

Independent Review of the registration arrangements for Architects under the Building Control Act 2007

Garrett Fennell Solicitor,

Chair of the Admissions Board established under Section 13 of the Building Control Act 2007

3 September 2013

Independent Review of the registration arrangements for Architects under the Building Control Act 2007

Garrett Fennell Solicitor, Chair of the Admissions Board established under Section 13 of the Building Control Act 2007

1. Introduction

This review has been conducted at the request of Mr. Phil Hogan TD, the Minister for Environment, Community and Local Government (the Minister) who has sought an independent review of the arrangements for the registration of Architects under the Building Control Act 2007 (the Act).

The Minister has specifically requested that the review take account of four distinct aspects;

- i. The overall experience to date in relation to the registration system for Architects under the Act.
- ii. The identification of any possible improvements to the registration system.
- iii. More specifically, a review of the number of applications from practically trained Architects
- iv. Recommendations on how the registration of practically trained Architects can be actively encouraged.

For the purposes of this independent review, a consultation process was conducted through the Department of Environment, Community and Local Government and 131 submissions were received from individuals, organisations and statutory authorities. In addition, meetings were arranged with a range of stakeholders who made submissions and whose views were canvassed on their experience of the registration system for Architects established by the Act.

The review also had the benefit of the Report on the registration of Architects published by the Joint Oireachtas Committee on the Environment in July 2013.

The submissions received expressed a range of perspectives and experiences on the registration system for Architects. In particular a number of submissions raised the issue of the registration of the title of Chartered Architectural Technologists in Ireland. This is an

issue that is outside the scope of this review and accordingly is not addressed in this report nor does it form part of the recommendations being advanced to the Minister. It is a matter which is under separate discussion between officials of the Department of Environment, Community and Local Government (the Department) and interested parties.

The review process could not have been completed without the substantial input and assistance provided by all the stakeholders who took their time to make submissions and I would like to acknowledge all those who participated constructively in the review. In particular I received significant assistance from officials in the Building Standards Section of the Department and was provided with all requested information from the RIAI and the organisations representing practically trained Architects.

2. Context to the review

The submissions and the subsequent meetings with groups and individuals made it clear that the registration of Architects is a matter that remains of significant concern following the enactment of the Act and the putting in place of the administrative processes to give effect to the statutory registration scheme. There are a number of important contexts that assist with understanding these concerns.

First, the enactment of the Act and the introduction of the statutory system for the registration of Architects have coincided with a sharp contraction in economic activity in Ireland since 2007. The construction sector is a different place in 2013 than in 2005 when the Act was first published as a Bill. The downturn in construction activity has had an extremely negative impact on those involved in architectural practice, including registered and practically trained Architects. It has resulted in constrained resources for those practicing architecture and those seeking to become Architects.

Secondly, there has been a renewed focus on the enforcement of building controls following high profile public controversies relating to poor building standards, which have left consumers at a significant loss and placed people at personal risk. The Priory Hall and Pyrite controversies both brought the need to ensure that consumers are adequately protected against poor building standards and that controls are put in place to prevent a reoccurrence of such instances. Both Priory Hall and the Pyrite instances highlight the need for appropriate regulation of standards in the public interest to ensure that people are protected against poor design, poor construction and inadequate certification of works. A properly functioning regulatory system for the registration of Architects should be a cornerstone of this new regime. The primary focus of any regulatory system must be consumer protection and this should remain the key policy imperative against which the regulatory system for the registration of Architects is assessed.

Thirdly, any regulatory system which is designed to assess standards of competence will of its very nature be exclusionary. It will always be the case that any process to determine if a

person meets the standards for qualifying as a professional in a particular discipline will fail to admit some people who do not reach the level of competence or proficiency in the area involved. It is of critical importance that any such system is rigorous, fair, proportionate and transparent.

Fourthly, where the State confers the responsibility for performing a regulatory function concerning a profession on a private entity, particularly one which acts as both a regulatory and support body for the profession concerned, it is important that the devolved regulatory role is carried out in a fair, accessible and transparent manner, while applying the legal regulatory requirements and seen as such.

Fifthly, the European context to the regulation of Architects is an important element of any review of the registration arrangements for Architects in Ireland. At EU level, a minimum standard of competence for the recognition of Architects is set out in Article 46 of the Professional Qualifications Directive (2005/36/EU)(The Directive) and a process for the mutual recognition of Architects qualifications across the EU is established by the Directive.

While it is open to a Member State to create a category of Architect that meets national criteria which do not match the competencies set out in Article 46, this would be a regressive step and could potentially undermine the worth and value of the registration of Architects in Ireland generally, particularly given the increased mobility across borders for the practice of services. Equally where the EU minimum standards are met, the manner in which any additional obligations are imposed on applicants seeking registration in Ireland must be capable of objective assessment to ensure that any additional requirements are reasonable, necessary and proportionate.

Finally, the legislative basis for the registration of Architects is tightly prescribed by the Act. It became apparent at an early stage in the review process that if some of the recommendations for change are to be given effect, legislative changes will be required to the Act. The transposition of the new Professional Qualifications Directive (the new Directive), which must be applied across all member states by 2014 provides an opportunity to introduce any required changes to the Act.

These contexts have informed this review.

