

Review of Building Control Regulations

following 12 months of operating under S.I. No. 9 of 2014

Report on Consultation Process

Submitted to Ministers Kelly and Coffey on 30 June 2015



Contents

Introduction	3
1 Overview and Summary	4
1.1 Terms of reference	4
1.2 S.I. No. 9 of 2014 in Context	5
1.3 Review of S.I. No. 9 of 2015 – Working Methods and Public Consultation Process	6
1.4 Summary	8
2 Matters Arising in relation to Building Control Arrangements for Single Dwellings and Extensions	10
3 Matters Arising in relation to Building Control Arrangements in General	18
 Appendices	
I Options Presented for Public Consultation (re. Single Dwellings & Extensions to Dwellings)	22
II Open Policy Seminar on Building Control Hosted by Minister of State Paudie Coffey T.D. (15 April 2015) – Summary Report	28
III List of Submissions	30

Introduction

The Building Control (Amendment) Regulations 2014 (S.I. No. 9 of 2014) were introduced with effect from 1 March 2014 in order to strengthen the arrangements in place for the control of building activity in response to the widespread failures that had occurred in all sectors of the industry in the period leading to the recent economic collapse.

Prior to S.I. No. 9 of 2014 coming into effect on 1 March 2014, the then Minister signalled the intention to review its effectiveness following its first twelve months of operation. This review was announced by Ministers Kelly and Coffey on 2 April 2015. An Open Policy Seminar on Building Control was hosted by Minister Coffey in the Custom House on 15 April 2015. Written submissions were invited by 15 May 2015. This report documents the key concerns that arose during the review process.

Section 2 deals specifically with the Impact of S.I. No. 9 of 2014 on New Dwellings (including Self Builds) and Extensions to Dwellings. Section 3 deals with the General Impact of S.I. No. 9 of 2014.

The opportunity has been taken, where appropriate, to clarify some apparent misunderstandings in relation to the regulations and their application. In this way the report will assist further with the ongoing transition to the new regulatory framework now taking hold in all sectors of the construction industry.

Matters which go beyond the scope of the Building Control Regulations are documented as an input into the future development of the policy and legislative framework for building control.

Finally, matters relating to the Building Control Management System (BCMS) and the resourcing of the Building Control function have been brought to the attention of the Local Government Management Association and the City and County Management Association for attention and action as appropriate.

1 Overview and Summary

1.1 Terms of Reference

The scope and objectives of the review were agreed by Ministers Kelly and Coffey on 2 April 2015 and are as follows:

- (a) To review the operation of S.I. No. 9 of 2014 in consultation with industry and local authority stakeholders and members of the public
- (b) To consider in particular the impact of S.I. No. 9 of 2014 on single dwellings and extensions to existing dwellings having regard to specific concerns which have been raised in relation the cost burden of the regulations and the level of certification required for this sector
- (c) To consider more generally the impact of S.I. No. 9 of 2014 on owners, occupiers and users of buildings having regard to the statutory purposes for which building regulations may be made (i.e. public safety, accessibility, energy efficiency, efficient use of resources and good building practice)
- (d) To make recommendations that will strengthen and improve the arrangements in place for the control of building activity in keeping with the principles of good and fair administration
- (e) To report with recommendations to the Minister of State as soon as possible, but in any event no later than 30 June 2015.

During the course of the review matters will inevitably arise which may be beyond the scope of S.I. No. 9 of 2014 and the Building Control Regulations 1997 to 2014. The review report will note and record such matters as an input into the future development of policy and legislation in this critical area of public policy.

1.2 S.I. No. 9 of 2014 in Context

The aim of the regulatory framework is to ensure that a home or building is designed and constructed in compliance with the relevant requirements of the building regulations.

Many incidences of building failures or severe non-compliance concerns have followed the recent collapse in economic and construction activity. The economic consequences of this situation for industry, private building owners and the State (remediation of NAMA properties, Priory Hall, pyrite remediation, costs associated with unfinished estates, etc.) continue to be felt in terms of the immediate remediation costs and the longer term effects on construction-related insurances and consumer confidence in the construction industry.

In response, S.I. No. 9 of 2014 has required that the design and construction of buildings is verified during construction through the execution of an inspection plan overseen by a registered construction professional (the assigned certifier) that enables the builder and the assigned certifier to sign a statutory certificate of compliance on completion.

This statutory certificate of completion effectively represents a badge of approval reassuring owners of homes and buildings that their home or building is a quality, compliant one that is

- Safe and healthy to live in;
- Structurally sound and resistant to fire;
- Energy efficient, therefore warm and comfortable, and requiring relatively low spending on fuel;
- Durable, having used properly certified materials combined with good construction practice.

1.3 Review of S.I. No. 9 of 2014 – Working Methods and Public Consultation Process

Prior to S.I. No. 9 of 2014 coming into effect on 1 March 2014, the then Minister signalled the intention to review its effectiveness following its first twelve months of operation. This report fulfils that commitment.

It is worth noting that this is the fourth review process on this matter:

1. The changes to the building control framework underpinned by S.I. No. 9 of 2014 were originally devised by a High Level Working Group of senior Department and Local Authority representatives who received submissions and held workshops with industry and local authority stakeholders;
2. The outcome of the High Level Working Group's deliberations were put to public consultation in the form of proposed Draft Building Control (Amendment) Regulations in 2012. 504 comprehensive submissions were received from industry stakeholders, industry practitioners and members of the public;
3. Building Control (Amendment) Regulations (S.I. No. 80 of 2013) were signed into law in March 2013. Following concerns about the insurability of persons signing the proposed statutory certificates, detailed engagement followed with industry and local authority stakeholders culminating in the Building Control (Amendment) Regulations 2014 (S.I. No. 9 of 2014) and the *Code of Practice for Inspecting and Certifying Buildings and Works*;
4. The current review of S.I. No. 9 of 2014 following its first twelve months of operation.

This level of consultation and engagement is unusual if not unprecedented in the development of statutory regulations. It underlines the significant role the regulations play in strengthening the building control system in order to ensure that the catastrophic impact of failed and defective buildings, whose legacy can affect the lives of countless citizens, is minimised as much as possible. It also underlines the effect the regulations have on the work and livelihoods of people in the construction industry.

