

General Scheme

of

THE BUILDING CONTROL (CONSTRUCTION INDUSTRY REGISTER IRELAND) BILL 2017

A Bill to provide for the establishment of a mandatory statutory register, known as Construction Industry Register Ireland (CIRI) of builders.

THE BUILDING CONTROL (CONSTRUCTION INDUSTRY REGISTER
IRELAND) BILL 2017

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SCHEDULE 1

PART 1

PRELIMINARY AND GENERAL

HEAD 1 SECTION 1

SHORT TITLE AND COMMENCEMENT

To provide that:

1. (1) This Act may be cited as the Building Control (Construction Industry Register Ireland) Act 2017.
- (2) The Building Control Acts 1990 and 2007, as amended by the European Union (Recognition of Professional Qualifications) (Amendment of Building Control Act 2007) Regulations 2014 and by the Local Government Reform Act 2014, and this Act may be cited together as the Building Control Acts 1990 to 2014 and shall be construed together as one.
- (3) The Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or by reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

NOTES:

Standard provisions.

HEAD 2 SECTION 2

INTERPRETATION

To provide that:

2. (1) In this Act, except where the context otherwise requires -

“Approved Housing Body” means a body approved of for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992;

“Board” means the Admissions and Registration Board established by the registration body;

“Builder” means an individual, sole trader, partnership or registered company carrying out building works, including a builder specialising in specific building elements or technologies;

“Building Works” means includes any act or operation in connection with the construction, extension, alteration, repair or renewal of a building under the Building Control Acts 1990 – 2014 to which the Building Regulations 1997 – 2017 apply.

“Code of Conduct” means a code of conduct published or approved under section 8 as it is in effect from time to time”

“Construction Industry Federation” means the Irish construction industry representative body and its successors.

“Committee” means the Appeals Committee established by the registration body;

“Minister” means the Minister for Housing, Planning, Community and Local Government;

“public body” means—

(a) a Department of State,

- (b) the Office of the President,
- (c) the Office of the Attorney General,
- (d) the Office of the Comptroller and Auditor General,
- (e) the Office of the Houses of the Oireachtas,
- (f) a local authority,
- (g) the Health Service Executive, or
- (h) a person, body or organisation (other than the Defence Forces) established—
 - (i) by or under any enactment (other than the Companies Acts), or
 - (ii) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or shares held by or on behalf of a Minister of the Government;

“principal officer” –

- (a) in relation to a body corporate, means any person who is-
 - (i) a director, manager, secretary or other similar officer of the body corporate, or
 - (ii) a person purporting to act in any such capacity,
- (b) in relation to a partnership -
 - (i) means any person who is –
 - (I) a partner in, or a manager or other similar officer of, the partnership, or

- (II) a person purporting to act in any such capacity, and
- (ii) if any partner in the partnership is both a body corporate and a registered member or an applicant for registration, includes any person who is-
 - (I) a director, manager, secretary or other similar officer of such partner, and
 - (II) a person purporting to act in any such capacity;

“register” means the register known as Construction Industry Register Ireland established under section 5;

“registered construction professional” means a person who is included on the registers of architects, building surveyors or quantity surveyors established under the Building Control Act 2007 (No. 21 of 2007) or who is a chartered engineer within the meaning of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969 [No. 1 (Private) of 1969];

“registered member” means a person or a body corporate who is entered on the register established under this Act following a decision by the Admissions and Registration Board;

“registration body” means the Construction Industry Federation;

“registration date” means the date on which a member’s registration took effect;

NOTES:

Standard provisions.

HEAD 3 SECTION 3

APPLICATION AND EXEMPTIONS

To provide that:

3. (1) This Act shall apply to:-

- (a) any builder carrying out building works under the Building Control Acts 1990 to 2014 which are subject to the Building Regulations 1997 to 2017 and which are not exempt under section 3(2).

3. (2) This Act shall not apply to: -

- (a) building works carried out solely and exclusively by an owner or an occupier involving the construction of a new single dwelling on a single unit development or the extension, alteration or upgrading of an existing dwelling – this exemption does not apply to any contractor or sub-contractor engaged by such an exempt person,
- (b) electrical works to a building undertaken by a registered electrical contractor pursuant to the Electricity Regulation Act 1999,
- (c) gas works to a building undertaken by a registered gas installer, registered with the R.G.I.I. pursuant to the Energy (Miscellaneous Provisions) Act 2006,
- (d) building works undertaken directly by the employees of a public body on a building in public ownership,
- (e) building works undertaken directly by the employees of an Approved housing body on a building under its control,
- (f) building works undertaken directly by the employees of the OPW on a building under its control.

NOTES:

This section provides that a number of building works shall not be covered by the Act.

Paragraph 3(1) defines the scope of building works to which the Act applies.

Paragraph 3(2)(a) provides for an exemption in respect of building works carried out by solely and exclusively an owner or an occupier involving the construction of a new standalone dwelling or the extension, alteration or upgrading of an existing dwelling.

Paragraph 3(2)(b) provides for an exemption in respect of electrical works to a building undertaken by an electrical contractor registered pursuant to the Electricity Regulation Act 1999.

Paragraph 3(2)(c) provides for an exemption in respect of gas works to a building undertaken by a registered gas installer, registered with the R.G.I.I. pursuant to the Energy (Miscellaneous Provisions) Act 2006.

Paragraph 3(2)(d) provides for an exemption in respect of building works undertaken directly by the employees of a public body on a building in public ownership.

Paragraph 3(2)(e) provides for an exemption in respect of building works undertaken directly by the employees of an approved housing body on a building under its control.

Paragraph 3(2)(f) provides for an exemption in respect of OPW employees.

PART 2

CONSTRUCTION INDUSTRY REGISTER IRELAND

HEAD 4 SECTION 4

REGISTRATION BODY AND ADMISSIONS AND REGISTRATION BOARD

To provide that:

4. (1) The Construction Industry Federation shall be the registration body for the purposes of this Act.
- (2) The registration body shall establish a register known as the Construction Industry Register Ireland comprised of builders who undertake building works for themselves or for others.
- (3) The registration body shall establish an Admissions and Registration Board (in this act referred to as the Board) for the purpose of registering builders under this Act.
- (4) The Board shall consist of a chairperson and ten ordinary members.
- (5) Ordinary members of the Board shall be appointed by the registration body as follows:
 - (a) 5 industry nominees of which no more than 3 may be registered members and two may be a registered construction professional; and
 - (b) 5 persons who are not registered members or directly employed by a registered member and who are nominated for such appointment by the Minister in consultation with the Ministers for Education and Skills, for Jobs, Enterprise and Innovation and for Public Expenditure and Reform.

- (6) The chairperson of the Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court or a registered construction professional who shall be appointed as chairperson by the Minister.

NOTES:

This section designates the Construction Industry Federation as the registration body for the purposes of the Act and provides for the establishment of an Admissions and Registration Board.

Subsections (1) and (2) provides that the Construction Industry Federation shall be the registration body and shall establish a register.

Subsections (3) (4) (5) and (6) provide that the registration body shall establish an Admissions and Registration Board and specifies the composition of that board.

HEAD 5 SECTION 5

REGISTRATION OF BUILDERS

To provide that:

5. (1) A builder shall not –

(a) carry out building works, or

(b) represent to the public that they are entitled to carry out such building works,

unless they are registered with the Construction Industry Register Ireland or they are exempt from the requirement to register pursuant to section 3 of this Act. A person who contravenes this provision is guilty of an offence and liable to conviction under section 22(b)&(d) of the Act.

(2) Subject to this Act, the registration body shall be responsible for the operation of the Construction Industry Register Ireland established under section 4(2).