3. The operation of the registration system for Architects under Part 3 of the Act – A general review

The registration system for Architects under Part 3 of the Act became operable in September 2009, and since its establishment 428 new applicants have been admitted to the Register as Architects according to figures supplied by the RIAI. Table 1 outlines the numbers of applicants that were registered as Architects for each year to date;

Table 1 - numbers admitted to the Register of Architects 2009 - 2013

Year	Numbers admitted to Register of Architects
2009	38
2010	146
2011	124
2012	96
2013 (to date)	24
Total	428

(Source - RIAI)

An examination of the statutory basis on which applicants were deemed eligible for registration provides a good indication of the operation of the different statutory routes to registration under Part 3 of the Act;

Table 2 –numbers admitted to the Register of Architects by ground of eligibility

Category	Relevant section in the ACT	2009	2010	2011	2012	2013	Total
Prescribed primary qualification plus Professional Practice Exam	14 (2)(a)(I)	5	25	19	12	8	69
Prescribed primary qualification plus 7 years practice and demonstration of knowledge,	14(2)(a)(II)	3	3	3	3	1	13

skill and competence							
Fellow or member of the RIAI	14 (2)(b)	13	62	63	64	10	212
Person eligible by virtue of Section 15 or 16 of the Act	14 (2)(c)	13	55	35	11	1	115
Ministers List	14 (2)(d)	4					4
Social Betterment	14 (2) (e)						0
Register Admission Examination	14 (2)(f)					4 ¹	4
WTO Agreement	14 (2) (g)						0
Technical Assessment	14 (2) (h)		1	4	3		8
Distinguished Practice	14 (2) (i)						0
Annex V. 5.7.1 National of Member State	15 (1) (a)						0
Annex VI 6 National of a Member State	15 (1) (b)						0
Relevant measure recognition	15 (1) (c)						0
Distinguished practice in a Member State	15 (1) (d)						0
Non EU national recognised in other Member State with 3 years' experience	15 (1) (e)						0
WTO agreement	15 (1)(f)						0
Fachhochschulen	15 (1)(g) (i)	0					0
Social Betterment	15 (1)(g)(ii)						0
General System	16 (1)						0

¹ The ARAE examination was only prescribed in 2013 – the other 28 people who completed the ARAE process were admitted to registration through Section 14 (2)(b)

Temporary Registration	60 (1)				3		3
Totals		38	146	124	96	24	428

(Source RIAI)

The table above indicates that of the twenty grounds for eligibility to register as an architect in Ireland specified in the Act, no applicants have been admitted to the Register of Architects pursuant to 12 of these grounds. In the case of applicants admitted through Section 14 (2)(c) their eligibility for registration arises by virtue of Section 15.

Of the remaining routes to entry the percentages admitted under each category are as follows;

Table 3 – active routes to entry on the Architects Register under the Act

Category	Relevant section in the Act	Total number presenting for admission under category	Percentage (rounded up to nearest %)
Prescribed qualification plus Professional Practice Exam	14 (2)(a)(I)	69	16%
Prescribed primary qualification plus 7 years practice and demonstration of knowledge, skill and competence	14(2)(a)(II)	13	3%
Fellow or member of the RIAI	14 (2)(b)	212	49%
Person eligible by virtue of Section 15 or 16 of the Act	14 (2)(c)	115	27%
Ministers List	14 (2)(d)	4	1%
Register Admission Examination	14 (2)(f)	4 ²	1%
Technical Assessment	14 (2) (h)	8	2%
Temporary Registration	60 (1)	3	1 %
Totals		428	100

Source RIAI

² The ARAE examination was only prescribed in 2013 – the other 28 people who completed the ARAE process were admitted to registration through Section 14 (2)(b)

An analysis of table 3 indicates that the majority of applicants applying for registration as an architect are being admitted through;

- Section 14 (2) (b) which confers eligibility for registration by virtue of RIAI membership, accounts for 49% of new applicants for admission to the Register since 2009
- Section 14 (2) (c) - which confers automatic recognition under the Directive, accounts to 27% of new applicants to the register since 2009.
- Section 14 (1) (a) accounts for 16% of new applicants for registration and includes candidates with a prescribed primary qualification who have completed the professional practice examination– this would be the usual route for entry to the Register for academically trained Architects with primary degrees in Architecture from UCD or DIT.

On the basis of the submissions received and the stakeholder meetings conducted, there is no evidence to suggest that the registration arrangements for academically trained Architects in Ireland are not operating effectively. The numbers gaining admittance through these registration routes (Section 14 (2)(a)(I) and Section 14 (2)(a) (II)) seem to be reasonable. There were no submissions received, or representations made to the effect that there are any problems arising with these routes of entry to the Register. Equally nearly a third of the Architects gaining admission following the establishment of the register are coming through Section 14 (2) (c) which would seem to be a reasonable level of admittance-again there were no representations received to indicate that the system for the automatic recognition of candidates possessing qualifications listed in Annex 5 has been problematical.

4. Section 14 (2) (b)

Section 14 (2) (b) of the Act provides for eligibility for admission to the Register of Architects as a consequence of a person being a fellow or member of the RIAI. Membership or the awarding of a fellowship of the RIAI is a matter that rests solely and exclusively with the Council of the RIAI, the governing body of the RIAI. As can be seen from Table 3, this route of entry to the Register counted for the largest number of newly admitted Architects to the Register in Ireland.