On 2 April 2014 following the announcement of the review by the Ministers the Department published [a suite of documents](#) (still accessible at this weblink) to inform the Review, and invited submissions from industry and members of the public outlining their views and concerns on the revised building control framework underpinned by S.I. No. 9 of 2014. A spreadsheet template for submissions was provided with a view to encouraging respondents to focus on documenting what action they thought might resolve their particular concerns.

Prior to the review it was clear that the aspect of S.I. No 9 of 2014 of greatest concern to the public has been its impact on single housing units and on extensions to existing homes. The concerns highlighted in this regard enabled the Department to give preliminary consideration to this issue in advance of the formal review of S.I. No. 9 of 2014. Accordingly, the documentation released for public consultation included a special information note *Information Note No. 2 – New Single Dwellings (including Self-Build) and extensions to existing dwellings* setting out a number of options in relation to addressing the impact of S.I. No. 9 of 2014 on single dwellings and on extensions to dwellings.

Information Note 2 also incorporated proposals for consideration relating to broadening the pool of persons who may sign statutory certificates of compliance which has also been an ongoing area of concern for persons who feel they are qualified to undertake such work but cannot do so as they are not a registered member of any of the relevant construction design professions.

The third key concern evident in feedback from industry relating to the operation of S.I. No. 9 of 2014 lies in the question of liability and responsibility faced by those who sign statutory certificates of compliance for building control purposes. In this regard the consultation documentation included *Information Note No. 3 – Professional Liability in the context of the Statute of Limitations and the Building Control Act 1990* which set out to clarify and address such concerns.

In addition to the invitation of written submissions, a consultative forum was hosted by Minister Coffey in the Custom House on 15 April 2015. The forum afforded participating stakeholders the opportunity to voice their views and concerns on the building control framework and to hear the views of other stakeholders prior to framing their own written submissions. A summary report on the proceedings is at Appendix II.

The closing date for submissions in relation to the review was 15 May 2015. A total of 171 submissions were received and have been reviewed. This report outlines the key concerns raised across the generality of the submissions received.

1.4 Summary

The submissions received indicate that there is broad general support for the strengthening of the building control arrangements that has occurred under S.I. No. 9 of 2014 notwithstanding the many valid suggestions that have been made for further improvements. With one or two exceptions, there were relatively few submissions calling for S.I. No. 9 of 2014 to be abolished, although there are serious concerns about its application in relation to new single dwellings in particular (see Section 2). Some industry stakeholders who were previously sceptical and opposed to particular features of S.I. No. 9 of 2014 have seen the benefit of its operation to date and have sent a strong message in their submissions that the Government should not unravel or undermine the reforms introduced. In the detailed submissions that have been received from all stakeholders it is clear that the reforms are bringing a new order and discipline to bear on construction projects at all levels. Building Control Authorities who are uniquely placed to observe such developments have strongly emphasised this aspect of the reforms. Overall, the evidence of the submissions suggests that S.I. No. 9 of 2014 is clearly having the desired effect in changing the prevailing culture of the Construction Industry in Ireland to one of compliance and quality.

Having regard to concerns regarding the impact of S.I. No. 9 of 2014 on single dwellings and on extensions to existing dwellings, the public consultation documentation set out a number of options and asked respondents to indicate their preferences in relation to each option presented. The summary position in relation to this aspect of the public consultation process is as follows:-

Option A – Making provision for statutory certification becoming advisory rather than mandatory allowing for alternative means of demonstrating compliance.

82 submissions responded to this option. 62% of respondents favoured mandatory statutory certification remaining in place. 38% of respondents supported statutory certification becoming advisory rather than mandatory.

Option B – Various measures aimed at broadening the pool of professionals who may sign certificates of compliance (thus improving competition and increasing consumer choice).

100 submissions responded to this option. 74% of respondents supported measures to broaden the pool of certifiers. 26% of respondents favoured no change to existing arrangements.

Option C – Making no change to regulatory requirements but publishing the Sample Preliminary Inspection Plan for Single Unit Dwellings on a Single Development as a statutory guidance document.

63 submissions responded to this option. 56% of respondents preferred no change to regulatory requirements while 44% favoured change.

Option D – Exempting extensions to existing dwellings having regard to a building-to plot-size ratio.

30 submissions responded to this option. 87% were against the use of a building- to plot-size ratio while 13% expressed support for this option.

2 Matters Arising in relation to Building Control Arrangements for Single Dwellings and Extensions

A key element of the terms of reference is to consider in particular the impact of S.I. No. 9 of 2014 on single dwellings and extensions to existing dwellings having regard to specific concerns which have been raised in relation to the cost burden of the regulations and the level of certification required for this sector. With this in mind, the consultation documents included a special paper (Information Note 2) which dealt specifically with the concerns known to exist in relation to this segment of the market. In particular four options were proposed which would influence costs and certification arrangements for single dwellings (including self-build) and extensions to dwellings, as follows:

- Option A – Making provision for statutory certification becoming advisory rather than mandatory allowing for alternative means of demonstrating compliance
- Option B – Various measures aimed at broadening the pool of professionals who may sign certificates of compliance (thus improving competition and increasing consumer choice)
- Option C – Making no change to regulatory requirements but publishing the Sample Preliminary Inspection Plan for Single Unit Dwellings on a Single Development as a statutory guidance document
- Option D – Exempting extensions to existing dwellings having regard to a building-to plot-size ratio.

For each option presented, the pros and cons were outlined – for ease of reference each of the four options and its pros and cons are included at Appendix I. Respondents were asked to answer five questions that would indicate whether they were for or against the various options presented and also respondents were afforded the opportunity to make further suggestions about broadening the pool of persons who may sign statutory certificates for building control purposes.

Q.1 Do you agree with the proposed amendment to Building Control Regulations to provide that the requirements for statutory certification in line with S.I. No. 9 of 2014 be eased in the case of a new single dwelling and an extension to an existing dwelling by becoming advisory rather than mandatory and by allowing for alternative means of demonstrating compliance?

Summary of Responses to Question 1:

82 submissions responded to this question. 62% of respondents favoured mandatory statutory certification remaining in place. 38% of respondents supported statutory certification becoming advisory rather than mandatory.

The broad thrust of submissions were overwhelmingly against any diminution of the existing requirement for statutory certification for one-off housing. Key reasons cited were that consumers in this segment of the market were vulnerable and needed the protection of regulation; that consumers themselves are likely to be unduly influenced by short-term financial considerations; and the undesirability of fostering a two-tier regulatory system in the residential market. Particular concerns were raised about the unintended consequences of a decision not to subject a building project to building control procedures in the form of unforeseen liabilities and limitations on funding arrangements and mortgage facilities for current and future owners.