(3) The Minister may prescribe regulations to divide the register into such different divisions of categories of registered members and classes of works as may be determined necessary and appropriate from time to time. When considering what categories and classes should be included on the register the Minister shall have regard to the following:-

(a) the legitimate interests of builders likely to be affected by the proposal,

(b) the objective justification of the proposal,

(c) the proportionality of the proposal,

(d) the desirability of having a competent and compliant construction industry,

- (e) the means by which a registered builder can seek registration in respect of a different class of works,
- (f) the different skills and competencies required by different construction projects,
- (g) that the requirements do not discriminate against those seeking registration from outside the State.

(4) Entry on the register shall be open to Builders on demonstrating to the satisfaction of the Board that they:-

- (i) Possess the requisite competence in construction practice in the division of the register to which their registration relates;
- (ii) Have completed the induction module provided by the registration body, to provide an overview *inter alia* of building regulations, health and safety legislation and building control regulations, which may be completed online;
- (iii) undertake to adhere to the *Code of Conduct*;
- (iv) Submit an acceptable plan of continuous professional development for themselves and all of their staff;
- (v) Declare that they are compliant with health and safety regulations relating to the Construction industry;
- (vi) Declare that they are compliant with the requirements of building regulations and building control regulations;
- (vii) Submit a tax clearance certificate;
- (viii) Have declared to the Board all previous convictions under health and safety and/or building control legislation in any jurisdiction.

(5) The Board may from time to time produce policy and guidance materials as are necessary to facilitate the registration process.

NOTES:

Subsection (1) provides for an obligation for builders carrying out building works to be registered.

Subsection (2) provides for the running by the registration body of the Construction Industry Register Ireland.

Subsection (3) provides for the division of the Register into different categories by the Minister and specifies points to have regard to in doing so. These requirements must not discriminate against persons from outside the State.

Subsection (4) provides for the requirements builders must demonstrate in order to be included on the Register.

Subsection (5) provides that the Board may produce policy and guidance materials as are necessary to facilitate registration.

HEAD 6 SECTION 6

COMPETENCE

To provide that:

6. (1) Builders may satisfy the requirements under section 5(3)(i) that they possess the requisite competence in construction practice to become a Registered Member of CIRI by submitting evidence to the Board of:-
 - (a) relevant work undertaken or relevant educational qualification or a combination of both. The previous work undertaken or educational qualification must be relevant to the category of the register in which registration is sought; or
 - (b) employment of a construction professional with experience or an educational qualification or a combination of both which is relevant to the category of the register in which registration is sought.

- (2) The Minister shall prescribe by way of Regulations the level of previous experience or educational qualification or both that is required for entry in respect of each category of the register and in doing so the Minister shall have regard to the following:-
 - (a) the legitimate interests of builders likely to be affected by the proposal,
 - (b) the objective justification of the proposal,
 - (c) the proportionality of the proposal,
 - (d) the desirability of having a competent and compliant construction industry,
 - (e) the means by which a registered builder can seek registration in respect of a different class of works,
 - (f) the different skills and competencies required by different construction projects,
 - (g) that the requirements do not discriminate against those seeking registration from outside the State so that the registration process

may be completed online and work undertaken outside of the State may be submitted to the Board to demonstrate competence in accordance with the requirements of section 5(3)(i).

- (3) The Board may seek independent verification of the documentation submitted and may reasonably require the submission of any further documentation required by the Board to make a determination.
- (4) In the case of applicants for registration or registered members seeking registration for an additional category who have not worked independently as a Builder, they may apply and be considered based on work undertaken at an appropriate level in the employment of another Builder, or on the basis of a qualification in a construction discipline related to the category and class of works in which registration is sought, or a combination of both.
- (5) A registered member or an applicant for registration may seek inclusion on the register for more than one category of registered members or class of works.
- (6) The Board may decide to approve, partially approve for a specific category or categories, or, refuse an application for entry on the register within a period of not more than 3 months from the date on which a fully completed application is received.
- (7) Any registration granted under this Section may be subsequently suspended, terminated or otherwise conditioned by the Board to give effect to a decision arising from a review, complaint or appeals procedure provided for under Part 3 of this Act.
- (8) A decision by the Board to refuse or partially refuse an application for registration or renewal of registration shall —
 - (a) be notified to the registered member or applicant concerned by notice in writing,

- (b) state the reasons for the decision to refuse registration or renewal of registration for any category of membership or any class of works,
 - (c) inform the person of their right to have the decision reviewed by the Board or appealed to the Appeals Committee within 21 days after receipt by that person of the decision of the Board.
- (9) Entry on the register shall last for a period of twelve months from the registration date and an annual renewal form will be sent to each registered member enclosing an application for renewal of registration which must be made to the registration body prior to the expiration of the registration period in order for the registration to remain valid pending the confirmation of the Board in relation to the application for renewal.
- (10) Evidence of competence will not be required to be resubmitted with an application for renewal unless the application includes a request by the Builder to be included on the register in respect of an additional category or class of works, however evidence of compliance with CPD requirements, a tax clearance certificate and a declaration that there are no outstanding prosecutions against the registered member must be submitted with an application for renewal to remain on the register.
- (11) Where a registered member seeks to extend the divisions of the register relevant to its registration, the term of any such extension, if granted by the Board, shall initially be limited to the unexpired term of the period of twelve months from the registration date relevant to the initial registration.
- (12) The registration body shall publish the Register online and may include the following particulars:-
 - (i) Business name and contact details;
 - (ii) Registration category;
 - (iii) Area of operation;
 - (iv) Details of type and level of insurance cover;
 - (v) Business profile;
 - (vi) Registration number;

(vii) Registration date.

(13) A registered builder, may make an application to the Board at any time after entry on the register to have any of the particulars set out in subsection (12) corrected on the Construction Industry Register Ireland website. The Board shall amend the Register if they find that it contains inaccurate information or does not reflect a change in circumstances.

NOTES:

Subsection (1) provides for Builders, may satisfy the requirements under section 5(3)(i) that they possess the requisite competence by submitting evidence to the Board of relevant work undertaken or relevant educational qualification or a combination of both.

Subsection (2) provides that the Minister shall prescribe the level of previous experience or educational qualification or both that is required for entry in the register and specifies items to have regard to in doing so.

Subsection (3) provides that the Board may seek independent verification of the documentation submitted and may also require the submission of further documentation in order to make a determination.

Subsection (4) provides that applicants may apply and be considered based on work undertaken at an appropriate level in the employment of another Builder or on the basis of a qualification at the appropriate NFQ Level in a construction discipline related to the category in which registration is sought.

Subsection (5) provides that an applicant for registration may seek inclusion on the register in more than one category of members or class of works.

Subsection (6) provides that the Board may decide to approve, partially approve or refuse an application for entry on the register within a period of not more than 3 months from the date on which a fully completed application is received.

Subsection (7) provides that any registration granted under this Section may be subsequently suspended, terminated or otherwise conditioned by the Board as is necessary in order to give effect to a decision arising from a review, complaint or appeals procedure provided for under Part 3 – Reviews, Complaints, Investigations, Sanctions and Appeals.

Subsection (8) provides that the Board must notify in writing an applicant or member whose application for registration or renewal is refused or partially refused. The written notification must state the reasons for refusal of registration or renewal and must advise the person concerned of their right to have the decision reviewed by the Board or appealed to the Appeals Committee within 21 days.

Subsection (9) provides that entry on the register shall last for a period of twelve months. An annual renewal form will be sent to each registered member enclosing an application for renewal of registration which must be made to the registration body prior to the expiration of the registration period.

