



Tithe an
Oireachtais
Houses of the
Oireachtas

TITHE AN OIREACHTAIS

An Comhchoiste um Thithíocht, Pleanáil agus Rialtas Áitiúil

**Tuarascáil ón gComhchoiste ar Scéim Ghinearálta an Bhille um
Rialú Foirgníochta (Clár Tionscail Tógála na hÉireann) 2017**

Nollaig 2017

HOUSES OF THE OIREACHTAS

Joint Committee on Housing, Planning & Local Government

**Report of the Joint Committee on the General Scheme of the
Building Control (Construction Industry Register Ireland) Bill
2017**

December 2017

32/HPLG/05

Preface



On 2nd June 2017, the then Minister for Housing, Planning, Community & Local Government, Mr. Simon Coveney T.D., submitted the General Scheme of the Building Control (Construction Industry Register Ireland) Bill ('the General Scheme') to the then Joint Committee on Housing, Planning, Community & Local Government in accordance with Standing Orders for the purpose of pre-legislative scrutiny ('PLS') of the General Scheme.

The Joint Committee agreed to undertake pre-legislative scrutiny of the General Scheme and the Committee has endeavoured to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments is warranted. The approach taken by the Committee in reporting on the scrutiny of the General Scheme was not to examine each Part of the General Scheme, rather to identify the most critical issues and to focus on these.

The voluntary register currently in place was formally established in April 2014 by the Construction Industry Federation (CIF), in consultation with the then Department of the Environment and is operated by the CIF. The purpose of the proposed legislation is to replace the existing voluntary register and provide a legislative framework for the establishment, on a statutory basis, of a register of builders, contractors and sub-contractors (collectively defined as "builders" in the proposed legislation). The proposed legislation seeks to develop and promote a culture of competence, good practice and compliance with the Building Regulations in the construction sector.

Developing and promoting a culture of high standards, competence and compliance with the Building Regulations will greatly benefit consumers, those operating within the construction industry and the wider general public. Establishing the Construction Industry Register Ireland (CIRI) on a statutory footing will go a long way to providing this benefit.

The Committee has identified seven key issues and made recommendations on these issues which are explained in detail in the body of the Report. The Committee has made

these recommendations in the hope that they will assist Minister Murphy and Department officials in improving this important piece of legislation.

I would like to thank all the individuals and groups who assisted and contributed to our consideration of this subject, specifically those who appeared before the Joint Committee and those that made submissions in writing.



Maria Bailey TD
Chair of the Joint Committee
December 2017

Introduction

The General Scheme of the Building Control (Construction Industry Register Ireland) Bill 2017 ('General Scheme') was published by the then Department of Housing, Planning, Community and Local Government on 31st May 2017. A Regulatory Impact Analysis (RIA) of the General Scheme was also published. The General Scheme is comprised of 25 Heads and 1 Schedule. In line with Standing Order 146A the General Scheme was referred to the Joint Oireachtas Committee on 2nd June 2017 and a decision was made by the Joint Committee to undertake pre-legislative scrutiny. The Committee held pre-legislative scrutiny meetings on the General Scheme of the Bill on Wednesday, 4th October 2017 and Thursday, 26th October 2017.

The purpose of the proposed legislation is to replace the existing voluntary register and provide a legislative framework for the establishment, on a statutory basis, of a register of builders, contractors and sub-contractors (collectively defined as "builders" in the proposed legislation). The proposed legislation seeks to develop and promote a culture of competence, good practice and compliance with the Building Regulations in the construction sector. The voluntary register currently in place was formally established in April 2014 by the Construction Industry Federation (CIF), in consultation with the then Department of the Environment and is operated by the CIF. This register, endorsed by the Government, is known as the Construction Industry Register Ireland (CIRI). CIRI is comprised of the Construction Industry Registration Board which governs approvals of registrations, the Complaints and Appeals Committee, and an Executive and Administration Office.

The objective of establishing the CIRI as a mandatory, statutory register is to primarily strengthen the arrangements in place for the control of building activity through the registration of all builders with a view to ensuring quality competence and good practice in the construction sector. It is seen as an essential consumer protection measure which will give consumers who engage a registered builder the assurance that they are dealing with a competent and compliant operator. It will also provide a forum for the investigation of complaints against registered members and the imposition of sanctions. Under the proposed legislation, a "builder" will only be permitted to undertake certain construction works if they are members of the register.

