employed.

(22) A person appointed to be an authorised officer under subsection (21) shall on his or her appointment be furnished with a certificate of his or her appointment, and when exercising a power conferred by this section shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(23) AN REC and every employee or independent contractor of an REC shall give all reasonable assistance to—

- (a) an authorised officer in the exercise of his or her powers under this section, and
- (b) the Commission in exercising its powers under subsection (19) including a person assisting the Commission pursuant to subsection (19).

(24) A person shall not obstruct—

- (a) an authorised officer performing any function he or she is authorised to exercise or perform under this section,
- (b) the Commission in exercising its powers under this section, or
- (c) a person assisting the Commission pursuant to subsection (19).

(25) A person shall not describe himself or herself as an REC or in a manner likely to suggest that such person is an REC unless that person is for the time being a member of a designated body.

(26) A person who contravenes subsection (4), (24) or (25) is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or

(b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

(27) The Commission, having consulted with such persons as it considers appropriate, may determine that a class or classes of electrical works be specified works.

(28) In this section—

‘Completion Certificate’ means a certificate the form of which has been specified by the Commission under subsection (18);

‘designated body’ means a person appointed under subsection (1) to be a designated body for the purposes of this section; ‘specified works’ means such class or classes of works as have been determined to be such by the Commission in accordance with subsection (27).

### **Designated electrical works**

**9E.** —(1) The Commission, having consulted with such persons as it considers appropriate, and with the consent of the Minister, may by regulations designate a class or classes of electrical works to be designated electrical works.

(2) Where the Commission proposes to make regulations under subsection (1) the Minister, where he or she has approved the draft of such regulations, shall cause a draft of the regulations to be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

(3) A person shall not carry out electrical works which are designated electrical works unless that person is an REC.

(4) A person who contravenes subsection (3) is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or

(b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

## **Appendix B - Overview of Regulatory Arrangements prior to the Act**

This appendix sets out, as a background to the development of the new regulatory model, an overview of the regulatory model in operation leading up to the making of the Act (“Pre-Existing Arrangements”). This appendix presents the key elements of the regulatory model and the key strengths and weaknesses of this as identified by the Commission and industry stakeholders. These are key factors influencing the Commission’s approach to the objectives for, and design and operation of, the new regulatory model.

### **Pre-Existing Arrangements for the Regulation of Electrical Contractor Safety**

The electrical contracting industry, at the low voltage level, has been self-regulated since 1992, with industry standards in place since 1972.

In 2000, a review was carried out by an Interdepartmental/Agency Review Group on Public Safety concerning the regulation of electrical contractors. At the subsequent request of the then Minister for Public Enterprise, the Commission recommended a regulatory system for electrical contractors that:

- built on the strengths of the voluntary system;
- addressed the weaknesses that existed; and,
- provided the Commission with statutory authority to act as Supervisory Regulator with the power to issue licences to self-regulatory bodies in the then upcoming Electricity Bill.

Until such statutory authority was provided, the Commission agreed to assume the role of Supervisory Regulator.

In August 2002, an implementation timetable for the new approach was agreed and published. A working group was established and was tasked with developing detailed draft criteria, for approval by the Commission, for the issue of a regulatory licence by the Commission to Electrical Contracting Regulatory body or bodies who met these criteria. Draft Criteria were published on the 6<sup>th</sup> November 2002.

Following review by key industry stakeholders and a number of consequent amendments, the Criteria Document was approved by the Commission on 18<sup>th</sup> June 2004. It was also agreed at that time that the proposed new regulatory model be implemented on a voluntary basis by all stakeholders to further improve safety and standards in electrical installation work in advance of legislation which put the system on a firm statutory basis. This voluntary approach to the regulation of the industry was formally launched by the Minister for Communications, Marine and Natural Resources on the 23<sup>rd</sup> September 2004.

Since June 2004, the voluntary system has continued to operate with self-regulatory bodies taking on board the requirements of the Criteria Document, with the Commission acting in an oversight role. Those self-regulatory bodies currently operating within this voluntary system are:

- The Registered Electrical Contractors of Ireland, or RECI<sup>10</sup>; and,
- The Electrical Contractors Safety and Standards Association, or ECSSA<sup>11</sup>.

