



Promoting Contractor Competency with the CIRI

Introduction

Earlier this year a new law was introduced to strengthen the current arrangements in place for regulating building activity with a view to improving quality, competence and good practice in the Construction Sector. This piece of legislation along with the Building Control Amendment Regulations 2014 is a further positive step to achieving the restoration of public confidence in the Construction Industry following the legacy of building failures which have come to light in recent years.

We set out below a commentary on the key issues arising from this new legislation.

WHAT IS THE CIRI?

The Construction Industry Register Ireland ("**CIRI**") is an official voluntary register of competent builders, contractors, specialist sub-contractors and tradespersons (collectively defined as "*contractors*" in this article) who undertake construction works. The CIRI was established in July 2014 and is open for applications. It was developed by the Construction Industry Federation with support from the Government. It is currently governed by the CIRI Admissions & Registration Board, who consist mainly of registered construction professionals from various sectors of the industry. Its operators confirmed to us that there are 700 registered members currently on the register. This register is a similar model to that of registration for Registered Architects and Surveyors.

Its main purpose is to provide those operating within the construction industry with competency accreditation. As such, consumers can freely access the register to find a competent and compliant contractor which has passed certain pre-registration checks, that otherwise may not exist for contractors not currently on the register. It ties in nicely with the Building Control (Amendment) Regulations 2014 which obliges clients to appoint competent and compliant contractors, builders, and specialist construction contractors and as such the CIRI acts as a tool to tick box this obligation.

The registered title is a professional designation granted to a contractor who meets these onerous requirements as outlined by the current CIRI Admission and Registrations Board. Becoming a registered contractor means that the contractor has been subjected to a strict review process to obtain the designated registration category under the register. The application process is an extensive system of checking contractors to make sure they meet the basic requirements regarding health and safety, insurance, financial clearances, project references, qualifications, and experience of key personnel. Then once on the register contractors must cover 4 main pillars of annual CPD, one of which are Building Regulations. These checks must be met afresh on every annual renewal.

A STATUTORY STRUCTURE

Earlier this year, the Government announced new changes to the CIRI with the focus of enhancing compliance within the construction sector. The Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022 ("**the Act**") was enacted in July 2022 and this Act will replace the voluntary register with a statutory one.

On 29 August 2022 a Commencement Order for the general provisions of the Act was passed with notable exclusions covering **Part 4** (Register and Competence Criteria) and **Part 5** (Registration and Practice). There is no date yet for commencement of these sections. However, it is proposed that the first category (both home and commercial builders) can begin registering under the Act with the CIRI in 2023 with mandatory registration expected in early 2024. While the CIRI is now open for voluntary registration this is under the current system rather than under the Act. The Act also maintains the CIRI title.

The main objective of the Act is to advance a culture of good practice, competence, and compliance with Building Regulations throughout the Irish construction industry. The Act provides for the appointment of a fair and independent registration body and a registrar to be responsible for the day-to-day running of the register.

The Act applies to all providers of building works with "*works*" meaning works to which the Building Regulations or the Building Control Regulations apply. An employee of a provider of building works is not a provider of building works.

KEY PROVISIONS OF THE ACT

Part 3 provides for the establishment of an Admissions and Registration Board (the "**Board**") and an Appeals Committee. Ministerial appointees will constitute a majority of the Board and Committee. Under the Act those appointed must have at least expertise and knowledge in one or more areas of construction, as set out in the Act. As a result of pre-legislative scrutiny before the passing of the Act, there is also a safeguard obligatory provision that the Board and Committee members shall be independent in the performance of its functions.

Part 4 provides for the establishment of the statutory CIRI register (the "**Register**") and sets out the competence criteria required for contractors to be eligible to register. This criterion is determined by the Board and eligibility is based on an assessment of the contractor's level of educational qualification or practical experience, or a combination of both. There is also a section providing for an equivalent competence criteria base for registered members from other countries to protect against discrimination of builders coming from other countries to tender for works in Ireland. This section also sets out the list of details that the Register shall contain in relation to each registered entity, which includes any penalties and offences handed down under the Building Control Act 1990.

In the event of legal proceedings (presumably involving a registered or unregistered contractor) the Act states that a member of the Board can furnish a certificate stating that contractor is, or is not, or was at one time, on the Register and this will constitute prima facie evidence of this fact. A party to proceedings could obtain such a statutory certificate to demonstrate a situation where a contractor or tradesman was suspended or not on the Register at a given date in time to prove that a standard of competency was not met. On the other hand, a contractor could obtain this certificate to prove in its defence that it has the level of competency, as required under the Act and/or the Building Control Regulations, to defend allegations which may suggest otherwise.

The Register is also divided into different divisions for each of the different categories of works. As such it is for a contractor to meet the competency criteria in respect of each division for which it is registered. That said, the Act provides for scope for a registered contractor to rely upon a specific employee as a '*competent person*' who fulfils the competence criteria relating to a certain division of works, if the contractor wishes to become registered in another division (or category). If the specific employee leaves the employment of the contractor, then there are obligatory time notice provisions in the Act that must be followed by the contractor. There are also useful provisions that enable a contractor to rely on its subsidiaries to fulfil the competency criteria and register in other divisions.

Part 5 provides for the operation of the CIRI and significantly prohibits any unregistered contractors from operating in construction. This also includes a ban on contractors providing building services in a category in which they are not registered. It is an offence to contravene this prohibition. As such, if contractors are not on the Register by early 2024 (assuming that it comes into effect then) then they simply cannot trade.