The submissions received show support amongst prospective homeowners, and a small number of individual construction professionals, for the proposal that statutory certification be made advisory rather than mandatory as suggested. Cost was the over-riding consideration in such cases. Such support among homeowners and construction professionals was not universal however with some respondents stressing the importance of having their home inspected and certified and echoing concerns about the undesirability of a two-tier system of certification as adverted to in the consultation documentation. The submissions also highlight some shortcomings in consumers' understanding of the industry; for instance a number of respondents assume that tradespersons are qualified and individually registered as a matter of course but this is not the case.

Cost

The question of cost is central to consideration of this issue and the consultation process has been useful in putting the largely anecdotal evidence of overcharging on costs associated with S.I. No. 9 of 2014 into context. A number of respondents indicated that they were already providing assigned certifier services for a cost of €3,000-€4,000 per dwelling which accords well with the Department's estimates. This bears out the view that competition and familiarity with the new arrangements will lead to fair and realistic pricing over time.

It is clear from some submissions that planning costs and design costs are often combined with the assigned certifier role. These costs cannot be wholly regarded as additional costs unless houses were previously built without a proper design (contrary to the Building Control Act 1990). However, the consultation indicates that the planning, design and assigned certifier service can be achieved at a combined charge of €8,000. A combined quote from a competent registered professional will probably give the best value for money for consumers. Using different persons for planning, design and assigned certifier roles leads to duplication of work and costs.

Equally, ancillary certification is not new unless houses were previously built without any site inspections. To the extent that inspections are now taking place in a more focussed manner, it is in the interest of the client/consumer and represents better value for money.

The information outlined in particular submissions has brought a number of inefficiencies to light. There is evidence that assigned certifiers who may lack competence in a particular aspect of the regulations (e.g. structure or Part L compliance) are outsourcing these aspects of design/inspection to other professionals at an additional cost to the client. From a consumers perspective a single service provider will give better value for money and this should be attainable in a single dwelling scenario. Structural designs signed by a chartered engineer are not a regulatory requirement for a typical one-off dwelling for instance. There is a role for CPD training responses here which would allow registered professionals to brush up on and gain confidence in aspects of the regulations with which they are not familiar and the professional bodies can play a role in this regard. These are examples of areas where the consumer is unfairly being presented with additional costs because the person who has undertaken the assigned certifier role may lack competence in a particular aspect of the application of the building regulations.

One respondent also suggests that construction professionals may be giving the impression that project management is a regulatory requirement and quoting prices in the range of €10,000-€15,000 or 6% to 8% of the value of a house. It is important to clarify that the Assigned Certifier role is a quality assurance role and the regulations do not mandate full professional service / project management which remains discretionary. Consumers may be at a disadvantage in seeking and understanding quotations in this regard.

Another evident feature is the reliance of consumers on quotes from local professionals. Although site visits are required, professionals are reasonably mobile and consumers would stand to benefit from seeking a wider selection of quotes on a regional basis.

The submissions from the construction professional bodies indicate a willingness to provide expertise to work with the Department in preparing further guidance for practitioners in relation to Building Control requirements, including further guidance in this area which would have a direct impact on improving value and quality for consumers.

Extensions

In relation to Question 1 respondents focussed more on new build dwellings than on extensions. For this reason and to avoid repetition, the question of extensions is dealt with under Question 5 below.

Q.2 Do you have any views in relation to the proposals for broadening the pool of professionals who may sign certificates of compliance, in particular proposals (c) – Architectural Technologists - and (d) – Minister’s List subject to defined criteria?

Summary of Responses:

100 submissions responded to this option. 74% of respondents supported measures to broaden the pool of certifiers. 26% of respondents favoured no change to existing arrangements.

Among the respondents who supported measures to broaden the pool of certifiers, the statutory registration of Architectural Technologists was by far the measure attracting most support.

A number of submissions in support of the idea of a Minister’s List were received from, or on behalf of, persons who had previously designed and supervised projects but who are not registered construction professionals. One respondent posited that having Leaving Certificate English, tax compliance, Professional Indemnity Insurance cover and previous experience are sufficient. The need for an assessment of competence cannot be avoided as a prerequisite for any person being given what is effectively a licence to inspect and certify works for statutory purposes.

In their submission, the Irish Building Control Institute (IBCI) point to the fact that 5,000 construction professionals have now registered on the Building Control Management System (BCMS). This indicates that the pool of registered professionals available to consumers is considerable having regard to current and anticipated activity levels within the construction industry.

Q.3 Do you have any further suggestions which would assist in broadening the pool of persons who may give statutory certificates of compliance for building control purposes?

A number of respondents made concrete suggestions which can be categorised as follows:-

A. Department and registration bodies to identify appropriate grades

A number of respondents made the general suggestion that the Department should engage with the registration bodies in order to identify appropriate grades in each stream (i.e. architects, building surveyors and engineers) who may be qualified to sign statutory certificates. The Department, for its part, has an ongoing engagement with the registration bodies in this regard and this process will continue. Existing legislation provides some scope for broadening the range of courses and qualifications that may lead to registration and, beyond this, the legislative arrangements can be revised and extended where reasonable and appropriate.

Some argued in favour of persons with specific technical training and, say, five years site experience, being allowed to certify subject to random inspection.

B. Categories of potential certifiers

A number of specific categories of persons were mentioned by respondents as being suitable for the role of certifier. The following is a list of the categories suggested together with the Department's view of the relevance or otherwise of their role in the context of signing statutory certificates of completion.

Construction Technicians & Architect-related diploma students from IT institutes – In general terms, the education sector and the construction professions view the role of persons educated to diploma level in a construction related discipline as being qualified to provide input in their specialist area on projects while working under supervision or as part of a project team. The education system does not prepare persons qualifying at this level to operate as independent professionals and does not intend that this would occur. Technician and diploma-level qualifications are seen as a stepping stone to further education and/or amassing practical training and professional experience by which an individual may in time become an independently operating professional. The determination of competence to operate at a particular level or fulfil a particular function is primarily a matter for professional bodies and not one in which the Department has a direct role or function.