There are approximately 800 builders on the existing voluntary register with the cost of registering not specified but provision is made for the CIF to specify fees. This fee will require the consent of the Minister and shall not exceed cost of the maintaining the register, and the cost of collecting, accounting for and administering the fee itself. According to the

RIA accompanying the General Scheme, the register will be run on a “*cost recovery, not for profit basis*”.

Key issues with the Proposed Legislation

The Committee has structured this report around the critical issues it has identified with the proposed legislation.

Key Issue 1: Independence of the Register and Board Membership

The issue of the independence of the register was without doubt the most contested issue which arose during the scrutiny hearings. Each witness that was before the Committee, either raised the issue of independence or was asked to give their opinion on the matter. Broadly speaking the issue can be split between the administration of the register by the CIF and the make up of the board membership.

Administration of the Register -

The proposed registering body for the statutory register is the CIF and not the State or a local authority. It is proposed that the voluntary register currently being operated by the CIF will in effect become the statutory register. There was considerable debate during the Committee hearings as to whether housing the register within the CIF was the most appropriate setting and additionally if housing it outside of a State body would lead to questions as to its independence and credibility.

Stakeholders were divided on the issue of independence of the issue of the register with Engineers Ireland describing their view that the proposed register is neither “*discriminatory or exclusive*” as it affords all those who “*wish to operate in the building sector an equal opportunity to be selected for specific works in accordance with declared expertise and a successful track record of project completions*”. They also stated that they believe that “*the Bill provides for independent and cost-effective oversight*”.

Engineers Ireland also stated that, “*currently there is much emphasis on the independence of CIRI. It is independent of the CIF and all the federation does is provide the resources to administer the facility*”. They went on to explain the role of the CIF and how “*It is simply a convenient house for CIRI...., CIRI will become mandatory and we may have to address the circumstances where CIRI is currently housed. It must be resourced one way or another. As other speakers have said, it would be more appropriate to have CIRI administered by people who know what it is all about*”.

The Royal Institute of the Architects of Ireland (RIAI) gave their views on the independence issue when they stated, “*we believe the Bill as structured can deliver a robust and*

transparent system. The requirements for the independence of the admissions and registration board....are all to be welcomed”.

The issue of the cost of having a State run agency or department was raised by several stakeholders, particularly in light of the fact that the CIF are currently providing the administrative support for the voluntary register and the perceived ease of transforming the existing voluntary register into the statutory register. The RIAI noted that “...the costs of a fully independent or State-sponsored system could be quite considerable”.

The Society of Chartered Surveyors of Ireland (SCSI) also raised the issue of costs when examining the administration of the register but importantly noted that doubts exist around the independence of the regulator; “...having an independent regulator certainly sounds great and it would remove any doubt as to the independence of the regulator. On the flip side, however, we have to look at the cost-benefit analysis. We are looking at a construction industry with a lot of members....The Construction Industry Federation, CIF, framework that is in place already has many of those people in its system. It makes sense from a cost-benefit point of view to use those systems. It is legitimate, however, to ask whether that is independent enough”.

The RIA published in tandem with the General Scheme does not contain any detailed cost benefit analysis of elements of the proposed legislation. Many of the representative bodies, however, related the issue of the administration of the register with the potential associated costs. The SCSI surmised that “any decision to put in place an independent regulator would have to be justified in terms of cost”.

Ms Orla Hegarty and Ms Deirdre Ní Fhloinn articulated a stronger opinion on the independence of the register and that it will be called into question if it is administered within the CIF. Ms Hegarty stated that she perceived that there are “... shortcomings in the proposed general scheme of this Bill”, and notably in relation to the independence of CIRI; “There are inherent conflicts of interest. CIRI is not independent. The absence of independent regulatory oversight of CIRI is not in accordance with best practice”.

Ms Hegarty elaborated further on the issue of the potential for a conflict of interest and the difficulty in the day to day operation of CIRI. She stated that “in terms of conflicts of interests, there are inherent conflicts of when an organisation performs the two unaligned functions of representing builders or employers and being involved in making representations or lobbying, and also has a consumer focus. If an organisation has to carry out the two functions then at the very least one would expect to see quite a strong Chinese wall down the middle of the organisation. That is not the way the CIRI is structured”.

Ms Ní Fhloinn shared similar concerns in relation to the administration of the register within the CIF, she stated that “a private registration system might be thought satisfactory in a

country with greater State involvement in the construction process generally and with better legal remedies for defects but it could have highly negative consequences for Ireland, where the regulatory regime for remedies are both inadequate from the perspective of consumer protection”.

