

**Meeting of the Joint Oireachtas Committee on Housing, Planning, Community
& Local Government 13 April 2017 (10.45am)**

Opening Statement

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Introduction

Chairman and members of the Committee thank you for inviting me to appear before you today. My Departmental colleagues in the Building Standards Unit and I welcome this opportunity to discuss the Building Regulations, Building Control and Consumer Protection, and to provide a comprehensive update on the significant progress which has been made over recent years in reforming the building control system. The design and construction of buildings is regulated under the Building Control Acts 1990 to 2014. The 1990 Act provides for (amongst other things) the making of Building Regulations and Building Control Regulations.

Building Regulations

The Act sets out the primary purpose for which the Building Regulations may be made i.e. the health, safety and welfare of people in and around buildings. The focus is on protection of people rather than property.

The Second Schedule of the Building Regulations 1997-2017 sets out the statutory minimum performance requirements for the construction of new buildings (including houses), extensions to existing buildings as well as for material alterations and certain material changes of use to existing buildings. The Schedule is comprised of twelve distinct parts, classified Parts A to M, each of which sets functional requirements for buildings or works e.g. structure, fire safety, energy conservation, accessibility etc.

The Department publishes Technical Guidance Documents to accompany each of the twelve parts; these guidance documents set out how the legal requirements can be achieved in practice. Where works are carried out in accordance with the relevant

technical guidance, such works are considered to be, *prima facie*, in compliance with the relevant regulation(s).

The primary responsibility for compliance with the requirements of the Building Regulations rests with the designers, builders and owners of buildings. Implementation and enforcement of the Building Control system is a matter for the 31 local building control authorities who are independent in the use of their statutory powers under the Building Control Acts 1990 – 2014.

The Department's aim is to develop and promote a strong and evolving building code in support of quality construction and sustainable development. The requirements of Parts A to M, and the associated Technical Guidance Documents, are maintained and are subject to on-going review by the Building Standards Section of the Department in the interests of safety and the well-being of persons in the built environment and to ensure that due regard is taken of changes in construction techniques, technological progress and innovation. Other drivers for change include emerging national issues or European legislation. The majority of the technical guidance documents are less than 7 years old. The most recent document was published earlier this year Part B/Technical Guidance Document B – Fire Safety – Dwelling Houses – Volume 2 (2017). At present Part L/TGD L - Conservation of Fuel and Energy for Buildings other than Dwellings is out for public consultation.

Building Control

The Act also sets out the purpose of Building Control Regulations, as being for matters of procedure, administration and control to secure implementation of, and compliance with, the requirements of building regulations.

Unfortunately, we are all too well aware of the many incidences of building failures or severe non-compliance concerns that have come to light over the past decade. The economic and personal consequences of these situations have been very significant.

To address this unacceptable situation, in July 2011, the then Minister announced a number of measures to be advanced by the Department and local authorities with a

view to strengthening the system by improving compliance with, and oversight of, the requirements of the Building Regulations.

A high level working group, which included representatives from the Department of Housing, Planning, Community & Local Government and from local government (nominated by the County and City Management Association), reviewed the existing building control regulatory framework and consulted with stakeholders. The key deficits identified in the regulatory regime were the lack of involvement of construction professionals on site and lack of accountability in relation to compliance with the Building Regulations.

It was through the *Building Control (Amendment) Regulations 2014* (S.I. No. 9 of 2014) that these key deficits were addressed, by empowering competence and professionalism in construction projects and establishing a chain of responsibility that begins with the owner. The owner must assign competent persons to design, build, inspect and certify the building works who, in turn, must account for their contribution through the lodgement of compliance documentation, inspection plans and statutory certificates.

The main provisions of S.I. No. 9 of 2014 include:

- (i) certified compliance documentation must be submitted to the local building control authority before works commence;
- (ii) the design of a building is certified by a registered construction professional (i.e. an Architect or a Building Surveyor or a chartered Engineer who is included on a statutory register maintained respectively by the Royal Institution of Architects of Ireland, the Society of Chartered Surveyors of Ireland or Engineers Ireland) to demonstrate compliance with the Building Regulations before works commence;
- (iii) owners must appoint a competent builder to undertake and certify construction works;
- (iv) owners must appoint an 'assigned certifier' to –

- prepare an inspection plan for the building works,
 - carry out, or oversee, inspections in accordance with the inspection plan; and
 - certify (jointly with the builder) that the construction works are in compliance with the Building Regulations upon completion;
- (v) designers, builders and ‘assigned certifiers’ must accept legal liability for their work;
- (vi) any change in circumstances in terms of owner, builder or assigned certifier must be notified to the local building control authority;
- (vii) the accompanying *Code of Practice for Inspecting and Certifying Buildings and Works* was developed to outline the roles and responsibilities of owners, designers, builders, assigned certifiers, etc. during building works;
- (viii) drawings and particulars relevant to the building works will be accessible to any person who subsequently acquires an interest in the building.