Part 5 of the Act also outlines the application process, the requirements for first registration and renewal. Like the current system, renewal is not automatic, and the contractor must go through a fresh onerous application process. The contractor must furnish evidence that it holds the minimum levels of insurance as required under the Act (see below for more on this). The application for registration both at the outset and renewal includes an obligation on the contractor to furnish a written statement confirming (amongst other things) whether the contractor applicant complies with the Building Regulations and Building Control Regulations. If the contractor becomes aware of any '*material matter*' that changes the information furnished in the registration application, then it must notify the registration body as soon as practicable and no later than 30 days. An adverse court judgment that a contractor was in non-compliance with the Building Regulations could well constitute a '*material matter*' that must be notified. This in turn could negatively impact upon registration and ultimately the ability to operate/trade.

Section 43 provides that the registration body will specify the minimum levels of insurance that the contractor must hold. This applies only to public liability and employer's liability policies. This section lists the criteria the registration body will have regard to when specifying these minimum indemnity levels. This includes regards to the level of risk generally inherent in the specific category of works, the level of risk that insurers associate with the category of works (this will require consultation as between underwriters and the registration body established under the Act), as well as the level of awards/settlements from proceedings relating to causes of action from allegations of breaches of duty involving registered contractors involved in that category of works.

Part 6 provides for the handling of complaints, investigations, and sanctions in respect of the registered contractor. A complaint may be made in writing concerning any one of a number of grounds (referred to as "*improper conduct*").

One such ground includes complaints against a contractor providing building services in a category in which they are not registered. Contractors and their employees will have to be very careful to avoid finding themselves unassumingly getting into other aspects of work on site if they are not registered in this specific area of work.

After a complaint is received, the registrar will review it to ascertain if it is made in good faith or if it is without substance, lacking information or frivolous and vexatious. The registrar may decide that the complaint could be resolved by mediation. If the registrar is of the view that the complaint has substance, then it will refer it onto the Board for investigation following which an inspector is appointed. An investigation report is produced at the end of the investigation stating whether the inspector is satisfied that there has been improper conduct or not. The appointed inspectors have wide ranging powers under the Act including the power to enter and search any premises of a contractor under investigation.

Both minor and/or major sanctions can be imposed by the Board following receipt of an investigation report that finds improper conduct. Oral hearings may also be conducted by the Board if it considers it necessary. A major sanction could be removal or suspension from the Register as a whole or a division thereof, thereby banning the contractor from operating. Confirmation from the High Court is required before a decision to impose a major sanction takes effect.

Importantly, the Act provides (in **Part 7**) that all complaints, investigations, inspector reports under the Act, and made to the inspector, the Board or Appeals Committee, and associated documents, and communications are absolutely privileged. This means that these issues cannot be disclosed and relied upon as evidence in court proceedings. **Part 7** also provides for the publication of sanctions and convictions and provision for offences and penalties.

WHY WAS A STATUTORY REGISTER CHOSEN?

The statutory Register was chosen as it is expected to help develop and promote a culture of competence, good practice and compliance with Building Regulations, to address rogue builders and shadow economic activity in the construction sector and to ensure fairer competition for compliant operators. The purpose of the Register is to promote safe and compliant work practices that consumers can rely on with confidence. The CIRI registered contractors can be confident that customers they are dealing with view them as highly skilled and experienced, and only contractors that meet the strict eligibility criteria are registered on CIRI.

KEY TAKEAWAYS

- *Contractors already included on the CIRI or equivalent may be regarded as competent for the purposes of the Building Control Regulations for projects consistent with their registration profile.*
- *The CIRI will be a mandatory register from early 2024 of competent builders, contractors, specialist sub-contractors and tradespersons in the construction industry.*
- *If a contractor is not on the Register, then it will be prohibited from trading.*
- *Employees of contractors will not be required to apply but sole traders will be required to apply.*
- *Eligibility for registration can be achieved through experience, qualifications, or a combination of both.*
- *Members of the public can now go online and are free to search for registered contractors.*
- *The Act will provide for the CIRI to receive complaints against registered contractors, including complaints against a contractor providing building services in a category in which they are not registered.*
- *If there is an issue with a contractor's quality and compliance, then it may not get its registration renewed.*

- *The CIRI Register should effectively blacklist shoddy contractors once it becomes mandatory.*
- *A certificate of registration will be proof of competency in the division of works to which it relates.*
- *Any major sanctions imposed will require prior confirmation from the High Court.*
- *Inspectors will have wide ranging powers under the Act.*
- *All complaints and investigations made under the Act will be privileged.*

WHAT GETS MEASURED GETS IMPROVED

Mandatory statutory regulation is necessary to protect the public from the risks posed by defective buildings such as the boom to bust housing defects and the legacies of poor construction design, workmanship and materials. Improving and promoting a culture of good building practice, competence and compliance with the Building Regulations will greatly benefit consumers, those operating within the construction industry, and the public at large. The Register will mandate that contractors can only take on work that they are competent to complete and registered to undertake.

Overall, the Register will help restore trust and confidence to the industry and its consumers and improve quality and standards in the construction environment, such that the risks of repeating the mistakes of the past should be substantially decreased. These measures are another welcome step for improving standards and minimising risks in the Irish construction industry.

Further Information

Given the generality of the note it should not be treated as specific advice in relation to a matter as other considerations may apply.

Therefore, no liability is accepted for reliance on this note. If specific advice is required, please contact one of the Partners at Caytons who will be happy to help.

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