“The scheme will result in a private system to regulate builders and a separate public system to regulate what they build. It is a missed opportunity to further develop the national building control management infrastructure as a central regulatory tool for regulation of both building and builders. Ms Ní Fhloinn provided an example to illustrate the potential for significant information gaps if the proposed legislation is enacted as it currently stands. Ms Ní Fhloinn highlighted that only the local building control authority¹ will know of a registered CIRI member’s record of compliance with building regulation. The information could be captured by the building control management system and cross referenced with the registration system. The CIF, in their submission noted that “provision is made for the integration by CIRI for sharing of data with building control authorities”.

Ms Ní Fhloinn also went on to elaborate that from her analysis and experience the State “... should be investing in strengthening and supporting the regulatory system instead of outsourcing a key pillar of that system to a private representative body for the construction industry”.

The CIF, however, were unequivocal in their opinion on the issue of independence, believing that there is no cause for concern with the proposed administration of the register. The CIF explained that “...while it is the registration body, has no influence whatsoever on the decision-making process of the CIRI admissions board and registration board”. The CIF, in their submission to the Committee further stated that “While the CIF advocated on behalf of its members, it has no role or function in regulating who is entered or not entered on the register. This is a matter exclusively for the CIRI Admissions and Registration Board. There is no conflict of interest in the Federation’s representative role for its members and its regulatory functions, as the CIRI Admissions and Registration Board is totally independent of the CIF”.

Furthermore in relation to the issue of costs in determining whether it is appropriate for the CIF to carry out the administration of the register, the CIF explained that they had already “...invested heavily in its IT administrative platform to support the application and administrative processes surrounding the registration scheme and the online database for the CIRI registered members” and that further investment is currently ongoing.

¹ 31 Local Authorities are designated as Building Control Authorities under the Building Control Acts 1990 to 2014. Source - <http://www.housing.gov.ie/housing/building-standards/building-regulations/building-control>

Members of the CIRI Board outlined to the Committee how they believe that there is no issue in relation to independence or undue influence; *“I cannot see the conflict of interest or the prejudicial relationships. We do not police ourselves. We are a fully independent board. We have always acted like that”*. However, the CIRI Board in their written submission outlined that *‘CIRI’s location within the CIF offices at Canal Road is a consequence of the CIF’s participation with the Department of Housing, Planning and Local Government in developing the current voluntary registration scheme and their role in the provision of an administrative service to the CIRI Board. The independent Appeals and Complaints Committee described in the legislation should ideally be located at a separate location’*.

The issue of costs and financing of potential court cases was also raised during the committee meetings. Engineers Ireland noted that *“from the point of view of the operation of the CIRI register, it would be important that there would be sufficient reserve funds for the registration body to be able to defend decisions that are made if an appeal is taken to the High Court”*. The CIF clarified their role in this matter in their follow up submission to the Committee, in it they stated that *“under the draft legislation, the CIF assumes the risk and cost pertaining to operations for the register which is to be funded from CIRI registration fees and for any legal challenges that may arise from builders that fail in their registration application or that are removed from the register for elements of non-compliance with any registration requirements”*.

Membership of the Board -

Notwithstanding the administration of the register, the membership of the Board was flagged by numerous witnesses as also being crucial to the independence of CIRI. It is proposed within the General Scheme that the Admissions and Registration Board be comprised of a chairperson and 10 ordinary members, as follows:

- **Chairperson** (a solicitor, a barrister, or former judge of the Circuit Court, High Court or Supreme Court, or a registered construction professional – appointed by the Minister);
- **5 industry nominees** - no more than 3 registered members of CIRI and 2 registered construction professionals;
- **5 non-registered members** or 5 persons not directly employees of a registered Member nominated for appointment by the Minister for Housing, Planning and Local Government (in consultation with the Ministers for Jobs, Enterprise and Innovation² and Public Expenditure and Reform, respectively).

Ministerial appointees therefore will constitute a majority of the CIRI Board. This mirrors the existing Board. The RIAI identified the membership of the board as an important issue when

² As of 2 September 2017 the Department is now the Department of Business, Enterprise and Innovation

they stated that “... *the independence of the system would be down to the quality and number of ministerial nominees on the board. The CIRI system will come under a lot of public scrutiny*”.

The SCSI outlined their view on the make up of the Board, they stated that “*it is very important that the board be independent and able to make decisions outside of the influence of the CIF. There are, I think, only three CIF members on the board under the Bill as it currently stands. More ministerial nominees might possibly be appropriate*”. Furthermore the SCSI highlighted that it would be appropriate to add a member to the board with specific responsibility for advocating for the consumer; “*It was mentioned that there is no voice on the board advocating for the consumer. The Minister makes the appointments so one would hope something could change to recognise that*”.

