

Oireachtas Joint Committee on Housing, Planning and Local Government
Pre-legislative scrutiny: General Scheme for Construction Industry Register Ireland
Bill

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Thank you for inviting me here today to address you in relation to the general scheme for the Construction Industry Register Ireland Bill. I am a barrister in the final year of my PhD research in relation to legal remedies and redress for defective housing.

In my previous submissions to this committee, I set out my concerns in relation to the system for construction regulation in Ireland. I have reviewed the scheme for this Bill. I thought that it would be beneficial to the Committee for me to examine how this proposed scheme fits within the existing legal and regulatory context for construction regulation in Ireland, and specifically whether it achieves the objective of consumer protection.

There are four issues in particular that I wish to highlight in my opening statement:

- 1. Consumer Protection**
- 2. How to regulate?**
- 3. Public accountability and conflicts of interest**
- 4. Effective regulation & State involvement**

Consumer protection – will CIRI protect consumers?

Consumer protection in construction regulation requires good quality housing to be built, with accessible remedies for poor quality housing. The Bill provides no remedies for consumers; it may be presented as part of a package of reforms, but those reforms do not address the most significant issues facing consumers. These include: poor legal remedies, no cost-effective access to dispute resolution procedures, and no mandatory defects insurance to cover the legal liability of insolvent builders, which could at least provide an ‘after the event’ pathway to a remedy for the home owner.

A private registration system might be thought satisfactory in a country with a greater State involvement in the construction process generally, and with better le-

gal remedies for defects. It could have very negative consequences in Ireland, where the regulatory system and the legal regime for remedies are both inadequate from the perspective of consumer protection.

Example: a consumer dealing with defects in their home

A home owner dealing with defects may make a complaint to the CIRI Admissions and Registration Board, and the complaint may result in disciplinary action or prosecution against the builder – which will not fix the defects. To obtain compensation to fix the defects, the consumer will still have to pursue a long and expensive remedy through legal proceedings. If the defect is a breach of the Building Regulations, that person can also complain to the local building control authority, and possibly also the registration bodies of any professionals involved in the works, none of which is obliged to act or award compensation so that another builder can do the work. Only the building control authority can actually order the builder to put the work right, and then only (realistically) during the construction stage.

How should builders be regulated?

The Scheme will result in a private system to regulate builders, and a separate public system to regulate what they build. In my opinion, 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.

This will result in significant information gaps – for example, only the local building control authority will know of a registered CIRI member’s actual record on compliance with the Building Regulations. This information could be captured on the Building Control Management System and then used by the registration / licensing system for builders, if the two systems were operated under a common framework.

An independent regulator with responsibility for the Building Control Management System could use the system as a regulatory tool to monitor persons and entities involved in construction, using information submitted in relation to projects and any inspection and enforcement information supplied by building control authority authorised officers in respect of construction works.

Example: A builder with a history of poor compliance with the Building Regulations

Information that I have obtained from Building Control Authorities indicates that formal enforcement powers are seldom used under the Building Control Acts. A

builder with a pattern of non-compliance in construction works may have negotiated on more than one occasion to avoid formal enforcement. Under the CIRC model, a person's registration will not be affected by these non-compliances unless that person is convicted under the Act; even then, CIRC may only discover the conviction if the member discloses it.

Conflicts of interest

The proposed system will act as a gateway to being able to work for large numbers of people, and would be a significant transfer of power from the State to a private entity. Independence cannot be ensured simply through the composition of the CIRC Boards. The system will not be overseen by a Regulator, as the RECI and RGI systems are for electricians and gas installers. These functions have been specifically delegated by the Commission for Regulation of Utilities, and the Commission monitors the performance of these schemes as well as taking enforcement action where electrical or gas works are carried out illegally.

A leading Irish expert on the delegation of State powers to the private sector has observed that where similar delegations have occurred in the United States, the private delegates are exempt from requirements that apply to the Government and State agencies, such as 'disclosure requirements, oversight structures, conflict of interest and reporting requirements, and ethical obligations'. (Donnelly, 2007).

There is no mention in this Bill of the Freedom of Information Act, the Ethics in Public Office Act, or whether CIRC will be subject to the Ombudsman Acts. There are no requirements on any committee or board members of CIRC to disclose their own financial interests.

There are a number of examples of other Irish regulatory bodies where such information is available, and for good reason: this Bill entrusts a significant amount of power to a private entity over who can work, and what work they can do. These norms of regulatory governance are not reflected in the Bill.

Effective regulation of construction: investment and State involvement

As part of my PhD I have researched systems of construction regulation in other countries. The consistent feature of effective and robust regimes is that they are proposed resourced, independent of the regulated industry, with sufficient profile and credibility in the sector to influence compliance.

My research suggests that part of the reason for the widespread defects in our housing stock is that, at least in recent years, there has not been a credible threat of enforcement of the Building Regulations. There are powers of enforcement in this Bill, but building control authorities also have extensive formal enforcement powers that are seldom used.

In my view the evidence of the number of defects in Irish houses and apartments points towards a widespread and systematic disregard of the Building Regulations. Why would people comply when it is cheaper not to comply and there is little chance of being caught, and little chance that you will be prosecuted or even have to pay to fix the defects if you are caught?

I have previously told this Committee of my concern that the system of mandatory inspection and certification set up in 2014 would be seen to be doing the 'heavy lifting of regulation', and that the public system would suffer unless it was resourced and supported. Investment in building control and in the Building Control Management Project is very small by comparison with the value of the construction sector. I believe that if regulation of builders is entrusted to the private sector that the public system will be undermined and that we will miss the opportunity to develop a robust system using the Building Control Management System as a key tool.

There are successful examples worldwide of the private actors having a role in construction regulation, and it can work well. Our context is different. We have extensive evidence of breaches of Building Regulations, poor legal remedies, expensive and complex procedures for dispute resolution, and lack of mandatory defects insurance.

My research and analysis of the particular experience of Ireland in recent years suggests that 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.

Reference

Donnelly, C. 'Delegation of Governmental Power to Private Parties: A Comparative Perspective', Oxford University Press, 2007.