



Merry Christmas and Happy New Year 2009

President Jack Hegarty, Chris Lundy- Executive Secretary and Council Members would like to wish all AECI Members and Friends a Merry Christmas, Happy New Year and a Prosperous 2009.



**Quigg Golden Seminar - Government New Conditions of Contract
(Michael Kelly, James Golden, Chris Lundy, Pauric Marray)**

AECI TRADE SHOW 2009

***will be held in The Rochestown Park Hotel, Cork
on Saturday the 23rd May 2009.***

Please do not hesitate to contact us for additional information.

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AECI Office closed for Christmas holidays from
the 23rd December 2008 to the 6th January 2009.

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Quigg Golden - Government New Conditions of Contract Seminar

AECI organised a 1day training seminar on the government's new conditions of contract. This took place in the Raddison Hotel in Athlone on the 21st October 2008. The training was designed & presented by Quigg Golden the leading specialists, in Ireland, on Construction Contract Law & dispute resolution.

The training was designed to focus particularly on the subcontract terms & conditions & included relevant aspects of the main form of contract.

The objectives included:

- Understanding the tendering & procurement process under the new contracts.
- Understanding the implications of the New Contracts
- Seeing the real pitfalls and the risks associated with them; and
- Key administration to protect your cash flow and income.



The new conditions are undoubtedly the most dramatic change in Ireland in over one hundred years in the way in which the Government intends to procure its business. The change has already provoked consternation, even panic, in main contractors and consultants alike. The Sub Contract Provisions are now issued and represent a dramatic change in how the business of sub contracting is going to be organized.

A failure to understand the new contracts may well lead to miss-tendering, dramatic loss of money and even bankruptcy. The change can not be over emphasized. All contractors who operate in the public works sector must understand the new world of contracting if you are to survive in it. The administrative record keeping & reporting procedures are paramount.

The training was well attended & provided serious debate amongst the attendants on realizing the seriousness of the new conditions of contract now being imposed.

The ensuing debate has resulted in numerous members seeking a re-run of the training. We will have another session running early in February 2009. We attach a booking form for those interested in attending the February session.

Places are limited, early booking is recommended. Fax back your booking form today to secure a place.

By Michael A Kelly (Chairman AECI tendering & contracts sub committee).

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Patrick Neville MSL,

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Open Information Evenings for the contractors in various regions

AECI organized Open Information Evenings for the contractors in the various regions:

Mallow, Co.Cork
(29th Oct 2008)

Galway
(30th Oct 2008)
and

Dublin
(5th Nov 2008).



Chris Lundy (Executive Secretary), Jack Hegarty (President), Mattie A Ryan (Vice President)

LAY-OFF AND SHORT-TIME WORKING

When recruiting employees, it is generally an employer's intention to retain them in a full-time capacity. However, situations do arise where normal working is no longer possible and the employer is faced with the problem of reducing working hours. Rather than make employees redundant, an employer has the option of introducing lay-off or short-time working in such situations.

LAY-OFF

Lay-off occurs when normal working is interrupted and the employer is unable to retain employees in their normal capacity. The situation is of a temporary nature and advance notice has been given to all concerned. This could occur for a number of reasons, for example:

- shortage of orders;
- fire at premises;
- storm or flood damage;
- shortage of supplies or fuel;
- industrial action in another company.

If one such eventuality arises employees are laid off for a specified period of time, until trading conditions improve, or until the reasons behind the lay-off no longer exist.

Patterns of Lay-off

There are many patterns of lay-off. Lay-off can be a period where no work is performed or the employees may work one week on, one week off. Other patterns could include working three out of four weeks or one in each four-week period. These patterns could be worked using teams of employees alternating the working weeks between them. Right to Lay-off Employees. A lay-off is a temporary suspension of a contract during which an employee receives no work and more importantly receives no payment from the employer. The employer has no right in law to lay-off employees for whatever reason unless this is provided for in the contract of employment. How then can an employer who has not reserved the right to lay-off in the contract of employment do so without being in breach of same? The answer to this is by agreement with the employee that s/he will accept the lay-off. A lay-off situation will only arise where there has been a decrease in the available work. This is effectively a redundancy situation and an employee who refuses to accept

lay-off and is not contractually bound to accept it leaves his/her employer with no alternative but to make him/her redundant. The vast majority of trade unions and employees accept lay-off in preference to immediate redundancy in the hope that the work requirement will build up again and the employment can continue as before. It is important to note that lay-off is really only a valid option where the employer has a reasonable expectation that s/he will be able to offer reemployment in the future.

SHORT-TIME WORKING

Short-time working is defined under the Redundancy Payments Acts as: where an employee's working week decreases to less than half of his/her normal weekly hours or his/her pay is less than half of his/her normal take home pay; and the situation is not considered to be permanent and advance notice is given.