The RIAI put forward some practical suggestions for the operation of the proposed registration structure, they included;

- reduce the “disproportionate burden” on Ministerial nominees on the Admissions and Registration Board by reducing the quorum (proposed at six persons) or increasing the number of Ministerial nominees (currently proposed at five);
- reduce the similar burden on the Appeals Committee by increasing the number of Ministerial nominees from 2 to 3 (with a quorum of 3).

The CIF noted that it is normally good practice in Board meetings for any member to declare if any potential conflict of interest may arise and in such situations, if warranted, the member may exclude themselves or be excluded from any deliberations or decisions on the matter. The CIF stated that “*the Oireachtas could consider if this provision should be specifically included in the legislation as it passes through the Houses*”.

Recommendations

The Committee recommend that:

- further research and analysis be undertaken to establish whether the independence of the register will be guaranteed through using the current model;
- clear guidelines and procedures be drafted in relation to court cases;
- a representative advocating for the rights of the consumer be one of the Ministerial nominees;
- the number of Ministerial nominees / appointees be increased, or numbers required for a quorum reduced, to strike a balance between the dual objectives to (a) establish an independent, autonomous, self-regulatory CIRI and (b) to maintain an appropriate level of oversight by Government and other industry actors.

- a provision be inserted into the legislation specifying that a Board member should exclude themselves, or be excluded, from any Board deliberations or decisions where there is, or the potential for, a conflict of interest arising.

Key Issue 2: Clarifications regarding the Regulatory Impact Analysis (RIA)

A number of stakeholders outlined to the Committee issues concerning the General Scheme that fall within the remit of the RIA. The RIA as published lacks any detailed cost/benefit analysis of the proposed register and potential alternatives. In light of the concerns raised about the proposed legislation, most notably the concerns around the administration and independence of CIRI, a more conclusive, thorough and extensive RIA is warranted.

Recommendations

The Committee recommend that an extensive examination, incorporating the potential administrative cost; regulatory impact; policy and risk implications of the following proposals, be undertaken:

- Maintaining the existing voluntary register / CIRI (under the CIF);
- Establishing and maintaining a significantly enlarged CIRI (under the CIF);
- Establishing a separate register, fully independent of the CIF;
- Establishing a fully independent building industry regulator for external oversight (e.g. an equivalent of the Commission for Regulation of Utilities);
- A typical complaints / investigation procedure under CIRI, as envisaged under the General Scheme;
- Adopting a new, stronger sanctions / enforcement procedure (compared to maintaining the existing procedure);
- Mandating insurance (e.g. professional indemnity and latent defects) in tandem with (rather than as an alternative to) the establishment of the CIRI on a statutory footing including by means other than by legislation;
- Underwriting structural defects and other damage through a bond scheme, similar to HomeBond to protect homeowners or the formal incorporation of HomeBond into the register;
- Modelling the proposed statutory register on other existing voluntary registers / redress scheme structures, in particular, the self-regulatory Register of Electrical Contractors of Ireland (RECI) and the Registered Gas Installers of Ireland (RGII);

Key Issue 3: Registration categories to be prescribed by Regulations

Head 5(3) of the General Scheme provides that the Minister may prescribe regulations to divide the register into different divisions of categories of registered members and classes of work, as may be determined necessary and appropriate.

The SCSi outlined to the Committee the importance of the regulations which are to be prescribed by the Minister and the aspiration of the SCSi that;

“... there will, under the CIRI system, be a series of subcategories that will be determined by the Minister, in consultation with whoever is on the board, and for each of those there would be specific elements within a building structure”.

“In reality, what we are expecting is that a main building contractor will register under the scheme and he will be ultimately responsible for the build. If it is the case that some of that responsibility is assigned to another registered contractor who is an expert in fire-stopping or fire-sealing, then it would seem to me that the second contractor is the person who the claim would be made against. That would be my expectation. That is really important because if all we do is create a register for the main building contractors, it will serve no purpose”.

“In respect of fire safety, it is really important that in those subcategories, there is a division for fire sealing and fire stopping”.

Recommendation

The Committee recommend that the categories prescribed by the Minister reflect all of the necessary components of a building project to ensure that responsibilities are shared among several (supporting) registrants, not just specialist contractors. The design and implementation of these categories should be carefully crafted in order to maintain a readable and easily navigable system, with particular attention being given to the categories relating to fire safety.

