



**AN BILLE UM RIALÚ FOIRGNÍOCHTA 2005
BUILDING CONTROL BILL 2005**

EXPLANATORY MEMORANDUM

General

In summary, this Bill provides for the following:

(1) Strengthening of Enforcement Powers of Local Building Control Authorities

- On foot of recommendations made by the Building Regulations Advisory Body (BRAB), the Bill introduces revised procedures for issue of Fire Safety Certificate (FSC), by local Building Control Authorities, confirming compliance with Part B (Fire Safety) of the Building Regulations of designs of new Non-Domestic Buildings (offices, factories, shops, hotels, etc.) and new Apartment Blocks.
- The Bill introduces a Disability Access Certificate (DAC) confirming that the designs of new Non-Domestic Buildings and Apartment Blocks comply with Part M (Access for People with Disabilities) of the Building Regulations.
- The Bill widens the right of building control authorities to seek injunctions from the High Court, e.g., authorities will, under the Bill, be able to seek injunctions to stop the construction or use of new buildings, the design of which has not been granted a Disability Access Certificate (DAC) or Fire Safety Certificate (FSC) or where an Enforcement Notice served by the authority has not been complied with.
- The Bill introduces the option for authorities to bring summary prosecution for all building code offences in the District Court, rather than by way of prosecution on indictment by the DPP in the Circuit Court. This will simplify the prosecution process.
- The Bill increases the maximum penalties for breaches of the national Building Regulations.

(2) Registration of Titles of Certain Building Professions

- The Bill provides that the use of titles of “Architect”, “Quantity Surveyor” and “Building Surveyor” will be confined to persons with recognised qualifications/training/experience, whose names are entered on a statutory register.

- The relevant registers will be administered by—
 - (a) Royal Institute of Architects of Ireland (RIAI), in the case of Architects; and
 - (b) Society of Chartered Surveyors (SCS), in the case of Building Surveyors and Quantity Surveyors.
- (3) Legal Transposition of relevant Provisions of the EU Energy Performance of Buildings Directive (2002/91/EC of 16 December 2002)**
- The Bill provides the legal basis for regulations to mandate the energy performance rating of new dwellings, with effect from 1 January, 2007; for new non-domestic buildings, with effect from 1 January, 2008; and for existing buildings, when buildings are sold or let, with effect from 1 January, 2009.
 - The Bill will enable regulations be made requiring that the design of large new Non-Domestic Buildings (over 1,000 m² or 10,800 square foot) take account of the economic/technical feasibility of using alternative energy systems, including district or block heating; combined heat and power (CHP); heat pumps using heat from ground; and energy supply systems using renewable energy, e.g., solar power, wind power.
- (4) Legal Transposition of relevant Provisions of the EU Directive on Mutual Recognition of Professional Qualifications (2005/36/EC of 7 September 2005)**
- The Parts 3, 4 and 5 of the Bill dealing with the registration of Architects, Quantity Surveyors and Building Surveyors take account of the recently adopted EU Directive 2005/36/EC of 7 September 2005 on Mutual Recognition of Professional Qualifications.

PART 1

PRELIMINARY AND GENERAL

(Sections 1 to 2)

Sections 1 and 2 contain the usual provisions of a general nature dealing with such matters as citation, commencement, and interpretation.

PART 2

GENERAL

(Sections 3 to 9)

Part 2 provides for amendments of the Building Control Act 1990. This part provides for improvements in the processing and format of applications for fire safety certificates by introducing a “regularization certificate” and a fast track procedure in cases where commencement of work is imminent. Part 2 also introduces a “disability access certificate” whereby the design of non-domestic buildings and apartment blocks will be certified as being in compliance with Part M of the building regulations, prior to commencement of work. Furthermore, Part 2 will simplify the prosecution process for building control authorities by giving authorities the option to bring summary

prosecution for all building code offences in the District Court. Finally, Part 2 provides for substantial increases in maximum penalties for breaches of the building code.

Section 3 contains an amendment to interpretation of section 1 of the Building Control Act 1990.

Section 4 amends section 6 of the 1990 Act by providing for revisions to the fire safety certificate (FSC) procedures and the introduction of a Disability Access Certificate as follows:

- (i) a 7-day notice may be submitted to a building control authority where commencement of work is imminent, to be accompanied by a valid fire safety certificate application together with a statutory declaration by the applicant in respect of the certificate and any necessary modification to works carried out prior to the granting of the relevant fire safety certificate;
- (ii) provision is made for application for a revised fire safety certificate in cases where a revised design of a building is necessary, following the grant of planning permission;
- (iii) provision is made for application for a “regularization certificate” in cases where works have been carried out without a fire safety certificate, to be accompanied by as constructed drawings and a certificate stating that the works are in compliance with the requirements of the fire safety requirements of the building regulations;
- (iv) provision is made for the granting, by the local building control authority, of a Disability Access Certificate (DAC) for non domestic buildings and apartment blocks to certify that the design, in the opinion of the building control authority, complies with Part M of the building regulations;
- (v) the opening, operation or occupation of buildings which require a fire safety certificate or disability access certificate is prohibited until DAC and FSC certificates are granted;
- (vi) the duration, manner of provision and display of building energy rating certificate will be specified by regulations made under the Bill.

