

Information Document No. 1

to inform public consultation on the

Review of S.I. No. 9 of 2014

following its first 12 months of operation

April 2015



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



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Background

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

In 2011 a High Level Group on Building Control Reform¹ was convened by the then Minister to review the arrangements in place for the control of building activity and to make recommendations for its reform. The High Level Group consulted broadly with key industry stakeholders and with local authorities and reported its views.

The key improvements to the Building Control framework needed at that time were identified as being:

- (a) The empowerment of competence on professionalism in the design and execution of construction projects;
- (b) Greater accountability for compliance with the minimum requirements of the building regulations relevant to a particular building or works; and
- (c) Better oversight by industry and by local authorities of the design and construction of buildings.

These became the key principles which informed the development of S.I. No. 9 of 2014 in a process overseen by the High Level Group referred to above working in conjunction with industry stakeholders and local authority representatives.

In general terms S.I. No. 9 of 2014 put in place a set of administrative procedures requiring owners, builders, designers and construction professionals as appropriate to appoint competent builders and registered professionals for key roles, to inspect works during construction, to lodge compliance documentation with the local building control authority and to give statutory certificates of compliance relating to the design

¹ Members of the High Level Group on Building Control Reforms:

Michael Layde, Assistant Secretary, Department of Environment, Community and Local Government (Chair)
Aidan O'Connor, Principal Adviser, Department of the Environment, Community and Local Government
David O'Connor, Head of Project Management Office, Local Government Management Agency and formerly Fingal County Manager
John O'Connor, Chief Executive, Housing Agency

and construction of works and buildings. Local authorities are required to validate the statutory certificates and to include them on the public register.

Prior to S.I. No. 9 of 2014 coming into effect on 1 March 2014, the then Minister signalled the intention to review its effectiveness following its first twelve months of operation. During this time, some 6,000 construction projects have been validly commenced and advanced under the new regulatory framework. 552 statutory certificates of completion are now included on the statutory register and this figure will continue to increase incrementally month on month. Many owners, builders and registered construction professionals now have amassed direct experience of operating the new regulatory framework. Overall then, a considerable level of activity has taken place to date to allow for a meaningful, evidence-based review of the effectiveness of S.I. No. 9 of 2014.

Terms of Reference

The scope and objectives of the review are as follows:

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

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

Overview of Building Control Framework

General

The Building Control Act 1990 provided for the establishment of building control authorities and the making of Building Regulations and Building Control Regulations in respect of the construction of buildings. The building regulations were introduced and came into operation in the years immediately following the Act, and gradually enforcement arrangements were developed across the local government sector leading to the nationwide system of local building control authorities we have today.

A clear statutory framework for construction activity, underpinned by the Building Control Act 1990, is therefore in place and is based on:

- clear legal standards as set out in the Building Regulations;
- detailed Technical Guidance Documents to outline how these standards can be achieved in practice;
- the burden and responsibility for compliance resting first and foremost with developers/builders, designers and building owners;
- a statutory responsibility for professionals to design in accordance with the building regulations; and
- the responsibility for enforcing compliance with the building regulations resting with the 31 local building control authorities.

The Act sets out clear roles and responsibilities for a number of parties, namely the Minister, the owner/developer, building professionals including designers in particular and finally local building control authorities.

Minister's Role

My role as Minister is to ensure that appropriate statutory requirements, technical standards and administrative provisions are in place to give practical effect to the Act. In particular this involves the making of Building Regulations and Building Control Regulations. This aspect of the matter has generally worked well and is not in dispute.

Building Regulations set out the legally enforceable minimum requirements that a building must achieve. The requirements are set out in 12 parts (classified as Parts A to M) each of which addresses a key aspect of ensuring the safety and wellbeing of persons in and around the building. A Technical Guidance Document (TGD) is published to accompany each part indicating how the requirements of that part can be achieved in practice. Adherence to the approach outlined in a TGD is regarded, prima facie, as evidence of compliance with the requirements of the relevant part of

the Building Regulations.

The Building Control Regulations deal with the administrative and procedural arrangements in place for the purpose of securing the implementation of, and compliance with, the requirements of the Building Regulations.

Contrary to common perception, the Minister has no role in relation to enforcement activity which the Act of 1990 delegates to local building control authorities who are independent in the exercise of their statutory powers.

Role of Owner and Builder

In relation to the owner/developer, the Act of 1990 places responsibility for compliance with the requirements of the Building Regulations first and foremost on the owner and the builder/developer of a building. Where, for instance, an issue arises concerning non-compliance of a particular building with the Building Regulations, the Act enables the local building control authority to issue an enforcement notice on the owner and/or the builder.

The onus is on the builder /developer and owner to demonstrate compliance with the Building Regulations when required to do so by the relevant local building control authority. Failure to do so is an offence under the Act which may if successfully prosecuted in court lead to a fine and/or a term of imprisonment

Remediation of defects is a matter between the parties concerned i.e. the owner and the builder/developer and their insurers. This applies even where the owner is a local authority. If satisfactory resolution cannot be achieved through dialogue and negotiation the option of seeking civil legal remedy may be considered. In such situations, the statutory requirements provide a yardstick by which the owners/builders, their technical consultants and the courts can determine whether a building is fit for purpose or not.

Role of Construction Professionals

The requirements of the Building Regulations apply to the design, as well as the construction, of a building and there is a responsibility on designers to ensure that their designs are in compliance with the minimum legal requirements.

Construction professionals generally play a key role in inspecting and certifying buildings and works during construction.