Subsection (10) provides applicants applying for renewal of their registration will not be required to resubmit evidence of competence unless the application includes a request to be included in an additional category or class of works.

Subsection (11) provides that where a registered member seeks to extend the divisions of the register relevant to its registration, the term of any such extension, if granted by the Board, shall initially be limited to the unexpired term of the period of twelve months from the registration date relevant to the initial registration.

Subsection (12) provides that the Register shall be available online and sets out particulars that may be included.

Subsection (13) provides that a registered builder may make an application to the Board at any time after entry on the register to have any of the particulars set out in section corrected.

HEAD 7 SECTION 7

CODE OF CONDUCT

To provide that:

7. (1) The Minister shall prepare a code of conduct specifying the standards of conduct and practice that shall be adhered to by registrants. The code of conduct may make provision for all or any of the following-
 - (a) professionalism, competence and diligence of registered members,
 - (b) continuous professional development,
 - (c) quality customer service,
 - (d) records, data and documentation,
 - (e) advertising and promotion,
 - (f) such other matters as appear to the Minister or the Board to be necessary or expedient for the proper administration of the register and the registration process.
- (2) The Minister shall review the code of conduct from time to time and any code of conduct made under this section may be amended or revoked by another code of conduct under this section.
- (3) A draft of the proposed code or any amendment of it shall be published by the Minister, together with an invitation to the public, to registered members and to any organisation or other body or persons which he or she considers appropriate to comment on the draft before a date specified.
- (4) The Minister shall take into account any comment or opinion received in relation to the draft Code of Conduct before he or she prepares the code for publication.

- (5) The registration body shall ensure that a copy of the code is publicly available electronically on the CIRI website or otherwise.
- (6) A failure on the part of a registered member to observe any provision of a code of conduct published under this section (including such a code as amended from time to time under this section) shall not of itself render the registered member liable to any civil or criminal proceedings but where, in any proceedings under this Act, improper conduct, poor professional performance or a breach of their registration requirements by a registered member is alleged to have occurred or to be occurring in the case of any matter in respect of which there was such a code of conduct in effect at the time of the alleged occurrence, subsection (7) shall have effect in respect of such code for the purposes of those proceedings.
- (7) The Admissions and Registration Board, the Appeal Board or any court or tribunal may, in any proceedings under this Act to determine whether improper conduct, poor professional performance or a breach of their registration requirements by a registered member has occurred or is occurring, have regard to any provision of a code of conduct published under this section (including such a code as amended from time to time under this section) which appears to it to be relevant to the improper conduct, poor professional performance or a breach of their registration requirements concerned.

NOTES:

This section ensures that a code of conduct is in place specifying the standards of professional conduct and practice that shall be adhered to by registrants.

Subsection (1) provides that the Minister shall prepare a code of conduct. It also set out the items that the Code of Conduct may make provision for.

Subsection (2) provides that the Minister shall review the Code of Conduct periodically and update and amend it as appropriate.

Subsection (3) requires that members of the public and interested organisations be given an opportunity to comment on the draft Code of Conduct or on any amendments to the code.

Subsection (4) requires the Minister to have due regard for comments received from members of the public or interested organisations in relation to its draft proposals.

Subsection (5) requires the registration body to make sure that the Code of Conduct is available to the public at all times or is published on the CIRI website or otherwise.

Subsections (6) and (7) deal with failure to adhere to the provisions set out in the code of conduct.

HEAD 8 SECTION 8

NOTIFICATION OF MATERIAL MATTER TO THE REGISTRATION BODY

To provide that:

8. (1) A registered member shall give notice in writing to the registration body as soon as practicable but, in any case, not later than 30 days after that matter comes to the knowledge of the member, of any material matter relevant to its registration.
- (2) Subsection (1) shall apply to an applicant for registration as if the applicant were a registered member included in each category of members and each class of works for which an application has been made.
- (3) For the purposes of subsections (1) and (2) material matter in relation to a registered member or an applicant for registration, shall include:-
 - (a) the imposition of conditions on any registration or licence or other authorisation to penalise a registered member, the revocation, suspension, withdrawal or removal of any registration or licence or other authorisation, or the refusal to grant registration or a licence or other authorisation, by any regulatory body in or outside the state in respect of any capacity or former capacity of the registered member or applicant for registration, as the case may be, relevant to their registration;
 - (b) any conviction for an offence under health and safety or building control legislation (whether imposed in or outside the State) relevant to the requirements for inclusion on the register specified at paragraphs (viii) of subsection (4) of section 5 of this Act;

- (c) any change to competence relied upon for registration purposes;
- (d) in the case of a registered member or an applicant for registration which or who is a body corporate or a partner in a partnership, any change in the principal officers of the body corporate or partnership, as the case may be;
- (e) Any change in insurance cover for the construction services they provide that they declared to hold on their application for registration or subsequently.

NOTES:

This section places an obligation on registered members and applicants for registration to notify material changes relevant to their registration in writing to the registration body.

Subsection (1) provides that a registered member shall notify the registration body in writing of any material matter relevant to its registration as soon as practicable but, in any case, not later than 30 days after that matter comes to the knowledge of the registered member.

Subsection (2) provides that this requirement for notification applies to an applicant for registration as if the applicant were a registered member included in each category of members and each class of works for which an application has been made.

Subsection (3) sets out what material matters must be notified to the registration body.

PART 3
REVIEWS, COMPLAINTS, INVESTIGATIONS, SANCTIONS AND
APPEALS

HEAD 9 SECTION 9

REVIEW OF REGISTRATION DECISIONS

To provide that:

9. (1) Any person adversely affected by a decision of the Admissions and Registration Board pursuant to section (5)(3) may seek to have the decision reviewed.
- (2) A request for a review shall be made in writing and shall set out the grounds on which a review is being sought.
- (3) The review shall be conducted in accordance with rules set down by the registration body in consultation with the Admissions and Registration Board.
- (4) Having reviewed the matter the Admissions and Registration Board shall notify in writing the person concerned of its final decision on the matter. Any changes in the categories of membership or classes of work to which the person concerned is granted registration should be reflected immediately on the register. Where the Board's decision means that the person concerned continues to be refused registration for one or more categories of membership or classes of work for which they have sought to be registered, the Board shall notify the person concerned of their right of appeal to the Appeals Committee against its decision.

NOTES:

This section deals with review of registration decisions by the Admissions and Registration Board on foot of a request by a person who has failed to secure registration.

Subsection (1) provides that any person adversely affected by a decision of the Board pursuant to section (5) may seek to have the decision reviewed.

Subsection (2) requires that a request for a review shall be made in writing, setting out the grounds for review.

Subsection (3) requires that the review shall be conducted in accordance with rules set down by the registration body in consultation with the Board.

Subsection (4) sets out the procedures to be followed by the Board having completed its review. Any changes in the categories of membership or classes of work to which the person concerned is to granted registration should be notified to the person and reflected immediately on the register. Where the Board's decision means that the person concerned continues to be refused registration, the Board shall notify the person concerned of their right of appeal.

HEAD 10 SECTION 10

COMPLAINTS AGAINST REGISTERED MEMBERS

To provide that:

10. (1) Any person may complain in writing to the Admissions and Registration Board concerning an action by a registered member which is alleged to amount to improper conduct, poor professional performance or a breach of their registration requirements. The following shall be specific grounds for a complaint against a registered member:-
 - (a) Where a registered member undertakes works in a class or division of the register for which they are not registered and are not exempt from registration under this Act;
 - (b) Failure by a registered member to notify the registration body of material matter pursuant to section 8 which is likely to have a bearing on their registration;
 - (c) Where a registered member failed, in connection with the carrying out of building works for which they are registered, to meet the standards of competence required for such registration;
 - (d) Failure by a registered member to implement an acceptable plan for Continuous Professional Development;
 - (e) Where a registered member has been convicted and disqualified from signing and submitting certificates of compliance pursuant to section 17(7) of the Building Control Act 1990;
 - (f) Failure by a registered member to declare any previous convictions under the Building Control Act 1990 – 2014 or the Health and Safety Act 2005.