Unchartered Engineering Technicians and Surveyors – The response above in relation to Construction Technicians, etc. also applies here. Engineers Ireland and the Society of Chartered Surveyors of Ireland in their role as professional bodies have arrangements in place by which engineers and surveyors can progress to chartered status.

Chartered Institute of Builders (CIOB) – Members of the architecture and surveying division of the CIOB with two years' experience may currently seek inclusion on the register of Building Surveyors. This would enable such persons to independently sign statutory certificates for building control purposes.

Independent Irish Architects – the title of architect is a protected title under the Building Control Act 2007; non-members of the Royal Institute of Architects of Ireland (RIAI) may seek inclusion on the Architect's register by technical assessment in the case of persons who had been practicing for ten years prior to the commencement of the Act of 2007 or by undergoing the ARAE process in the case of persons with 7 years' experience.

Interior Designers – The typical work undertaken by this category of persons is not comparable to the design, inspection and surveying work undertaken in connection with the construction and major renovation of buildings.

Project Managers – This person is more likely to assume the builder/developer role rather than the assigned certifier or design certifier role. Depending on their qualification and experience individuals in this category may be eligible to seek registration but this would depend on their qualifications and experience of value as a registered construction professional rather than in the field of project management.

C. Perceptions of Liability and Responsibility

Prior to the finalisation and introduction of S.I. No. 9 of 2014 there was considerable concern regarding the extent to which a registered construction professional who signed a statutory certificate of compliance might be held responsible for any defects in relation to the building concerned which manifest themselves at a later date. The Department, having consulted closely with industry stakeholders at the time, was satisfied that the wording of the statutory certificates is reasonable and appropriate having regard to the Building Control Act 1990 and the wider operational context in which the certificates are given. Nevertheless it is clear from a number of submissions that concerns in relation to liability continue to exist. These concerns may be preventing a number of registered construction professionals from taking on the roles of design certifier and assigned certifier who would otherwise do so or, in the case of those who do take on the role, to impose additional fees and/or inspection requirements commensurate with the burden of liability they perceive themselves to be facing. This issue needs to be addressed in order to ensure the optimum benefit for the consumer.

Registered Professionals are not necessarily competent

A number of submissions pointed out that not all registered Engineers, Architects and Surveyors are familiar with the Building Regulations and those that are not so familiar should be prevented from acting as certifiers. This is a valid observation and it should be noted that the provisions of S.I. No. 9 of 2014 specify competence in addition to being a registered professional. Any professional who undertakes a project for which they are not competent leaves themselves open to professional conduct complaints and may find that they are in breach of their own professional code. Viewed in this context, reliance on the judgement of registered professionals in itself provides added strength to the system.

It is also worth emphasising that the regulations do not place any limitation – other than competence – on who may undertake design or inspection work. Ancillary certification enables participation by competent persons at all levels of qualification. It is only those persons who wish to act as assigned certifiers or design certifiers who are required to be competent, registered professionals.

Q.4 Do you agree that there should be no change in regulatory requirements for new single dwellings and extensions to existing dwellings, but that the Sample Preliminary Inspection Plan for Single Dwellings should be incorporated into the existing Code of Practice for inspecting and certifying buildings and works thus becoming a statutory guidance document?

Summary of Responses:

63 submissions responded to this option. 56% preferred no change to regulatory requirements while 44% favoured change.

In general the Sample Preliminary Inspection Plan was seen as a positive development although a number of reservations were expressed.

Some respondents disputed the Department's costing which accompanied the Sample Inspection Plan and indicated that it would only be possible to perform the design and assigned certifier roles for a single dwelling for €8,000 or upwards. However a number of other respondents indicated that they have already undertaken the role at a cost that is in keeping with the Department's costing.

It was also argued in some submissions that price will impact on the time that assigned certifiers allow for inspection so reducing price means less oversight and mitigates against the desired outcome of achieving better compliance. While this is inherently true the cost of quality assurance must represent value for money.

On the question of costs, several submissions favour a cap on fees charged by professionals for the assigned certifier role. This is not possible however. Any attempt to restrict or control pricing for professional services would be an anti-competitive practice and would be contrary to competition law.

A number of registered professionals expressed reservations about the adoption of the Sample Preliminary Inspection Plan on the grounds that it may reduce the inspection process to a tick box exercise. However by incorporating the inspection plan in the Code of Practice this is unlikely to be the case, as the Assigned Certifier will be required to exercise professional judgement in considering whether, and to what extent, the Sample Preliminary Inspection Plan addresses the risks associated with a particular project and may be relied upon.

It was also represented that the Sample Preliminary Inspection Plan would not suit extremely large atypical dwellings, dwellings with basements, unusual designs with alternative materials. Again, this is a valid observation, but it does not preclude the adoption of the approach outlined in the Sample Preliminary Inspection Plan provided that the additional project specific risks are also documented and included as additional items.

Q.5 Do you have any views on the proposal that exemptions for extensions to existing dwellings should be determined having regard to a building to plot ratio? (Option D refers)

Summary of Responses: 30 submissions responded to this option. 87% were against the use of a building- to plot-size ratio while 13% expressed support for this option. Where, albeit in a limited number of submissions, there was tacit support for this option there were no definite suggestions on how the option might be applied in practice.

More generally in relation to extensions, some respondents offered the view that the full application of S.I. No. 9 of 2014 to extensions is too onerous and should be eased. Equally, the counter view was also expressed that the oversight process should apply to all extensions as there is a gap in consumer protection at this level.

Greater clarity was called for in relation to the application of the threshold of 40 square metres above which statutory certification applies to extensions. Confusion exists in relation to the status of previous extensions and the reason or relevance for taking the size of previous extensions into account in the first place was questioned.

Finally, a number of submissions favoured increasing the threshold – 60 square metre and 100 square metre limits were specifically suggested. To put some context on these figures, it may be useful to note that the typical dwelling size across all building types is regarded as being 126 square metres, although single, detached dwellings tend to be larger again and sizes of 200 – 250 square metres are not unusual.

Other Issues raised in submissions relating to Self-build in particular

Submissions made by self-builders and by representatives of self-builders indicate that the regulations are perceived as being intended to restrict or prevent self-building. Two aspects of the regulations are seen as giving rise to this perception. Firstly the general requirement that an owner must be satisfied that a competent person is nominated to take on the role of builder. Secondly, the statutory certificates requiring a signature by a Principal or a Director of a building company only.

