

# DÁIL ÉIREANN

## AN ROGHCHOISTE UM THITHÍOCHT, RIALTAS ÁITIÚIL AGUS OIDHREACHT

### SELECT COMMITTEE ON HOUSING, LOCAL GOVERNMENT AND HERITAGE

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*Déardaoín, 3 Márta 2022*

*Thursday, 3 March 2022*

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Tháinig an Romhchoiste le chéile ag 5.30 p.m.

The Select Committee met at 5.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Peter Burke (Minister of State at the Department of Housing, Local Government and Heritage),	
Francis Noel Duffy,	
Emer Higgins,	
Paul McAuliffe,	
Cian O’Callaghan,	
Eoin Ó Broin.	

I láthair / In attendance: Deputy Ged Nash.

Teachta / Deputy Steven Matthews sa Chathaoir / in the Chair.

## **Regulation of Providers of Building Works Bill 2022: Committee Stage**

**Chairman:** The purpose of this meeting is Committee Stage consideration of the Regulation of Providers of Building Works Bill 2022. I welcome the Minister of State at the Department of Housing, Local Government and Heritage, Deputy Peter Burke, and his officials.

Sections 1 and 2 agreed to.

**Chairman:** Amendment No. 1 has been ruled out of order.

Amendment No. 1 not moved.

Sections 3 and 4 agreed to.

### **SECTION 5**

**Chairman:** Amendments Nos. 2 and 13 are related and will be discussed together.

**Deputy Cian O’Callaghan:** I move amendment No. 2:

In page 8, between lines 36 and 37, to insert the following:

“(5) Within 12 months of the passing of this Act, the Minister shall lay a report before both Houses of the Oireachtas that examines the establishment of a statutory skills register for the construction sector and sets out recommendations for reform in this area.”.

I welcome this Bill. The amendments I have tabled seek only to strengthen and improve it. A statutory skills register for the construction sector is important. A register of builders is welcome, but the key reasons for this register are the difficulties we have had, which are well known, in terms of mica, pyrite, fire safety defects and construction defects, which have caused not only significant untold financial costs but human costs for people. There are different reasons for this, including weaknesses in building controls and regulations, inspection of materials and, at times, deficits in terms of skills. As part of the register of builders, we need a statutory skills register for the construction sector. The Bill as drafted does not provide for that.

On Second Stage, the Minister legitimately made the point that it is necessary to have regard to experience as well as skills in terms of people that can access the existing register and that if we insisted only on skills it would have the effect of some people who have decades of experience and can do very good construction works and play a very important role not being able to register. I understand that. As of now, however, we are allowing only experience and not qualifications and certified skills to stand. We need to move to having a statutory skills register of the professionalisation and qualifications that are needed. Why would not that be done?

The amendment seeks that the Minister would lay a report before the Houses of the Oireachtas within 12 months of enactment. That is very reasonable. It is not a huge obligation, but it would provide us with a path forward on this issue. I look forward to hearing the Minister of State’s response.

**Deputy Eoin Ó Broin:** As the Minister of State may or may not be aware, the idea of a statutory register is older than he is. It started its life in a Law Reform Commission report recommending its creation in the 1970s. The proposition was strongly resisted by the Construction Industry Federation, CIF, and not only by its equivalent at the time but also by architects, engineers and chartered surveyors. It died a slow death between the 1970s and 1980s and was revived only by the Minister of State's party colleague the then Minister for the Environment, Community and Local Government, Phil Hogan, when he produced his building control reform proposals after the Priory Hall issue arose. It is an important proposal that would place all construction industry professionals on a statutory register and having a set of requirements to be able to trade and be a professional. Having a formal complaints procedure for where people have been deemed to be in breach of the code and those criteria is important.

Two issues that relate to the amendments before us are very important. There are many areas of construction where formalised skills are still not where most people in the industry would like them to be. In the case of plastering, for example, there is a fairly mobile labour force from a variety of countries. In many cases, on a building site where people come onto the site for work, they will not have to show a formal qualification but rather just demonstrate they can carry out the relevant plastering work and that may or may not suffice for the foreman or the contractor. The difficulty, of course, is that creates the possibility for inadequate standards and workmanship. I strongly agree with Deputy Cian O'Callaghan that the point is not to create a regime from the start that locks out people but instead is about moving towards circumstances in which there is a clear skills register in order that, when the registration body, which we will come to in the next amendment, is trying to determine whether the person is a qualified skilled professional to carry out that work, there will be a proper, statutory register against which those skills can be marked.

The other example that is important to mention relates to fire stopping. The Minister of State will be aware from his knowledge of Celtic tiger-era building defects, particularly in apartments and duplexes, that fire stopping is one of the most common defects. Currently, there is no skills requirement to place fire stopping in properties. There is no course that has to be completed or qualification that has to be achieved, and that is one of the reasons, although not the only one, that fire stopping continues to blight the lives of thousands of homeowners and tenants in properties that were built without adequate fire stopping.

Deputy O'Callaghan's amendment is eminently sensible and it will probably be easier for the Minister of State to support his amendment or a version thereof than it will be to support mine, given mine seeks to insert in the Bill a requirement for a statutory skills register. Even if he will not accept either amendment, this is something that makes eminent sense. I suspect both industry and the unions think it is a good idea and, therefore, I am keen to hear his response. Without such a register complementing the construction industry register, the Bill will be much weaker. Accordingly, I strongly support both my amendment and that of Deputy O'Callaghan.

**Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke):** I will address amendments Nos. 2 and 13. I must oppose amendment No. 2, which would provide that the Minister shall provide a report examining the establishment of a statutory skills register. The Bill provides for a register of providers of building works. The competence criteria for registration in each division of the register are determined by the board and approved by the Minister and will be published on a website. Section 29 provides that the Minister shall prescribe the required qualifications or experience or the combination of both that shall be required to be registered in a division. These shall be set out in secondary

legislation for each division of registration.

I must also oppose amendment No. 13, which seeks to insert the establishment of a skills register in the criteria to be included in a code of practice for registrants. This is not relevant to this Part of the Bill and the competence criteria for each division of registration will be set out in legislation, as I described.

**Deputy Cian O’Callaghan:** Is it the intention that over time, in order for someone to be included on this builders’ register, skills and qualifications in the respective areas will be required?

**Deputy Peter Burke:** Yes.

**Deputy Cian O’Callaghan:** Insofar as the Minister can say, what is the thinking regarding timelines for that and how it will be progressed?

**Deputy Peter Burke:** We will first look at builders and then go through the various trades stage by stage. That is what is intended.

**Deputy Cian O’Callaghan:** At present, the number of people undertaking apprenticeships in plastering, for example, is much lower than it was in 2004. We are only at about 15% of the 2004 levels, or perhaps a little higher because the number has increased in the past year. Even so, we are far off the apprenticeship levels there used to be in areas such as bricklaying, stone-cutting, tiling and plastering, that is, the key wet trades in construction. There are many issues with that but in particular, there is simply no requirement to have a qualification in plastering to work as a plasterer on a building site. Some employers may look for it but in general, there is no requirement. There is no incentive, therefore, for people to get the qualification given it is not required.

This has implications, not least in respect of defects, as was mentioned in the context of people not having the proper skills and qualifications, but also for productivity in building and for having enough people who are well trained and qualified. While qualified people can achieve a better wage and income, they also are more productive and it will be better for efficiency. As the Minister of State will be aware, we have a good distance to go in terms of productivity and efficiency in our construction sector. I acknowledge that work is being done in that regard.

The Minister of State indicated that in a matter of time, that is, within the next few years, there will be skills requirements in these various trades such that in order for people to register, they will have to have these skills. If someone comes to work from another jurisdiction, he or she will have to show evidence of those skills, as will be the case if someone comes from the Irish apprenticeship system. Is that correct?

**Deputy Peter Burke:** Yes. For clarity, we are saying builders of buildings will be first and trades will follow. I am advised that by mid-2024, the register of builders will be complete, with trades to follow.

**Deputy Eoin Ó Broin:** The timeline for the statutory register is clear in the Bill but it does not address the question both Deputy Cian O’Callaghan and I are raising as to why a parallel skills register would not enhance what is being proposed in the Bill and would not be good for the industry overall. The idea of a skills register is that it makes clear what the skills requirements are, and the register will be public and transparent, which is helpful both for employers and for contracting parties, whether they are large contractors, public agencies or individuals

getting various kinds of construction work done.

My understanding is that within the construction sector working group, located in the Department of Public Expenditure and Reform and including representation from the Minister of State's Department, this is a matter under discussion. While we did not expect him to warmly embrace our amendments, I would be somewhat comforted if he could give some indication as to whether the Department, in conjunction with the relevant other Departments through the construction sector working group, is actively considering such a skills register. Is it something that is in the pipeline, to the Minister of State's knowledge? The industry needs such a register, and creating it in parallel with the construction industry register would be complementary and would strengthen it. I will not ask him to reiterate what he said about the amendments, given I acknowledge he will not accept them, but is anything else going on in the background with respect to this issue that he can share with us?

**Deputy Peter Burke:** I am advised that the Department is working with the Department of Further and Higher Education, Research, Innovation and Science surrounding what Deputy Ó Broin mentioned. It is very keen to point out that this is on competence. We just want to be careful in terms of the parameters when we are talking about a register. Work is going on across Government in line with the recommendation Housing For All.

**Deputy Eoin Ó Broin:** Perhaps if, at a later stage, the Minister of State is in a position to share a note with the committee on that work, that would be very helpful for us.