- (2) Where the Admission and Registration Board receives a complaint, it shall cause an investigation of the matter, the subject of the complaint, to be carried out unless—

- (a) it is satisfied that the complaint is not made in good faith,
- (b) it is satisfied that the complaint is frivolous or vexatious or without substance or foundation, or
- (c) following the making of such inquiries as the Admission and Registration Board thinks fit, it is satisfied that the complaint is likely to be resolved by mediation or other informal means between the parties concerned.

- (3) Where the Admissions and Registration Board decides that a complaint falls within subsection (2)(a), (b) or (c), it shall give notice in writing to the complainant and the registered member to whom the complaint relates of the decision and the reasons for the decision.
- (4) Where a complaint is withdrawn by a complainant before the investigation report which relates to the complaint has been submitted to the Admissions and Registration Board pursuant to section 10 (2), the Admissions and Registration Board may proceed as if the complaint had not been withdrawn if it is satisfied that there is good and sufficient reason for so doing.
- (5) Where, pursuant to subsection (4), the Admissions and Registration Board proceeds as if a complaint had not been withdrawn, the investigation concerned shall thereupon be treated as an investigation initiated by the Admissions and Registration Board, and the other provisions of this Act shall be construed accordingly.
- (6) Where a complaint is not resolved by mediation or other informal means referred to in *subsection (2) (c)*, the complainant may, at his or her discretion, make a fresh complaint in respect of the matter the subject of the first-mentioned complaint.
- (7) In the absence of a complaint, the Admissions and Registration Board may, of its own volition, cause an investigation to be held into any conduct which would come under *subsection (1)*.

NOTES:

This section deals with complaints made by a third party concerning an alleged failure by a registered member to honour its commitments under the register.

Section (1) provides that any person may make a complaint to the Board concerning an action by a registered member which is alleged to amount to improper conduct, poor professional performance or a breach of their registration requirements. It also sets out specific grounds for a complaint against a registered member.

Subsection (2) and (3) provide that the Board will instigate an investigation unless it satisfies itself that the complaint is groundless or is likely to be resolved by informal means between the parties concerned. In such cases the Board will give notice to the complainant and the registered member.

Subsections (4) and (5) provide that the Board may proceed with an investigation even if the complaint is withdrawn.

Subsection (6) provides that a complainant may make a fresh complaint should informal means fail to resolve a complaint.

Subsection (7) provides that the Board may initiate an investigation of its own volition.

HEAD 11 SECTION 11

INVESTIGATIONS AND DECISIONS OF THE BOARD

To provide that:

11. (1) Subject to section 10 (2), (3) and (4), the Admissions and Registrations Board —

(a) shall, following the receipt of a complaint, or may of its own volition, cause such investigation as it thinks fit to be carried out to identify any improper conduct, poor professional performance or a breach of registration requirements as set out in section 10 (1), and

(b) for the purposes of the investigation, shall appoint an inspector, subject to such terms as it thinks fit—

(i) to carry out the investigation, and

(ii) to submit to it an investigation report following the completion of the investigation.

(2) The Admissions and Registrations Board may appoint such other persons as it thinks fit to be inspectors and may appoint more than one inspector to carry out an investigation but, in any such case, the investigation report concerned shall be prepared jointly by the inspectors so appointed and the other provisions of this Act shall, with all necessary modifications, be construed accordingly. The Inspector must be entirely independent of the subject matter of the investigation.

(3) The terms of appointment of an inspector may define the scope of the investigation to be carried out by the inspector, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances.

(4) Where the Admissions and Registrations Board has appointed an inspector to carry out an investigation, the inspector shall, as soon as is practicable after being so appointed—

(a) if the investigation arises in consequence of the receipt of a complaint by the Admissions and Registration Board—

(i) give notice in writing to the registered member to whom the complaint relates of the receipt of the complaint and setting out particulars of the complaint,

(ii) give the registered member—

(I) copies of any documents relevant to the investigation, and

(II) copies of this Part,

and

(iii) afford to the registered member an opportunity to respond within 30 days from the date on which the registered member received the notice referred to in subparagraph (i), or such further period not exceeding 30 days as the inspector allows, to the complaint,

(b) if the investigation arises on the volition of the Admissions and Registrations Board —

(i) give notice in writing to the registered member concerned of the matters to which the investigation relates, and

(ii) give the registered member —

(I) copies of any documents relevant to the investigation, and

(II) copies of this Part,

and

(iii) afford the registered member an opportunity to respond within 30 days from the date on which the registered member received the notice referred to in subparagraph (i), or such further period not exceeding 30 days as the inspector allows, to the matter to which the investigation relates.

(5) Where an investigation arises in consequence of the receipt of a complaint by the Admissions and Registrations Board, the inspector appointed to carry out the investigation—

(a) shall, as soon as is practicable, give the complainant a copy of the notice referred to in subsection (4)(a)(i) given to the registered member to whom the complaint relates, and

(b) shall make reasonable efforts to ensure that the complainant is kept informed of progress on the investigation.

(6) Where an inspector has completed his investigation, the inspector shall, as soon as is practicable prepare a draft of the investigation report and give to the registered member to whom the investigation relates and, if the investigation arose in consequence of the receipt of a complaint, the complainant—

(i) a copy of the draft of the investigation report,

(ii) a copy of this section, and

(iii) a notice in writing stating that the registered member and the complainant (if any) may, not later than 30 days from the date on which the notice was respectively received by them, or such further period not exceeding 30 days as the inspector allows, each make submissions in writing to the inspector on the draft of the investigation report.

(7) An inspector who has complied with *subsection (6)* following the completion of an investigation shall, as soon as is practicable after—

(a) the expiration of the period referred to in subsection (4)(a)(iii), and

(b) having—

(i) considered the submissions (if any) referred to in subsection (4)(a)(iii) made before the expiration of that period on the draft of the investigation report concerned, and

(ii) made any revisions to the draft of the investigation report which, in the opinion of the inspector, are warranted following such consideration,

prepare the final form of the investigation report and submit it to the Admissions and Registration Board with any such submissions annexed to the report.

(8) Where an inspector states in the draft of the investigation report or the final report that he or she is satisfied that improper conduct, poor professional performance or a breach of registration requirements by the registered member to whom the investigation relates has occurred or is occurring, the inspector shall not make any recommendation, or express any opinion, in the report as to the sanction that he or she thinks ought to be imposed on the registered member in respect of such improper conduct, poor professional performance or a breach of registration requirements in the event that the Admissions and Registration Board is also satisfied that improper conduct, poor professional performance or a breach of registration requirements by the registered member has occurred or is occurring.

(9) Where the Admissions and Registration Board has considered an investigation report submitted to it pursuant to subsection (7), the Admissions and Registration Board may, if it considers it proper to do so for the purposes of assisting it to make a decision whether to impose a sanction under *subsection (10)*, or for the purposes of observing fair procedures, for those purposes—

(a) conduct an oral hearing in accordance with Schedule 1, or

(b) give to the registered member to whom the investigation concerned relates and, if the investigation arose in consequence of the receipt of a complaint, the complainant—

(i) a copy of the investigation report, and

(ii) a notice in writing stating that the registered member and the complainant (if any) may, not later than 30 days from the date on which the notice was respectively received by them, or such further period not exceeding 30 days as the Authority allows, each make submissions in writing to the Authority on the investigation report.