This existing regulatory model, as prescribed by the current Criteria Document is posited on three key elements:

### **1. *Electro-Technical Standard***

- The industry standard, “*ET 101 – the National Rules for Electrical Installations*,” (it being the latest published version, “the National Wiring Rules”) has been developed and published by the Electro-Technical Council of Ireland (“ETCI”) - the national body responsible for the harmonisation of standards in the electro-technical field, operating in collaboration with the National Standards Authority of Ireland (NSAI);
- This industry standard provides the fundamental basis upon which the existing regulatory system is founded given that it is the standard which electrical contractors must adhere to in the course of their work;
- The scope of these Rules apply to electrical circuits supplied at nominal voltages up to and including 1000V a.c. or 1500V d.c. which form part of installations in residential, commercial, industrial or public premises, or of installations contained in prefabricated buildings, caravans and halting sites, as well as installations for specialised purposes, such as those in agricultural and horticultural holdings.

### **2. *Connection Policy and Supervisory Bodies - Self-Regulatory Bodies***

- the primary incentive for adherence to the provisions of the National Wiring Rules in this regulatory system is that the connection policy of the Distribution System Operator (DSO) requires that, in order for any new installation to be energised, it must be certified as being in accordance with the National Wiring Rules. Furthermore, the Building Regulations require that all installations be in compliance with the National Wiring Rules;
- Certification can only be provided under circumstances where:
  - 1) members of the two self-regulatory bodies, being RECI and ECSSA, have carried out the work in accordance with the requirements of their regulatory body and certified it further to testing the installation; or,
  - 2) where, further to testing and inspection of the installation by an inspector of one of the regulatory bodies, the inspector endorses/authenticates the certification of an installation carried out by a non-member of a regulatory body;

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<sup>10</sup> See [www.reci.ie](http://www.reci.ie) for further information on this Regulatory Body.

<sup>11</sup> See [www.ecssa.ie](http://www.ecssa.ie) for further information on this Regulatory Body.

- The self-regulatory bodies only accept electrical contractors as members of their body if their operations meet certain minimum requirements which include (1) having appropriate training and qualifications to undertake, test and certify electrical work and (2) having suitable insurance to cover their work. Members are obliged to always work in conformance with the National Wiring Rules;
- Thus, the self-regulatory bodies currently provide a mechanism for confirming that their members possess the necessary training and competence to undertake electrical work in accordance with the National Wiring Rules. They undertake an inspectorate role to ensure members conform with the above minimum requirement and standards. Members who are found to contravene above requirements are subject to disciplinary proceedings by the self-regulatory body;
- The self-regulatory bodies also undertake other functions with respect to dealing with customers and handling complaints relating to Registered Electrical Contractors.