**Deputy Peter Burke:** That is okay. I can do that.

**Deputy Cian O'Callaghan:** Just to clarify, the Minister of State said this is "on competence". One can be competent from one's experience and not have qualifications or certified skills. The Minister of State is talking about addressing that in future years and that one will have to have the certified skills.

**Deputy Peter Burke:** Absolutely. That is the intention.

**Deputy Cian O'Callaghan:** It will not just be competence based on experience. I wanted to be clear on that.

**Chairman:** Is amendment No. 2 being pressed?

**Deputy Cian O'Callaghan:** Given what the Minister of State said, it is still a very reasonable amendment. It would be helpful to press.

Amendment put and declared lost.

Section 5 agreed to.

Sections 6 and 7 agreed to.

## SECTION 8

**Chairman:** Amendments Nos. 3 and 4 are related and will be discussed together.

**Deputy Eoin Ó Broin:** I move amendment No. 3:

In page 10, to delete lines 12 and 13 and substitute the following:

“(4) The Minister shall appoint the National Building Control Office as the registration body under *subsection (2)*.”

These amendments probably relate to one of the most significant aspects of this Bill and probably one of the most significant disagreements between some of us in the Opposition and the Government. Section 8 is quite a bizarre section in the sense that it sets down the criteria that an organisation may meet to be designated as a registration body. We all know who the registration body will be because that has already been decided and is a matter of public record. The Construction Industry Federation, CIF, has the non-statutory register. At first take, it is almost like rather than just saying we are giving it to the CIF, we set down in law a set of criteria the CIF can meet and only an organisation such as it can meet, which strikes me as odd.

However, that is not the central problem here. The CIF is not the right place for this register. Any of us who have lived through or who have worked with families affected by defective buildings know that in particular for that industry, the very last place to put a register of this kind is within the lobby organisation for those same organisations and individual contractors that this register will cover.

There is a long-standing tradition here, in Britain and elsewhere that we have these almost Victorian gentlemen’s self-regulatory bodies. We have it with architects, surveyors, engineers, etc. That is a fundamentally flawed model and one can see that, for example, when one looks at the level of complaints and sanctions against members registered in some of those bodies but particularly with construction and particularly because one of the great values of a statutory register is that it will give the public confidence that we should not have a return to the same levels of defective workpersonship as we have in the past. Locating this in the lobby organisation, albeit with some Chinese walls and some issues around governance and the board, makes no sense to me.

It is also very hard to understand given that the Minister of State’s predecessor created a body which is much better suited to be the location of this, which is the National Building Control Office, NBCO. For those members of the committee who do not know its good work, it was set up specifically to try to support, enhance and improve building control functions in local authorities. If one were to take a longer-term view, the NBCO authority is exactly the kind of body that one would progressively build into a much larger and more effective building control and consumer protection agency, not unlike the Food Safety Authority, the Environmental Protection Agency, etc.

Therefore, my amendment, inelegant as it is, and I am sure the Minister of State will tell me all about the technical inadequacies of my drafting, and that is okay, is more to make a crucial point here, which is this should not be located in the CIF. That is not disrespect to the good people of the CIF. Its job is to represent, lobby for and advocate on behalf of its members. However, if we want the public to have absolute confidence that this register is fully independent of industry and that it would be administered without fear or favour, then the right place is the NBCO. That will place challenges, as the NBCO only has a small number of staff and has only been recently established. However, given that it exists, I see no reason that this function would not be given to it and that is why I am pressing this amendment.

**Chairman:** Deputy O’Callaghan will speak on amendment No. 4, which is grouped with amendment No. 3.

**Deputy Cian O’Callaghan:** I want to make similar points. Of the whole Bill, this is the



area that I have the biggest issues with. My amendment is slightly different in that it looks to remove a number of the potential non-State bodies that this could be applied to. It is not as specific as Deputy Ó Broin's amendment is, although his suggestion that this would be a function for the NBCO is a very good one. The NBCO needs to be beefed up into a national building control authority, like the Food Safety Authority, and given similar powers. I do not see any reason that this would not be done straightaway. This is no disrespect to the CIF, but it is very specifically a lobby group for the industry. Therefore, if we want to have public confidence in this registration body, it is very important that it is not, as this legislation allows, run by industry lobby groups. That is a flaw in the legislation. It should be a State agency.

Huge distress has been caused by building defects and I know we all have these issues in our own constituencies. Priory Hall is in mine, and the family of Fiachra Daly is in my area and I know them well. For us not to do this as well as we possibly could do it, in terms of establishing independence, does not make sense. I would strongly urge the Minister of State to accept our amendments on this. The NBCO would be the right place for this and it needs to be beefed up into a national building control authority. That is the other piece of the jigsaw that would go well with register, that is, if we had a statutory national building control authority. The Minister has indicated that he is working on legislation on that, which is positive. This definitely should be a function of that agency.

**Deputy Peter Burke:** I thank the Deputies for their amendments. I will address amendments Nos. 3 and 4. Section 8 of the Bill provides that the Government may make an order appointing a body to perform the functions of the registration body. It sets out that the body can be a public body or otherwise and it provides that the body must be capable of performing the functions conferred.

I must oppose amendment No. 3, which seeks to provide that the NBCO will be appointed as the registration body. The Office of the Attorney General has advised that the Bill should not name the body that is to be appointed as the registration body in the Bill. Where a body appointed is not performing the functions required, another entity may be appointed to perform the functions of the registration body under the Bill without any amendment being required to the primary legislation.

I must also oppose amendment No. 4, which seeks to only allow a public body to perform the functions of the registration body. It is preferable that a body with experience and expertise in the construction industry performs this function, similarly to how the Royal Institute of the Architects of Ireland, RIAI, and the Society of Chartered Surveyors Ireland, SCSi, operate statutory registers for architects and surveyors.

It is envisaged that the CIF will be appointed as the registration body. There are a number of safeguards in place to ensure and maintain the independence of the registration body. The registration body will have delegated responsibility for the day-to-day maintenance of the register within the confines of the specific and limited parameters set out in the Bill. The board of the registration body will be completely independent of the body in the performance of its functions. The independence of the registration body will be maintained through the following measures: all powers of the registration body will be prescribed in legislation; all competency requirements for registration will be recommended by the board and prescribed by the Minister; the board will make decisions in relation to all sanctions, including removal from the register; removal from the register must be confirmed by the High Court; all prosecutions under the Act will be taken by the board or the director of public prosecutions; all members of the appeals committee will be independent from the board and the registration body; and the Bill allows the

functions of the registration body to be transferred if the body is not performing its functions satisfactorily.

**Deputy Eoin Ó Broin:** I like that word “envisaged”. If the Deputy had said “decided”, it would have been more accurate because we know it has been decided but I will not quibble over that word. The problem is this register will be located in the same building as the Construction Industry Federation. It will be staffed in the main by staff from the CIF. If people have to make telephone calls to the registration body or go to meet it, that will be channelled through the infrastructure of the CIF.

A crucial point is that in order to restore absolute confidence that we are never going back to the bad old days of the Celtic tiger the legislation not only has to ensure it is fully independent and competent to its functions but the public has to be able to have confidence in it. The perception is as important as the reality. Have any cases been taken against any contractors under the voluntary register? I do not think they have. Have any sanctions been applied to remove people from the voluntary register? I do not think they have. If the Minister of State has figures in that regard, I would be very keen for him to share them. Basing it on the same model we have for the Society of Chartered Surveyors, for example, or the Royal Institute of Architects of Ireland, is a flawed approach. That approach has all sorts of problems.

The Government has a programme for Government commitment to actively examine the recommendations of the previous Oireachtas Joint Committee on Housing, Planning and Local Government report on building control and consumer protection, *Safe as Houses?*. One of the things that report strongly recommended was a stand-alone building control and consumer protection agency which would be the location for, among other things, the construction industry register. A review was recently undertaken of the National Parks and Wildlife Service. I know the report has not yet been published but it has been so widely leaked I think most of us have read it at this stage. That report makes some sensible recommendations for how to transform that agency from a function of the Department through a number of phases to, at some point in the future, become a fully independent body. That is the report’s recommendation and I support it fully. This Bill would have been the ideal opportunity to do that with the NBCO.

I have a two-part question for the Minister of State and I will not repeat the questions which prompted the technical answer he has given us. Why does he believe the CIF is the right place to locate this register? If it is about skills and competence in the building industry, the officials in the NBCO have just as many skills and as much knowledge of the good, bad and ugly of the industry. Likewise, why does the Minister of State not believe the NBCO would be the right place? It just makes eminent sense. It is fine that the Attorney General has advised that the legislation should not name the organisation. I am sure there are ways of doing it. I am at a loss to understand why this is the proposition but I will hazard a guess. I mean no disrespect to the Minister of State or his officials but given the long history of opposition to a statutory register by the construction industry, in particular, the CIF, I suspect that at a time long before the Minister of State and I were elected to this House, a compromise was reached in order to get the CIF on board with the proposition of a register that it would be located with the federation. That was likely the trade-off to allow the proposal to progress. If I am correct in that, and one day we will get the documents under freedom of information to establish whether that is true, it is a very bad proposition. This register should be independent and should be seen to be independent and, therefore, I think the spirit of my amendment, if not the technical quality of it, stands. That is why I will continue to press it.