(10) Where the Admissions and Registration Board, having considered an investigation report submitted to it pursuant to *subsection (7)*, it may, subject to the other provisions of this Bill, do one or more of the following:

- (a) advise, admonish or censure the registered member in relation to the matter complained of;
- (b) direct that during a specified period, the registered member's inclusion on the register shall be suspended;
- (c) erase the registered member's name and details from the register;
- (d) direct that the registered member's name and details remain on the register but impose such conditions as the Admissions and Registration Board considers appropriate, to be complied with by the registered member,

and the chairperson of the Admissions and Registration Board as appropriate shall notify the registered member by prepaid registered post to the registered member's address as given in the register, of the Board's decision, the date thereof and the reasons therefor and of the registered member's rights of appeal to the Appeals Committee against the finding.

(11) When considering the appropriate sanction to be applied, if any, the Admissions and Registration Board shall have regard to the following considerations:

(i) the need to ensure that any sanction imposed—

- (I) is appropriate and proportionate to the improper conduct, poor professional performance or a breach of registration requirements, and
- (II) if applicable, will act as a sufficient incentive to ensure that any like improper conduct, poor professional performance or a breach of registration requirements will not occur in the future,

(ii) the seriousness of the improper conduct, poor professional performance or a breach of registration requirements,

(iii) the extent of any failure by the registered member to co-operate with the investigation concerned,

(iv) any excuse or explanation by the registered member for the improper conduct, poor professional performance or a breach of registration requirements or failure to co-operate with the investigation concerned,

(v) the duration of the improper conduct, poor professional performance or a breach of registration requirements,

(vi) the repeated occurrence of improper conduct, poor professional performance or a breach of registration requirements by the registered member,

(vii) if applicable, the continuation of the improper conduct, poor professional performance or a breach of registration requirements after the registered member was notified of the investigation concerned,

(viii) if applicable, the extent and timeliness of any steps taken to end the improper conduct and any steps taken for remedying the consequences of the improper conduct, poor professional performance or a breach of registration requirements,

(ix) whether a sanction in respect of like improper conduct has already been imposed on the registered member by a court, the Admissions and Registration Board or another person, and

(x) any precedents set by a court, the Admissions and Registration Board or another person in respect of previous improper conduct, poor professional performance or a breach of registration requirements.

(12) Without prejudice to the operation of the other provisions of this Act in relation to the appeals against decisions to exercise such powers, none of the powers under subsection 9(c) to (e) may be exercised by the Admissions and Registration Board unless the decision to exercise the power has been confirmed by the High Court under subsection 13 or, as the case may be, on an appeal to that Court under section 14, and then may only be exercised subject to the terms (if any) of such confirmation.

(13) Where a person appeals against a decision of the Admissions and Registration Board to the Appeals Committee within the period provided for under this Act in section 14(2), the decision of the Board is stayed until the appeal is disposed of, including any period provided for a further appeal to

the High Court. Any subsequent direction by the Appeals Committee pursuant to subsection 9 of section 13, or by the High Court pursuant to section 14, to annul or amend a decision of the Board shall for the purposes of this section be regarded as constituting a new decision of the Board.

(14) Subsection (15) applies if—

- (a) no appeal under this Act is taken against the decision of the Board mentioned in that subsection, or
- (b) (i) such an appeal taken against the decision has been disposed of and the decision has been confirmed (with or without amendment of it), and
- (ii) that confirmation is not a confirmation of the High Court under section 14.

(15) The chairperson of the Admissions and Registration Board may apply to the High Court for confirmation of a decision of the Admissions and Registration Board to exercise the powers under subsection (10) (b), (c) or (d) and, if the chairperson so applies, the High Court, on the hearing of the application, shall, unless it sees good reason to the contrary, declare accordingly and, where the declaration relates to a decision to exercise the powers under subsection (2)(b) or (c), either (as the Court may consider proper) direct the Admissions and Registration Board to erase the name of such person from the register concerned or direct that during a specified period (beginning not earlier than 7 days after the decision of the Court) the inclusion of the registered person's name and details in the register shall be suspended.

(16) On erasing the name and details of a member from the register under this section, the chairperson shall forthwith send by prepaid registered post to such member, at the member's address as stated in the register, notice in writing of the erasure.

(17) Where a direction is given under this section that during a specified period registration of a member's name and details in the register shall not have effect, the chairperson shall, before the commencement of that period, send by prepaid registered post to such member, at the member's address as stated in the register, notice in writing of such direction.

(18) The name of any member that has been erased under this section may be restored to the register concerned on the direction of the Admissions and Registration Board, but not otherwise, and the Board may attach such conditions as it sees fit to the restoration (including payment of a fee not exceeding the fee provided for an application for registration in the first instance).

(19) Where the registration of a member has ceased to have effect under this section for a period of specified duration, the Admissions and Registration Board may, if it thinks fit, on application made to it by such member, by direction terminate the suspension and the Board may attach such conditions as it sees fit to the termination (including payment of a fee not exceeding the fee provided for an application for registration in the first instance).

NOTES:

This section sets out the administrative steps that must be taken once a review of a registered member's registration or a complaint against a registered member has been decided by the Admissions and Registration Board.

Subsections (1) and (2) provide that where the Admissions and Registration Board initiates an investigation it must appoint an inspector or inspectors to carry out the investigation and submit a report.

Subsection (3) provides that the appointment of the inspector may define the scope of the investigation.

Subsections (4) provides that in the case of investigations arising from a complaint by the Authority, or on its own volition, the inspector will notify the registered member of the particulars of the complaint, furnish them with relevant documents and afford them an opportunity to respond within 30 days.

Subsection (5) provides that in the case of investigations resulting from a complaint received by the Board, the inspector shall furnish the complainant with the notice issued to the registered member and shall make reasonable efforts to keep the complainant informed.

Subsection (6) provides that where the inspector has completed his investigation he will give to the Registered Member (and the complainant if there is one) a draft report, a copy of this section and notification that they may make a submission on the draft within 30 days.

Subsection (7) provides that following this, the inspector will prepare a final report and submit it to the Board.

Subsection (8) prohibits an inspector from expressing an opinion on sanctions in his report.

Subsection (9) provides that the Board, in deciding whether to impose sanctions, may conduct an oral hearing or may provide a copy of the report to the registered member or complainant and furnish them with an opportunity to make a submission.

Subsection (10) sets out the sanctions that the Board may impose and the procedure for notification of same.

Subsection (11) sets out the criteria to be taken into account when deciding what sanction is appropriate.

Subsection (12) provides that the Board may not impose certain sanctions unless the decision to exercise the power has been confirmed by the High Court.

Subsection (13) provides that where a person appeals to the Appeals Committee against a decision of the Admissions and Registration Board the decision of the Board is stayed until the appeal is disposed of, including any period provided for a further appeal to the High Court. Any direction by the Appeals Committee pursuant or by the High Court to annul or amend a decision of the Board shall be regarded as constituting a new decision of the Board.

Subsection (14) applies if—

- (a) no appeal under this Act is taken against the decision of the Board mentioned in that subsection, or
- (b) (i) such an appeal taken against the decision has been disposed of and the decision has been confirmed (with or without amendment of it), and
 - (ii) that confirmation is not a confirmation of the High Court under section 15.

Subsection (15) provides that the chairperson of the Admissions and Registration Board may apply to the High Court for confirmation of a decision of the Committee to suspend or erase a registered member from the register.

Subsections (16) and (17) specifies the method of notifying a registered member that they have been erased or suspended from the register.