The statutory *Certificate of Compliance on Completion* signed by both a registered construction professional and the builder must be in place prior to occupation (for certain works). It effectively represents a badge of approval reassuring owners of buildings that their building is compliant with the building regulations and is -

- safe and healthy to live in;
- structurally sound and resistant to fire;
- energy efficient and comfortable, requiring relatively low spending on fuel; and
- durable, having used certified materials and competent persons.

Turning now, to the oversight and governance of the Building Control System, this was also scrutinised in the context of the building failures which have come to light

over the past number of years. To improve the effectiveness of the system a number of changes have occurred.

1. To facilitate the consistent implementation of the changes introduced by S.I. No. 9 of 2014 and assist local building control authorities in handling the additional workload, the Building Control Management System (BCMS) was developed. BCMS is a national IT enabler, it was launched by the Local Government Management Agency (LGMA) in March 2014 to coincide with the commencement of S.I. No. 9 of 2014. The BCMS facilitates the electronic administration of building control functions and provides a common platform for clear and consistent administration of building control matters across the local authority sector.

2. Having enabled efficiencies through the BCMS for building control authorities, the focus moved to standardisation of operational activity. The publication “Framework for Building Control Authorities” was first published in September 2014, to standardise work practices, systems, procedures and decision-making in relation to oversight of building control activity across the sector, to enhance consistency of approach nationally, and to move towards a risk-based approach to inspections by building control authorities. A revised version was published in June 2016.

3. To further support local building control authorities in their daily activities, a compliance support workstream has been developed. This provides a mechanism for dealing with queries, either from building control staff and/or private practitioners making submissions to BCAs, at a centralised level that can be applied nationally. A number of FAQs have been answered through this system.

4. To fully empower staff in BCAs to carry out their work effectively, training programmes are being developed. This includes foundation level to provide minimum competency training for those new to the role, annual continuous professional development for all staff involved in building control and professional post graduate courses to enable greater specialisation. In an ever evolving construction environment this professional approach is absolutely necessary.

5. Finally and most fundamentally of all, is the requirement for meaningful inspections of building activity. In this regard, a BCMS module is currently being developed to use the data collected at commencement to carry out a risk

assessment of the works in question and thereby inform building control staff of the risk profile of works about to commence and potentially the most effective stages to inspect such works. The aim is to position Building Control Authorities to carry out risk based targeted inspections by making more efficient and effective use of the resources available.

The Local Government Management Agency and County and City Managers Association have been instrumental in driving these reforms. To sustain the momentum and commitment among the sector we are working towards encapsulating all these workstreams into a centralised structure for the governance and oversight of Building Control. This structure will ultimately be a shared service embedded in a lead local authority. This is known as the Building Control Management Project

The concept of shared services is to consolidate transactional activities, ideally using optimised and automated processes that add value, thereby allowing concentration on core/strategic activities. In relation to the Building Control Management Project this means facilitating increased inspection activity, improving consistency and promoting a culture of compliance in the building sector with a unified sectoral approach.

Consumer Protection

Prior to its introduction, a commitment was given that S.I. No. 9 of 2014 would be reviewed after its first twelve months in operation. This review was formally announced on 2 April 2015 and concluded on 15 May 2015 given concerns in relation to self-build and the costs associated with the assigned certifier. Over the course of the review, the clear view of industry stakeholders in relation to the speculative housing and apartment sector of the market as evidenced in the review of S.I. No. 9 of 2014 is that the reforms in relation to certification introduced in 2014 are necessary and effective and should continue.

Statutory certification was welcomed by the insurance, banking and legal sectors and is perceived as a responsible regulatory measure which makes Ireland a more attractive place for construction-related trade and investment.

Following the review and having regard to concerns with regard to costs, the Building Control (Amendment) (No. 2) Regulations 2015 (S.I. No. 365 of 2015) were introduced on 1 September 2015 which provided the owners of new single dwellings, on a single development unit, and domestic extensions an option to opt out of the requirements for statutory certification although compliance with Building Regulations must still be achieved and building control procedures would still apply.

Insurance

Strong and effective regulation in the building control system and the construction industry is essential in order to provide insurance underwriters with sufficient confidence to cover risks at prices which are sustainable and which the market can bear. Reform of the Building Control Regulations in 2014 was welcomed by the insurance industry and there is evidence that since then more construction related insurance products have become available on the market. This increase demonstrates that the insurance industry has made an assessment that the risk of building failure in relation to buildings completed in accordance with the new building control system is low.

It is worth noting that this increase in the availability of construction related insurance products, such as first party latent defects insurance, has taken place at a time of retrenchment and conservatism in the wider insurance industry since the introduction of the Solvency II Directive which has led to a substantial overhaul of European insurance regulation and sets out stronger, EU-wide requirements on capital adequacy and risk management for insurers.