**Deputy Cian O’Callaghan:** It would be helpful to hear the Minister of State’s rationale.



Deputy Ó Broin's amendment is very good but my amendment comes at this from a different point of view. It does not name the public agency that would be involved but it would confine it to a public agency, which I think makes sense. We have not heard the rationale from the Minister of State as to why he thinks it is necessary to include in the legislation the possibility that the registration body could be an organisation such as the CIF. In fact, the specific lines in the Bill are written in such a way as to ensure the CIF meets the criteria but another body may not. Those lines are quite specific in that regard. Why, for instance, must the body to be designated the registration body have been in existence for a continuous period of not less than ten years? That certainly rules the CIF in. What is the rationale for this legislation barring a body that has only existed for five years but is totally competent? What is the rationale for that? Why does it have to be a body corporate which is not a company but has not fewer than 300 members? It is quite detailed and seems to specifically set out criteria that the CIF happens to fit. Why is that necessary? Given that my amendment does not name a specific public body but would mean that it must be a public body, why is there an objection to my amendment? Certainly the Attorney General's advice about not naming a particular body does not cover that. I would like to believe that what Deputy Ó Broin was saying is not the case and no such deal on this issue was done years ago. It would be useful for us to get confirmation, if possible, that is not the case. We need an explanation as to why this wide approach is being taken when there is a really good public body that could be doing this job.

The NBCO has considerable expertise. It comprises a small group of people and that needs to be increased and beefed up. However, it is playing a very valuable role. It plays a value-added role in what it does in terms of building control and the knowledge and expertise it is helping to spread between local authorities and building control authorities. I am at a loss as to why that is not the route being taken or earmarked in this legislation.

**Deputy Peter Burke:** Deputy Ó Broin referred to the voluntary register. In the main, it would obviously be compliant members who registered on the voluntary register. It is unfair to make some of the suggestions that have been made. The reason infringements are lower and cases are not taken against members is that it is a voluntary register.

The Royal Institute of Architects of Ireland and the Society of Chartered Surveyors are known to have views on public policy. There is nothing wrong with any organisation or entity putting its views across on public policy. The CIF already has an established register. It has the required skills and competence to undertake the role. It is going to be underpinned by strong and robust legislation, with an independent board to ensure it is operated correctly.

As I outlined, there are safeguards if the registration body is not performing to the criteria set out in legislation. The independent building standards regulator is being worked upon by the Government as well. It has advanced under the Minister, Deputy Darragh O'Brien. In all these various areas, we have, and will have, a strengthened approach to protect citizens. My rationale is clear. There is precedent there with other bodies which have views on public policy. There is an independent board with strong safeguards to ensure citizens will be protected. Under the legislation, there are parameters to change the position if the registration body is not carrying out its function appropriately.

**Deputy Eoin Ó Broin:** We do not know if contractors are compliant or not. I am not at all casting aspersions on any contractor but we simply do not know. The number of complaints and strike-offs on the registers of architects and chartered surveyors is tiny. In fact, when we did pre-legislative scrutiny of this Bill in 2017 or 2018, the committee was surprised when we brought in representatives of the Royal Institute of Architects of Ireland and others to show us

the extent to which the complaints procedure had operated.

There is also another big difference, and I think this a fair point to make. In the main, architects and surveyors did not leave the trail of destruction in our cities, towns and villages that a section of the construction industry did in the 1990s and 2000s. That is a fair point to make and we know that to be the case. There is a particular problem in sections of the CIF. A lot of good work has been done, including by party colleagues of the Minister of State, in trying to clean up that industry and to improve the regulatory framework. Credit where credit is due. We are at a point where there are currently two working groups in the Department, one looking at a revised defective concrete blocks scheme, which is a slightly separate issue to this, but the other is looking at building defects, which is directly related to the Bill. There is a significant question mark over whether the industry should be allowed to regulate itself. First, that point must be made. I still have not heard the Minister of State say why he thinks this organisation is the right one. I hear him say the organisation needs to be competent, experienced and knowledgeable and I accept all of those points, but I have yet to hear somebody explain to me why the Construction Industry Federation itself would oversee it.

CIF does have a slightly different function in public policy from the two institutes the Minister of State mentioned; they are not primarily lobby organisations, they are primarily professional bodies that provide a host of supports and services to their members. In fact, they are often very reluctant to give their views on matters and are much more circumspect. We know, in particular under previous Governments but not under the current or previous Administration, the Construction Industry Federation was a semi-political body that in fact spent most of its time in direct political lobbying not the affairs of a professional body in the same way that those two other institutes are. I will not speak beyond this contribution, but I invite the Minister of State to say why in his opinion CIF is the best body and why the National Building Control Office is not an appropriate body for this purpose.

**Deputy Peter Burke:** In the first instance, as I pointed out, CIF has the experience from operating the voluntary register. Second, it is unfair to cast aspersions on the voluntary register in terms of infringements because of its voluntary nature and the fact that people are mostly compliant. Third, as I also pointed out, it has the skill sets and reference. Fourth, and critically, it is underpinned by an independent board, which is carrying out the administration functions. The Government is clearly setting the policy and parameters by which the register would work, and the criteria are set down strongly in primary and secondary legislation, as I set out in my initial response.

**Deputy Cian O’Callaghan:** I wish to make just a quick comment. There is a bit of a contradiction here. We are being told that the Construction Industry Federation is the appropriate body to run the statutory register because of its experience of running the voluntary register. That is valid. At the same time, we are being told that we cannot read anything into the fact that nobody has been struck off, because it is a voluntary register and most of the people who apply to be on it are more likely to be compliant. By its very nature and the explanation the Minister of State has given us of the voluntary register, he has explained to us how the experience of enforcing compliance is lacking in a body running a voluntary register. He has clearly made the case therefore as to why running a voluntary register does not give a body a lot of experience with enforcement and compliance issues. As we know, the National Building Control Office has significant experience relating to building control, enforcement, and compliance because that is its skill set. That is what it does. The case for the National Building Control Office rather than the Construction Industry Federation is incredibly clear. The Minister of State has helped

to make that case as well in his comments.

Amendment put.

The Committee divided: Tá; 2; Níl, 4.	
Tá;	Níl;
O'Callaghan, Cian.	Burke, Peter.
Ó Broin, Eoin.	Higgins, Emer.
	Matthews, Steven.
	McAuliffe, Paul.

Amendment declared lost.

**Deputy Cian O'Callaghan:** I move amendment No. 4:

In page 10, to delete lines 17 to 26.

Amendment put.

The Committee divided: Tá; 2; Níl, 4.	
Tá;	Níl;
O'Callaghan, Cian.	Burke, Peter.
Ó Broin, Eoin.	Higgins, Emer.
	Matthews, Steven.
	McAuliffe, Paul.

Amendment declared lost.

**Deputy Cian O'Callaghan:** I move amendment No. 5:

In page 11, to delete line 13.

My question is about the definition of “public morality”. Where is it defined? All I could find was a Dáil debate on it almost 100 years ago in 1928. The contributions in that Dáil debate 100 years ago said that they were not sure that this was a good term to be putting into legislation because of its loose definition.

**Chairman:** Is this the right amendment, “In page 11, to delete line 13 “? The amendment the Deputy refers to is line 12, which is “contrary to public morality”. Could the Deputy clarify?

**Deputy Cian O'Callaghan:** It is a mistake. It is meant to be “contrary to public morality”, not “public policy”. That is line 12.

**Chairman:** I do not know how that works as an amendment. I will let the Deputy continue on it anyway. We will clarify that it is line 12.

**Deputy Cian O'Callaghan:** Yes. To be clear, the amendment seeks to delete the line “contrary to public morality,” not “contrary to public policy,”.

**Chairman:** Okay. So it is to delete line 12.

**Deputy Cian O’Callaghan:** I am looking for an explanation of the definition of “public morality.” As I have said, I looked and all I could find was that debate from almost 100 years ago in 1928 where various Deputies were not happy that it was a properly defined term. They were quite clear, even 100 years ago, that they felt it was quite a loose definition, and that the concepts of what is public morality and what is not can shift and can be open to different interpretations. If there is another basis for that definition I would like to hear it. I really just want to know, in a legislative context, what exactly does this mean and what the definition is based on. I will not push this very heavily but I am trying to find out what the Bill is trying to achieve with this.

**Deputy Peter Burke:** I thought the Deputy was just going to withdraw the amendment on foot of the error, and that there was not going to be any question on it at all. I am told that in other pieces of legislation this is a standard clause, in line with the Charities Act 2009 for example. That is my advice here.

**Deputy Cian O’Callaghan:** Do we know if there is a definition anywhere? All I could find was references in a 1928 Dáil debate where it was used in legislation back then, I believe for the first time. There was a lot of objection to the use of the term, with people saying that it was a very loose definition. In those Dáil debates there was really no definition settled on or given to it at all.

**Deputy Peter Burke:** We are told that it is a standard clause. I will have a look and come back to the Deputy. I have the briefing here on the public policy part but I would have to have a look at the morality piece. I do not have the exact answer myself.

**Deputy Cian O’Callaghan:** If the Minister of State could, that would be welcome.

**Deputy Peter Burke:** I will yes.

**Deputy Cian O’Callaghan:** It is really just to find out it means and where is the definition around it.

**Chairman:** Does the Deputy wish to withdraw the amendment to reintroduce it on Report Stage?

**Deputy Cian O’Callaghan:** To be fair, because there is obviously a typographic error - and I do not know whose end this is at - I will withdraw the amendment today and may bring it back on Report Stage. Presumably I would not do that, but I would appreciate a definition.

**Deputy Peter Burke:** We will come back to the Deputy.

**Chairman:** To clarify, the Deputy is withdrawing the amendment.

**Deputy Cian O’Callaghan:** Yes, but I may reintroduce it.

Amendment, by leave, withdrawn.

Question proposed: “That section 8 stand part of the Bill.”

Question put.

The Committee divided: Tá;, 5; Níl, 2.	
Tá;	Níl;
Burke, Peter.	O'Callaghan, Cian.
Duffy, Francis Noel.	Ó Broin, Eoin.
Higgins, Emer.	
Matthews, Steven.	
McAuliffe, Paul.	