Section 5 provides for the insertion of two new sections 6A and 6B to the 1990 Act. The new Section 6A requires that alternative energy systems be considered during the design of large buildings over 1,000 square metres (10,800 square foot). The new Section 6B provides for mandatory Building Energy Rating (BER) Certificates for classes of buildings to be prescribed. The Draft Action Plan for the Implementation of the Energy Performance of Buildings Directive (EPBD) in Ireland provides from the phasing in of the BER certification provisions as follows:

- for newly constructed Dwellings, with effect from 1 January 2007;
- for newly constructed Non-Domestic Buildings, with effect from 1 January 2008;
- for existing Buildings, when sold or let, with effect from 1 January 2009.

Section 6 amends Section 7 of the 1990 Act by providing for an appeal to An Bord Pleanála in respect of refusal of, or conditions attached by building control authorities to Regularisation Certificates or Disability Access Certificates under Section 6.

Section 7 amends Section 12 of the 1990 Act by providing for application to the High Court by a building control authority for an order for the removal, alteration or making safe of a building or works which have been commenced or completed without a fire safety, disability or regularization certificate where such certificate was required or the discontinuance of works, or restricting or prohibiting the use of the building until such certificates have been granted.

Section 8 amends section 17 of the 1990 Act to provide for the option for building control authorities to bring summary prosecution for all building code offences under the Act in the District Court. It also increases the maximum fines for summary convictions for offences under the Act from £800 to €5,000; and from £150 per day to €500 per day for ongoing offences. The maximum fine for conviction on indictment is being doubled from £10,000 to €25,000.

Section 9 provides for the insertion of two new Sections 17A and 17B to the 1990 Act. The new Section 17A provides for payment of fines to a local building control authority where the fine results from a prosecution brought by the authority. The new Section 17B provides for the evidential value of electronically stored building control records in any prosecutions under the Act.

PART 3

REGISTRATION OF ARCHITECTS

(Sections 10 to 24)

Part 3 provides for statutory protection of the title of “Architect” by restricting the lawful use of the title to suitably qualified persons whose names are entered on a statutory register to be established in accordance with the provisions of this Part. The registration system will be administered by the *Royal Institute of Architects of Ireland (RIAI)*. This Part also specifies criteria for automatic eligibility for admission to the Architects register. It provides for the setting up of an Admissions Board, a Technical Assessment Board, and a Professional Conduct Committee. Part 3 further provides for an Appeals Board to determine appeals against decisions of any of the aforementioned Boards or Committee, with an ultimate right of appeal against decisions of the Appeals Board to the High Court. Finally, Part 3 provides for payment of registration fees, the appointment of a Registrar, and for fines or penalties for misuse of the title of “Architect”.

Section 10 designates the Royal Institute of Architects of Ireland (RIAI) as the registration body and as the competent authority under Directive 2005/36/EC under this part. It provides that the registration body must establish an Admissions Board for the purpose of registering members of the architectural profession. Membership of the Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 architects to be nominated by the registration body;
- (ii) 4 persons (who are not architects) to be nominated by the Minister;

- (iii) the chairperson, who will be appointed by the registration body subject to the prior approval of the Minister will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 11 sets out the eligibility criteria for admission to the architects register for persons holding approved qualifications, including nationals of EU Member States, the European Economic Area (EEA) and the Swiss Confederation. It also provides that membership of the registration body is not a prerequisite for registration and that the same registration fee will apply to members and non-members of the body.

Section 12 sets out the detailed criteria for registration of persons who are nationals of EU Member States, and the European Economic Area in accordance with EU obligations.

Section 13 provides for application for recognition of qualifications by a further category of persons from Member States who are eligible to apply to the Admissions Board for registration under EU Directive 2005/36/EC (Chapter 1, Title 111). It sets out the procedures for assessment of such applications, including the procedures for interview by the Board, where such is considered necessary. The board must make its decision on the application within a 3 month period of the date of receipt of a valid application. There is provision for extending the period for assessment by 1 extra month in specified cases.