Key Issue 4: Definition of Competence

Under the proposed legislation, “competence” is defined broadly under Head 6 as possessing the relevant educational qualification, or submitting evidence of relevant work undertaken, or submitting evidence of a construction professional with relevant education or work experience, or a combination of both. Head 2(2) states that the Minister shall prescribe by way of Regulations the relevant levels of both of these registration requirements.

Training / Continuous Professional Development (CPD) was also separately judged by stakeholders to be of vital importance for members of the CIRI.

The SCSi highlighted what they view as a shortcoming with the proposed legislation in terms of the definition of competency. In particular they noted that; *“section 7 of the Bill speaks about competence being relevant work undertaken or relevant education qualifications or a combination of both. Looking at this definition, one could say somebody who has educational qualifications could get onto the register. To me this does not sit with the definitions we have had traditionally in the industry”*.

THE SCSi went on to explain how the definition under health and safety legislation and the code of practice for inspecting buildings both define competence as relevant knowledge, training and, experience.

For successful admittance to the statutory register, and the primary difference between a voluntary and statutory register, a builder must satisfy minimum qualifications criteria, as set down in Head 5 (4). Under the General Scheme, to prove competence, builders must submit evidence to the Board detailing the following:

- Relevant work experience / educational qualifications (relevant to the category of the register in which registration is sought);
- Employment of a construction professional with experience / educational qualification (relevant to the category of the register in which registration is sought);

The prerequisite levels of work experience or educational qualification are not defined in the General Scheme, nor are the proposed registration categories. Head 6(2) states that the Minister shall prescribe such specificity by way of Regulations given certain stated criteria. Under Head 6(7) any registration may be suspended, terminated or otherwise conditioned by the Board arising from a review, compliant or appeals procedure. Evidence of competence is not required for renewal of applications, unless the builder requests to amend the existing categorisation of their application.

Recommendation

The Committee are of the view that the current definition of competence is insufficient and to ensure uniformity, the definition should be broadened in primary legislation to include evidence of relevant ongoing training as well as education and experience, as is the case with existing health and safety legislation.

Key Issue 5: Consumer Protection – financial redress and insurance

The General Scheme of the Bill contains no provisions for the consumer to access redress in the event of poor workmanship. The Bill instead focuses on the role of the builder and setting the standards expected of entry to the profession. As a means to ensuring standards, the Bill imposes sanctions on builders who undertake work of a substandard nature. The strictest sanction imposed for poor workmanship is the removal from the Register and thus the loss of a builders' ability to work as a builder. As proposed, the sanctioning or removal of a builder from the CIRI would not in itself provide a corrective mechanism to fix those problems which caused a complaint by a property owner in the first instance. Several witnesses outlined to the Committee that this focus on sanctioning the builder in isolation of offering a form of consumer redress, is a major flaw with the General Scheme. Suggested amendments in terms of consumer redress in order to improve upon the proposed legislation were outlined to the Committee.

The primary avenues for consumer redress identified by the witnesses were that of latent defect insurance (LDI), personal indemnity insurance (PII) and a bond supplied by the builders. The RIAI proposes that the legislation make it compulsory for builders to carry an appropriate level of (a) PII, as is the case with all other construction professionals (e.g. architects) and (b) LDI in respect of specific new-build premises or building works.

The RIAI explained why they view PII and LDI as crucial. They stated that; *"in order to further protect clients and homeowners, the RIAI recommends that LDI becomes a mandatory requirement for all new build residential requirements"*. The RIAI were also unequivocal in their belief of the need for PII, stating that; *"it acts both to provide redress for the consumer and to keep a check on professionals. PI insurance must be a part of the CIRI Bill. Everybody involved in a construction project must have a similar level of insurance cover"*.

Similarly, the SCSi also highlighted the issue, stating that; *"professional indemnity insurance is the missing piece of the jigsaw in terms of recourse for those seeking to bring an action against a contractor. Other financial measures such as latent defects insurance were touched on. There is no financial redress within the Construction Industry Register Ireland, CIRI, scheme and we all recognise this is one of the flaws. The impact and cost of this new regulation will be negligible"*.

Engineers Ireland also highlighted that if the requirement for LDI and PII are excluded from the Bill, then they foresee flaws with building control continuing, as there will still remain no

avenue for consumer recourse. Engineers Ireland explained in the inter-relationships between these consumer redress and building control measures and the importance of a combined, holistic view on the construction industry is needed, they stated that; *“it is almost inconceivable that contractors who are responsible for the biggest element of a project can get away without having PII. However, PII, LDI, CIRI and BCAR are not stand-alones; they all integrate and overlap. If we walk away from this Bill saying that we have done our business and that CIRI solves all the problems, we will be neglecting our duties”*.