The RIAI has indicated that the candidates that have been admitted to membership and presented to the Admissions Board through this route are categorised as follows;

Table 4– breakdown of Section 14 (2) (b) applicants eligible for registration

Category	Stated RIAI reason for using Section 14 (2) (b)	Total
Candidates with a prescribed or recognised degree who had passed the RIAI professional practice exam	RIAI professional practice exam not prescribed under Section 14 (2) (a) I	103
Candidates with non-prescribed qualifications from the professional practice examination	Extension of Section 14 (2) (a) II system to those with non-prescribed qualifications	9
Recognised EU qualifications	Amendments to the Directive not reflected in the Act & applicant with EU qualifications taking Irish or non-home state professional exams.	16
Register Admission Examination prior to prescription – admitted on the basis of RIAI accreditation	No other process	28
Readmission	Conditions permitted under Section 20 (2)not in place	6
Recognised degree and prescribed professional practice examination	No other process	24
Demonstrated parity based on awards made elsewhere	No other process	26
Total		212

This route to entry on the Register confers significant retained power on the Council of the RIAI and would appear to run counter to the principle underpinning the Act that as a matter of practice substantive decisions in relation to the admittance on the Register should rest

with the Statutory Admissions Board with a majority of non-architect members. While in strict legal terms the decision on admittance does rest with the Admissions Board, in fact the Act provides the Admissions Board with little discretion when assessing an applicant presented for admission to the Register through this route. If the applicant has been admitted to membership by the RIAI Council, the Admissions Board has little discretion to look behind the decision of the Council and must admit the applicant.

5. The admittance of practically trained Architects to the Register of Architects in Ireland.

In the letter appointing me to carry out the Independent Review of the registration arrangements for Architects, the Minister expressed his particular concern at the low level of applications for registration from practically trained Architects, which he said was less than might reasonably have been expected when the Act was introduced.

The Act made provision for the admittance of practically trained Architects to the Register through two specific routes;

- a. Section 14 (2) (f) - an applicant over 35 years, with 7 years practical experience of performing duties commensurate with an architect and who has passed a prescribed register admission examination. This process remains open for all qualifying applicants.
- b. Section 14 (2) (h) – a person assessed as eligible for registration by the Technical Assessment Board in accordance with the practical experience assessment procedures. This route of entry is time limited and can only be availed of by people who were performing duties commensurate with an Architect for 10 years or more before the commencement of Part 3 of the Act.

A total of 40 Architects were admitted to the Register through these routes, accounting for 10% of total registrants over the period since the Register was established. Of this number 32 presented for eligibility on the basis of the prescribed register admission examination and 8 came through Technical Assessment.

In the context of the overall admissions figures this is a disappointingly low take up of these channels for admission to the Register of Architects given the numbers of potential applicants that could avail of these routes. There is no definitive guide to the numbers of people that might be eligible to avail of these routes, but the groups representing practically trained Architects suggest that there could be up to 500 potential applicants who would be eligible for admittance under either route. The RIAI indicated the number is likely to be closer to 80. The Section 14 (2) (f) process does not apply to a restricted cohort with potential applicants meeting the qualifying criteria for assessment each year. The Section 14

(2) (h) process on the other hand only applies to a cohort of people who have the required service before Part 3 commenced and as such the numbers of potential applicants for this route can be expected to contract each year.

Whatever the number potentially interested in availing of either route, it is clear that the numbers of applicants that are being admitted to the Register, particularly through the Technical Assessment process, are particularly low given the indications that there are a significant number of practically trained Architects that are anxious to be on the Register.

6. Section 14 (2) (f) – Prescribed examination

The numbers applying for admittance through the Section 14 (2) (f) process are reasonable and it is a process which is facilitating significant levels of entry to registration – 32 applicants have been registered as Architects following completion of the prescribed examination. The main concern expressed by prospective applicants about this process is based on cost – at present the fees associated with undertaking the prescribed register examination are €8,500, which represents a substantial financial commitment in current circumstances. Notwithstanding the high costs involved, this route to admission is attracting reasonable numbers of applicants and in turn is leading to reasonable numbers of new registrants to the register.

The figures outlined above indicate that this has been the most successful route to admission for practically trained Architects accounting for 32 of the 40 admitted since this part of the Act was commenced. The Registered examination process is carried out by ARAE Limited, a not for profit UCD Campus company which has been prescribed for this purpose.

Candidates who are eligible for the Section 14 (2) (f) process must demonstrate that;

- They have 7 years practical experience of performing duties commensurate with those of an architect in the State, and
- Are at least 35 years of age.

Candidates who are deemed eligible for this process undertake a course of study run by ARAE Limited based at the UCD School of Architecture aimed at preparing them for the prescribed registered examination based around determining competence in design and practice.

The year long course involves a programme of assessment including two sets of written examinations, a design project and oral examinations. During this period the candidates have access to a range of supporting resources including workshops, information and advice sessions, library facilities and facilities associated with the School of Architecture in UCD.

Candidate supports also include information days, one to one oral examination preparation, library tutorials and design studio and study skills workshops.