Prior to the regulations coming into effect the Department published an information note confirming that self-build remains possible and permissible under S.I. No. 9 of 2014. Notwithstanding this and further clarification the perception persists that the regulations are against self-building.

In terms of resolving the issue various suggestions include inserting a definition of self-builder under the regulations. However, the Act of 1990 places clear and distinct statutory obligations on owners and builders. These obligations are preserved and elaborated on in the regulations and guidance documents made and published by the Minister in line with the Act. A definition of self-builder would be likely to confuse rather than enhance the legal position. A clarification in the interpretation section of the regulations to the effect that nothing in the Building Control Regulations should be read as preventing an owner from nominating themselves as the builder for building control purposes (provided they are satisfied that they are competent to perform any building tasks they intend to undertake themselves and will appoint only competent persons to undertake all other building tasks) would resolve the issue.

Clarification that the requirement that the signatory be a Principal or Director applies only in the case of a company would also be helpful.

Another issue of importance in relation to single dwellings is the question of occupation prior to completion. Single dwellings in rural areas are often undertaken in stages as money becomes available and are often occupied when partially complete. A number of submissions called for a partial completion certificate or certificate of habitation that would allow self-builds to be used before being fully finished once they are in compliance with critical safety and access requirements. The Safety Health and Welfare at Work Acts have a bearing here. It is also worth noting that article 20E(9) of the Building Control Regulations currently provides that a Certificate of Completion may refer to areas within a building.

3 Matters Arising in relation to Building Control Arrangements in General

Building Control Management System

The responses to the public consultation indicate a high degree of support for the introduction and further development of the Building Control Management System (BCMS). Many useful suggestions have been included in the submissions in relation to how the BCMS can be further developed and improved in the interests of administrative efficiency, data collection and better supporting the needs of users.

Building Control Inspections

There is a clear demand for active, independent on-site inspections by local authority personnel. Respondents generally favoured a more significant role for building control in this regard.

Industry stakeholders in their submissions place a high premium on the continuing development of the oversight and inspection function of local authorities and have offered to share their expertise in supporting progress in this area.

The reform package announced by the former Minister in July 2011 included a commitment to real and meaningful inspections by local authorities. Independent inspections by local authorities are a necessary check and balance in a self-certification system. Self certification will work best where it is supported by an independent regime of inspection and enforcement to ensure that standards are maintained. In this regard local building control authorities have responded well to the new operating environment supported by S.I. No. 9 of 2014. The adoption of the Common Framework for Building Control Authorities (July 2014) is a positive step and common inspection templates and reports are under development. Comprehensive, multiple-visit inspections by building control are now taking place with increasing frequency. Over time, informed by risk-based profiling enabled by the Building Control Management System, this will develop further.

Regularisation of projects having commenced illegally

Some submissions pointed out that, where works commence without the proper statutory notice being given to the local building control authority, there is no provision for the situation to be regularised, even with a penalty. Building Control Authorities invariably come under considerable pressure to provide a resolution.

There are legal complexities in this area. Most importantly, to commence works without notifying the local authority is itself an illegal act and one on which the clock cannot be turned back. The State needs to be very careful about being seen to retrospectively legitimise or approve such projects particularly where the buildings in question may be owned or occupied by other parties who will suffer the consequences should any latent defects emerge at a later date. The existing administrative arrangements can be used to accommodate the finish out of such projects provided due diligence checks are carried out on the earlier illegally commenced works. The compliance documentation in relation to such projects then becomes a matter of public record available to anyone who subsequently acquires an interest in the building. This is the most appropriate approach in the circumstances.

Continuing relevance of Disability Access Certificates

Another issue raised during the consultation process was the continued necessity and relevance of Disability Access Certificates (DACs) given that statutory certificates of compliance with all aspects of the building regulations are now in place.

The DAC was provided for under the Building Control Act 2007 and introduced in practice in 2009 in response to concerns around the widespread lack of compliance with Part M requirements. The DAC is a local authority approval process and thus stands apart from the statutory certificates of compliance given by industry under S.I. No. 9 of 2014. It may be that unnecessary duplication in the oversight of Part M requirements is now occurring. However no review has yet been undertaken of the manner and extent to which Part M requirements are addressed in inspection plans and compliance documentation prepared for the purposes of S.I. No. 9 of 2014. This would only be possible once a critical mass of relevant buildings other than dwellings have been built in line with S.I. No. 9 of 2014.

It is also worth noting that S.I. No. 243 of 2015 provides for a reduction in the cost of a DAC application (from €800 to €500) where a DAC is sought prior to commencement.

Statutory Certificates of Completion

It is clear from the submissions that concerns persist about the burden placed by the wording of the statutory certificates on the certifying professional. Several submissions suggest changes which are seen as rebalancing this burden. Any adjustment in this regard would need to be carefully weighed against its impact on building quality and consumer recourse.

Professional Indemnity Insurance

Several submissions included recommendations in relation to professional indemnity insurance and other corporate insurances. In general, however insurance matters are outside the scope of regulatory powers vested in the Minister under the Building Control Act 1990. In the first instance the professional bodies should raise their concerns and proposals with insurance providers. The Department would be happy to assist with such matters where reasonable and appropriate.

Latent Defects Insurances (LDI)

Submissions from bodies representing registered construction professionals and individual registered professionals advocate latent defects insurance (LDI) as an ultimate recourse for consumers when faced with serious construction defects. For consumers such products have the advantage of providing direct recourse from the insurer rather than having to rely on the insurances of others. For construction professionals they spread the burden of liability. Ultimately the cost of such insurance is directly or indirectly borne by the consumer.

The Government's Construction 2020 strategy includes a commitment to consider the potential for latent defects insurance. The Department has had some preliminary consultations on this matter with the Department of Finance and with industry bodies. The matter is receiving serious consideration in industry at present and further developments in regard to the increased availability of products are expected later this year. Clearly the stronger framework for the control of building activity underpinned by S.I. No. 9 of 2014 is more conducive to the wider availability of such products and the ongoing developments in relation to the registration of builders and contractors under Construction Industry Register Ireland (CIRI) is another positive step in this regard. In principle the existence and use of LDI is in the common good. However the prudence or otherwise of mandating their use by legislative means remains to be determined. Supporting LDI, in the housing market in particular, may also be achieved by other means.