The CIF outlined to the Committee that there are insurance policies out there in the market which have evolved from what was available as recently as ten years ago. The CIF explained how *“... a number of operators in the market that provide what is in effect latent defects insurance”*.

The SCSi, however, raised issues with the insurance policies available in today's market and is *“... concerned that the level of latent defects insurance currently available falls short of what is required. While there have been improvements in recently introduced products, we believe this area requires significant improvement”*. Ms Hegarty stated that insurance, such as latent defects, will not be made more widely available to the Irish market until insurance companies can price the risk and that a self-regulatory system, as is proposed in the General Scheme, *“is inherently risky”*.

The RIAI noted that insurance premiums should be kept down if all those involved in building keep up to date with the legislation and new technology. The RIAI also noted the longer term financial benefits of such a system, stating that; *“while there are concerns about the cost of these new regulations and of paying for latent defects insurance, the benefit for the consumer is enormous in the long run. It shortens the time to get redress and reduces the legal bills attached to it. In the larger scheme of things, it is far more cost effective than the current system”*.

The CIF noted in their submission that they would not be against the idea of introducing these insurance products on a mandatory basis when they stated that *“No objections will be raised by the CIF in the event of the Oireachtas determining that insurance policies of this nature should be mandatory for all future new home purchases”*.

Another measure to facilitate consumer redress which was raised during the Committee scrutiny of the proposed legislation is that of a bond facility. The CIF raised the need for a transferable bond when they stated that; *“we need a bond that the insurance markets will be able to supply and following on from that a process whereby the works as they are carried*

out can be signed off on, certified as compliant with standards and the bond released and transferred to other developments”.

Ms Ní Fhloinn informed the Committee of a report completed back in 1977 by the Law Reform Commission on liability of vendors and lessors of defective premises³. The report dealt with the proposed registration for builders, which was under discussion at the time. Ms Ní Fhloinn outlined that *“the Law Reform Commission stated it would be useless to create a new set of legal remedies without addressing the fact that the builder may not be solvent and able to meet the claims. Following publication of the Law Reform Commission’s working paper, we had the introduction of HomeBond, which, to this day, will not give claimants the same amount of money they could recover in an action under contract if they had access to the original contract. HomeBond is more limited and subject to significant exclusions”.*

Recommendations

The Committee recommend that:

- to appropriately protect the consumer and to adequately meet the objectives of the proposed legislation, access to insurance products (e.g. professional indemnity insurance and/or latent defects insurance) in respect of specific new-build premises or building works must be a requirement for entry to the CIRI;
- the incorporation of a transferrable bond facility in respect of new developments;
- a separate consultative exercise be held to ascertain how the insurance products have changed, the exclusions that exist and to assess the appropriateness of applying possession of specific insurance;

³ <http://www.lawreform.ie/fileupload/consultation%20papers/FitnessofPremises.htm>

Key Issue 6: Accountability and Transparency

Establishing and maintaining credibility are crucially important to the success of CIRI. A key aspect to achieve this is in the transparency and accountability of the Register. Stakeholders raised concerns with the transparency and accountability mechanisms present within the proposed legislation. As it stands, in terms of transparency and accountability in the Bill, the CIF will be required to prepare and publish a report including a financial statement each year.

Engineers Ireland stated clearly that *“when the Bill becomes law and the register is in operation the issue will be how robust the processes will be and it will be very important for there to be accountability and transparency in respect of the systems and processes that are put in place...”*

They went on to say that; *“there is also an opportunity to introduce accountability here through auditing by the Comptroller and Auditor General, as well as accountability to the Oireachtas and to committees such as this one. Accountability to the courts is also embedded in the draft Bill. Those three facets, together with public scrutiny, should give a high degree of public assurance around the independence of the register”*.

Ms Ní Fhloinn highlighted a key difference in terms of accountability and transparency with this proposed regulatory system when compared with the regulators which are in place to oversee electricians and gas installers. Ms Ní Fhloinn also raised further issues of transparency when she highlighted that *“there is no mention in this Bill of the Freedom of Information Act, the Ethics in Public Office Act or whether CIRI will be subject to the Ombudsman Acts”*. Furthermore there is no requirement on any committee or board members of CIRI to disclose their own financial interests. Ms Ní Fhloinn states that *“these norms of regulatory governance are not reflected in the Bill”*. Ms Ní Fhloinn surmises that *“If there is no accountability and no external body asking questions, it is down to members of the public to try to work out what is happening via the Freedom of Information Act. This would suggest a real problem of accountability and governance”*.