Question declared carried.

## SECTION 9

**Chairman:** Amendments Nos. 6, 18, 24 and 25, in the names of Deputies Ó Broin and Gould, are related and may be discussed together. Is that agreed? Agreed.

**Deputy Eoin Ó Broin:** I move amendment No. 6:

In page 12, line 2, after “person” to insert “through the Public Appointments Service”.

These four amendments speak to the same issue. They all relate to appointments by the Minister. In the first instance, it is the person under section 9 who would be appointed by the Minister to carry out periodic inspections, reviews, audits, etc. It relates to the appointments of the chair of the board, the chairperson of the appeals committee and the ordinary members of the appeals committee.

We have had this discussion probably every time we have had legislation. My strong view is the legislation should require the use of the Public Appointments Service, PAS.

To the credit of the Minister, Deputy O'Brien, every time he has made an appointment, he has made it through the Public Appointments Service. The issue is not that this Minister has an issue with it. The problem is he has colleagues in the Government who have not done that and have chosen people outside the Public Appointments Service.

There are two reasons it is important to stipulate it in the legislation. The first is that is what should be done. The second is that the people who are ultimately appointed will be protected, from a public perception point of view, if they have gone through the more rigorous process of PAS rather than being a direct ministerial appointee.

I can guess the Minister's response that this is standard language, there is a protocol and Ministers use the Public Appointments Service. Of course, the Minister, Deputy O'Brien, does but, very recently, one of his colleagues did not and that is why I am still of the view the standard formula in legislation should change and should specify the Public Appointments Service. I see no reason not to do this given that is what Government is meant to do anyway. On that basis, I press all four amendments.

**Deputy Peter Burke:** I will address amendments Nos. 6, 18, 24 and 25, as jointly tabled by Deputies Ó Broin and Gould. I must oppose amendment No. 6. This section of the Bill allows the Minister to appoint a person to carry out periodic inspections, reviews and audits with regard to the performance of the registration body and to furnish a report. The “person” in this

instance is likely to be a professional body or a professional auditing body and, therefore, it is not appropriate that they are appointed through the Public Appointments Service. All such appointments will be in line with public procurement procedures.

Amendment No. 18 seeks to have the chairperson of the board appointed through the Public Appointments Service. Amendment No. 24 seeks to have the chairperson of the appeals committee appointed through the Public Appointments Service. Amendment No. 25 seeks to have the members of the appeals committee appointed through the Public Appointments Service.

At this stage, I cannot accept these amendments. However, I am minded to review the proposals that the appointments will be made through the Public Appointments Service. I am also minded to review the proposal contained in amendment No. 24 that the chairperson of the board should have specific knowledge and experience relevant to construction and building regulations.

However, at this stage, I must oppose amendments Nos. 6, 18, 24 and 25 but I will bring fresh proposals back on this section on Report Stage.

**Deputy Eoin Ó Broin:** I thank the Minister of State for the clarification on section 9(1). In order that I am clear, from a purely legal point of view, “person” does not just mean an individual person. It can be a corporate entity or body. Is that what it will be? It will be a consultancy of some kind.

**Deputy Peter Burke:** A professional auditing service or body.

**Deputy Eoin Ó Broin:** On that basis, I am happy to withdraw amendment No. 6. In terms of the other three amendments, what is the Minister of State suggesting he may return with?

**Deputy Peter Burke:** I will return with proposals on Report Stage, with a view to having appointments made through the PAS. However, we have to discuss it within the Department first. At that juncture, if the Deputy wishes, he can return with proposals if ours are not up to scratch.

**Deputy Eoin Ó Broin:** What the Minister of State is saying is that at least at this stage, he is willing to discuss the possibility of his own amendments to address that.

**Deputy Peter Burke:** Absolutely.

**Deputy Eoin Ó Broin:** On that basis, I am more than happy to withdraw all of these amendments but I reserve the right to return to the latter three on Report Stage.

Amendment, by leave, withdrawn.

**Chairman:** We will move on to amendment No. 7 in the name of Deputy O’Callaghan.

**Deputy Cian O’Callaghan:** I move amendment No. 7:

In page 12, line 2, to delete “periodic” and substitute “annual”.

This is a straightforward amendment to replace the word “periodic” in terms of a person being appointed by the Minister to carry out inspections of the registration body, audits on the performance of the registration body and reviews. Rather than these being periodic inspections, reviews or audits, the amendment specifies that they be annual. Periodic could be every few years, which would not provide the level of accountability and scrutiny that we need. That is



the intention behind it and I look forward to the Minister of State's response.

**Deputy Peter Burke:** I will address amendment No. 7. The purpose of section 9(1) is to review the performance of the registration body. I must oppose amendment No. 7 which seeks to require this review of the registration body to take place annually. Section 19 of the Bill requires that the registration body shall provide an annual report on the performance of its functions and the functions of the board and the appeals committee and be laid before the Oireachtas and published on the website.

**Deputy Cian O'Callaghan:** I appreciate the annual report but should there not be an annual audit of the performance? What will be the arrangements in terms of auditing performance?

**Deputy Peter Burke:** The Minister will be able to request a periodic review to be carried out. With the annual report, the threshold is deemed adequate in the Department.

**Deputy Cian O'Callaghan:** I appreciate the response but given the importance of this body and especially given that the amendments Deputy Ó Broin and I tabled to section 8 were not passed, it is critically important that the performance of this body is audited on an annual basis. Left at the discretion of the Minister, it could go on for years without it. I will certainly press this amendment.

Amendment put and declared lost.

**Chairman:** Amendments Nos. 8, 9, 10 and 12 are related and will be discussed together.

**Deputy Cian O'Callaghan:** I move amendment No. 8:

In page 12, line 5, after "accordingly." to insert the following:

"This report shall also be furnished to the Joint Oireachtas Committee on Housing, Local Government and Heritage."

This is quite a straightforward amendment. It seeks that where inspections, reviews or audits and reports are furnished to the Minister by a person who is appointed by the Minister to carry out the reviews of the registration body, that report be furnished to this committee, as well as the Minister. If it is furnished directly to this committee, that will ensure an extra level of accountability. If there are issues in that report that need to be discussed by this committee, we are given a greater opportunity to do so, in terms of transparency and accountability. Given a new statutory body is being set up and its importance, that extra layer of accountability makes sense.

**Chairman:** Does Deputy O'Callaghan want to speak to amendment No. 10? It is a similar request.

**Deputy Cian O'Callaghan:** It is similar. Amendment No. 10 relates to section 17 of the Bill which is about the annual report. It calls for the annual report to be furnished directly to this committee. I appreciate that it would probably be available in any event, but there is a difference. If it is sent directly, in a practical sense, it means it comes to everybody's attention. It is in the correspondence list. People are more likely to read it, scrutinise it and, if issues arise from it, they are more likely to be captured and given appropriate attention. I will not oppose the Bill, if the Minister does not accept these amendments, but this is good practice and I ask him to accept them.

**Chairman:** These amendments are grouped. Does Deputy Ó Broin wants to speak to

amendments Nos. 9 and 12?

**Deputy Eoin Ó Broin:** I was a bit perplexed when I read section 18. In addition to responding to the amendments, I will ask the Minister of State to clarify some aspects of that section for my benefit, if not for the benefit of anybody else. It states: “The registration body may arrange with any person to assist it, the Board or a committee of the Board, in the proper discharge of its functions.” Obviously, the drafters of the legislation have something relatively specific in mind. Will the Minister of State elaborate on the kinds of persons, organisations or assistance?

My amendment, amendment No. 9, relates to section 18(3). The nature of the provision struck me as very broad. It states: “The registration body may make rules for facilitating and discharging its functions and the functions of the Board or a committee of the Board.” I would have thought the making of the rules would have been more appropriate for the Minister, Government or some such body. Maybe it is the nature of these rules are of a different order and, therefore, they do not require an outside individual such as the Minister of State or Government. However, I would prefer to see some level of requirement for engagement with the Minister and the Oireachtas on the setting of rules.

Amendment No. 12 relates to how there are still significant question marks in the public arena over sections of the construction industry. Therefore, I am sure that part of the Minister of State’s response will be that there is nothing to stop the Oireachtas committee from asking the industry to attend and speak to it. Having a statutory requirement increases the significance of that, though. While my amendment No. 9 is much more significant, having a formal requirement to engage with the committee would be appropriate.

**Deputy Peter Burke:** I agree with amendment No. 8. It is appropriate that this report, which is a review of the performance of the registration body, should be provided to the Oireachtas Joint Committee on Housing, Local Government and Heritage. I can accept amendment No 8.

I must oppose amendment No. 9, which proposes that the registration body may only make rules following consultation with the Minister and the Oireachtas. The Bill provides that the board and the appeals committee will be independent of the registration body. Schedule 2 sets out detailed procedures and rules for the operation of the board and appeals committee and these cannot be amended by the registration body. Parts 2, 5 and 6 of the Bill set out rules and procedures for the operation of the registration body. Again, these cannot be amended by the registration body. The registration body cannot make rules that are contrary to the statutory functions as outlined in the Bill. The only rules that the registration body can make are procedural and administrative in nature and as I have outlined. They cannot be outside the statutory provisions of the Bill. This amendment seeks to have the registration body consult with the Minister and the Oireachtas on the making of such administrative rules. This is not required, as the registration body is circumscribed by the provisions of the Bill.