Need for Additional Guidance

Some submissions suggested that further collaboration between the Department and industry on guidance in the following areas would be helpful:

- Level of detail required in drawings and compliance documentation to assist practitioners (good practice submissions)
- Protocols to be followed when availing of the prior notification procedure for validating the statutory certificate of completion.
- Accommodating atypical models of service delivery (such as Public Private Partnerships and construction management procurement approaches) within the regulatory framework

Oversight Group

A number of submissions have suggested that the presence of an Oversight Group to provide procedural advice on Building Regulations and Building Control Regulations would be a useful addition to the overall building control framework. It is suggested that representation would include expertise from the Local Authorities, professional bodies, industry and the Department.

Exemption for Local Authority buildings

Some submissions from Local Authority respondents have suggested that the exemption from Building Control procedures that is currently open to local authorities, when building in their own functional area, be discontinued. Given that local authority owned buildings, in particular social housing stock, may be sold to private buyers at a future date there are advantages in compliance with statutory certification requirements. An information note on the matter was issued by the Department on 17 February 2015. The matter is currently been considered by the Chief Executives of the Local Authorities.

Supporting the Building Control Function

Local Authority submissions have pointed to the need for the building control function being better supported and resourced. Unlike the planning and fire services functions it does not have a definite home within the typical organisation structure of a local authority. It is suggested that the role and function be defined and that steps be taken to ensure that inspection and enforcement work is overseen by registered construction professionals, and that arrangements are in place for training and continuous professional development of Building Control Authority staff. Submissions from industry supported the need for the function to develop along professional lines if inspection and enforcement capability is to increase as envisaged.

**Options Presented for Public Consultation
(re. Single Dwellings and Extensions to Dwellings)**

Option A – Revise Building Control Regulations 1997 to 2014 to make statutory certification and related requirements advisory rather than mandatory in the case of new single dwellings and extensions to existing dwellings.

This option addresses the concern that the statutory certification requirements are considered too onerous for single dwellings and extensions to dwellings.

The option would involve an amendment to Building Control Regulations to remove the mandatory requirement for full compliance with the level of statutory certification required under S.I. No. 9 of 2014 in the case of a new single dwelling or an extension to an existing dwelling. This in effect would mean that there would be no formal requirement for a statutory certificate signed by the designer prior to commencement or for a statutory certificate signed by the builder and the assigned certifier at completion. Owners who wish to invest in full compliance with the level of statutory certification currently required under S.I. No. 9 of 2014 may of course do so. The regulations and guidance would advise that so doing would be good practice notwithstanding the owner's facility to 'opt out.'

The Department will publish the Sample Preliminary Inspection Plan for Single Dwellings (see option C) to promote good practice in this sector.

Owners who 'opt out' of statutory certification would have to confirm this when they lodge the commencement notice, etc. on the online Building Control Management System. They would be reminded of their obligations to comply with building regulations. Owners who elect to avail of this option should demonstrate by way of lodgement of documentation their best alternative means of demonstrating compliance which would include lodgement of -

- (a) General arrangement design documents to facilitate targeted inspections by building control,
- (b) Confirmation that the Sample Preliminary Inspection Plan for Single Dwellings (referred to above) has been followed, and
- (c) Recognised industry forms of certification relevant to the design and construction of the dwelling concerned.

Pros:

- The 'opt out' clause would give owners a choice and would mean they need not be held to ransom by unaffordable quotes for professional services.
- Clarity as to where responsibility for compliance lies (i.e. with owners) is at all times preserved.
- Owners of new single dwellings and extensions would still have to invest in achieving compliance with building regulations.
- Owners who want to invest in quality assuring their home may still do so and may elect to obtain a statutory certificate of completion and have it placed on the public register.

Cons:

- Consumers may be driven by cost considerations rather than quality considerations.
- A two-tier system of residential houses would develop – those which enjoy statutory certificates of completion and those which do not. Homeowners who do not have a statutory certificate of completion may find themselves at a disadvantage for insurance, mortgage or conveyancing purposes.
- This sector, where consumers are vulnerable and where real shortcomings and risks to public safety are known to occur, may again prove to be vulnerable in the face of under regulation.
- The easing of the regulatory requirements may prove controversial should incidents of failure occur in relation to such homes in the future.

Specific Question for Public Consultation

Q.1 Do you agree with the proposed amendment to Building Control Regulations to provide that the requirements for statutory certification in line with S.I. No. 9 of 2014 be eased in the case of a new single dwelling and an extension to an existing dwelling by becoming advisory rather than mandatory and by allowing for alternative means of demonstrating compliance?

Option B – Broaden the pool of persons who may sign statutory certificates of compliance.

At present the construction professional who gives the statutory certificate of compliance at commencement and completion must be a person who is either one of the three registered professional groupings typically involved with the design of buildings, namely a registered Architect, Building Surveyor or Chartered Engineer.

At present there are some 5,000 construction professionals registered on the Building Control Management System for the purposes of fulfilling the roles of design certifier and assigned certifier.

Broadening the pool of persons who may undertake these roles would obviously lead to more competition in the market place and increase the choice of providers available to consumers. It may be that in particular geographical locations the number of professionals available for doing this work is limited.

The Department is actively considering options which may broaden the pool of persons who may sign statutory certificates of compliance for building control purposes. Initiatives currently underway or under active consideration in this regard include:-

- (a) Prescribing by regulation further courses and educational institutions which are recognised for the purposes inclusion on the register of Architects
- (b) Reviewing the arrangements in place for the registration of Architects (the Fennell review)
- (c) Working in conjunction with industry stakeholders and representatives of relevant educational institutions to agree, through Quality Qualifications Ireland structures, a common standard for the discipline of Architectural Technologist as a first step towards its becoming a registered profession
- (d) Amending Part 3 of the Building Control Act 2007 to provide a 'Minister's List' means of providing access to the register of architects, subject to defined criteria, for established practitioners (having at least ten years' experience of relevance prior to the commencement of the Act of 2007) as an alternative to the current under-utilised and unpopular technical assessment procedure.

In bringing forward any proposals, the Minister will have to objectively identify and defend the class or classes of persons who may be recognised by the Minister as a professional grouping undertaking comparable work to registered construction professionals. Any changes in existing arrangements for statutory registration must be consistent with relevant Irish and EU legislative requirements.

Pros:

- Pool of practitioners who can serve this sector of the housing market would be increased offering more competition and choice to consumers.