Section 14 provides for the payment of prescribed registration fees and annual retention fees to the registration body. The Registrar may remove the names of registrants from the register for non-payment of retention fees within two months of sending of a second notice by pre-paid post. Names may be restored to the register on payment of the fee. In cases of verified hardship, the Registrar may remit all or part of the fee.

Section 15 makes it an offence for persons to use the title “architect”, unless entitled to do so, either alone or in combination with either names, letters, titles or descriptions to imply that they are registered; with intent to deceive, makes use of a certificate issued under the Act; makes a false declaration for the purpose of obtaining registration, aids or abets any such action, or practices any business under the name or title containing the word “architect”. Persons who do so, will be guilty of an offence and will be liable on summary prosecution to a fine of €5,000 and €500 for each day of an ongoing offence, and/or imprisonment for a term not exceeding 12 months.

Section 16 enables the registration body to appoint a Registrar for keeping an updated register of the names of persons registered. It will also decide on the format of the register. Following registration, a certificate will be forwarded to the registrant. The Registrar will ensure that the register is available for public inspection during working hours. It also provides for payment of a salary or fee to the Registrar by the registration body, which may also pay pension contributions and allowances expenses.

Section 17 enables a registrant to apply to have his/her name removed from the register and to subsequently apply for restoration. An application for removal from a registrant will not be considered while an investigation is underway by the Professional Conduct Committee until such proceedings have been completed and necessary action decided. Nothing in this section will prevent the Professional Conduct Committee from refusing to restore a person’s name to the

register on the grounds of unfitness to practice architecture or attaching certain conditions to the entry, whereupon the registrar will notify the person of the decision taken, the date and the reasons therefor.

Section 18 provides for the establishment by the registration body of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under Section 11. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 architects to be nominated by the registration body;
- (ii) 4 persons (who are not architects) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 19 provides for the procedure of the Technical Assessment Board in assessing applications from persons who have 10 years experience in the field of architecture in the State, on the operative date. It cites the documentation to be submitted by applicants for registration, the criteria and format to be used for assessment of applications. It specifies that the board may interview applicants, if considered necessary. Where interviews are considered necessary, 4 board members will be present and the interview may be recorded in writing or any other format as the board may decide. The interviewee may, at his/her own expense, be accompanied by a professional advisor, including a lawyer. Applicants must be notified of the decision taken by the Board. Where a decision is favourable, the board will notify the registrar who will arrange to register the applicant, on payment of appropriate fee.

Section 20 provides for the establishment by the registration body of a Professional Conduct Committee to examine complaints made in regard to alleged professional misconduct. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 architects to be nominated by the registration body;
- (ii) 4 persons (who are not architects) to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment;
- (iii) the chairperson, who will be appointed by the registration body (subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment), will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 21 provides for the establishment by the registration body of an Appeals Board. The Board will be comprised of a Chairperson and 5 members as follows:

- (i) 2 architects to be nominated by the registration body, neither of whom will be a member of any other Board or Committee established under this Part;

- (ii) 3 persons (who are not architects), 2 of whom will be nominated by the Minister and 1 will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment, none of whom will be a member of any other Board or Committee established under this Part;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 22 sets out the procedures for making an appeal to the Appeals Board by persons who are adversely affected by decisions of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee. It details the requirements for processing of the appeal by the Board and informing the appellant of the outcome of the appeal. The appeal must be in writing, relate to either procedural or substantive matters and be lodged within 2 months of the date of the decision being appealed. A witness at a hearing will have the same immunities and privileges as a witness before the High Court.

The procedures of the Appeals Board shall make provision for:

- (i) notification of the appellant, the Chairperson of the relevant Board or Committee, and any other person whose evidence may be required to attend before the Board on a particular date and time at a specified venue;
- (ii) advising the appellant of the right to present the case or, at their own expense, through a legal representative;
- (iii) the examination of witnesses;
- (iv) whether evidence should be taken under oath;
- (v) recording of evidence.

The Board, having considered an appeal, may:

- (i) confirm the decision of the relevant Board or Committee, subject to an amendment;
- (ii) annul the decision and direct the relevant Board or Committee to make a new decision; or
- (iii) give such other direction as it thinks fit.

The Chairperson shall then notify the appellant by pre-paid registered post of the decision taken, the date of same and the reasons for the decision, and of the appellant's right of appeal to the High Court. The relevant Board or Committee against whose decision the appeal was lodged shall also be informed of the decision. Where the appellant had made a complaint to the Professional Conduct Committee under Part 6, the registered architect against whom the complaint was made, shall also be notified of the decision of the Board.