Amendment No. 10 seeks to require the body to furnish its annual report to the Oireachtas committee and amendment No. 12 requires the registration body to seek the views of the relevant Oireachtas committee on that annual report. The report is required to be laid before the Oireachtas and published on a website. As such, it will be available to the committee. Any Oireachtas committee can provide its views on such a report as it requires.

Regarding the query on section 18(1), this relates to the normal administrative procedures if the body needs assistance in preparing its annual report or the like.

**Deputy Eoin Ó Broin:** That is helpful. So that we are clear on the procedural rules, perhaps it would be helpful if the Minister of State gave a practical example. The example he gave in respect of section 18(1) was clear - the board may require certain kinds of professional supports - but what types of procedural rules are we discussing? I presume the officials have a specific understanding.

**Deputy Peter Burke:** Normal administrative rules of the register, not policy items or-----

**Deputy Eoin Ó Broin:** Give us an example so that we are clear.

**Deputy Peter Burke:** The way the body administers its normal procedures. It is nothing that is outside the statutory scope of the Bill, which has to do with policies and the body's functions. For example, how many days in advance of board meetings that people have to be given notice-----

**Deputy Eoin Ó Broin:** It is as simple as something like that.

**Deputy Peter Burke:** Yes.

**Deputy Eoin Ó Broin:** On that basis, I am happy to withdraw the first of my amendments, but I will revert to the second in a moment.

Amendment agreed to.

Section 9, as amended, agreed to.

Sections 10 to 17, inclusive, agreed to.

## SECTION 18

**Deputy Eoin Ó Broin:** I move amendment No. 9:

In page 17, line 16, after "may" to insert "following consultation with the Minister and the Oireachtas".

Amendment, by leave, withdrawn.

Section 18 agreed to.

## SECTION 19

**Deputy Cian O'Callaghan:** I move amendment No. 10:

In page 17, line 20, after "Minister" to insert "and the Joint Oireachtas Committee on Housing, Local Government and Heritage".

On the basis that amendment No. 8, which was the more significant of my amendments and made the annual report more easily accessed, was agreed, I am happy to withdraw this amendment.

Amendment, by leave, withdrawn.

**Deputy Cian O'Callaghan:** I move amendment No. 11:

In page 17, to delete lines 25 and 26 and substitute the following:

“(3) The annual report shall include details on:

- (a) admissions;
- (b) appeals;
- (c) complaints;
- (d) investigations;
- (e) sanctions;
- (f) training;
- (g) Board and committee member;
- (h) disclosure of interests; and
- (i) any additional information requested by the Minister.”.

This amendment sets out some detail and structure in the legislation. Obviously, it is not an exclusive list of the areas to be covered in the annual report, as it reads “shall include”. Rather, it is meant to ensure on a legislative basis that these areas are included. One would assume that they would be anyway, but it is better to have them outlined in the legislation. Other elements could be included. The list is not overly prescriptive as regards these headings. In fact, it is quite non-prescriptive because the way in which the information is presented and what detail it contains are not gone into.

**Deputy Peter Burke:** Unfortunately, I must oppose this amendment at this Stage. However, I am minded to take the Deputy’s policy proposal on board and provide on Report Stage further detail in this section to direct that the annual report should include information on admissions, appeals, complaints, investigations, sanctions, board and appeals committee members and any additional information as requested by the Minister. We will revert to this matter on Report Stage.

**Deputy Cian O’Callaghan:** I thank the Minister of State. He did not mention a disclosure of interests. Is that something that the report would include?

**Deputy Peter Burke:** We are examining the issues of training and disclosure of interests. We need to do some extra work on both headings.

**Deputy Cian O’Callaghan:** I appreciate that.

**Chairman:** Given the Minister of State’s commitment to revert on this matter on Report Stage, I take it that the Deputy is withdrawing his amendment.

**Deputy Cian O’Callaghan:** Yes.

Amendment, by leave, withdrawn.

**Deputy Eoin Ó Broin:** I move amendment No. 12:

In page 18, between lines 11 and 12, to insert the following:

“(10) The registration body shall seek the views of the relevant Oireachtas Commit-

tee on its annual report in person or in writing as requested by that Committee.”.

Amendment put and declared lost.

Section 19 agreed to.

## SECTION 20

**Deputy Eoin Ó Broin:** I move amendment No. 13:

In page 18, between lines 22 and 23, to insert the following:

“(f) establishment of a statutory skills register;”.

Amendment put and declared lost.

**Chairman:** As amendments Nos. 14 and 15 are related, they may be discussed together.

**Deputy Eoin Ó Broin:** I move amendment No. 14:

In page 18, between lines 22 and 23, to insert the following:

“(f) accessing the National Training Fund for upskilling construction sector workforce;”.

This is one of the amendments that we do not expect the Minister of State will accept but it gives us an opportunity to raise an important issue that is relevant to the Bill. If the Minister of State has not hit his head against a hard object and decided to support our amendment, then he might at least consider discussing the matter with his colleagues and others at a later stage, given that this is a real issue.

When we speak to construction industry professionals, one of the points they make to us is that there need to be more opportunities for upskilling, retraining and diversifying. One of the weaknesses of our construction sector is that there are not enough career progression opportunities, particularly to attract young men and women into the sector with clear career pathways that allow them to build and grow their skill sets and, therefore, their terms and conditions of employment, rates of pay etc. Therefore, the need for greater access to the National Training Fund for upskilling construction sector workers is important. If the register is at its very core about ensuring best practice and improving standards, then the broad principle of this amendment, which is about accessing the fund in the first instance, but, more importantly, upskilling construction sector workers currently in the profession and those we would like to see enter into it, is quite important. This amendment was really to give me an opportunity to raise that with the Minister of State but also perhaps for him to provide an update, if he can, on any work his Department is doing with other Departments and the construction sector working group chaired by the Department of Public Expenditure and Reform, which is obviously discussing this issue as well.

**Deputy Peter Burke:** I will address amendments Nos. 14 and 15. Amendment No. 14 proposes-----

**Deputy Eoin Ó Broin:** I am sorry; I did not realise they were grouped. I will speak to amendment No. 15 very briefly.

Amendment No. 15 is for me a really significant omission from the Bill. The absence in

the code of practice of adherence to the requirements of the building regulations seems to be an omission. I know that the drafters of the Bill are keeping a clear distinction between building control functions and the operation of the register. It seems, however, that adherence to the requirements of the building regulations is central to everything this register is about. I really hope the Minister of State is in a position to support this amendment.

**Deputy Peter Burke:** Amendment No. 14 proposes including the phrase “accessing the National Training Fund for upskilling construction sector workforce” in the provision. Our view is that it is not to be included in the code of practice. We will, however, provide an update to Deputy Ó Broin in the form of a note on the work that is ongoing with the Department of Further and Higher Education, Research, Innovation and Science.

Amendment 15 suggests including the phrase “adherence to the requirements of the Building Regulations” in the code of practice. The code of practice is for the purpose of the continued improvement in the professional development and conduct of builders on building works. The amendment suggested by the Deputies is not appropriate in this section. Part 4 of the Bill outlines the competence criteria which will determine eligibility for registration. These include adherence to the building regulations in section 28. This has already been provided for in the Bill.

**Deputy Eoin Ó Broin:** The Minister of State might send that note in respect of upskilling to the clerk to the committee rather than to me directly in order that the entire committee can benefit from it.

I have one additional point to make in respect of this matter. I have spoken to a number of medium-sized contractors in different parts of the country. One of the concerning things they told me was that they are beginning to notice a drop-off in the number of young people who are entering into a variety of construction industry professions. When I asked them the reason, because they are talking to people and trying to recruit them into the industry, they said the nature of the work and additional stress of, for example, travel times and insecurity between jobs compared with the lack of career progression and new opportunities to upskill and develop, is a real problem. We might look at countries that do this really well. Scotland, for example, has made great strides in recent years in providing good-quality career progression and upskilling. Germany is probably one of the best in terms of its career path progression. It is really important. I look forward to reading the note.

With respect to the code of practice, I must say that I do not agree with the argument against it insofar as building regulations are changing quite a lot. They change all the time, which is a good thing, and they will continue to change. In terms of the code of practice, I would have thought it made eminent sense to have it here. I have tabled amendments elsewhere in which I would like building regulations inserted as well but I can see no reason why not to put it here. If this register is to be of real value, continued improvement has to mean continued improvement in adherence to the requirements of building regulations. I will go back, for example, to the areas in which we had some of the most significant fire safety defects. In some of those areas, there are no requirements to have any training or continued improvement because there is no skills requirement at all. Fire stopping and fire safety works is one clear example.

This is one amendment I would really ask the Minister of State to reconsider. Again, perhaps my wording is not elegant enough or there is a better way to do it but it would be remiss not to have some reference to building regulations in the code of practice.



**Deputy Peter Burke:** My officials are happy that section 39 also captures continuous professional development to ensure that people of relevant competence are included on the register and that they continue to be familiar with regulations through continuous professional development. The officials are of the view that this is not the appropriate place considering what is in section 28 and also section 39 in reference to continuous professional development.

**Deputy Eoin Ó Broin:** I would make the point on record that while section 39 talks about continuous professional development, it does not explicitly make reference to building regulations or building control. It is, therefore, still a very general provision.

**Deputy Peter Burke:** I am advised it is intended that would be captured through regulations.

**Deputy Eoin Ó Broin:** Many things that were intended to be captured by the Building Control Act 1990 ultimately were not. I will press the amendment.

**Chairman:** To be clear, is Deputy Ó Broin satisfied to withdraw amendment No. 14 on the basis of the note that is coming from the Minister of State?

**Deputy Eoin Ó Broin:** Absolutely; I thank the Minister of State for that.

Amendment, by leave, withdrawn.