The CIF acknowledged the contributions of Ms Hegarty and Ms Ní Fhloinn and the deficiencies in the proposed legislation which they highlighted, stating that the General Scheme still rests with the Minister and that changes can still be made to it; *“With regard to the point about the lack of oversight, the Minister has major input into all the different areas. I have much confidence in the House and how it develops legislation...We had two very eminent professionals in earlier who have identified shortcomings from an academic point of view. This Bill is in the process of being put together”*.

Recommendations

The Committee recommend that:

- a full, independent audit of the voluntary register be completed prior to the formal establishment of a statutory register;
- the question over whether the responsibility for auditing rests with the Comptroller and Auditor General (C&AG) should be examined and legally clarified;
- more explicit accountability and reporting structures be established;
- CIRI be subject to the Freedom of Information Act, the Ethics in Public Office Act, and the Ombudsman Acts;
- regular reporting by the CIRI Board on its activities to the Oireachtas be formally established and, in particular, reporting to the Joint Committee on Housing, Planning and Local Government or its equivalent.

Key Issue 7: Complaint Procedure

As proposed in the General Scheme, members of the public shall be able to complain to the CIRI Admissions and Registration Board regarding an action by a registered member which is alleged to amount to improper conduct, poor professional performance or a breach of their registration requirements.

The CIRI Board provided information on the level of complaints received since the introduction of the voluntary register in 2014. There were no complaints received in 2014, one in 2015 which was resolved in negotiation between CIRI, the contractor and the complainant, no complaints in 2016 and three in 2017.

Ms Hegarty highlighted some concerns with the complaints procedure as outlined in the Bill and linked very much to the previously detailed issues around consumer redress. Ms Hegarty illustrated how *“Builders build a product, a building, so a complaints process that looks at their professional performance, misconduct and consumer service is not really appropriate because the complainant wants the house, the product, fixed”*. Ms Hegarty outlined how the system used by the Register of Electrical Contractors of Ireland (RECI) where when a complaint is received by them, a receipt is issued within a day and a independent inspector is sent out within seven days. Ms Hegarty explained how *“This is what home-owners want. They do not necessarily want their complaints to be put to a complaints committee for an investigation that will drag on for several months, at the end of which perhaps someone will be sanctioned. The complainant still has the problem with the building that will not be fixed”*.

Ms Hegarty raised some additional concerns around the day to day operations of CIRI and the interaction with the CIF, particularly in terms of how complaints are dealt with. Ms Hegarty stated that *“CIRI is structured to have a board with some independent members. All of the wraparound to administer that, in terms of the public faith and the person who picks up the phone, it is the same phone number that the consumer must dial to complain about a building as a builder who seeks support from the organisation following a complaint. There is no clarity about the purpose. There is plenty of potential risk in terms of how the system would operate”*.

Recommendation

The Committee recommend that the procedure for the public to submit complaints for investigation by the CIRI be streamlined, effectively promoted and made as efficient as possible.

Recommendations

Key Issue 1: Independence of the Register and Board Membership

The Committee recommends that -

- further research and analysis be undertaken to establish whether the independence of the register will be achieved through using the current model;
- clear guidelines and procedures be drafted in relation to court cases;
- a representative advocating for the rights of the consumer be one of the Ministerial nominees;
- the number of Ministerial nominees / appointees be increased, or numbers required for a quorum reduced, to strike a balance between the dual objectives to (a) establish an independent, autonomous, self-regulatory CIRI and (b) to maintain an appropriate level of oversight by Government and other industry actors.