Subsection (18) and (19) provide for restoration to the register of a registered member on the direction of the Admissions and Registration Board.

HEAD 12 SECTION 12

APPEALS COMMITTEE

To provide that:

12. (1) The registration body shall establish an Appeals Committee.
- (2) The Appeals Committee shall consist of a chairperson and four ordinary members, the latter appointed by the registration body as follows:
 - (a) 2 registered construction professionals, not being members of the Board and not being persons included on the register established under this Act or directly employed by such persons, nominated for such appointment by the registration body;
 - (b) 2 persons, not being members of the Board and not being persons included on the register established under this Act or directly employed by such persons, nominated for such appointment by the Minister.
- (3) The Chairperson of the Appeals Committee shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court who shall be appointed as chairperson by the Minister.

NOTES:

This section provides for the establishment of an Appeals Committee and specifies the composition of that committee.

HEAD 13 SECTION 13

APPEAL BY A REGISTERED MEMBER OR AN APPLICANT

To provide that:

13. (1) Any registered member or applicant for registration adversely affected by a decision of the Admissions and Registration Board made pursuant to section 5 and or section 9 or section 11 may appeal to the Appeals Committee against the decision.

(2) An appeal shall be in writing and lodged with the Appeals Committee within 3 months after the date of the decision being appealed against.

(3) The appeal shall specify the decision to which the appeal relates and the grounds on which the appeal rests.

(4) An appeal may be based on either procedural or substantive matters.

(5) A person may, at any time before the appeal is heard, withdraw the appeal in whole or in part by notifying the Appeals Committee in writing of the withdrawal.

(6) A witness at a hearing conducted by the Appeals Committee has the same immunities and privileges as if he or she were a witness before the High Court.

(7) The Chairperson of the Appeals Committee may-

(a) direct in writing an appellant to attend before the Committee on a date and at a time and place specified in the direction,

(b) direct in writing any other person whose evidence the Appeals Committee may require, to attend before the Appeals Committee on a date and at a time and place specified in the direction, and may direct the person to bring any document in the person's possession relating to the appeal,

- (c) request the Admissions and Registration Board whose decision is being appealed against to produce any documents in its possession relating to the appeal, together with its observations on the appeal,
 - (d) give any other direction for the purpose of the proceedings that appears to the Chairperson to be fair and reasonable.

- (8) The procedures of the Appeals Committee shall make provision for-
 - (a) notifying the appellant and the Chairperson of the Admissions and Registration Board of the date, time and place of the sitting of the Committee
 - (b) advising the appellant of the appellant's right-
 - (i) to be present at the Committee's sitting, and
 - (ii) to present his or her case in person, or, at his or her own expense, through a legal representative,
 - (c) the examination of witnesses,
 - (d) determination by the Committee as to whether or not evidence should be given under oath,
 - (e) recording of proceedings.

- (9) On the hearing of an appeal under this section the Appeals Committee may-
 - (a) confirm the decision of the Admissions and Registration Board subject to any amendment thereof the Committee thinks fit,
 - (b) annul the decision and direct the Admissions and Registration Board to make a new decision, or
 - (c) give such other directions as it thinks fit.

- (10) The Chairperson of the Appeals Committee shall notify-
 - (a) the appellant in writing, sent by prepaid registered post to the appellant's address, of the decision taken on the appeal, the date on which it was made and the reasons for it, and shall also advise the appellant of the right to appeal to the High Court against the Committee's decision,
 - (b) the Admissions and Registration Board of the decision taken on the appeal, the date on which it was made and the reasons for it.

NOTES:

This section provides persons who are affected by a decision of the Admissions and Registration Board to appeal against such decision and sets out specific administrative procedures to be followed in conducting the appeal. The decision may relate to refusal to allow registration for one or more particular categories of membership or for one or more classes of works. Such decisions may arise in the context of an initial application of registration, a renewal of registration by a registered member or a decision to suspend, terminate or restrict the registration of a registered member.

Subsection (1) provides that any registered member or applicant for registration adversely affected may appeal to the Appeals Committee against the decision.

Subsection (2) provides for the time limits that apply.

Subsection (3) and (4) provide for grounds of appeal and the requirement to specify grounds.

Subsection (5) provides that a person may withdraw an appeal.

Subsection (6) provides that a witness at a hearing conducted by the Appeals Committee has the same immunities and privileges as if he or she were a witness before the High Court.

Subsection (7) provides for the direction to attend and requests for evidence that the Chairperson of the Appeals Committee may make.

Subsection (8) requires the Appeals Committee to make specific provision for a number of critical matters in its procedural rules.

Subsection (9) sets out the options open to the Appeals Committee in deciding the appeal.

Subsection (10) provides for the procedures for notification of an Appeals Committee decision.

HEAD 14 SECTION 14

APPEAL TO HIGH COURT ON A QUESTION OF LAW FROM DECISIONS OF THE APPEALS COMMITTEE

To provide that:

14. (1) A person adversely affected by a decision made by the Appeals Committee may appeal against the decision to the High Court, on a point of law, within 3 months of the date of the decision.
- (2) On the hearing of the appeal on a point of law under this section, the Court may-
 - (a) confirm the decision of the Appeals Committee, subject to any amendment thereof the Court thinks fit,
 - (b) annul the decision and direct the Appeals Committee to make a new decision, or
 - (c) give such other directions as the Court thinks fit,and the Court may direct how the costs of the appeal are to be borne.

NOTES:

This section provides for a right of appeal to the High Court, on a point of law only, against a decision of the Appeals Committee.

HEAD 15 SECTION 15

CERTAIN OTHER JURISDICTION OF APPEALS COMMITTEE

To provide that:

15. (1) If the Board fails to make a decision referred to in section 5(6) of within the three month period specified, a person adversely affected by such failure may make a complaint to the Appeals Committee that such a failure has occurred.
- (2) On the hearing of such a complaint and having given the Board an opportunity to be heard, the Appeals Committee may, as it thinks appropriate-
 - (a) give a direction to the Board to make the decision concerned forthwith, or
 - (b) make itself a decision on the application concerned (and where the Appeals Committee does so section 14 shall apply to such a decision as it applies to any other decision of the Appeals Committee).

NOTES:

This section provides that the Appeals Committee may act on a complaint that the Admissions and Registration Board has failed to decide an application within the a specified period. Any decision of the Appeals Committee on this basis may be appealed to the High Court as is the case with other decisions of this committee.

HEAD 16 SECTION 16

PUBLICATION OF SANCTIONS

To provide that:

16. (1) The Admissions and Appeals Board shall publish particulars, in such form and manner and for such period as it thinks fit, of any—
 - (a) decision of the Admissions and Appeals Board or the Appeals Committee to admonish or censure a registered member,
 - (b) decision of the Admissions and Registration Board or the Appeals Committee refusing to renew a licence,
 - (c) suspension of a licence,
 - (d) erasure of a registered member's name and details from the register,
 - (e) imposition of a sanction on a registered member which does not require confirmation by the High Court, and
 - (f) imposition of a sanction on a registered member pursuant to a required confirmation of the decision by the High Court.
 - (g) conviction of a person for a contravention of section 22 of this Act.

HEAD 17 SECTION 17

PROCEEDINGS PRIVILEGED

To provide that:

17. Proceedings of or communications to or by the Admissions and Registration Board, Investigator or the Appeals Committee in the course of an inquiry, and reports of the Board or the Committee made in the exercise or performance of its powers, duties or functions shall, in any action for defamation, be absolutely privileged.