**Deputy Eoin Ó Broin:** I move amendment No. 15:

In page 18, between lines 22 and 23, to insert the following: “(f) adherence to the requirements of the Building Regulations;”.

Amendment put.

The Committee divided: Tá; 2; Níl, 5.	
Tá;	Níl;
O’Callaghan, Cian.	Burke, Peter.
Ó Broin, Eoin.	Duffy, Francis Noel.
	Higgins, Emer.
	Matthews, Steven.
	McAuliffe, Paul.

Amendment declared lost.

Section 20 agreed to.

## SECTION 21

**Chairman:** Amendments Nos. 16 and 17 are related and may be discussed together.

**Deputy Eoin Ó Broin:** I move amendment No. 16:

In page 19, line 31, to delete “such members of its staff as it thinks fit to be” and substitute “independent”.

Section 21 relates to the appointment of inspectors. I have a question which will determine

whether I press the amendment, which is just to clarify two elements of section 21. I first want to clarify the function of the inspectors for the purposes of the meeting. Second, where it says “such members of its staff”, am I right in saying that means the staff of the registration body, which, as we know, is the Construction Industry Federation? I might get the Minister of State to answer those two questions and, with the indulgence of the Chair, I will respond. I think I know the answer but I would like the Minister of State to put it on the record.

**Deputy Peter Burke:** I agree with the policy intention of amendment No. 17. It is appropriate that an inspector would operate independently while performing these functions and that they have the experience and competence to perform these functions. However, I wish to review the proposed wording in further detail and, following input from our legal drafters, we will bring forward a revised amendment that will reflect the policy outlined in this proposal.

**Deputy Eoin Ó Broin:** That is very welcome but I want to tease this out so I have an understanding of the section. For the benefit of the committee, the Minister of State might outline what the functions of these inspectors are.

**Deputy Peter Burke:** They will be carrying out investigations of the members to ensure the due diligence is correct in terms of their upskilling, the continuous professional development courses that they have attended and all of that type of metrics to ensure they are competent and that, as a collective group, they are improving.

**Deputy Eoin Ó Broin:** Let me make the point for the proposition that I am making and I will then withdraw the amendment, although I reserve the right to reintroduce it depending on what the Minister of State returns with on Report Stage. This again goes back to that point about the need for an independent process. I would find it completely unacceptable that staff members of the Construction Industry Federation - who, and we made the point strongly earlier, are also lobbyists for the industry - would also have the role of inspectors, whether it is to comply with the terms of the register or in any other areas. This is one area where I really would impress upon the Minister of State to come back and ensure they would be fully independent and not staff members. If that was the case, it would be a very positive development.

**Deputy Peter Burke:** I will come back on that.

**Chairman:** Amendment No. 17 is in this group and is in the name of Deputy Cian O’Callaghan. The Minister of State has already responded on this amendment but I invite Deputy O’Callaghan to speak on it.

**Deputy Cian O’Callaghan:** I thank the Minister of State for the response. The key issue for me here is the independence of the inspectors. I am coming at it from a slightly different angle to Deputy Ó Broin and I am taking a broader view. Obviously, people who have the competence, the expertise and the skills in this area presumably will have been employed in the industry before, and will have done previous work with people who will then be getting inspected, so that independence in their role is very important. We want them to have that expertise and experience and we also want them to have that independence, but that can be somewhat contradictory. It is not automatic to have both of those because people will gain a lot of experience and skills from working in the industry, and that is going to mean working for commercial bodies and everything else. However, while they are in this role, they have to be independent and it is very important that this is explicit in the legislation in order that it is achieved. I very much welcome the Minister of State’s commitment in this regard.

**Chairman:** Is Deputy Ó Broin withdrawing amendment No. 16?

**Deputy Eoin Ó Broin:** I will withdraw the amendment but I reserve the right to reintroduce.

Amendment, by leave, withdrawn.

**Deputy Cian O’Callaghan:** I move amendment No. 17:

In page 19, between lines 35 and 36, to insert the following:

“(2)The inspector appointed under *subsection (1)* shall-

(a) be a person who, has satisfactory experience and competence to perform the functions required of them under this section, and

(b) be independent in the performance of those functions.”.

Amendment, by leave, withdrawn.

Section 21 agreed to.

## SECTION 22

Amendment No. 18 not moved.

**Chairman:** Amendments Nos. 19 to 23, inclusive, are related and may be discussed together.

**Deputy Cian O’Callaghan:** I move amendment No. 19:

In page 20, to delete lines 24 to 35, and in page 21, to delete lines 1 to 3 and substitute the following

“(4)The ordinary members of the Board shall be appointed by the Minister following an open competition as follows:

(a) 8 persons who are nominated for such appointment by the Minister following consultation by him or her with the Minister for Further and Higher Education, Research, Innovation and Science and the Minister for Enterprise, Trade and Employment—

(i) who are not registered persons,

(ii) who are not employees of registered persons, and

(iii) all of whom, in the view of the Minister, have the experience, skill and knowledge necessary for the proper, effective and efficient performance of the functions of the Board;

(b) 2 persons who are nominated for such appointment by the Minister—

(i) who have experience and expertise in the area of construction,

(ii) both of whom, in the view of the Minister, have the experience, skill and knowledge necessary for the proper, effective and efficient performance of the

functions of the Board.”.

This is about the composition of the board. It is another part of the legislation where I have a lot of concern. I do not believe that having half of the members of the board appointed by the body that is appointed to be the registration body is the correct way to do it. I think that should be by appointments. If it continues to be the Construction Industry Federation, for example, I would have a problem with half of the board coming from that quarter and it would be better if they were ministerial appointments. The previous amendments from Deputy Ó Broin proposing that this goes through the Public Appointments Service are very important. It is also important to say that the pre-legislative scrutiny report on this made recommendations and while there was some movement towards those in the drafting of the Bill, I do not think they were fully taken on board. I think this is a better structure for the board and it means half of its members will not come from the Construction Industry Federation side. It is important that other skills and interests are reflected on the board and this lays out the structure for those.

**Chairman:** Excuse me. I should have pointed out that amendments Nos. 20 to 23, inclusive, are physical alternatives to amendment No. 19.

**Deputy Cian O’Callaghan:** We are not discussing them together.

**Chairman:** We are taking amendments Nos. 19 to 23, inclusive, together.

**Deputy Cian O’Callaghan:** On amendment No. 23, one of the nominations should come from the Irish Congress of Trade Unions. It has a representative role for people working in the sector but it is also very important that the interests of homeowners are reflected. As a representative body of union members, it reflects the interests of homeowners as well as people working in the industry, in that broader policy context as a social partner. That is a useful way of ensuring there is some structured representation on the board. The amendments from Deputy Ó Broin on this are very good and I would be happy with those proposals as well.

**Deputy Eoin Ó Broin:** This a very strange way to constitute the board. I will outline my objections to the section and then propose my alternative. I see no reason the chair of the board should exclusively be any of the four categories stated, namely, a former judge, a practising solicitor, a practising barrister or a registered construction professional. I do not think a registered construction professional should be the chair of the board full stop. That makes no sense whatsoever and would create the perception, at best, that the board does not have the level of independence required if the chair is a registered construction professional who is practising in the industry. With regard to being a practising solicitor or barrister, it is a bit like the list of people on a passport form who were deemed to be of sufficient good standing in the community to be able to sign the form. I do not know if those lists are still on the forms but barristers and solicitors were on them. These could be solicitors or barristers who have no knowledge of the areas in question. It is likewise for a judge. I do not understand why, given the particular functions of the chair of a board, it would be restricted to that group of people. That is the first problem I have with this section.

Second, 15 is a large board for a register. This is not a corporation or a body that has huge functions. It has very limited and narrow scope and that is one of the weaknesses of the register. Fifteen is too large a number. Ten would seem much more appropriate for it to conduct its functions very efficiently. There are five appointees by the Minister and five persons who are nominated for such appointment by the registration body, of whom at least two are registered construction professionals. Why should the registration body be able to appoint a third of the

board and why should two be practising professionals?

What I am proposing is basically a complete replacement of this section. We have already dealt with my alternative amendment for the chair of the board so I will not return to that but I think ten is an appropriate number. I know the Minister of State will not accept this proposal but I ask him to deliberate a little on it. In order to ensure we have the right range of people with the right skills, we need a combination of the Public Appointments Service, PAS, and nominating bodies. It would be a little like what happens currently with An Bord Pleanála. There would be ten nominating bodies, which could nominate one, two, three four or five people as they saw fit. Those people would then have to go through the Public Appointments Service to be interviewed and approved in that manner.

The reason I have listed the organisations here is that there is clearly a strong argument for the inclusion of the relevant Departments, including those of the Minister of State and his counterparts. It is logical for the National Building Control Office to nominate a person or persons who would then go through the PAS. It is reasonable for both the employers and the trade unions to have nominating rights. There is also a role for the Society of Chartered Surveyors Ireland and the Irish Planning Institute, and I have also included the Construction Defects Alliance, which is the representative body for homeowners affected by Celtic tiger era defects. The Minister for Housing, Planning and Local Government has appointed that organisation to the working group on building defects, which was a very positive move. That was not done for the previous working group on defective blocks or pyrite. This amendment does two things. It makes sure that Departments, professional bodies and affected homeowners have a pathway to membership on the board but there is also the robust mechanism of the Public Appointments Service to ensure they are fully qualified and are the best people for the job. The board would then have the merit of being a more representative, more qualified and more skilled body, as verified by PAS. It would also be slightly smaller and streamlined. In the current section 22, there is an in-built majority on the board, whereas this would have a much more independent flavour to it. The Government is saying it wants to achieve that independence and my amendments facilitate that.