Patterns of Short-time

The general pattern of short-time working is the 'three day week' where employees work on three days and claim social welfare on the other two. When employers realise that normal working will be interrupted the decision must be taken as to which option is the more suitable to his/her circumstances, i.e. lay-off or short time working.

Protective Notice

This is not a legal term, it has no legal standing and it has never been tested in law. It is an industrial relations concept and a practice used to give employees notice of pending lay-off/short-time working. Thus where there is a real risk of lay-off or shorttime being necessary, 'protective notice' should be given to employees. Notification does not have to be in writing but it is advisable that it should be. The length of protective notice will be dependent on whether or not the cause and the appropriate date of the interruption of normal working is known in advance and if so, how long in advance.

REDUNDANCY

A redundancy situation generally arises where an employee's job no longer exists and where he/she is not replaced. The Redundancy Payments Acts, 1967 - 2003 define when a redundancy situation occurs and provides a redundancy payments scheme.

REDUNDANCY PAYMENTS ACTS 1967 – 2003

Employees are covered by the Act provided they fulfil the following conditions:

- work or worked under a contract of service or apprenticeship;
- in employment which was insurable for all benefits under the Social Welfare Act 1981 and in such employment in the four years prior to his/her dismissal;
- aged between 16 & 66 years
- continuously employed for 104 weeks.

The lump-sum payable under the legislation is payable by the employer directly to the employee and the amount of payment is related to the employee's length of service with that employer and his/her normal earnings. An employer who makes a statutory lump-sum payment to an employee will be entitled to a rebate of 60% from the Department of Enterprise, Trade and Employment if the notification procedures have been adhered to. The Employment Appeals Tribunal (EAT) deals with disputes under the Act.

Notice Requirements

Under the terms of the Redundancy Payments Acts, 1967 – 2003 an employee being dismissed for redundancy reasons must be given at least two weeks' notice before the proposed date of dismissal. However, employers must also comply with the notice requirements under the Minimum Notice and Terms of Employment Acts 1973 – 2001. Under this Act, an employee who has been in continuous service with an employer for 13 weeks or more is entitled to a minimum period of notice of dismissal, the length of which varies in accordance with the length of service as follows:

13 weeks but less than 2 years' service	1 weeks' notice
2 years but less than 5 years' service	2 weeks' notice
5 years but less than 10 years' service	4 weeks' notice
10 years but less than 15 years' service	6 weeks' notice
15 years service or more	8 weeks' notice

A longer period of notice may be required under a contract of employment which is legally binding unless there is a mutual agreement allowing for alteration of the terms of the contract. Notice required under the Redundancy Acts runs concurrently with other notice requirements. Notice must be given to the employee in writing on form RP50. Copies of the statutory forms required are available on request from the Redundancy Section of the Department of Enterprise, Trade & Employment at Tel: 01-6313131 or download from www.entemp.ie. A copy of the form must be sent to the Minister for Enterprise, Trade and Employment and another copy retained by the employer for his/her own records. The reasons for redundancy are detailed on this form.

The common reasons are:

- need for fewer employees due to fall in demand for products;
- need for fewer employees due to rationalisation;
- need for fewer employees due to closure of a certain department;
- closure of the company.

Collective Redundancies and Notice

A company that proposes to make a number of employees redundant within a given period should be aware of the provisions laid down under the Protection of Employment Act 1977-2000. This Act requires exchange of information and consultation between an employer, employee representatives and the Minister for Enterprise, Trade and Employment. Consultation must take place a full 30 days before the first dismissal in a "collective redundancy" situation.

The Act applies where the proportion of the employees to be made redundant is at least:

5 out of a total of	21 - 49 employees
10 out of a total of	50 - 99 employees
10% out of a total of	100 - 299 employees
30 out of a total of	300 + employees

The employer is obliged under this Act to consult with the employees' representatives with a view to avoiding the proposed redundancies or reducing the numbers involved. The employer is also obliged to consult on the selection of staff for redundancy. The employer must also give formal notice to the Minister for Enterprise, Trade and Employment of his/her intention to make employees redundant at least 30 days before the first redundancy takes place. This notice may run concurrently with the other forms of notice due. Failure to comply with the procedures can lead to substantial fines unless special justification can be proved.

Pay in Lieu of Notice

Under the Minimum Notice and Terms of Employment Acts 1973 - 2001 either side may voluntarily waive the right to notice and the employee may accept payment in lieu. Under Revenue rules, where the right to pay in lieu of notice is not set out as a contractual term, then the notice money can be paid tax free, where it is paid in lieu, as part of the basic exemption on ex-gratia payments on termination of employment. The date of termination for the purposes of the Redundancy Acts where payment in lieu is made, is the date on which notice would have expired had it been worked (i.e. the "notional expiry date"). For the purposes of statutory redundancy calculations, service up to the "notional expiry date" will need to be taken into account.