Key Issue 2: Clarifications regarding the Regulatory Impact Analysis (RIA)

The Committee recommend that an extensive examination, incorporating the potential administrative cost; regulatory impact; policy and risk implications of the following proposals, be undertaken:

- Maintaining the existing voluntary register / CIRI (under the CIF);
- Establishing and maintaining a significantly enlarged CIRI (under the CIF);
- Establishing a separate register, fully independent of the CIF;
- Establishing a fully independent building industry regulator for external oversight (e.g. an equivalent of the Commission for Regulation of Utilities);
- A typical complaints / investigation procedure under CIRI, as envisaged under the General Scheme;
- Adopting a new, stronger sanctions / enforcement procedure (compared to maintaining the existing procedure);
- Mandating insurance (e.g. professional indemnity and latent defects) in tandem with (rather than as an alternative to) the establishment of the CIRI on a statutory footing including by means other than by legislation;
- Underwriting structural defects and other damage through a bond scheme, similar to HomeBond to protect homeowners or the formal incorporation of HomeBond into the register;
- Modelling the proposed statutory register on other existing voluntary registers / redress scheme structures, in particular, the self-regulatory Register of Electrical Contractors of Ireland (RECI) and the Registered Gas Installers of Ireland (RGII);

Key Issue 3: Registration categories to be prescribed by Regulations

The Committee recommend that the categories prescribed by the Minister reflect all of the necessary components of a building project to ensure that responsibilities are shared among several (supporting) registrants, not just specialist contractors. The design and implementation of these categories should be carefully crafted in order to maintain a readable and easily navigable system, with particular attention being given to the categories relating to fire safety.

Key Issue 4: Definition of Competence

The Committee are of the view that the current definition of competence is insufficient and to ensure uniformity, the definition should be broadened in primary legislation to include evidence of relevant ongoing training as well as education and experience, as is the case with existing health and safety legislation.

Key Issue 5: Consumer Protection – financial redress and insurance

The Committee recommend that:

- to appropriately protect the consumer and to adequately meet the objectives of the proposed legislation, access to insurance products (e.g. professional indemnity insurance and/or latent defects insurance) in respect of specific new-build premises or building works must be a requirement for entry to the CIRI;
- the incorporation of a transferrable bond facility in respect of new developments;
- a separate consultative exercise be held to ascertain how the insurance products have changed, the exclusions that exist and to assess the appropriateness of applying possession of specific insurance;

Key Issue 6: Accountability and Transparency

The Committee recommend that:

- a full, independent audit of the voluntary register be completed prior to the formal establishment of a statutory register;
- the question over whether the responsibility for auditing rests with the Comptroller and Auditor General (C&AG) should be examined and legally clarified;
- more explicit accountability and reporting structures be established;
- CIRI be subject to the Freedom of Information Act, the Ethics in Public Office Act, and the Ombudsman Acts;

- regular reporting by the CIRI Board on its activities to the Oireachtas be formally established and, in particular, reporting to the Joint Committee on Housing, Planning and Local Government or its equivalent.

Key Issue 7: Complaint Procedure

The Committee recommend that the procedure for the public to submit complaints for investigation by the CIRI be streamlined, effectively promoted and made as efficient as possible.

Appendix 1 – Orders of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
- (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
- (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other matters
- as shall be referred to the Select Committee by the Dáil, and
- (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint

Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

Appendix 2 – Membership

Deputies: Maria Bailey – Chair (FG)
 Pat Casey – Vice Chair (FF)
 Ruth Coppinger (Solidarity-PBP)
 Barry Cowen (FF)
 Mattie McGrath (IND) – Rural Independent Technical Group
 Eoin O Broin (SF)
 Fergus O’Dowd (FG)

Senators: Victor Boyhan (IND)
 Paudie Coffey (FG)
 Jennifer Murnane O’Connor (FF)
 Grace O’Sullivan (GP)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 21 July 2016.
3. Elected Vice Chair on 24 May 2017

Appendix 3 – List of Witnesses

Engineers Ireland

- Ms Caroline Spillane
- Mr Cormac Bradley

Royal Institute of Architects of Ireland

- Ms Carole Pollard
- Ms Kathryn Meghan

Society of Chartered Ireland

- Mr Alan Baldwin
- Mr Alan Isdell

Ms Orla Hegarty, UCD

Ms Deirdre Ní Fhloinn, TCD

Construction Industry Federation

- Mr Tom Parlon
- Mr Mel O'Reilly
- Mr Hubert Fitzpatrick

Construction Industry Register Ireland – Admissions and Registration Board

- Mr Hank Fogarty
- Mr Liam Egan

Appendix 4 – Links to Meeting Transcripts

[Wednesday, 4 October 2017](#)

[Thursday, 26 October 2017](#)

Appendix 5 – Links to Submissions & Opening Statements

[Ms. Orla Hegarty UCD](#)

[Ms. Deirdre Ní Fhloinn TCD](#)

[CIF, Mr. Tom Parlon](#)

[CIRI Admissions & Registrations Board](#)

[Society of Chartered Surveyors Ireland](#)

[Royal Institute of the Architects of Ireland](#)

[Engineers Ireland](#)