Cons:

- Specific proposals affect the working arrangements of registered architects, surveyors and chartered engineers.
- The Department does not regulate price and there is no guarantee that any individual who succeeds in being recognised as a construction professional will provide competitive quotes.

Specific Questions for

Public Consultation

Q.2 Do you have any views in relation to the proposals for broadening the pool of professionals who may sign certificates of compliance, in particular proposals (c) and (d) at Option B above ?

Q.3 Do you have any further suggestions which would assist in broadening the pool of persons who may give statutory certificates of compliance for building control purposes?

Option C – No change in regulatory requirements; but produce guidance for single dwellings

The Department, in conjunction with the Housing Agency and the construction professional bodies, has developed a Sample Preliminary Inspection Plan for Single Dwellings which, together with costings for the execution of this inspection plan, accompany this document. Where a fully certified design is available, the assigned certifier role can be comfortably achieved for €3,800 (incl. VAT). Where the existing design is inadequate for addressing compliance with building regulations further work may be necessary at an additional cost of up to €2,200 (incl. VAT). Market forces and competition may also drive down these projected costs.

Under this option, the Sample Preliminary Inspection Plan for Single Dwellings would be incorporated as an annex to the existing Code of Practice for inspecting and certifying buildings and works which would confer its status as a statutory guidance document.

Pros:

- This option responds directly to the actual issue which is one of affordability/economic cost.
- The simplified approach will hasten the downward competitive pressure on pricing that will arise over time.
- Home owners are not forced to pay for inspections or services they do not require.
- Home owners will be assured of a fully compliant, certified dwelling.
- The statutory certificate of completion will be available for insurance and mortgage purposes and, if necessary, for conveyancing purposes at any future time.

Cons:

- There may be a time lag before a downward adjustment of pricing in the marketplace is observed.

Specific Question for Public Consultation

Q.4 Do you agree that there should be no change in the regulatory requirements for single dwellings and extensions to existing dwellings but that the Sample Preliminary Inspection Plan for single Dwellings should be incorporated into the existing Code of Practice for inspecting and certifying buildings and works thus becoming a statutory guidance document?

Option D – Exemptions for extensions to existing dwellings should be determined having regard to building plot ratio.

The Department would welcome views on the proposal that exemptions for extensions to existing dwellings should be determined by reference to the relationship between the scale of the extended dwelling and the overall size of the plot. The effect of this option would be to considerably increase the number of extensions to dwellings which would be exempted from building control requirements.

This option addresses the concern that the statutory certification requirements are considered to be too onerous for extensions to dwellings. The current threshold of 40 square metres has proved contentious, in particular where previous extensions to a dwelling exist and must be taken into account.

The implication of this option for planning requirements as well as for building control requirements needs to be carefully considered.

Pros:

- Owners would still have to invest in achieving compliance with building regulations in respect of the new extension to their dwelling.
- Onerous requirements for extension will have been eased.

Cons:

- The cons outlined in respect of option A above are also relevant to this option.
- The proposal may be regarded as being unfairly discriminatory – the effect of the plot ratio approach would mean that on a large landholding a large project would be exempt while a project of equal size on a smaller landholding would not be exempted.
- Variable criteria adds complications to oversight and administration by building control authorities

Specific Question for Public Consultation

Q.5 Do you have any views on the proposal that exemptions for extensions to existing dwellings should be determined having regard to a building to plot ratio?



Open Policy Seminar on Building Control
Hosted by Minister of State Paudie Coffey T.D.
Custom House – 15 April 2015 (2.00 to 3.30pm)

Overview: This is a high level summary of the key points raised by participants in the open forum. The narrative does not follow the exact sequence of individual contributions or ascribe views to any particular stakeholder.

Attendance: Some 19 key stakeholder groups were represented - Architects Alliance of Ireland, Association of Consulting Engineers of Ireland; Chartered Association of Building Engineers, Chartered Institute of Architectural Technologists; Construction Industry Federation; Construction Industry Register Ireland, Chief Fire Officers Association; County and City Management Association, Government Contracts Committee for Construction, the Housing Agency, Irish Association of Self Builders, Irish Building Control Institute; Irish Home Builders Association; Engineers Ireland; Royal Institution of Architects of Ireland; Society of Chartered Surveyors Ireland; Oversight Group on S.I. 105/2014; Practice Trained Architects of Ireland, Property Industry Ireland (Irish Business Employers Conference); an Industry Contact for Foreign Direct Investment projects.

Objective: The Building Control Amendment Regulations 2014 are being reviewed after 12 months in operation and a public consultation process is underway. This event gives stakeholders a chance to air their views and hear the views of other stakeholders prior to making their submissions and enables the Department to focus its attention on addressing key concerns.

Open Forum: Minister of State Coffey, welcomed participants, made some brief opening remarks and introduced officials on hand to clarify matters if required, before he invited and chaired contributions from participants.

Broadly speaking there was a strong sense among participants that S.I. No. 9 of 2014 has strengthened the arrangements in place for the oversight of building activity and should remain intact with further development and improvements.

The Building Control Management System (BCMS) is a valuable resource and should be further developed to support the full range of building control procedures, to allow for greater integration with fire and planning processes and to harness its potential to provide statistical and management reports to improve future policy formulation.

Latent defects insurance (LDI) or project insurance was generally favoured as a means of recourse for consumers. Devising insurance products with specific stakeholders may give rise to potential conflicts of interest and must be avoided. While LDI may be seen as an overhead, failure to deal with the matter may result in more expensive premiums for builders and professionals own insurances which will add to the overall cost of construction for clients and consumer with no direct benefit.

Simplified guidance for single dwellings is required and the regulations should clarify that self build is permissible to correct the contrary perception. The Sample Preliminary Inspection Plan must not facilitate a tick-box culture – the exercise of professional judgement by a registered, construction professional is the only context in which a statutory certificate may be given. Guidance documents tend to be written with professionals in mind but owners/consumers need clear guidance on their responsibilities. Quality and standards must be adhered to in this sector. The relevance of the Building to Plot size ratio for extensions was questioned by some participants.

Some participants questioned the necessity for broadening the pool of professionals who may give statutory certificates pointing to the variety of broadly based routes to registration that currently exist and emphasising that reliance on the professional judgement of competent, registered persons is central to the building control framework now in place. Several participants welcomed the QQI process underway to define a common standard for Architectural Technologists as a first step to statutory registration of this group who perceive that a glass ceiling exists despite having qualifications and experience at home and abroad commensurate with registered design professionals. It was clarified that reference in consultation documentation to Irish and EU law in this context refers to the Building Control Act 2007, the Services Directive and the Professional Qualifications Directive.