The process run by ARAE has a number of distinct advantages over the Technical Assessment process and these are reflected in the feedback from candidates who have undertaken the ARAE Examination. In particular the following elements were felt to have assisted candidates through the process;

- The examination can be completed in stages or modules
- The examination can be repeated if required
- The examination is specific to practice experience
- The examination provides an opportunity to improve knowledge and competence
- The examination and study process is carried out with the support of other candidates, tutors and colleagues.
- The examination is conducted independently of the RIAI

The ARAE examination process appears to be thorough, rigorous and fair. Candidates that are determined as eligible for assessment through this route to admission record high levels of satisfaction with the process and the learning outcomes achieved. There are also high levels of success in the examination, with pass levels ranging from 60% to 92% in the Stage 2 (Design) and Stage 3 (Practice) examinations conducted between 2010 and 2012.

In submissions received during the Review process a number of misgivings about the Section 14 (2) (f) process were expressed by respondents;

- **Cost** - the most consistent criticism levelled at the Section 14 (2) (f) process is the cost of completing the course and examination. At present the candidates must pay €8,500 to ARAE for this process. This fee includes an initial application and assessment fee of €725 for the Stage 1 Assessment to determine if the candidate meets the criteria for this process. The balance of €7,775 is charged in respect of the nine examinations at Stages 2 & 3, the Design Project, Workshops and supports. This larger tranche of the fee can be paid in increments of an initial €4,015 fee plus eight monthly instalments of €470.

The Directors of ARAE point out that the fee for the course and examination is a direct reflection of the costs incurred and that ARAE operates on a not for profit basis. They also indicate that if the numbers coming through the 14 (2) (f) process increased there would be a consequent reduction in the costs and fees involved as economies of scale would be achieved.

- **Age limit** - Section 14 (2) (f) specifies that a person who wishes to proceed through the registered examination process must first be at least 35 years of age and have at least 7 years practical experience of performing duties commensurate with those of an architect. While the practical experience requirement is easy to understand as a condition precedent, the imposition of the age limit seems arbitrary and discriminatory without any obvious basis in policy justification.
- **Dublin centred** – some respondents to the consultation process carried out as part of the Review expressed the view that the fact that the ARAE course is conducted in Dublin and is not carried out in regional centres or through increased use of remote learning techniques is a deterrent. The numbers availing of the process are likely to be insufficient to justify the provision of the course at a regional level without greatly increasing the overall costs. While there may be some role for remote learning and this is something that the ARAE is exploring, this is likely to have a limited scope given the interactive and direct learning component of the course.

7. Section 14 (2) (h) – Technical Assessment

The Technical Assessment process established under the Act was intended to be the primary procedure whereby practically trained Architects could be assessed as eligible for registration as an Architect by a Technical Assessment Board in accordance with practical experience assessment procedures. As at May 2013 there had been 19 applicants for Technical Assessment with 8 ultimately being eligible for registration following the assessment. The remainder of applicants were either declined (3), were still being assessed by the Assessors (3) or the Technical Assessment Board (3) or were due to have Assessors appointed at that time (2).

Some respondents to the consultation process for this Review have described the Technical Assessment process as the “grandfather clause” in the Act – in other words a process whereby people with practical experience but without formal academic qualifications in architecture can apply to have their competence and experience assessed to determine if they are eligible for registration as Architects.

The technical assessment procedures are set out in Section 22 of the Act and outline the basis of eligibility and the nature of the assessment process that applies to someone being assessed by this route. The key elements include;

- The candidate must have been performing duties commensurate with those of an architect for a period of 10 years or more in the State prior to the commencement of Part 3 of the Act – no period of service following that period is taken into account. Consequently as stated above, the cohort of people eligible to apply through this

route is finite as it only includes people who can provide evidence of 10 or more years experience as an architect prior to 1 May 2008.

- The candidate makes an application to the Technical Assessment Board, which is a statutory board with a majority of non-Architects and independently chaired. In the application the candidate submits the following;
 - A curriculum vitae providing details of the work carried out in the field of architecture during the period cited as the basis for eligibility.
 - Information on projects for each year of that period for which they were responsible with necessary corroboration.
 - A file of 4 projects including graphic material for which the person was responsible
 - Independent verification of the documentation submitted.
- The Technical Assessment Board establishes a Technical Assessment Panel, comprised exclusively of Architects which assesses the application through a review of the documentation and an interview with the applicant. The Technical Assessment Panel then issues an opinion to the Technical Assessment Board as to whether the applicant is eligible for registration under Section 14 (2) (h).
- The applicant may be subject to an interview by the Technical Assessment Board and may be required to provide further information to the Board. The legislation contains provisions allowing an applicant to be represented at such an interview and for the proceedings to be recorded.
- The Technical Assessment Board shall use specified criteria in assessing an application from a candidate;
 - Whether the applicant has been performing duties as an architect for at least the 10 year period specified in the Act.
 - Whether the work submitted was equivalent to the work of an architect in terms of scale, complexity and quality,
 - Whether the applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive, and
 - Whether the work submitted had been realised by the applicant or if the level of responsibility by the applicant could be established.
- The Board should also have regard to the opinion of the Technical Assessment Panel, but is not bound by their opinion.
- The applicant is then advised by the Board as to whether he or she is deemed suitable for registration.

From the submissions made to the Review and during the meetings with the individuals and groups that engaged with me, including applicants for the Technical Assessment process, a number of aspects of the process were noted;

First, the process is regarded by the RIAI and the Technical Assessment Board as a once only process of assessment – an applicant can only apply for assessment once and if he or she fails, then subject to exercising any statutory rights of appeal, there is no opportunity to be reassessed.