More generally, construction professionals play a key role in the planning, design, and construction of our built environment. Notwithstanding the responsibility of the Minister and the Department to guide and regulate development; the quality of our built environment depends to a large extent on the quality of the contribution of construction professionals.

Role of Local Authorities

Local authorities, as building control authorities, have strong powers to:

- scrutinise proposals and inspect works in progress;
- serve enforcement notices for non-compliance;
- institute proceedings for breaches of regulatory requirements;
- seek High Court injunctions if non-compliance poses considerable and serious danger to the public.

Key Provisions of SI No. 9 of 2014

These regulations were made in order to strengthen the arrangements in place for the control of building activity by requiring greater accountability in relation to compliance with Building Regulations in the form of

- statutory certification of design and construction,
- lodgement of compliance documentation,
- mandatory inspections during construction, and
- validation and registration of certificates.

The regulations also provided for electronic administration of building control matters and recognised the online Building Control Management System as the preferred means of building control administration.

The form of commencement notice was revised to require signature by the owner, in recognition of their primary position in the chain of responsibility.

Where the works involve the creation of a new building (including a dwelling), the extension of an existing building beyond 40 square metres, or necessitate an application for a Fire Safety Certificate, the Commencement Notice must be accompanied by the following:

- (a) General Arrangement Drawings
- (b) A schedule of design documents as are currently prepared or to be prepared
- (c) An online- assessment via the Building Control Management System of the proposed approach to compliance with the requirements of the Building Regulations
- (d) The preliminary inspection plan
- (e) A Certificate of Compliance (Design)
- (f) Notices of Assignment in respect of the Builder who will carry out the works and of the Assigned Certifier who will inspect and certify the works, and
- (g) Undertakings by the Builder and the Assigned Certifier to carry-out their roles in accordance with the requirements of the Building Regulations.

The building owner is further obliged to notify the Building Control Authority of any changes of ownership of the works or of the persons assigned as Builder or as Assigned Certifier. Failure to attend to any of these obligations, as well as being an

offence in itself, would delay or inhibit inclusion of details of the final certificate on the statutory register.

The regulations also provide for a statutory certificate of completion which must be submitted to, and validated by, the Building Control Authority before a building may lawfully be opened, occupied or used. The completion certificate must be signed by the Builder and the Assigned Certifier and must be accompanied by plans and documentation showing how the completed building complies with the requirements of the Building Regulations (and clearly indicating any differences to design documentation previously submitted to the Building Control Authority at commencement or during construction) and by the Inspection Plan as implemented by the Assigned Certifier.

A Code of Practice for Inspecting and Certifying Buildings and Works was published by the Minister for the purposes of informing the process of inspecting and certifying work for compliance with the Building Regulations. Compliance with this Code of Practice shall, prima facie, indicate compliance with the relevant requirements of these regulations.

Documentation held on file by a building control authority relevant to works or a building included on the statutory register will be accessible to any person who subsequently acquires an interest in the building concerned.

Related Reforms

Building Control Management System/Shared Services Service Delivery

The new online Building Control Management System (BCMS) has been developed to provide a common platform for clear and consistent administration of building control matters across the local authority sector. The BCMS is an online system which facilitates the electronic administration of building control functions. As such it greatly benefits building control authorities and owners, builders and construction professionals in discharging their separate and distinct responsibilities. It also facilitates a shared services approach to building control administration and ensures greater consistency of administration and decision-making across the local building control authority sector.

Framework for Building Control Authorities

This guidance document comprises an agreed set of common protocols for the exercise of the Building Control function was formally adopted by the County and City Managers Association on 17 July 2014 and is now in operational use. The document outlines standard approaches to the full range of building control activity and includes common reporting templates for inspections.

Construction Industry Register Ireland (CIRI)

The establishment of a statutory register of builders and contractors is a key commitment of the Government's Construction 2020 strategy for the renewal of the construction sector. CIRI was established on a voluntary basis in 2014 to coincide

with the coming into effect of S.I. No. 9 of 2014. The preparation of Heads of Bill to place the register on a statutory footing is now at an advanced stage and the Government is committed to having the necessary legislation in place during the current year.

Latent Defects Insurance

The Government is committed to exploring the potential for reliance on insurance policies as a means of providing ultimate recourse for consumers faced with defective buildings. The order and discipline imposed on construction projects under S.I. No. 9 of 2014 and the register of building contractors are developments which create the conditions necessary for more widespread availability of insurance products in the Irish construction sector. The matter is currently being explored by the Department and by industry and is expected to be the subject of a report to Government later this year.

Making Submissions

- All submissions should be returned by email to buildingstandards@environ.ie on the template provided.
- Submissions should state clearly and briefly what aspect of SI No. 9 of 2014 gives rise to a concern and how, in your view, this concern may be resolved. There is no restriction on the number of concerns which may be returned.
- Further information may be attached in support of your submission but key concerns and recommended solutions should be summarised on the template provided.
- The work of the Department is subject to the Freedom of Information Acts and persons are advised that any submission received may be published by the Department or by other parties on foot of a Freedom of Information request. Personal, confidential or commercially sensitive information should not be included in a submission and it will be presumed that all information contained in submissions is releasable under the Freedom of Information Acts.
- For ease of reference, your attention is again drawn to the following specific questions on which response are particularly welcome.
- Reminder – Please also note Information Note No. 2 and accompanying documentation relating to single dwellings which forms a specific element of the consultation process and ensure to included your views on same in your submission.