### **3. Certification System**

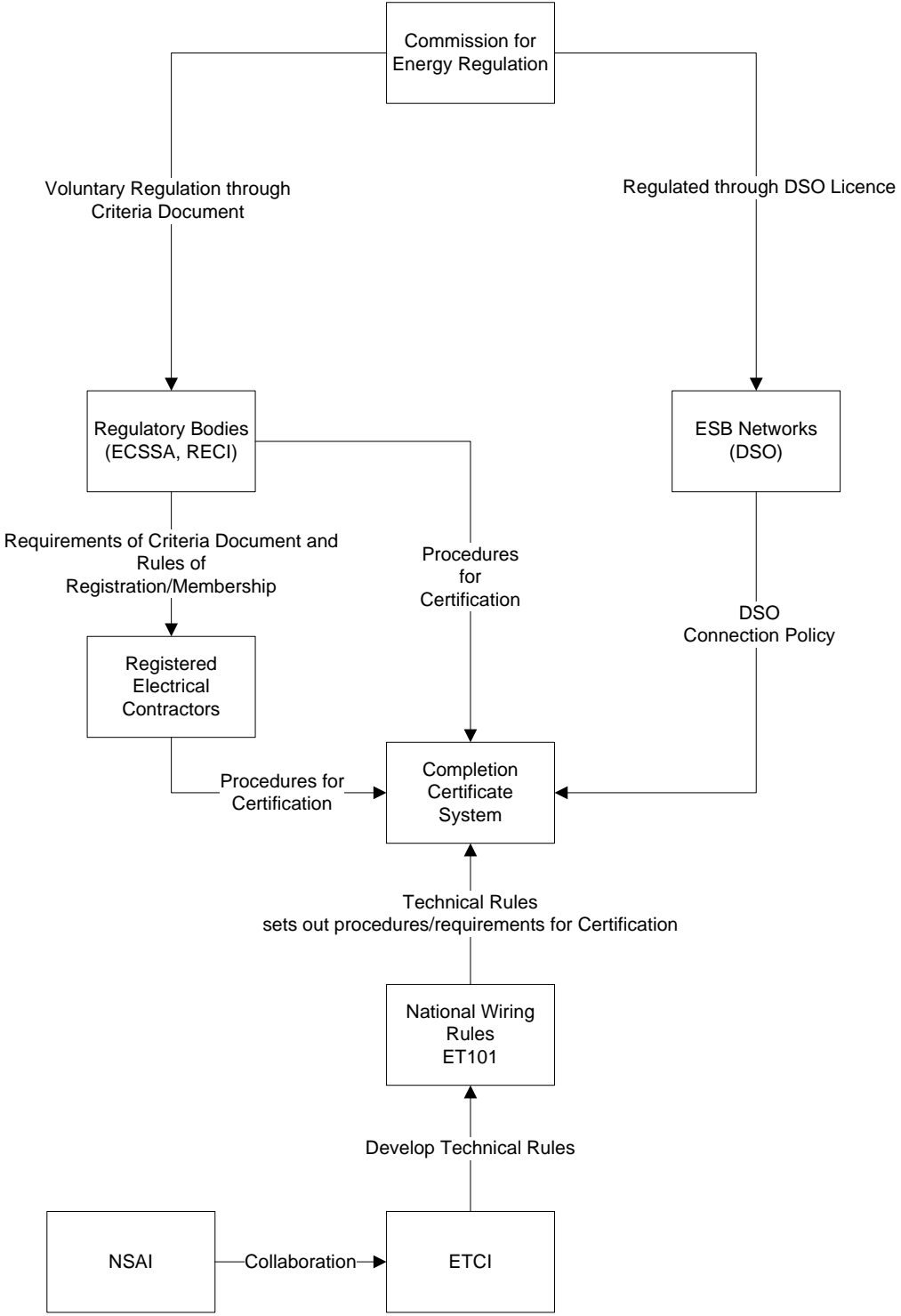
The system requires that only certificates in the form of the ETCI Completion Certificate are valid. This forms a declaration to the customer that the installation has been installed and tested in accordance with the required standard by a member of one of the self-regulatory bodies.

The Completion Certificate system has been successful in providing this confirmation to customers and improving the overall standards of electrical work in Ireland given that:

- The sale of ETCI Completion Certificates is restricted by the ETCI to the self-regulatory bodies only;
- The subsequent issuance of ETCI Completion Certificates by the self-regulatory bodies is restricted to its members only;
- The connection policy requirement of the DSO to only energise new installations on receipt of a valid Completion Certificate from members of the self-regulatory bodies, thereby incentivising customers to only use registered members of the self-regulatory bodies, and electrical contractors to become members of the bodies;
- Only members of a self-regulatory Body have the right to self certify their own work in accordance with the National Wiring Rules and the issuance of an ETCI Completion Certificate for such;
- The Completion Certificate itself provides the audit trail for the self-regulatory body to undertake the follow up audit and inspection of the work of a registered member and, thus, a means to assess the competence of that member.

Figure 3 below presents a diagram setting out the operation of the current regulatory model.

Pre-Existing Regulatory Model  
Voluntary Self-Regulation



**Figure 3 – Overview of Pre-Existing Regulatory Model**

### **Scale of System**

It is estimated that approximately 120,000 Completion Certificates are issued annually by Registered Electrical Contractors or further to direct inspections carried out by the self-regulatory bodies.

Furthermore, there is in the region of 5,200 Registered Electrical Contractors in Ireland. These are individuals (sole traders) or collective entities (partnerships/companies) registered with either of the current self-regulatory bodies.

### **Strengths & Weakness of Regulatory Model**

The primary weakness of the existing regulatory model from the Commission's perspective is the lack of statutory underpinning for the regulatory approach.

Other weaknesses, as highlighted to the Commission by industry stakeholders, include:

- The perceived differences in the operating standards/procedures of the existing self-regulatory bodies;
- There is a lack of support and enforcement with respect to those works which do not require network connection (example: the wiring of an extension). It is the view of the existing self-regulatory bodies that Completion Certificates are not issued in the vast majority of cases where a network connection is not required. It should be noted that there are large volumes and different categories of electrical work (maintenance, upgrades, sub-systems); and,
- The comparative lack of awareness among customers of the importance of the Completion Certificate as a declaration/confirmation of good installation practice.