Concern about the level of assigned certifier fees is a symptom of an underlying problem which appears to be one of ambiguity and lack of clarity in relation to the assigned certifiers' role/risk profile. Information and guidance is the effective solution. A converse risk occurs in high density development where there is evidence of failure to factor in appropriate resources for the assigned certifier role and department/industry guidance is required here. Caution is advised in relating risk to the scale of a building –small houses carry big risks (radon, subsidence, septic tanks, etc.). Reliance on competence of professionals must be supported by investment in skills of tradespersons – minimising risk exposure will tend to drive down certification costs.

The successful transition to S.I. No. 9 of 2014 should allow for reconsideration of building control processes. The ongoing value of the Disability Access Certificate should now be reviewed while some streamlining of the 7 Day Notice and the Fire Safety Certificate procedures may be possible. Retrospective validation or regularisation of late commencement notices would be helpful.

Building Control Authorities are seen as having responded positively by industry to the new framework but need resourcing and support to inspect sites, to monitor BCMS activity and to further develop BCMS.

Provision should be made for an Oversight Group to be established as a guardian for the overall integrity and ongoing effectiveness of the building control framework which would advise the Department on corrective measures where weaknesses are identified.

Welcoming the opportunity presented by this seminar, several participants advocated more regular interaction in this way and expressed an interest in providing experts to work collaboratively with the Department and the LGMA in developing guidance, etc.

Minister of State Coffey thanked all participants and looked forward to receiving written submissions by 15 May 2015.

List of Submissions

INDIVIDUALS (129)

Arnold, Paul	Kelleher & Associates Ltd
Baragwanath, Tony	Kelly, Carol and Alan
Bracken, Aidan M	Kennedy, Mark
Brennan, Laura	Kerr, Sean
Brouder, Gerry	Kiely, Siobhan
Bryan, James	Kiernan, James
Burke, Nuala	Larkin, Malachy
Chambers, M	Leader, Stephen
Chapman, Barrett	Ledwith, Frank
Cleary, Gerard	Linnane, Michael
Coemack, Jerry	Madden, John & Associates (x2)
Coleman, Sandra	Mahon, John L
Collins, Michael & others	Matthews, Nicola
Coppins, Ruth	McCarthy, Eoghan
Coyle, Peter	McCarthy, Ray
Creevan, Rachel	McEoin, Ruadhan
Cronin, Aidan	McGinty, Shaun
Cummins, John	McHugh, Gerry
Davitt, Aidan, Councillor.	McCabe, Conor & Mary
Dinneen, Diarmuid	McCabe, Deirdre
Divilly, Karen	McClave, John Paul
Dolan, Elaine	McDonagh, Paul
Duffy, Helen	McManus, Edward
Duffy, Michael	McManus, Tony
Duggan, John	Meaney, Cormac
Fahy, David	Mernagh, Nicholas
Farrell, Andrew	Molloy, John M.
Farrell, John PK	Moore, John
Fearon, Philip	Moseley, Martin
Finlay-Mulligan, Peter	Moylan, John
Finnegan, Joanne	Mulhern, Ruth
Flood, Bryan (x2)	Mullins, Brian
Flood, Noel	Murphy, Emmet
Foley, Ray	Murphy, Niall
Foley, Robert	Naughton, Fergus
Gallagher, Amanda & Raymond	Naughton, Lester
Gleeson, Liam	Ni Fhloinn, Deirdre
Grehan, Gerry	O Maolagain, Brendan
Hannify, Shane	O' Riordan, James
Hastings, Bill	O'Brien, David
Heaphy, Patrick	O'Coifaigh, Eoin (x2)
Hegarty , Orla	O'Connell, Paul (x2)
Herriott, Richard	O'Connell, Dara
Keenan, Patrick	O'Connor, Joe
Kehoe, Dermot	O'Dea, Emmanuel
	O'Donnell, Cathal

O'Dorus, Apol
O'Mara, John
O'Neill, Gerry
O'Neill, Michael
O'Reilly, Raymond
O'Rourke, Andrew
O'Rourke, Christopher
Plewman, Daniel
Power, John
Quaine, Brendan
Quinn, Ross
Quirke, Raymond
Ralph, Chris
Reynolds, Maoiliosa
Ring, Michael, TD
Robinson, Martin
Ryan, Fergal
Ryan, Gareth
Ryan, Kevin
Shanahan, Mike
Simpson, Gareth
Sinnott, Carol
Spellman, Cathal
Spillane, Tim
Sweeney, Barry
Sweeney, Brian
Tobin, David
Trench, Mike
Tunney, Peter
Turley, Noel
Wallace, Richard
Walsh, Declan
Welby, Thomas, Cllr.
Winkens, Zeno

ORGANISATIONS (30)

An Taisce
Architects' Alliance of Ireland
Association for Specialist Fire Protection
Ireland
Chartered Institute of Architectural
Technologists
Chartered Institute of Building
Chartered Association of Building Engineers
Chartered Institute of Building in Ireland
Construction Industry Federation
Dublin Institute of Technology (School of
Architecture)

Designers in Ireland
Engineers Ireland
Government Contracts Committee for
Construction (GCCC)
Green Party
Group of Independent Architects In Ireland
Health Service Executive
Homebond
Institute of Clerks of Works and Building
Inspectors
Institution of Civil Engineers (Ireland)
Institution of Fire Engineers
Irish Architectural Technology Graduates
Network (IATGN)
Irish Association of Self Builders (x2)
Irish Building Control Institute
Irish Green Building Council
Law Society of Ireland
Office of Public Works
Practically Trained Architects of Ireland
Royal Institute of Architects of Ireland
Society of Chartered Surveyors Ireland
Suir Valley Environmental Group

LOCAL AUTHORITY (12)

Carlow County Council
Clare County Council
Cork County Council (x2)
Dublin City Council
Dun Laoghaire- Rathdown County Council
Fingal County Council
Monaghan County Council (Building Control)
Monaghan County Council (Fire & Civil
Protection)
Sligo County Council
South Dublin County Council / Dublin Social
Housing Delivery Taskforce
Waterford City & County Council