Construction Products Regulation

The Construction Products Regulation came directly into force across the entire European Union on 1st July 2013 and represents a significant change for all those involved in the construction sector, from manufacturers, importers and distributors to the end users of construction products. The primary purpose of the Construction Products Regulation (and its predecessor the Construction Products Directive) is to break down technical barriers to trade in order to ensure the free movement of construction products across Member States within the European Union.

As a general rule, all manufacturers of construction products for which a harmonised European product standard (commonly referred to as a hEN) is in force must make a *Declaration of Performance* for the product they manufacture and affix the CE marking in order to show compliance with the Construction Products Regulation.

In addition, the Construction Products Regulation has introduced a 'chain of custody' approach for construction products being placed on the market which will result in greater legal responsibility for compliance not only on manufacturers but also with agents, importers and distributors (i.e. retailers) who must, inter alia, take appropriate steps to ensure that these requirements have been fulfilled by the manufacturer.

While the CE marking is not a quality mark, nevertheless, all the information supplied with the *Declaration of Performance* is obtained by strictly applying the methods and criteria provided by the relevant harmonised standard. Furthermore, the correct application of these methods and criteria are guaranteed by the manufacturer himself and, where required, by the appropriate oversight of production / product by a third party known as a notified body.

Against this background, the National Standards Authority of Ireland, who are responsible for the development of standards in Ireland, has produced additional guidance to some harmonised European product standards in the form of National Annexes or Standard Recommendations (SRs) which set out appropriate minimum performance levels for specific intended uses of certain products in Ireland.

Accordingly, specifiers can better define their performance demands for the specific end use using a common technical language by means of reference to NSAI Standard Recommendations, National Annexes.

Where the CE marking has followed the drawing up of a *Declaration of Performance*, there is a presumption that the declared performances are accurate and reliable and can be harnessed to inform the specifier / designer / builder whether the product's performance will meet the requirements of a particular design specification (and are, therefore, proper materials within the meaning of the Building Regulations).

Market surveillance refers to the activities carried out and the measures taken by market surveillance authorities (i.e. the building control authorities) to ensure that

construction products comply with the requirements set out in the Construction Products Regulation. In real terms, market surveillance under the Construction Products Regulation will include any necessary actions to: –

- stop the circulation of construction products that do not comply with all the requirements set out in the Construction Products Regulation (e.g. bans, withdrawals, recalls);
- require economic operators to bring their construction products into compliance; and/or
- apply sanctions to non-compliant economic operators.

However, it should be noted that primary responsibility for demonstrating a construction product's compliance with the requirements of the Construction Products Regulation rests with the manufacturer of the product. It is not the responsibility of a market surveillance authority to certify products.

Market surveillance activity is largely carried out on a reactive basis i.e. responding to an allegation of non-compliance in the market place, this may require various levels of investigation to establish the facts. The Department also co-ordinates an annual market surveillance campaign which is linked into a pan European market surveillance co-operation.

Construction Industry Register Ireland – CIRI

The main objective of the Building Control (Construction Industry Register Ireland) Bill 2017 is to develop and promote a culture of competence, good practice and compliance with the building regulations in the builder community of the construction sector, which will benefit consumers and the general public.

This will be achieved by the establishment of a statutory register which a builder must be included on in order to carry out any works under the Building Control Acts.

The CIRI register will be divided into a number of different categories depending on the nature and complexity of the works involved and a builder will have to demonstrate competence in the area, or areas of construction to which his application for registration relates.

The establishment of a robust statutory register is critical for the development of a culture of competence and compliance in the construction sector. It will also complement the reforms, set out above, which have been made through the Building Control Amendment Regulations. Statutory regulation is necessary to protect the public from the financial, health and other risks posed by defective buildings, as it will ensure that builders can only take on work for which they are competent in and registered to undertake.

CIRI was established on a voluntary basis in 2014 and to date I understand that over 800 building entities have registered. Statutory registration of builders is seen as an essential consumer protection measure giving those who engage a registered builder the assurance that they are dealing with a competent and compliant operator. Legislative proposals in this regard are currently being finalised by the Department with a view to their being presented to Government for consideration shortly.

Conclusion

In conclusion, the failures in construction of the past have arisen largely due to inadequate design, poor workmanship or the use of improper products, or indeed a combination of these.

The significant reforms that have been introduced and are underway which I have outlined above are aimed at addressing these three distinct areas by means of, in summary:

- better developed designs before commencement;
- greater accountability, due diligence and inspections by competent people during construction;
- a statutory certification of compliance on completion;
- Improved oversight by local building control authorities;
- Development of a centralised structure for training, inspection, compliance support and BCMS development to support building control authorities; and
- The proposed establishment of the Construction Industry Register Ireland (CIRI) as a robust statutory register of builders.

The reforms that have been in operation for a number of years now, have brought a new order and discipline to bear on construction projects that improves and reinforces a culture of compliance with Building Regulations, securing safe and healthy buildings.

Thank you for your attention and I look forward to your questions.