Notwithstanding the above weaknesses, it is generally accepted that the regulatory model has been instrumental in the improvement in standards of electrical installation work, and consequently public safety, over the last number of years.

The regulatory system itself is, by and large, widely understood and conformed to by the industry. In particular the Completion Certificate system has been continually developed over the last number of years, and, as such, there is a considerable amount of IT infrastructure and processes in place to ensure that the system works effectively.

## **Appendix C – Proposed Designation Process**

This Appendix sets out the Commission’s proposed Designation Process (high-level) and is further to the details on designation and a Designated Body as set out in Section 4 of this document.

The process as described in this Appendix may be subject to further change. The Commission will publish its decision on the various elements of the process through embarking on the two stages (as set out hereunder) and through the release of the relevant documentation to the appropriate parties at each stage.

The process will include opportunity for interested parties to raise queries and seek clarifications on the detailed process with the Commission prior to the formal commencement of each stage.

The Commission has decided to pursue a procurement-style process similar to the “Restricted” Procurement Procedure.

### **Outline of Restricted Procedure:**

- The restricted procedure involves two stages.
  1. Stage One involves issuing a Request for Expressions of Interest (“EOI”), which will contain certain requirements which a tendering party must conform to.
  2. Stage Two is the issue of an Invitation to tender (“ITT”) to those parties who have been successful in the selection process in Stage One.;
- Full tendering (Stage 2) is made by only those parties invited to do so by the Commission through the ITT. This allows the Commission to use a pre-qualification stage, limiting the range of tenderers to those meeting the criteria specified by the Commission.
- The restricted procedure is generally used for procurements which are not simple and have some element of complexity.
- The contents of the EOI and ITT will contain all of the necessary requirements to be provided by the entity and the necessary requirements to which it must adhere (e.g. its constitution, the conduct of its business etc.). The proposed Designation Conditions would be included in the ITT documentation.
- The EOI will be advertised in the Official Journal of the European Union and/or other media.
- The Electricity Safety Team and its Technical Advisor will draft the contract notice and tender documentation. These will be subject to legal review.

- An independent Process Auditor will be appointed by the Commission. The role of the Process Auditor shall be to monitor the evaluations at the two stages to ensure that there is due process and that the evaluations take place in accordance with the principles set out in the tendering documentation and that they are fair and non-discriminatory.

### **Detailed Stage 1 Process**

1. This will involve the drafting and release of EOI. The EOI will set out the outline specifications for what is being procured and the general rules applicable to the process. The EOI may contain a pre-qualification questionnaire (“PQQ”).
2. The EOI will be advertised in the OJ, other media and through the Commission’s website and mailing list.
3. The contract notice will state that the Commission has elected to limit the number of candidates to be invited to tender.
4. This Stage is intended to launch immediately after the Commission has published its consultation on the Criteria Document.
5. Persons who wish to be invited to tender must respond to the EOI. The Commission will then evaluate the responses (which, in the main, comprise the completed PQQ or response to the EOI and relevant supporting documents) to establish if a respondent meets the minimum criteria.
6. The responses to the EOI are then evaluated by reference to published selection criteria to determine which candidates will be invited to submit a tender. The Commission will then confirm “invited bidders”, who will be invited to participate in Stage 2. The Commission will invite to tender those candidates whose responses satisfy the minimum criteria.

### **Detailed Stage 2 Process**

7. Stage 2 involve the drafting of detailed ITT documentation (further questionnaires and statements of requirements with respect to bids etc.), Designation Conditions and guidance notes on Designation and the evaluation process for tenders received.
8. Stage 2 will launch after the Commission publishes its decision on the Criteria Document.
9. Stage 2 will involve the initial release of documentation at the commencement of Stage 2 for invited bidders followed by a period for the receipt of written clarification requests on the documentation.
10. The Commission will subsequently release a clarification memo (to all invited bidders) on any requests received.
11. The process will subsequently conclude with receipt of tenders and their evaluation.
12. After this step, the Commission will confirm its position with respect to the number of bodies it wishes to designate (as set out in Section XX of this document).
13. Following that confirmation, Notice/advertisement of the Commission’s decision will take place, and finally, formal designation.
14. Prior to this last stage of Designation taking place, there may be a need, further to the review of the bids/proposals of the preferred bidders and

discussions with same, to make some amendments to the Designation Conditions as would have been released at the outset of Stage 2.

It should be noted that the Stage 2 documentation would not be released until after Stage 1 is concluded.