**Deputy Ged Nash:** Deputy Ó Broin's assessment of the approach that has been taken in the Bill is spot-on. I and the Labour Party support his amendments. We did not have the opportunity to table any amendments in this area ourselves but we may table some on Report Stage. I want to notify the committee of that. I am particularly interested in whether the Minister of State believes there should be a form of statutory entitlement for the Irish Congress of Trade Unions to be represented on the board, for the reasons Deputy O'Callaghan pointed out. It is Ireland's largest civil society organisation North and South and is organised on a 32-county basis. The Irish Congress of Trade Unions is very active, especially in the last few years, on the question of housing and the right to housing. I know from my own work over the years, including legislative and representational work, and my involvement with the trade union movement, that nobody is more skilled at identifying issues than those who actually work in the sector professionally, such as skilled craftspeople, general operatives and others. There is genuinely a function here for that expertise in the first instance. Given how significant housing is to our society more broadly and the construction sector more generally, there is also a function here for the Irish Congress of Trade Unions. I hope the Minister of State will concede that. We can assume he will not support the amendment but I would be interested in a clarification as to where he stands on that idea of an entitlement for the Irish Congress of Trade Unions to be represented, for all the reasons we have pointed out.

**Deputy Peter Burke:** To confirm, there will be ten people on the board, that is, five and five. Given the complex nature of the work that will be carried out here, the chair will need significant legal and other skill sets because the gravity of the decisions this body will be making in terms of limiting an individual's right to work is very significant.

I must, unfortunately, oppose all of these proposed amendments, Nos. 19 to 23, inclusive. However, I am minded to review the proposals that the appointments be made through the Public Appointments Service. I am also minded to review the proposals that certain skills and expertise should be a prerequisite for membership of the board. On amendment No. 22, I agree with the policy intention that specialist expertise is required and that certain bodies, including the registration body, should nominate persons to be members of the board. In light of this and the discussion we have had, we will review section 22 of the Bill and bring forward amendments on Report Stage.

**Deputy Eoin Ó Broin:** I welcome the Minister of State's generosity throughout the meeting. That is genuinely a positive thing. We would be more than open to some alternative formulation of this amendment. I agree with Deputies O'Callaghan and Nash about the Irish Congress of Trade Unions. There is a whole set of concerns for workers working for registered companies but there is also the very significant issue of bogus self-employment. There are many people who, even though they do not want to be registered and would like to be PAYE workers, will essentially be forced to register because they are forced to operate as sole traders. Their voice is a very different voice and their interests are very different interests from those of actual registered construction industry professionals. As a result, I think the ICTU representative, in particular, would be important.

I take this opportunity to re-emphasise, and know the Minister hears the point I am making, the importance of the National Building Control Office and the building control regulations being a much more public part of this process. That is really key. I hope that those two elements come are placed in the foreground in the Minister of State's deliberations between now and Report Stage.

Amendment put and declared lost.

**Deputy Eoin Ó Broin:** I move amendment No. 20:

In page 20, line 24, to delete "ordinary" and substitute "ten".

Amendment, by leave, withdrawn.

**Deputy Eoin Ó Broin:** I move amendment No. 21:

In page 20, line 24, to delete "by the Minister" and substitute "through the Public Appointments Service,".

Amendment, by leave, withdrawn.

**Deputy Eoin Ó Broin:** I move amendment No. 22:

In page 20, lines 24 to 35, to delete all words from and including "as follows" in line 24 down to and including line 35, and in page 21, to delete lines 1 to 3 and substitute the following:

"with one member selected from the nominations of each the following bodies:



- (a) the Department of Housing, Local Government and Heritage;
- (b) the Department of Further and Higher Education, Research, Innovation and Science;
- (c) the Department of Enterprise, Trade and Employment;
- (d) the Department of Environment, Climate and Communications;
- (e) the National Building Control Office;
- (f) the Construction Industry Federation;
- (g) the Irish Congress of Trade Unions;
- (h) the Society of Chartered Surveyors Ireland;
- (i) the Construction Defects Alliance;
- (j) the Irish Planning Institute.”.

Amendment, by leave, withdrawn.

**Deputy Cian O’Callaghan:** I move amendment No. 23:

In page 20, between lines 30 and 31, to insert the following:

“(iii) one of the five persons shall be a person nominated for appointment by the Irish Congress of Trade Unions;”.

Amendment put and declared lost.

Section 22 agreed to.

Section 23 agreed to.

## SECTION 24

**Deputy Eoin Ó Broin:** I move amendment No. 24:

In page 22, to delete lines 6 to 12 and substitute the following:

“(3) The chairperson of the appeals committee shall be appointed through the Public Appointments Service and shall have knowledge and experience of construction, building control, building standards, planning and related legislation; and other areas that the Minister may specify by way of regulations.”.

Amendment, by leave, withdrawn.

**Deputy Eoin Ó Broin:** I move amendment No. 25:

In page 22, to delete line 23 and substitute the following:

“(7) The ordinary members of the appeals committee shall be appointed through the Public Appointments Service.”.

Amendment, by leave, withdrawn.

**Deputy Cian O’Callaghan:** I move amendment No. 26:

In page 22, to delete lines 24 to 26.

This amendment relates to the appeals committee. It also relates to the discussion we just had. The purpose of the amendment is to delete the provision whereby half of the members of the appeals committee would be appointed by the registration body. It is the same principle. The legislation sets out that if the register continues to be run by the CIF, then half the members of the appeals committee will be appointed by the federation. For public confidence in the entire process, including appeals, it would be far preferable that half the nominees to the appeals committee could not potentially come from an industry lobby group. I see no reason why half need to come from the registration body, which, I presume, will continue to be the CIF.

**Deputy Peter Burke:** This amendment relates to our previous discussion. It seeks to delete the requirements that at least one half of the ordinary members appointed by the Minister shall be registered construction professionals. As previously discussed, I am happy to take a look at this and revert on Report Stage.

**Deputy Cian O’Callaghan:** I am happy to withdraw the amendment then.

Amendment, by leave, withdrawn.

**Deputy Eoin Ó Broin:** I move amendment No. 27:

In page 23, to delete lines 24 to 28 and substitute the following:

“(12) All appeals shall be considered in public.”.

The Minister of State is setting a very high expectation in respect of his performance on Report Stage. I want to note that. I do hope that he does not disappoint us terribly. Will there be a leadership contest between now and Report Stage? The Minister of State has been tipped in the newspapers as a potential leadership candidate for his party.

**Chairman:** We are on amendment No. 27.

**Deputy Eoin Ó Broin:** The amendment relates to section 24(12). It may be that I do not understand the intention. I hope that the Minister of State can clarify the position. Section 24(12) refers to an appeal being considered in public unless the chairperson of the appeals committee, a division of the committee or whatever “determines that, due to the existence of special circumstances, the appeal (or part of it) should be conducted otherwise than in public”. I do not see where special circumstances is listed or prescribed. Who gets to decide what those special circumstances are? Given that we are talking about what are potentially very significant allegations against somebody’s professional conduct or compliance with the terms of the register, I would have thought that these appeals always being in public would have been the most obvious thing for both parties. Say someone was appealing in good faith because they thought that they had been wrongly determined initially, I would have thought that they would want the opportunity to do so in public. While it is not completely comparable, I am thinking of the Residential Tenancies Board in terms of appeals and the publication of information. The more transparency here, the better. I may have misunderstood the provision. Perhaps if the Minister of State clarifies it more, I can reconsider the amendment. At this time, however, I think that any appeal should be considered in public.

**Deputy Peter Burke:** Unfortunately, I cannot agree to this amendment. In general, appeals shall be held in public. However, special circumstances may exist, through the determination of the chairperson and the board, on issues that may be contractual or may have sensitive information attached to them. That would have to be adjudicated by the board. I am advised by our officials that it is needed for issues that are potentially sensitive.

**Deputy Eoin Ó Broin:** I would be much more comfortable with that if special circumstances were prescribed somewhere. Some of what the Minister of State said could sound eminently reasonable. Unless the circumstances are prescribed somewhere else and not here, however, I think that it gives too wide a latitude. Is there an intention to prescribe this by way of regulations? Is it somewhere else in the Bill that I have missed? If not, how much latitude will the appeal board or division of the board have in terms of determining the special circumstances may be?

**Deputy Peter Burke:** The board will have to adjudicate on the matter. It will have the skill set to do that. It would have to be based on good reason, that a matter is confidential or a sensitive contractual engagement. That is how it is prescribed at the moment.

**Deputy Eoin Ó Broin:** You could write a philosophy PhD dissertation on the meaning of good reason or, indeed, on special circumstances. Does the Minister of State not think that there should be some way of providing a framework or guide to the board in making those decisions. It seems to be too broad. The Minister of State and I can have a nice conversation here about what we interpret it as being. He is confirming that nowhere in legislation or regulations will there be a definition or an attempt to provide at least the outer limits of what that definition may be. That then gives the board a pretty wide berth of what may or may not be applicable. For example, and we all know this from experience of freedom of information, commercial sensitivity could be a special circumstance, but should commercial sensitivity trump public transparency about a decision about a construction industry? In many cases these could be large companies. There could be all sorts of questions around potential defects or defective practices, non-compliance with the register, etc. I am not saying that I do not accept that there may be special circumstances but I would like a clear idea of what they are and for the board to have some limits on how they determine those.