Section 23 provides for the right of appeal to the High Court by persons adversely affected by a decision of the Appeals Board. The appeal must be lodged within 2 months of the date of the decision of the Appeals Board. The Court may—

- (i) confirm the decision of the Appeals Board, subject to any amendment the Court may decide;
- (ii) overturn the decision and direct the Appeals Board to make a new decision;
- (iii) give any other direction the Court thinks fit.

In the case of an appeal from a decision of the Professional Conduct Committee, the Court may admit evidence of a person of standing in the architectural profession as to what constitutes professional misconduct. The Court may also direct how the costs of the application are to be borne.

Section 24 provides that the Appeals Board will also have jurisdiction in the case of complaints arising from non-decisions by the relevant Board within the period specified under *Section 12(5)* or *section 13(11)* in assessment of applications for registration.

PART 4

REGISTRATION OF QUANTITY SURVEYORS

(Sections 25 to 33)

Part 4 specifies the statutory protection of the title of “Quantity Surveyor” by limiting the lawful use of this title to suitably qualified persons whose names are entered on a statutory register. The registration system will be administered by the *Society of Chartered Surveyors (SCS)*. Part 4 also specifies the criteria for automatic eligibility for admission to the relevant register. It provides for the setting up of an Admissions Board, a Technical Assessment Board, and a Professional Conduct Committee. Part 4 further provides for an Appeals Board to determine appeals against decisions of any of the aforementioned Boards, with an ultimate right of appeal against decisions of the Appeals Board to the High Court. Finally Part 4 provides for payment of registration fees and appointment of a Registrar and for the determination of fines or penalties for misuse of the title of “Quantity Surveyor”.

Section 25 designates the Society of Chartered Surveyors as the registration body under this Part, and as the competent authority for quantity surveyors in the State. It provides that the registration body must establish an Admissions Board for the purpose of registering members of the quantity surveying profession. Membership of the Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 quantity surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not quantity surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 26 sets out the eligibility criteria for admission to the quantity surveyors register for persons holding approved qualifications, including nationals of EU Member States. It also provides that membership of the registration body is not a prerequisite for registration

and that the same registration fee will apply to members and non-members of the body.

Section 27 provides for application for recognition of qualifications by a further category of persons from Member States who are eligible to apply to the Admissions Board for registration under EU Directive 2005/36/EC (Chapter 1, Title 111). It sets out the procedures for assessment of such applications, including the procedures for interview by the Board, where such is considered necessary. The Board must make its decision on the application within a 3 month period of the date of receipt of a valid application. There is provision for extending the period for assessment by 1 extra month in specified cases.

Section 28 provides for the payment of prescribed registration fees and annual retention fees to the registration body. The Registrar may remove the names of registrants from the register for non-payment of retention fees within two months of sending of a second notice by pre-paid post. Names may be restored to the register on payment of the fee. In cases of verified hardship, the Registrar may remit all or part of the fee.

Section 29 makes it an offence for persons to use the title “quantity surveyor”, unless entitled to do so, either alone or in combination with either names, letters, titles or descriptions to imply that they are registered; with intent to deceive, makes use of a certificate issued under the Act; makes a false declaration for the purpose of obtaining registration, or aids or abets any such action; practices any business under the name or title containing the word “quantity surveyor”. Persons who do so, will be guilty of an offence and will be liable on summary prosecution to a fine of €5,000 and €500 for each day of an ongoing offence and/or imprisonment for a term not exceeding 12 months.

Section 30 enables the registration body to appoint a registrar for keeping an updated register of the names of persons registered. It will also decide on the format of the register. Following registration, a certificate will be forwarded to the registrant. The register will be available for public inspection during working hours. It also provides for payment of a salary or fee to the registrar by the registration body, which may also pay pension contributions and allowances expenses.

Section 31 enables a registrant to apply to have his/her name removed from the register and to subsequently apply for restoration. An application for removal from a registrant will not be considered while an investigation is underway by the Professional Conduct Committee until such proceedings have been completed and necessary action decided. Nothing in this section will prevent the Professional Conduct Committee from refusing to restore a person’s name to the register on the grounds of unfitness to practice quantity surveying or attaching certain conditions to the entry, whereupon the registrar will notify the person of the decision taken, the date and the reasons therefor.

Section 32 provides for the establishment by the registration body of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under Section 26. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 quantity surveyors to be nominated by the registration body;

- (ii) 4 persons (who are not quantity surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 33 provides for the procedure of the Technical Assessment Board in assessing applications from certain persons who have 8 or 10 years experience in the field of quantity surveying in the State, on the operative date. It cites the documentation to be submitted by applicants for registration, the criteria and format to be used for assessment of applications. It specifies that the board may interview applicants, if considered necessary. Where interviews are considered necessary, 4 board members will be present and the interview may be recorded in writing or any other format as the board may decide. The interviewee may, at his/her own expense, be accompanied by a professional advisor, including a lawyer. Applicants must be notified of the decision of the Board. Where a decision is favourable, the board will notify the registrar who will arrange to register the applicant, on payment of appropriate fee.