Secondly, the Act (Section 22 (2) (b)) specifies that an applicant may only bring forward projects that were carried out during the 10 year period for assessment by the Technical Assessment Panel and the Technical Assessment Board. This raises two practical issues – first it has been difficult for applicants to provide the level of corroboration and verification required to establish their role and responsibility for such projects given the passage of time – some applicants expressed particular concerns about the absence of detailed advance guidance on the levels of verifications that would be required for such projects. Secondly some applicants indicated that while the projects were historical or old, the Panel frequently questioned decisions made or approaches taken in relation to these projects by reference to current laws, regulations and RIAI practice guidelines.

Thirdly, some applicants indicated that they would find some screening or pre assessment mentoring of benefit in helping to determine if they have the necessary experience and skills to be assessed through the Technical Assessment route. A common theme in the submissions from people assessed through the process was that the absence of guidance and support for potential applicants on how to navigate the process was challenging. In particular it was felt that some guidance or mentoring could have helped an applicant to identify weaknesses in their practice or knowledge which could be addressed through additional training prior to being assessed. The absence of guidance or mentoring means that often the first time that the applicant is made aware of shortcomings is once they have completed the formal process and failed.

Fourthly, a number of applicants commented that it was difficult for them to gauge the basis on which they were to be assessed by the Technical Assessment Panel. While the broad parameters of assessment were indicated, there was no guidance given on the scoring or marking that was being applied by the Assessors when reaching an opinion as to whether the applicant is eligible for registration pursuant to Section 22 of the Act. It has been represented by some members of the Technical Assessment Board during my meeting with them that the provision of such a scoring or marking scheme would not be appropriate given the nature of the assessment being undertaken by the panel.

Finally some concerns were expressed that the current provision limiting the extent of experience gained as an architect for a period of 10 years or more in the State is limiting on applicants who have spent some or all of the qualifying period working outside the State.

There are a number of reasons expressed by different interests for the low take up in the number of applicants seeking admission through the Technical Assessment process including;

- General economic downturn – the collapse in construction activity coincided with the commissioning of the new system for Technical Assessment under the Act. The low levels of registrations must be assessed against this general decrease in activity.
- Personal financial position – a number of potential applicants expressed the view that the fee and preparation costs involved in completing an application for Technical Assessment are prohibitive particularly as personal incomes have also reduced over the period given the sharp contraction in construction activity since the onset of the current recession. Some indicated that their personal financial position and age profile would make it impossible for them ever to undergo a costly assessment process.
- Anticipation of a new grandfather clause – some respondents felt that the anticipation of the introduction of a new grandfather clause was acting as a deterrent for higher levels of applications for Technical Assessment – put simply some felt that people would not commit to a process if it was to be replaced with another mechanism for registration.
- Lack of trust in the process – a number of respondents indicated that they would not participate in the Technical Assessment process as they did not have confidence that their work, capacity and competence would be assessed in an objective manner. These people pointed to low levels of numbers applying and admitted through the process as justification for the lack of participation by practically trained Architects in the process.
- Cost – the cost of going through the Technical Assessment Process is €4,500 – some prospective applicants indicated that this cost is excessive, particularly when the costs of preparing for the assessments (including the submission of project portfolios) are also factored into the equation. The RIAI has indicated that the fee imposed for this process is actually insufficient to cover the costs involved and is not excessive.
- Experience of others –some potential applicants said that they were deterred from applying for the Technical Assessment process because of the experience of people they know who had been through the process.
- Concern at the assessment process – a small number of prospective applicants indicated that they did not believe that they should be assessed through the Technical Assessment Process as it was not an effective process to measure the benefit of practical experience, placing as they saw it, an undue emphasis on academic aspects and requiring a subjective assessment of competence by academically trained peers.

- Inflexible process – a number of prospective applicants claimed that the assessment process is inflexible and not designed to facilitate admission, citing an absence of support and assistance for candidates through the process and the fact that it is a “once only” assessment, with no opportunity for remediation or repeat assessment in the event of shortcomings being identified.

8. Assessment of routes to admission for practically trained architects

On balance it strikes me that no single reason predominates as justification for the comparatively low level of applications for registration through the Technical Assessment process. While general economic conditions have been extremely challenging and personal incomes have declined significantly, it is important that those that wish to undertake the Technical Assessment process can do so confident that the process represents a fair, proportionate and reasonable assessment of their skill, competence and experience. Equally it is important that those that are assessed through this process are shown to have the required level of skill, competence and experience to render them eligible for registration as an Architect in Ireland.

As a consequence of this review I believe that there are certain changes that can be applied to the Technical Assessment process which should contribute to increasing the numbers availing of this process, without undermining the important process of assessing competence and skill in the public interest. I have set out these recommendations below.

In summary following a review of the current processes for the admission of practically trained persons to the register of Architects, I have concluded that the Section 14 (2) (f) process involving the prescribed register examination is an inclusive process which is generally working effectively and facilitating the admittance of a significant number of practically trained Architects to the profession. This is borne out by the figures which indicate that 32 people have been registered as Architects under this process - accounting for 8% of the total registrants since the Act commenced. It is also doing so in a way that is improving learning outcomes and providing candidates with practical support, encouragement and guidance on the broad knowledge and competencies required for the practice of architecture. There are some changes that can be made to improve the process further which I have set out below.