Refusing to Accept Redundancy Notice

If an employee refuses to accept notice of redundancy, an employer is advised to send such notice to the employee's address by registered post.

If an employee does not accept and sign the RP50 and accept the redundancy monies the employer should send same to the employee by registered post. Further, s/he should send copies of all documentation (including a copy of the cheque) to the Minister explaining that the employee did not accept redundancy and that all forms and the payment due were sent to the employee by registered post.

BETTER BUSINESS

Self-Employed & Want to Beat the Taxman?

Beating the taxman is not easy but, by taking action in advance of the Revenue's deadline of the 31 October 2008, self-employed people in the building services sector can reduce their tax bill and build a financial cushion for retirement.

In the past many of Ireland's self-employed saw their business as their future financial security so they did not take out a pension. With the construction and property boom of recent years the building services sector is no different. With massive increases in volumes of business, many may simply not have had the time to consider how a pension could prepare them for their long-term future and improve their current income by significantly reducing the tax bill.

Now, as the construction boom subsides, with the combination of increased tax relief limits on pensions and the broader array of pensions options now available, the time is ripe to invest in a pension and secure the future.

Tax Relief

The 31 October 2008 is the last date by which pension contributions can be paid into a Personal Pension Plan or Personal Retirement Savings Account (PRSA) and be offset against the tax due for 2007. Therefore, contributions invested prior to 31 October 2008 can be used to reduce the final tax liability due to be filed and paid on that date.

For instance, prior to the Finance Act 2006 individuals could contribute a maximum of 30% of net relevant earnings to a personal pension (depending on their age) and get full tax relief at their marginal rate on their contributions. Since the Act has been in place there has been a substantial increase in tax relief limits. The table illustrates this increase and shows why it makes good business sense for the self-employed to invest in a pension.

Age	Maximum tax deductible limits as % of earnings
Under 30	15% of net relevant earnings
30 to 39	20% of net relevant earnings
40 to 49	25% of net relevant earnings
50 to 54	30% of net relevant earnings
55 to 59	35% of net relevant earnings
60 and over	40% of net relevant earnings

Retirement Options

Further retirement options were introduced as a result of the Finance Act 1999 which saw the introduction of approved retirement funds (ARFs) and approved minimum retirement funds (AMRFs). These are funds managed by qualified fund managers in which you can invest the proceeds of your pension fund when you retire. Prior to the introduction of these funds it was compulsory for a personal pension (PRSA) holder to convert their fund into an annuity that provided a guaranteed income for life. With the new legislation, self-employed people can now leave their pension fund invested in a tax efficient way after they retire, or alternatively encash the balance of their fund.

However, it is important to note that if the individual wishes to invest in an ARF or encash the balance of their fund, they must have a guaranteed pension income of 12,700Eur per annum. If this cannot be met then 63,500Eur of the balance of their fund must be invested in an AMRF and remain in place until age 75.

HOLIDAYS 2008 - 2009

Mon	27th Oct	Public
Wed	24th Dec	Annual
Thu	25th Dec	Public
Fri	26th Dec	Public
Mon	29th Dec	Annual
Tue	30th Dec	Annual
Wed	31st Dec	Annual
Thu	1st Jan	Public
Fri	2nd Jan	Annual
Mon	16th March	Annual
Tue	17th March	Public
Fri	10th April	Annual
Mon	13th April	Public
Tue	14th April	Annual
Wed	15th April	Annual
Thu	16th April	Annual
Fri	17th April	Annual
Mon	4th May	Public
Mon	1st June	Public
Mon	20th July	Annual
Fri	To 31st July	
Mon	3rd Aug	Public



RETENTION OF TITLE

What is it?

Retention of the title is a legal mechanism which enables a seller of goods to retain title in the goods until the price for them has been paid. A clause is inserted in the terms of trade under which the sale is made whereby, if after delivery but before payment for the goods, the buyer becomes insolvent, the seller may claim return of the goods.

How may it be used?

There are three main requirements which must be present to enable successful use of a claim on this basis.

1. The clause must be incorporated in your contract with the buyer. To ensure no problems here you should:

- Get written acknowledgement from the buyer when trading relationships have begun (perhaps on the credit application form).
- Distribute to existing customers a note enclosing terms and conditions of sale,
- Print terms and conditions of sale on price lists and sales materials,
- Print terms and conditions of sale on the reverse of letters of other company documents where appropriate.

The question of whose terms of trade are used will rest on the last notification before delivery was effected. A legal contract is made when definite offer is met by an unqualified acceptance. When on party sends the other an offer only to be met by an acceptance which includes a new set of terms of trade then the "qualified acceptance" amounts to a counter-offer and no contract exists until the counter-offer is accepted. Thus the first terms of trade have been superseded and the second set have become part of the contract. There have been cases where a company has introduced its own terms of trade shortly before entering receivership, effectively repudiating a retention of title clause.