Section 34 provides for the establishment by the registration body of a Professional Conduct Committee to examine complaints made in regard to alleged professional misconduct. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 quantity surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not quantity surveyors) to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 35 provides for the establishment by the registration body of an Appeals Board. The Board will be comprised of a Chairperson and 5 members as follows:

- (i) 2 persons (who are not quantity surveyors), to be nominated by the registration body, neither of whom will be a member of any Board or Committee established under this Part;
- (ii) 3 persons (who are not quantity surveyors), to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment, none of whom will be a member of any Board or Committee established under this Part;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 36 sets out the procedures for making of an appeal by persons who are adversely affected by decisions of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee. It details the requirements for processing of the appeal by the Board and informing the appellant of the outcome of the appeal. The appeal must be in writing, relate to either procedural or substantive matters and be lodged within 2 months of the date of the decision being appealed. A witness at a hearing will have the same immunities and privileges as a witness before the High Court.

The procedures of the Appeals Board shall make provision for:

- (i) notification of the appellant, the Chairperson of the relevant Board or Committee, and any other person whose evidence may be required to attend before the Board on a particular date and time at a specified venue;
- (ii) advising the appellant of the right to present the case or, at their own expense, through a legal representative;
- (iii) the examination of witnesses;
- (iv) whether evidence should be taken under oath;
- (v) recording of evidence.

The Board, having considered an appeal, may:

- (i) confirm the decision of the relevant Board or Committee, subject to an amendment;
- (ii) annul the decision and direct the relevant Board or Committee to make a new decision; or
- (iii) give such other direction as it thinks fit.

The Chairperson shall then notify the appellant by pre-paid registered post of the decision taken, the date of same and the reasons for the decision and of the appellant's right of appeal to the High Court. The relevant Board or Committee against whose decision the appeal was lodged shall also be informed of the decision. Where the appellant had made a complaint to the Professional Conduct Committee under Part 6, the registered quantity surveyor against whom the complaint was made, shall also be notified of the decision of the Board.

Section 37 provides for the right of appeal to the High Court by persons adversely affected by a decision of the Appeals Board. The appeal must be lodged within 2 months of the date of the decision of the Appeals Board. The Court may—

- (i) confirm the decision of the Appeals Board, subject to any amendment the Court may decide;
- (ii) overturn the decision and direct the Appeals Board to make a new decision;
- (iii) give any other direction the Court thinks fit.

In the case of an appeal from a decision of the Professional Conduct Committee, the Court may admit evidence of a person of standing in the quantity surveying profession as to what constitutes professional misconduct. The Court may also direct how the costs of the application are to be borne.

Section 38 provides that the Appeals Board will also have jurisdiction in the case of complaints arising from non-decisions by the relevant Board within the period specified under *Section 27(12)* or *section 27(13)* in assessment of applications for registration.

PART 5

REGISTRATION OF BUILDING SURVEYORS

(Sections 39 to 52)

Part 5 provides for the statutory protection of the title of “Building Surveyor” by restricting the lawful use of the title to suitably qualified persons whose names are entered on a statutory register. The registration system will be administered by the *Society of Chartered Surveyors (SCS)*. Part 5 also specifies the criteria for automatic eligibility for admission to the register of Building Surveyors. It provides for the setting up of an Admissions Board, a Technical Assessment Board, and a Professional Conduct Committee. Part 5 further provides for establishment of an Appeals Board to determine appeals against decisions of any of the aforementioned Boards or Committee, with an ultimate right of appeal against decisions of the Appeals Board to the High Court. Finally Part 5 provides for payment of registration fees and appointment of a Registrar and for the determination of fines or penalties for misuse of the title of “Building Surveyor”.

Section 39 designates the *Society of Chartered Surveyors (SCS)* as the registration body under this Part and as the competent authority for building surveyors in the State. It provides that the registration body must establish an Admissions Board for the purpose of registering members of the building surveying profession. Membership of the Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 building surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not building surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 40 sets out the eligibility criteria for admission to the building surveyor’s register for persons holding approved qualifications, including nationals of EU Member States. It also provides that membership of the registration body is not a prerequisite for registration and that the same registration fee will apply to members and non-members of the body.