The Section 14 (2) (h) process involving Technical Assessment is not operating as an effective mechanism for the admission of practically trained Architects to the profession. Only 8 people have been admitted to the register through this process so far and the levels of applications for assessment has been alarmingly low at just 19. This is not due to the dedication, professionalism or commitment of the Technical Assessment Boards, but primarily because the structures for technical assessment developed in the Act are defective in a number of material respects and as a matter of fact, have not worked effectively to secure the levels of application for the admittance of practically trained persons as the

grandfather provision that the section was designed to address. I have made some recommendations on how this process could be improved if it is to be retained as a route of entry to the Architects register.

9. Recommendations

In his letter requesting me to conduct the independent review of the registration arrangements for Architects under the Act, the Minister indicated that he wanted to see how the system could be improved. He also requested specifically that I make recommendations on how the registration of practically trained architects could be encouraged. Accordingly I am making general recommendations relating to the registration system - these stem both from submissions received during the review process and experience in my capacity as the Chair of the statutory Admissions Board. I am also making specific recommendations in relation to the registration of practically trained Architects. Most of these recommendations will require changes to the Act, although some can be given effect without legislative change.

General Recommendations

1. Streamline routes to admission - The routes to admission set out in the Act should be streamlined in light of the experience since 2009 – some routes to admission set out in Part 3 have never been used and are unlikely to be availed of in the future – accordingly their presence in the Act is unnecessary and portrays a level of legislative complexity which is not required. The Act specifies 20 routes of entry to the Register of Architects – no person has been admitted to the Register under 10 of these routes of entry (Sections 14 (2) (e); Section 14 (2) (f); Section 14 (2) (i); Sections 15 (b) – (f), Section 15 (1) (g) (ii) and Section 16). There is no evidence of demand for admittance through some of these routes and some of the routes have been rendered obsolete by changes in law at EU level. Accordingly in any proposals to amend the Act, consideration should be given to streamlining the current routes of entry to the Register of Architects with the deletion of routes which are either obsolete, or unutilised.
2. Accessible communications concerning admissions - The RIAI should review all documents and forms used for external communications concerning the admissions processes to ensure that they are accessible, user friendly and understandable. While the admissions processes are complex some of the materials produced by the RIAI to guide applicants through the process are unnecessarily complex and could benefit from review and simplification. A review of this nature could be carried out

with the assistance of the National Adult Literacy Agency Plain Language Editing and Training Service.

3. A number of specific changes are recommended to the registration processes; As a consequence of this review and in light of my experience as Chair of the Admissions Board, I believe that there are a number of changes to the registration process which will assist in strengthening the integrity and independence of the process.
 - a. Membership of the registration body should not of itself create eligibility for registration. Under current provisions, one route through which a person is eligible for registration in the register of Architects is if that person is a fellow or member of the registration body (the RIAI). From the perspective of the Admissions Board process, which is intended to facilitate a co-regulation model with a majority of non-architect members present, the current provision frustrates the independence of the model and it removes any discretion or power that the Admissions Board has to review the basis upon which registration is being granted – it effectively allows the registration decision to be taken by the RIAI decision making structures, in which Architects predominate. If a person has been admitted to membership by the RIAI, then the Admissions Board must, by virtue of the RIAI decision, admit the person to the register.

The RIAI contend that the membership process contained in Section 14 (2) (b) of the Act is an essential mechanism to allow access to the register for qualified persons in a regulatory environment which is subject to on-going change and clarification. The RIAI also contends that the procedure is used to provide access to the register and not to restrict it. This may all be so, but the process undermines the intention behind the Act that substantive decisions on Admissions should rest with an independently chaired Admissions Board with a majority of non-Architects members.

Accordingly it is my recommendation that Section 14(2) (b) of the Act should be amended to make provision for registration for a person who is a fellow or member of the registration body, who is not eligible for registration through any of the other routes to admission and who it can be demonstrated to the Admissions Board has achieved the required standard for registration as an architect in Ireland;

Technical Assessment

4. **Changes to the Technical Assessment process** - In the interests of strengthening the registration process and to address some of the concerns that have been identified through this review about the Technical Assessment process, I am making the

following recommendations for changes to the Technical Assessment process (Section 14 (2) (h), in the event that the process remains a part of the registration arrangements for Architects.

- i. At present the panel appointed under Section 21 (4) to form an opinion on whether a person is eligible for registration is comprised exclusively of Architects. It would strengthen the process if this panel was maintained at 3 Architects, but was independently chaired by another construction professional (Engineer, Surveyor) appointed by the Minister. Such a change would assist in facilitating an enhanced perception of an independent, but expertly led assessment process.
- ii. There should be a cyclical process to Technical Assessment – it would assist applicants if there was some cycle introduced for Technical Assessment, so that the dates on which submissions had to be made and subsequent meetings arranged, either with the Technical Assessment Panel or the Technical Assessment Board, were known to applicants before engaging in the process. This would improve the predictability, certainty and efficiency of the process.
- iii. An in-depth pre- assessment screening process should be introduced – before a candidate embarks on the Technical Assessment process they should first have the opportunity to undergo a pre assessment screening process to assist them in determining whether this process is the correct and appropriate route to registration. The benefit of such an approach would be to assist with identifying potential applicants who might be more suitable for the registered admission examination process, given particular gaps in their skills, experience or knowledge. It makes eminent sense for such a screening process to be carried out at an early stage before an applicant undertakes a determined course, which they may never be in a position to complete from the outset. I do not see any conflict between the establishment of a pre assessment screening process and the ultimate decision making function of the Technical Assessment Board, provided the Board is not involved in the provision of that screening process.
- iv. There should be mentoring provided through a panel – there is a sense from some applicants who went through the Technical Assessment Process that they found the process difficult because of a lack of support or guidance from colleagues or suitably qualified mentors . In conjunction with a pre assessment screening process, the introduction of a mentoring process for applicants would assist in providing support to applicants as they prepare for their assessment.