2. The goods under consideration must be identifiable. This may simply be by the supplier's name on the product packaging or distinguishing marks, product serials or code numbers (perhaps in bar coding).

Alternatively, can it be proven that no-one else could have supplied the good?

3. The goods have been paid for. This may be simply by production of an unpaid invoice. It is more difficult, however, when a number of similar transactions have been made, some of which have been paid for and some not. It will be necessary to prove that the goods claimed are part of the unpaid supply and not the paid supply. In order to do this it will be necessary to identify the date of the last payment, then refer to product serial numbers, codes and delivery dates and establish that goods were delivered or even manufactured after the date of the last payment.

Debtor's Receivership or Liquidation

1. Visit the debtor's premises, inspect and identify the goods claimed by listing them. Sign the list and get a member of the receiver's/liquidator's staff to countersign the list.

2. Obtain an assurance that the goods claimed will not be sold, disposed of, or transformed by manufacture or other processes by which they may lose their identity.

3. Persevere with your claim as long as it has merit. You will have a good chance of recovering the goods or securing a cash payment from the liquidator/receiver, especially as the receiver may need your goods and indeed goodwill if the intention is to try to sell the business as a

Companies in Administration

When advancing claims against companies in administration the rules are slightly different. You may inspect the goods but you may not take action to enforce the claim without the permission of the court or the administrator. Such restraints make the claimant's position much weaker. If the claim has merit then negotiation with the administrator will tend to produce best results.

The use of retention of title clauses may put a supplier in a very much better position than the ordinary unsecured creditor. Using the retention of title clause effectively elevates the unsecured creditor above the preferential creditors such as banks and government departments.



A.E.C.I. Recent Council Meeting

E-PACE QUESTIONNAIRE

The AECl Position on the Questionnaire that has been circulated by EPACE to Electrical Contractors is as follows:

While there is no compulsion on any Electrical Contractor to complete and return this document, it is worth considering that this is a requirement if an EPACE Certificate of Compliance is required.

Dear Members

2009 should prove a very interesting year with the Nation's (and Global) Economic situation effecting everyone. There is no doubt that we will come through these turbulent times and with some "glimmers of light" beginning to show already, perhaps we may see better days sooner than expected.

Your AECl Council delegates have had meetings recently with the NJIC and all issues relating to our Members and our Industry are continually being aired and we will continue on this line. The C.I.F., as we are all aware, are seeking a 10% deduction in wages and the AECl and ECA are continuing to find common ground to bring forward an acceptable proposal to suit all our Members in the poor economic climate we are in today and as a follow up to this a further meeting is planned for Monday 22 December 2008 between AECl and ECA. As soon as more information is available it will be passed on to all Members.

Again on behalf of all those working with your interests at heart may we extend our Season's Greetings to you and your Families for a Happy, Healthy and Peaceful Christmas.

Chris Lundy
Executive Secretary AECl



Please find below a sample of Certificate of Membership for 2009



GOVERNMENT NEW CONDITIONS OF CONTRACT SEMINAR

1 Day Seminar/Workshop

Venue: Athlone February 2009

Date: to be agreed

Designed by the experts specifically for Electrical Sub-Contractors.

Focuses on the terms of the Sub-Contract agreement for use with new Government Main Form of Contract.

Specific Aims are:

1. To ensure members understand the implications of the terms contained within the new Public Works Sub – Contract & Main Contract forms.
2. To ensure members understand the potential pitfalls in projects they may become involved in & how best to deal with them.
3. To ensure members are aware of the dispute resolution mechanism available to them & understand how they operate.
4. Get to know & understand the new tendering procurement practices.

This training is designed specifically for AECl by Quigg Golden one of the country's leading specialists in Construction Contract law, Dispute resolution, Arbitration, & Conciliation/Mediation.

The cost for attending will be in the order of €320.00 per person.
NB the cost of similar such training elsewhere is €525.00 per person.

A minimum of 20 is required to prove viable. Spaces are limited to 25.

**Places are limited & will be secured on a 1st come basis, on receipt of payment.
Book Today**

Please use the fax back form overleaf.

GOVERNMENT NEW CONDITIONS OF CONTRACT SEMINAR



1 Day Seminar/Workshop
GOVERNMENT NEW CONDITIONS OF CONTRACT SEMINAR

Where: Athlone
When: February 2009 (date to be agreed)
Fee: €320.00 per person

Fax Back Booking Form

Please complete below and fax to 01-288 5870.

Name(s):

Company Name:

Address:

Phone:

Fax:

Mobile:

E-mail:

Number of places intended:

Signature of Owner/Director:

All places must be paid for in full prior to training date.



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Members of A.E.C.I.
from all at Arachas***

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