Section 41 provides for application for recognition of qualifications by persons from Member States who are eligible to apply to the Admissions Board for registration under EU Directive 2005/36/EC (Chapter 1, Title 111). It sets out the procedures for assessment of such applications, including the procedures for interview by the Board, where such is considered necessary. The Board must make its decision on the application within a 3 month period of the date of receipt of a valid application. There is provision for extending the period for assessment by 1 extra month in specified cases.

Section 42 provides for the payment of prescribed registration fees and annual retention fees to the registration body. The Registrar may remove the names of registrants from the register for non-payment of retention fees within two months of sending of a second notice by pre-paid post. Names may be restored to the register on payment of the fee. In cases of verified hardship, the Registrar may remit all or part of the fee.

Section 43 makes it an offence for persons to use the title “building surveyor”, unless entitled to do so, either alone or in combination with either names, letters, titles or descriptions to imply that they are registered; with intent to deceive, makes use of a certificate issued under the Act; makes a false declaration for the purpose of obtaining registration, or aids or abets any such action: practices any business under the name or title containing the word “building surveyor”. Persons who do so, will be guilty of an offence and will be liable on summary prosecution to a fine of €5,000 and €500 for each day of an ongoing offence, and/or imprisonment for a term not exceeding 12 months.

Section 44 enables the registration body to appoint a registrar for keeping an updated register of the names of persons registered. It will also decide on the format of the register. On registration, a certificate will be forwarded to the registrant. The register will be available for public inspection during working hours. It also provides for payment of a salary or fee to the registrar by the registration body which may also pay pension contributions and allowances expenses.

Section 45 enables a registrant to apply to have his/her name removed from the register and to subsequently apply for restoration. An application for removal from a registrant will not be considered while an investigation is underway by the Professional Conduct Committee until such proceedings have been completed and necessary action decided. Nothing in this section will prevent the Professional Conduct Committee from refusing to restore a person’s name to the register on the grounds of unfitness to practice building surveying or attaching certain conditions to the entry, whereupon the registrar will notify the person of the decision taken, the date and the reasons therefor.

Section 46 provides for the establishment by the registration body of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under Section 40. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 building surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not building surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body subject to the prior approval of the Minister will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 47 provides for the procedure of the Technical Assessment Board in assessing applications from certain persons who have 8 or 10 years experience in the field of building surveying in the State, on the operative date. It cites the documentation to be submitted by applicants for registration, the criteria and format to be used for assessment of applications. It specifies that the board may interview

applicants, if considered necessary. Where interviews are considered necessary, 4 board members will be present and the interview may be recorded in writing or any other format as the board may decide. The interviewee may, at his/her own expense, be accompanied by a professional advisor, including a lawyer. Applicants must be notified of the decision of the Board. Where a decision is favourable, the board will notify the Registrar who will arrange to register the applicant, on payment of appropriate fee.

Section 48 provides for the establishment by the registration body of a Professional Conduct Committee to examine complaints made in regard to alleged professional misconduct. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 building surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not building surveyors) to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment;
- (iii) the chairperson, who will be appointed by the registration body subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 49 provides for the establishment by the registration body of an Appeals Board. The Board will be comprised of a Chairperson and 5 members as follows:

- (i) 2 persons (who are not building surveyors), to be nominated by the registration body, neither of whom will be a member of any Board or Committee set up under this Part;
- (ii) 3 persons (who are not building surveyors), 2 of whom will be nominated by the Minister and 1 will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment, none of whom will be a member of any other Board or Committee established under this part;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 50 sets out the procedures for making of an appeal by persons who are adversely affected by decisions of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee. It details the requirements for processing of the appeal by the Board and informing the appellant of the outcome of the appeal. The appeal must be in writing, relate to either procedural or substantive matters and be lodged within 2 months of the date of the decision being appealed. A witness at a hearing will have the same immunities and privileges as a witness before the High Court.

The procedures of the Appeals Board shall make provision for:

- (i) notification of the appellant, the Chairperson of the relevant Board or Committee, and any other person

whose evidence may be required to attend before the Board on a particular date and time at a specified venue;

- (ii) advising the appellant of the right to present the case or, at their own expense, through a legal representative;
- (iii) the examination of witnesses;
- (iv) whether evidence should be taken under oath;
- (v) recording of evidence.

The Appeals Board, having considered an appeal, may:

- (i) confirm the decision of the relevant Board or Committee, subject to an amendment;
- (ii) annul the decision and direct the relevant Board or Committee to make a new decision; or
- (iii) give such other direction as it thinks fit.