- v. Candidates should be given guidance around the assessment process by the Technical Assessment Panel and how it will be determined. Some applicants for Technical Assessment indicated that they found the process of assessment of their application by the Technical Assessment Panel to be uncertain as to which aspects of the required competencies would be afforded particular priority in the assessment. A contrary view was expressed that the approach of the panel to an assessment must remain entirely subjective to assess the particular circumstances presented by an individual applicant. I am not convinced by this last argument – any process which is established to determine the competence of a person for a particular role or function, must primarily involve the assessment of a person’s abilities by reference to a set of defined criteria if the process is to have a level of certainty and consistency required to give it credibility. This process should be no different.
- vi. Current work and current projects should be included for assessment – Candidates must be able to submit current or recent projects which they are involved in for assessment under Section 22 of the Act. Some candidates expressed unease that they had to submit projects from pre May 2008, which is the period of practical experience taken into account as part of the Technical Assessment process. This unease was based on two elements – first the challenges in providing verification for projects that were carried out some time ago and secondly they felt that they were being assessed on projects carried out some time ago by reference to current laws, standards and practices. If the assessment process is to determine a person’s current level of knowledge, skill and competence, they should be permitted to bring forward recent projects which can in turn be assessed by current standards and requirements.
- vii. Capacity for re-assessment – at present the process for technical assessment of applicants is regarded as a once only procedure – applicants have just one opportunity to be technically assessed and subject to rights of appeal, do not have a facility for re assessment. While the statutory basis for this approach is not clear it does seem unjustly harsh when the outcome of a failure to pass through Technical Assessment could be the loss of a person’s livelihood. There should be some procedure for a person to be reassessed through Technical Assessment in circumstances where they have taken clear and identifiable steps to address specific skills gaps which have been identified in the initial assessment process. This should be possible to achieve without undermining the integrity of the assessment process

or the requirement for the maintenance of the highest necessary standards of competence, skill and experience among practically trained persons. It must also be recognised that in any process which is established to determine standards, there will always be some people who will fail to meet that standard, but the processes to determine competence, experience and skill should be fair and reasonable and where possible allow a person to improve their skill set by reference to defined measures so that they can be reassessed if appropriate. A pre-application assessment process should assist in identifying applicants that would be unlikely to meet the standards required as part of the Technical Assessment process.

- viii. Given the comparatively low take up of the Technical Assessment process the Department should commission a cost benefit analysis of the Section 14 (2) (h) process to determine if the maintenance of the process is justified in the context of another well-functioning mechanism for practically trained persons to gain access to the register. In the event that the Technical Assessment process is discontinued in a streamlining of the routes to entry to the register the costs currently incurred in administering the process could be allocated by the RIAI to reduce the cost of the Section 14 (2) (f) process or provide a bursary for applicants under that process.

Prescribed examination

- 5. **Changes to the prescribed examination** - As the figures indicate, the prescribed examination process under Section 14 (2) (f) is operating successfully and has led to a number of practically trained Architects being admitted to the Register.

There are some enhancements to the process which could increase its accessibility and appeal to potential applicants;

- i. At present the prescription of the register admission examination rests exclusively with the RIAI as the registration body. For the sake of consistency with the provisions applying to the prescription provisions in Section 14 (4) of the Act and in the context of a system of co-regulation, it would be preferable if QQI also had an integral role in the prescription process.
- ii. Section 14 (2) (f) has been the most successful approach to practically trained persons, but is not available to all potential applicants due to the cost of the process, the age restriction or logistical restraints. The not for profit campus company which conducts the process (ARAE

Limited) is keen to address potential obstacles for enrolment and in particular contends that if there were a greater number of applicants, the cost of the course would be reduced proportionately. There are a number of initiatives that might be considered to increase the accessibility to this process;

- a. Cost – the ARAE have indicated that greater numbers enrolling will lead to a lower cost per applicant and suggested for example that if numbers doubled the cost for applicants could half. This would bring the cost on a par with the current fee for Technical Assessment.
- b. E Learning – ARAE Limited has indicated that it is developing some modules for the course leading to the prescribed examination which will be capable of online delivery. This should be of assistance for some applicants, but the nature of the process will always require some level of attendance at lectures, seminars and workshops – indeed it seems that this interpersonal element is a key attribute of the Section 14 (2) (f) process.
- c. Age limit – it is hard to understand the public policy justification for an age limit on applicants through the Section 14 (2) (f) process – this should be repealed.