NOTES:

This section provides that the proceedings of or communications by the Admissions and Registration Board or the Appeals Committee in the course of an inquiry, and any reports made by the Board or the Committee in the exercise of its powers, duties or functions with regards to such an inquiry are absolutely privileged in any action for defamation.

PART 4

FEEES EXPENSES AND REPORTS

HEAD 18 SECTION 18

REGISTRATION BODY MAY SEEK ASSISTANCE AND MAKE RULES

To provide that:

- 18
- (1) Subject to subsection (2), the registration body may arrange with any person to assist it, the Admissions and Registration Board, or the Appeals Committee established under this Act, in the proper discharge of its or their functions.
 - (2) The registration body shall not make an arrangement referred to in subsection (1) as respects the discharge of the functions under sections 5 , 12 or 19.
 - (3) Subject to subsection (4)&(5), the registration body may make rules for facilitating and carrying out its functions and the functions of the Admissions and Registration Board and the Appeals Committee.
 - (4) Before making rules, the registration body shall prepare a draft of the rules and circulate them to the Board or the Committee for comment.
 - (5) Rules shall not be made in accordance with subsection (3) without the consent of the Minister.

NOTES:

Subsection (1) provides that the Registration Body may arrange for assistance from persons in relation to the discharge of its functions.

Subsection (2) excludes decisions under section 5, 12 and 19 from any such arrangement for assistance made under subsection (1).

Subsection (3), provides that the registration body may make rules for facilitating and carrying out its functions and the functions of the Board and the Appeals Committee.

Subsection (4) requires the registration body before making rules, to prepare a draft of the rules and circulate them to the Board and the Appeals Committee for comment.

Subsection (5) requires that the registration body obtain the consent of the Minister in order to make any rules in accordance with subsection (3).

HEAD 19 SECTION 19

REGISTRATION BODY MAY SPECIFY FEES

To provide that:

- 19 (1) The registration body may specify that a fee of a specified amount shall be payable to it in respect of the doing of any of the following, namely:
- (a) processing applications for registration;
 - (b) the annual renewal of a person's name in the register;
 - (c) restoring a person's name in the register after it has been erased pursuant to a provision of this Act;
 - (d) removing a person's name from the register on the application of that person;
 - (e) issuing a certificate of registration;
 - (f) providing any other service which the registration body may provide.
- (2) A fee shall not be specified in accordance with subsection (1) without the consent of the Minister.
- (3) The amount of a fee specified in accordance with subsection (1) shall not in any case exceed the total of—
- (a) the costs in providing the services in respect of which the fee is paid, and
 - (b) the reasonable costs incurred by the registration body in collecting, accounting for and administering the fee.

NOTES:

Subsection (1) provides that the registration body may specify a fee for a range of services provided by the registration body.

Subsection (2) provides that the consent of the Minister must be obtained before any fee proposed by the registration body may be specified.

Subsection (3) limits the total of any specified fee to an amount not greater than the sum total of the costs of providing the service to which the fee relates and the reasonable costs incurred by the registration body in collecting, accounting for and administering the fee.

HEAD 20 SECTION 20

EXPENSES OF REGISTRATION BODY

To provide that:

- 20
- (1) Expenditure incurred by the registration body in the performance of its functions under this Act shall be defrayed by the registration body from funds at its disposal.
 - (2) There shall be paid to the chairpersons and other members of the Board and the Appeals Committee established under this Act by the registration body such remuneration and allowances for expenses as the registration body may determine and payment of such remuneration and allowances shall be made from funds at the disposal of the registration body.
 - (3) All payments and allowances paid to Chairpersons and other members of the Board and the Appeals Committee shall be subject to the rules governing such payments in accordance with circulars issued by the Minister for Public Expenditure and Reform.

NOTES:

This section provides that the registration body will be self-financing.

Subsection (1) provides that expenses incurred by the registration body in carrying out its administrative functions under the Act shall be defrayed by the body from the funds at its disposal.

Subsection (2) provides for payment of remuneration and allowances for expenses of the chairpersons and members of the Board and the Appeals Committee established under the Act. The amounts payable shall be

determined by the Registration body and shall be paid from the funds at the disposal of the body.

Subsection (3) provides that all payments and allowances paid to Chairpersons and other members of the Board and the Appeals Committee shall be subject to the rules governing such payments in accordance with circulars issued by the Minister for Public Expenditure and Reform.

HEAD 21 SECTION 21

ANNUAL REPORT

To provide that:

21. (1) The registration body shall, as soon as may be after the end of each year, prepare a report of its proceedings under this Act during that year.
- (2) That report shall include a financial statement detailing the registration body's income and expenditure in respect of the performance of its functions under this Act during that year. Such financial statement shall be certified by an auditor who has been appointed to carry out an audit of the matter for the year concerned.
- (3) As soon as may be after the preparation of such a report, the registration body shall cause the report, including the financial statement, to be published, and made available for purchase by members of the public.

NOTES:

This section imposes some reporting requirements on the registration body in the interests of transparency and accountability.

Subsection (1) provides that the registration body shall prepare an annual report on its proceedings under the Act as soon as possible in the year following the reporting year.

Subsection (2) provides that the annual report shall include a financial report, certified by an auditor, detailing the registration body's income and expenditure for the year in question.

Subsection (3) provides that the registration body shall publish the annual report, including the financial report, and make them available for purchase by members of the public.

PART 5

OFFENCES AND PENALTIES

HEAD 22 SECTION 22

OFFENCES AND PENALTIES

To provide that:

22. (1) A person who –

- (a) makes any false or misleading statement in any application, complaint or notice of appeal under this Act or any document required thereunder or otherwise gives false or misleading information to the registration body, the Board or the Appeals Committee;
- (b) not being a registered member, under this Act, purports to be a registered member,
- (c) with intent to deceive, makes use of a certificate issued pursuant to this Act to such person or any other person,
- (d) not being a registered member and not being a person specifically exempted under section 3, undertakes building works;
- (e) being a registered member or having made an application for inclusion on the register, fails to notify a material matter to the registration body when required to do so, in contravention of section 8;
- (f) being a registered member, engages in any class of works beyond that or those classes of work to which their registration relates,

is guilty of an offence and liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

- (2) Subject to subsection (3), where a registered member is convicted of an offence under subsection (1)(b),(c),(d) or (f), the court may, if the offence caused serious injury, loss of life or substantial economic loss to an individual or to the State, having regard to the serious nature of the offence and the circumstances in which it was committed, order that the registration of the registered member be terminated and that the former registered member be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for registration in the register or any particular division of the register.
- (3) An order under subsection (2) shall not take effect until-
 - (a) the ordinary time for bringing an appeal against the conviction concerned has expired without any such appeal having been brought,
 - (b) any such appeal has been withdrawn or abandoned, or
 - (c) on any such appeal, the conviction or order, as the case may be, is upheld.
- (4) Where –
 - (a) a contravention of a provision of this Act is committed by a body corporate, and
 - (b) the contravention is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person being a principal officer of the body corporate,

that person is also guilty of an offence and liable to be proceeded against and punished as if the person were guilty of the contravention referred to in paragraph (a).
- (5) Where the affairs of a body corporate are managed by its members, subsection (4) shall apply in respect of the act or defaults of a member in connection with the member's function

or management as if the member were a director or manager of the body corporate.

- (6) Subsections (4) and (5) shall, with all necessary modification, apply in respect of offences under this Act committed by an unincorporated body.
- (7) The registration body may bring and prosecute summary proceedings for an offence under this Act.
- (8) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act to which that provision applies may be instituted-
 - (a) within 12 months from the date on which the offence was committed, or
 - (b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge, whichever is the later, provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was committed.
- (9) For the purposes of subsection 8(b), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.
- (10) It shall be presumed, until the contrary is shown, that proceedings for an offence under this Act were commenced within the appropriate period.