The Chairperson of the Board shall then notify the appellant by pre-paid registered post of the decision taken, the date of same and the reasons for the decision and of the appellant's right of appeal to the High Court. The relevant Board or Committee against whose decision the appeal was lodged shall also be informed of the decision. Where the appellant had made a complaint to the Professional Conduct Committee under Part 6, the registered building surveyor against whom the complaint was made, shall also be notified of the decision of the Board.

Section 51 provides for the right of appeal to the High Court by persons adversely affected by a decision of the Appeals Board. The appeal must be lodged within 2 months of the date of the decision of the Appeals Board. The Court may—

- (i) confirm the decision of the Appeals Board, subject to any amendment the Court may decide;
- (ii) overturn the decision and direct the Appeals Board to make a new decision;
- (iii) give any other direction the Court thinks fit.

In the case of an appeal from a decision of the Professional Conduct Committee, the Court may admit evidence of a person of standing in the building surveyor profession as to what constitutes professional misconduct. The Court may also direct how the costs of the application are to be borne.

Section 52 provides that the Appeals Board will also have jurisdiction in the case of complaints arising from non-decisions by the relevant Board within the period specified under Section 41(12) or section 41(13) in assessment of applications for registration.

PART 6

FITNESS TO PRACTICE

(Sections 53 to 56)

Section 53 enables the registration bodies to prepare a Code of Professional Conduct and standards to which registered professionals must adhere. The code may be reviewed from time to time, as considered necessary by the registration bodies. A copy of the code will be available, at a reasonable charge, or without charge as may be determined by the registration bodies.

Section 54 sets out the procedures for examination of a complaint made to the Professional Conduct Committee (PCC) and the conduct of an inquiry into alleged professional misconduct of a registered professional. Where the Committee decides that a prima facie case has not been made for an inquiry, it will inform the complainant in writing of the decision.

The PCC, following consideration of the complaint and if considered appropriate, may provide for resolution of the complaint initially by mediation between the parties to the complaint, before a person/persons appointed by the relevant registration body. Where mediation is unsuccessful, the Committee must proceed to examine the complaint.

Provision is made whereby the Chairperson of the PCC will inform the members of the Committee, the complainant and the registered professional of the date, time and venue for the hearing. The notification to the registrant will outline the details of the complaint and advise of his/her right to appear before the Committee and be represented by a person of his/her choice.

The PCC, when holding an inquiry under this section, will have the powers, rights or privileges vested in the High Court or a judge of the High Court in regard to enforcing the attendance of witnesses, examining witnesses under oath or compelling the production of documents. Witnesses appearing at an inquiry under this section will have the same immunities and privileges as witnesses before the High Court.

On completion of an inquiry, the PCC must produce a report embodying its findings, to include the nature of the complaint and the evidence before it. The findings of the Committee will not be made public, without the consent of the registrant who has been the subject of the inquiry, unless he/she has been found guilty of professional misconduct by the Committee.

Where the PCC has found the registrant not guilty of professional misconduct, it must so notify the complainant and advise of the right of appeal to the Appeals Board. Persons who fail to attend a hearing, fail to produce necessary documents or refuse to take an oath or answer questions which the Committee may lawfully ask, will be guilty of an offence and will be liable, on summary conviction to a fine not exceeding €5,000 and €500 for each day of an ongoing offence and /or to imprisonment for a term not exceeding 12 months.

Section 55 provides that where the PCC finds there has been no professional misconduct by the registrant, it will notify the registrant of the decision and take no further action. Where the Committee finds that a registrant is guilty of professional misconduct it may do one or more of the following:

- advise, admonish or censure the registrant;
- impose a fine of a specified amount, which, if unpaid after a 2 month period has elapsed following notification of the fine, the Registrar may strike the registrant's name from the register;
- suspend the registrant from the register with provision to reapply for admission after a specified period;
- erase the registrant's name from the register permanently;
- allow for the registrant's name to remain in the register subject to the imposition of certain conditions for so remaining as it considers appropriate, to be complied with by the registrant.

The Chairperson of the PCC must inform the registrant by pre-paid registered post of the decision, the date thereof and the reasons for that decision and of the registrants right to appeal to the Appeals Board. Without prejudice to the operation of the other provisions of the Act in relation to appeals against decisions to exercise such powers, none of the powers to suspend/remove the name of a registered professional from a register may be exercised by the PCC unless confirmed by the High Court. The decision of the PCC must be stayed where the registrant appeals to the Appeals Board within the specified period, until the appeal is disposed of, to include the time specified for appeal to the High Court.

Where no appeal is made against the decision of the PCC, or an appeal is made and has been disposed of, and where the decision of the Committee to strike the registrant from the register has been upheld, the Registrar may apply, *ex parte*, to the High Court for confirmation of the decision and the Court shall, on hearing the application, unless it sees good reason to the contrary, confirm the decision and either direct the registrar to remove the registrant's name from the register or direct that during a specified period (beginning not earlier than 7 days after the decision of the Court) registration of the professional's name shall not have effect.