Mutual recognition of qualifications of practically trained Architects admitted to the Register

6. Recognition of qualification of practically trained Architects – one issue that arose during the review was a concern expressed by practically trained Architects who had been through the Technical Assessment or prescribed examination processes, that they were not afforded equivalent rights to mutual recognition under the Directive of their status as an Architect and received the designation of MRIAI (Irl) rather than the MRIAI designation which applies to applicants being admitted through Section 14 (2) (a).

The RIAI as the registration body and competent authority under the Directive have indicated that they are precluded from allocating any other designation to the practically trained applicants being admitted through these routes as the assessment processes would need to be notified to the European Commission to ensure that they are in compliance with the requirements set out in Article 46 of the Directive. The RIAI have indicated that while the Section 14 (2) (f) prescribed examination process is eligible for notification to the Commission and this is being prepared, the

Technical Assessment process would not seem to fit the criteria in the Directive for notification, although this position may change in the new Directive if formal recognition is permitted for lifelong learning. This is a limitation of the Technical Assessment process as it currently stands. It is important that the notification of the ARAE prescribed examination to the European Commission proceeds at a pace and is not delayed unnecessarily. The absence of equivalence in the mutual recognition of practically trained Architects admitted through the two routes (Section 14 (2) (f) and (h)) in the Act adds to the perception among applicants that they are not treated as equivalent to academically trained Architects, in a material respect. While there are limits to the extent that this can be addressed with regard to the Technical Assessment process under the Directive which might be addressed in the New Directive, it is encouraging that the ARAE process is being notified.

Grandfather clause

7. A number of submissions sought the introduction of a grandfather clause to facilitate practically trained Architects securing admission to the register of Architects, with differing views expressed on how the clause would be administered. Any system that purports to provide recognition for acquired rights and practical experience would need some provision for assessment of competence, skill, and knowledge that is robust, provides adequate assurance to consumers and maintains the protection of standards. A grandfather clause that did not achieve this would be contrary to the public interest. There is an existing grandfather clause mechanism in the Act through the Technical Assessment process, which has not been availed of by a significant number of potential applicants for some of the reasons set out above. I would expect that if the changes identified in these recommendations are implemented, the numbers proceeding through Technical Assessment should increase. In addition if the cost of registering for the ARAE course was reduced as a consequence of increased use or subvention, the numbers of practically trained Architects coming on the register through that process should also increase.

Annual renewal of registration

8. There was an issue that arose during my discussions with the RIAI in connection with Section 12 (2) (b) and the requirements that are placed on Architects taking out or renewing their registration.

At present an Architect seeking to renew their registration under Section 17 of the Act must pay the RIAI an annual registration fee and to secure their membership of the RIAI must provide evidence of maintaining CPD requirements each year. There is no requirement as a condition for annual registration or membership to

demonstrate that the applicant has adequate professional indemnity cover to offer services to the public. As matters stand, the absence of professional indemnity cover is a matter that is addressed through a breach of the Architects Code of Conduct. In light of recent high profile cases concerning poor building standards and the significant losses arising for consumers as a consequence, there would be a public policy justification for reviewing whether the right to practice as an Architect and offer services to the public should only be available to those that can demonstrate that they are adequately insured to provide such services for the level of work that they are engaged in. It is cold comfort for a consumer to discover that their Architect may be in breach of a code of conduct for not having PI cover in respect of professional services that the architect has provided, where the client has suffered a loss. And ultimately the absence of adequate insurance may lead to the State facing claims to recompense members of the public who have suffered as a consequence of a poor service having been provided by an uninsured professional. To address this inadequacy consideration should be given to making it a condition of annual registration as an architect that the applicant provide evidence of holding adequate professional indemnity cover to cover the scale of work that they intend to engage in.

Readmission

9. The procedures for readmission to the register due to non-payment of a registration fee (Section 17) and the provisions dealing with voluntary removal (Section 20) need to be aligned to ensure that the Admissions Board can be satisfied that the person seeking readmission remains eligible. At present a person who is removed for non-payment of their registration fee can automatically gain re-entry to the register on payment of the outstanding fees owing (Section 17 (4)) without any re-assessment by the Admissions Board of their eligibility to be re-registered. However where someone has voluntarily resigned from the register they can be restored to the register subject to any conditions that the Admissions Board imposes – for example if someone has been off the register for a number of years the applicant may be required to undergo an assessment to determine if they have maintained their knowledge level and professional development requirements up to date. The same requirement should be imposed where someone has been off the register for a prolonged period for non payment of fees – there should be some objective assessment by the Admissions Board of their capacity and competence for re-admission.

Architectural Technologists

10. A significant number of submissions were received concerning the registration of Architectural Technologists in Ireland, with parallel submissions seeking a new registration system for Chartered Architectural Technologists. Such matters are not

concerned with the registration system for Architects and as such I have not considered them as being within the scope of the review. I also understand that they are being addressed by the Department with the relevant bodies involved.

Overarching regulatory structure

11. In the context of any future review of the overall regulatory structure for construction professionals there would be merit in determining if consumer confidence would be enhanced and the independence of the regulatory structure bolstered by the introduction of an overarching supervisory regulator to monitor and guide the self-regulatory or co-regulatory functions of the various professional bodies in this area. The manner in which the accountancy profession is regulated, whereby the Irish Auditing and Accounting Supervisory Authority monitors and guides the regulatory functions provided by the various accountancy institutes and organisations could provide an instructive model in this regard.

Garrett Fennell

Solicitor

3 September 2013