(11) Where a registered member is convicted of an offence under the Building Control Act 1990 – 2014 and is disqualified by the court from signing certificates of compliance with building regulations for a period of time as provided for under section 17(7) of the 1990 Act, this will, once notified to the registration body in accordance with section 9 of this Act, result in an automatic deregistration for a corresponding period of time.

NOTES:

This section provides for a number of offences which may be prosecuted summarily by the registration body.

Subsection (1) provides for seven specific circumstances in which an offence is committed. Any person guilty of any such offence is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

Subsection (2) provides that where a registered member is convicted of an offence under subsection (1), the court may order that the registration of the registered member be terminated and that the former registered member be prohibited from applying for registration

Subsection (3) provides that a Court order made under subsection (2) shall not take effect until the time for bringing an appeal has expired, the appeal has been withdrawn or abandoned or the appeal is upheld

Subsections (4) to (7) deal with contraventions committed by a body corporate. In such cases a principal officer of that body corporate is also guilty of an offence and liable to prosecution. In the case of a body corporate managed by its members, a member is guilty of an offence in respect of the act or defaults with the member's function or management as if the member were a director or manager of the body corporate.

Subsection (8) provides for time limits for commencement of proceedings.

Subsection (9) provides that a certificate signed by the person bringing proceeding or a person acting on their behalf shall be admitted as evidence in any legal proceedings as to the date or dates such evidence came to knowledge of the registration body, without proof of the signature of the person, unless the contrary is shown.

Subsection (10) provides that it shall be presumed that proceedings are taken within the proper time period unless it is otherwise shown that proper time limits have not been observed.

Subsection (11) provides for automatic deregistration where a registered member is disqualified from signing compliance certificates by the Court following a conviction under the Building Control Acts.

PART 6

THE BOARD AND COMMITTEE

HEAD 23 SECTION 23

TENURE OF MEMBERS OF BOARD AND COMMITTEE

To provide that:

23. (1) A person appointed by a registration body to be a member of the Admissions and Registration Board or the Appeals Committee established by it under this Act shall hold office for a period of 3 years, unless he or she sooner dies or resigns.
- (2) No person appointed pursuant to a section of this Act shall hold office under that section for more than 2 consecutive terms of office.
- (3) A member of the Admissions and Registration Board or a member of the Appeals Committee may resign from office by giving notice to the registration body in writing signed by him or her and the resignation shall take effect at the next meeting of the registration body.
- (4) (a) Any requirement (whether as to consultation, obtaining of another's approval or otherwise) that applies with respect to the nomination of a person for appointment to the Board or the Committee established under this Act shall apply to the nomination of a person for appointment to fill a casual vacancy amongst the membership of the Board or the Committee.
- (b) Where the term of office of a member of the Board or the Committee established under this Act terminates otherwise than by reason of the passage of time, the period of office of the person appointed to fill the vacancy occasioned by that

other's ceasing to hold office shall be specified to be the unexpired period of that other's term of office.

- (5) The registration body may, having consulted with the members of the Admissions and Registration Board and the Appeals Committee, as appropriate, make rules specifying grounds (such as repeated absence from meetings or unacceptable professional conduct) on which a member of the Board or the Committee may be removed from office and the procedure for such removal and for so long as rules under this subsection are in force such a member may be removed from office subject to and in accordance with the rules.

NOTES:

This section governs the tenure of officeholders.

Subsection (1) provides for the term of office for a chairperson or a member of the Admissions and Registration Board or of the Appeals Committee.

Subsection (2) provides that a Chairperson or member of the Board or the Appeals Committee shall not serve for more than 2 consecutive terms in of office.

Subsection (3) provides a means by which members of the Board or the committee may resign their position.

Subsection (4) provides a process for the filling of casual vacancies on the Board or the Committee. The term of office of the person appointed to fill a casual vacancy shall be limited to the unexpired term of office of the person originally appointed.

Subsection (5) provides that the registration body, having consulted with members of the Board and of the Appeals Committee, may make rules specifying grounds for removal from office of members of the Board or the Appeals Committee.

HEAD 24 SECTION 24

PROCEEDINGS AT MEETINGS OF BOARD AND COMMITTEE

To provide that:

24. (1) The Board or the Appeals Committee established under this Act shall hold such meetings as it considers necessary for the performance of its functions.
- (2) The chairperson and each other member of the Board or the Appeals Committee shall have a vote.
- (3) At a meeting of the Board or the Appeals Committee, the chairperson or, in the chairperson's absence a member chosen by those present, shall chair the meeting.
- (4) Every question at a meeting referred to in subsection (3) shall be determined by a majority of votes of members present and the chairperson shall have a casting vote in the event of an equal division.
- (5) The quorum for such a meeting shall be—
 - (a) 6 members in the case of the Board, or
 - (b) 3 members in the case of the Appeals Committee,of which, subject to subsection (6), the majority shall be members who were nominated for appointment as members of the Board or the Appeals Committee, as the case may be, by the Minister.
- (6) There may be reckoned for the purposes of that majority the chairperson of the Board or the Appeals Committee, as the case may be, if he or she is present at the meeting.

- (7) The Board or the Appeals Committee may perform its functions whether or not there is a vacancy in its membership and none of its proceedings are invalidated by any defect in the appointment of a member to it.

NOTES:

This Section sets out the procedural arrangements that apply when meetings are held and decisions are made by the Board and the Appeals Committee.

Subsection (1) provides that the need for and frequency of meetings shall be determined by the Board and the Appeals having regard to the proper discharge of its statutory functions.

Subsection (2) provides that the chair and ordinary members shall each have a vote at meetings.

Subsection (3) provides that where a Chairpersons is absent at a meeting the meeting will be chaired by a member chosen from among those present.

Subsection (4) provides decisions at meetings will be reached by majority decision of those present and, in the event of a split decision, the Chairperson will have the casting vote.

Subsection (5) and (6) provides for the quorum for meetings of the Board and the Appeals Committee.

Subsection (7) provides that the Board or the Appeals Committee may continue to perform its functions in the event of a vacancy in its make-up.

HEAD 25 SECTION 25

ADDITIONAL FUNCTIONS

To provide that:

25.

- (1) The Minister may, by order, confer on the registration body such additional functions connected with the functions for the time being of the board as he or she determines, subject to such conditions (if any) as may be specified in the order.
- (2) An order under this section may contain such incidental, supplementary and additional provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

NOTES:

This section provides that a registration body shall carry out any additional functions assigned to it by regulation made by the Minister, subject to the Minister having first consulted with the registration body prior to the making of any such regulation.

SCHEDULE 1

Provisions applicable to Oral Hearings conducted pursuant to section 11(9).

Oral Hearing conducted by Admissions and Registration Board pursuant to section 11(9)

1. The Admissions and Registration Board, in conducting the oral hearing for the purposes of assisting it to make a decision whether to impose a sanction under section 11 (10) or for the purposes of observing fair procedures, may take evidence on oath, and the administration of such an oath by any member of the Admissions and Registration Board is hereby authorised.

2. The Admissions and Registration Board may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the making of the decision under section 11 (10) or to produce any relevant documents within his or her possession or control or within his or her procurement.

3. Subject to paragraph 4, a person referred to in paragraph 2 may be examined and cross-examined at the oral hearing.

4. A person referred to in paragraph 2 shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

5. Where a person referred to in paragraph 2 does not comply or fully comply with a requirement referred to in that paragraph, the Admissions and Registration Board may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.

6. The jurisdiction conferred on the Circuit Court by paragraph 5 may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.