The Registrar must notify the registrant by pre-paid registered post of either direction of the Court. The name of a registrant which has been erased or suspended under this section, may be restored to the register on the direction of the PCC, subject to any conditions specified, including payment of a fee which must not exceed the initial registration fee.

Section 56 provides that the proceedings of or communications by the PCC in the course of an inquiry, and any reports made in the exercise of its powers, duties or functions under this Part are absolutely privileged in any action for defamation.

PART 7

MISCELLANEOUS PROVISIONS

(Sections 57 to 68)

Section 57 provides that a registration body may arrange for assistance from persons for any board or Committee for the proper discharge of its functions. A registration body may also make rules to facilitate the execution of its functions and those of any board or committee, including the Appeals Board, as provided for under this Act. The registration body must publish the draft rules and circulate them to the board or committee affected by their requirements.

Section 58 provides that the registration body may prescribe the payment of fees for the following:

- (i) processing applications for registration;
- (ii) the annual retention of a name in the register maintained by the Body, *in consultation with* the Director of Consumer Affairs;
- (iii) restoring the name of any person in the register following removal pursuant to the provisions of the Act;
- (iv) removing the name of any person from the register on the application of that person;
- (v) entering additional qualifications of any person in the register, not being qualifications required for registration;
- (vi) issuing a certificate of registration;
- (vii) provision of any other service by the registration body (or a related board or committee).

Section 59 provides that a registrant may, on payment of a specified fee, apply to the registration body to have additional qualifications entered in the register. The registration body will decide what additional qualifications, other than those required for registration, may be entered in the register.

Section 60 provides that the Minister may make regulations for prescribing any matter referred to in the Act as prescribed or to be prescribed, or in relation to any matter referred to as the subject of regulations. Regulations may contain such incidental, supplemental and consequential provisions as the Minister considers necessary or expedient. It also includes the standard provision for the laying of regulations before both Houses of the Oireachtas.

Section 61 provides that the Registrar, in order to keep the register correct and updated, will be obliged to correct all errors in the register and to remove entries procured by fraud or misrepresentation; to amend addresses where necessary and to remove the names of professionals who are deceased. On taking such action, the Registrar must notify the persons concerned or the next of kin, if such person can be identified, of the action taken and the reason therefor.

Section 62 provides that expenses incurred in administrative functions under the Act by the registration body shall be defrayed by the body from funds at its disposal. It also provides for payment of remuneration and allowances for expenses of the chairpersons and

members of any board or committee established under the Act, to be determined by the registration body, which shall be paid from the funds at the disposal of the body.

Section 63 provides that summary proceedings for offences under Part 3, 4, 5 and 6 of the Act may be brought and prosecuted by the registration body. Notwithstanding the provisions of the Petty Sessions (Ireland) Act 1851, summary proceedings may be commenced within 12 months from the date of the offence or within 6 months from the date on which sufficient evidence to justify proceedings, comes to the knowledge of the person instituting the proceedings, whichever is later. However, no such proceedings can be commenced later than 5 years from the date of the offence committed. A certificate signed by the person shall be admitted as evidence in any legal proceedings as to the date or dates such evidence came to his or her knowledge, without proof of the signature of the person, unless the contrary is shown.

Section 64 provides that in any legal proceedings, a certificate signed by the relevant registrar containing only information stated to be taken from registration records will be sufficient evidence of the facts contained therein, unless proved to the contrary. Certificates of registration data stored in electronic format or photographic, digitized or other modern format will have evidential value.

Section 65 determines the term of office of members of boards or committees at 3 years, unless he or she sooner dies or resigns. A member shall not serve for more than 2 consecutive terms of office. It also provides for procedure for resignation of members, filling of casual vacancies and where the registration body may provide grounds for removal of a member from office and the procedure for so doing.

Section 66 provides for the procedures to be followed at meetings of any board or committee established under the Act.

Section 67 provides that a registration body shall carry out any additional functions assigned to it by Order made by the Minister relating to the implementation of an act adopted by an institution of the EU in regard to the relevant professions.

Section 68 provides that the registration body shall prepare an annual report on proceedings under the Act, to include account details as certified by an auditor. The report must be published and put on sale as soon as may be.

Staffing and Financial Implications

The staffing and financial implications are being assessed and will be addressed during the enactment of the Bill.

*An Roinn Comshaoil Oidhreachta agus Rialtais Áitiúil
Mí na Nollaig 2005*