**Deputy Peter Burke:** It is a very difficult issue around which to set parameters. My view is that when you have an independent board that has the skill set, it will be acting in the public interest, especially when they are being appointed and we have committed to the board having the required skills and experience to enable it to discharge its functions. It provides a significant safeguard with regard to how the decision will be adjudicated in an independent manner and it will be in the public interest. That would be my view. It is very difficult to try and frame in legislation exactly what should and should not happen regarding a contract or a sensitive issue. It is almost like asking “How long is a piece of string?”

**Deputy Eoin Ó Broin:** Between now and Report Stage, would the Minister of State be willing to discuss with his officials the proposition that were such special circumstances to be invoked, at least some information on the grounds of those circumstances would be made public in the absence of a public hearing? I am not saying the board would provide the information which is, in itself, confidential but at least the public would know the grounds upon which those special circumstances were being invoked.

**Deputy Peter Burke:** We will have a look at that and revert to the committee.

**Deputy Eoin Ó Broin:** On that basis, I am happy to withdraw the amendment but reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Section 24 agreed to.

Sections 25 to 27, inclusive, agreed to.

## SECTION 28

**Deputy Eoin Ó Broin:** I move amendment No. 28:

In page 27, between lines 15 and 16, to insert the following:

“(g) construction products regulations;”.

One of the weaknesses in our building control regime is that, for the most part, we think of building control in terms of some level of regulation, monitoring or enforcement of the process of building itself. Obviously, a lot of what the register is about is ensuring that those people who are engaged in that process are properly qualified and meet all of the relevant criteria. The poor relation of building control, with building control itself being the poor relation in our planning system, is the area of construction product regulations. The most glaring evidence of that is what we are seeing now with defective blocks used along the western seaboard and also the pyrite scandal of which Deputy Cian O’Callaghan, I and others have a fair bit of experience. It would be appropriate to include in this section a reference to construction product regulations. We have a series of other relevant provisions here but just naming those regulations and highlighting them would be very valuable. It is on that basis that I have tabled this amendment.

**Deputy Peter Burke:** This section deals with the competence criteria by which the board shall determine an applicants’ suitability for registration and includes the relevant standards, building regulations and other appropriate regulations. A provider of building works has certain obligations under the construction products regulation so it is appropriate to include this in the list of requirements. Therefore, I will accept the amendment.

**Deputy Eoin Ó Broin:** Excellent. I must say the more time the Minister of State spends with me and Deputy Cian O’Callaghan, the more he agrees with us. I would like to commend-----

**Chairman:** We have another 25 minutes, so make the most of it.

**Deputy Eoin Ó Broin:** -----more proximity osmosis.

Amendment agreed to.

Section 28, as amended, agreed to.

Sections 29 to 33, inclusive, agreed to.

## SECTION 34

**Deputy Cian O’Callaghan:** I move amendment No. 29:

In page 36, line 8, after “*section 43*” to insert “including latent defects insurance”.

This amendment is concerned with the registration process and what the applicant needs to furnish to the board as part of the application for registration. There is a list of different items that applicants have to furnish and this amendment seeks to include in the section that refers to indemnity, which reads “evidence that the applicant holds minimum levels of indemnity specified under *section 43*,” that the applicant would have to have latent defects insurance. One of the big issues with all of the problems we have had with building defects has been the lack latent defects insurance. It is not the entire solution to the problems but is one of them. It is part of the solution because if builders or contractors are doing shoddy work and are getting into difficulties, they are not going to be able to get latent defects insurance. No one will insure them if they keep making mistakes for which they have to pay out. It is quite an effective method of getting some of the people who have been causing havoc out of the system altogether, as they should be. It is not the entire solution but it is certainly part of it. If we adopted this as part of the criteria for registration, it would help us to get some of the way we need to go in terms of sorting all of these problems out.

**Deputy Peter Burke:** I must, unfortunately, oppose amendment No. 29. It seeks to require an applicant for registration to possess latent defects insurance. Latent defects insurance is taken out on a project-by-project basis and it is not practical that registration could be conditioned on the possession of such insurance. In addition, while a builder of residential or non-residential buildings should possess such insurance, other categories of providers of building works, for example, bricklayers or plasterers, do not require this insurance.

It is worth noting that while latent defects insurance is not a mandatory requirement, lending institutions and consumers are likely to demand it. I recognise that this is a very important consumer product, particularly in the residential market. I will review how this is further promoted and encouraged so that consumers are aware of this product. This would also have the effect of encouraging the take-up of latent defects insurance.

**Deputy Cian O’Callaghan:** I thank the Minister of State for his response. The first part of the response is fair enough but I have a different view of the latter part. I do not think people who are looking to buy a home at the moment are necessarily aware of these issues. I know the Minister of State is saying we need to create an awareness but if those looking to buy a home, particularly now, manage to get mortgage approval and find somewhere suitable to live that they can afford within their mortgage approval, with everything falling into place, they are not likely to then turn around and ask if there is latent defects insurance in place and, if not, to pull out of buying. An awful lot of providers simply do not have latent defects insurance and potential buyers are not in a position of sufficient power to be able to insist on it.

I accept that my amendment may not be the correct way of dealing with this but we need to get to a position where latent defects insurance is required. Unfortunately, it has not been driven from consumer or lending institution quarters. I wish it had been and I wish it was commonplace as a result. One would think that after everything that has happened, it would be commonplace but it is not. In that context, a legislative solution is required. I am interested in hearing the Minister of State’s thoughts on the general point.

**Deputy Peter Burke:** The Deputy’s point is well made and we will consider how we can further promote latent defects insurance. Specifically on the amendment, such insurance is not attached to the entity but to the project. That is why we cannot accept the amendment.

**Deputy Eoin Ó Broin:** The best way for the Government to deal with this is to accept one of the recommendations of the Safe As Houses? report, which is for latent defects insurance to

be mandatory. When we raised this at our sessions with the Construction Industry Federation it said that there was no need to make such insurance mandatory because developers are all using it anyway but that is not the case. There are other jurisdictions where it is a legal requirement and it provides a great degree of security for good quality builders and tradespeople as well as for the purchasers. I am talking liberties here in the sense that I am not speaking specifically to the amendment but I am speaking to the substance of it. Mandatory latent defects insurance is the way to go. Anything short of that means it will be a pick-and-mix in terms of who takes it and who does not.

Amendment put and declared lost.

**Chairman:** Amendments Nos. 30 to 32, inclusive, are related and may be discussed together.

**Deputy Cian O’Callaghan:** I move amendment No. 30:

In page 36, lines 16 and 17, to delete “, within the last 10 years or since the establishment of the register whichever is the shorter period,”.

Amendments Nos. 30 to 32, inclusive, relate to the application for registration and the information that an applicant has to provide. I have two issues with the wording of the Bill as it stands. I am not satisfied with and want to hear the rationale for the ten-year cut-off point.

I am doubly unsatisfied with the wording, “or since the establishment of the register, whichever is the shorter period”. In terms of the establishment of the register, the Minister of State might clarify if we are talking about the establishment of the statutory register as provided for in this Bill and that, therefore, a person applying for registration with the board has to provide only information about any conviction in the State. It is worth pointing out that these are not general convictions but convictions specified in the Bill in regard to building controls, building regulations and fire safety, which are particularly relevant in the context of whether someone is suitable to be on the register. As I said, these people have only to provide the information. The fact that they have these convictions, which are potentially very serious convictions, does not mean they are barred from going on the register.

My reading of the current wording is that as this provision will apply only since the establishment of the register, a person with serious convictions that are highly relevant to building control and fire safety but which date from two years ago will not have to provide that information with an application for registration. Ten years after the establishment of the register on a statutory basis, the person will have a ten-year window to do that. I understand the idea of cut-off points but this is highly relevant information. Bearing in mind that as convictions under the Building Control Acts are very rare, it is highly relevant information. If there have been convictions under these Acts, I do not see why there would be any time cut-off. If the Minister of State is strongly of the view that it needs to be ten years, it should, at least, be ten years and not “or since the establishment of the register” given that will mean from day one a zero time period.

As I said, there have been very few convictions under these Acts in any event. I would welcome an indication of the Minister of State’s view on this.

**Deputy Peter Burke:** I must oppose these amendments Nos. 30 to 32, inclusive. This section requires an applicant to confirm any convictions for certain relevant offences or orders under the Building Control Act 1990 within the previous ten years or since the establishment



of the register, whichever is the shorter period. The legal advice is that any amendment would need to consider the relevant provisions and the legal position on retrospectivity in regard to this case. That is where we are at on this matter.

**Deputy Cian O’Callaghan:** On retrospectivity, the current wording in the Bill means that from day one of the establishment of the register, a person can apply and in regard to a conviction imposed a year beforehand, that person is not obliged to provide that information. Is the legal advice that this would not be acceptable in terms of retrospectivity?

**Deputy Peter Burke:** That absolutely is the legal advice from the Attorney General’s office, which we have to consider. We can take a further look at it but at this point in time, the advice is very clear that to go back into the past one has to consider that. I am not a legal expert. That is the advice from the Attorney General’s office.

**Deputy Cian O’Callaghan:** I appreciate it is advice from the Attorney General’s office but I cannot grasp how that would not be relevant information for a registration board to seek. I find that very difficult-----

**Deputy Peter Burke:** We are still considering it. That is just the advice at the moment.

**Deputy Cian O’Callaghan:** Is the Minister of State saying that he will look at it and may be able to-----

**Deputy Peter Burke:** We will look at it. We are still considering it. I just need to be honest and frank that this is the advice at the moment. I can understand the point the Deputy makes.

**Deputy Cian O’Callaghan:** I appreciate that. Notwithstanding that advice, I have a very serious objection to this part of the Bill.

**Deputy Eoin Ó Broin:** The issue of retrospectivity often comes up. In the Minister of State’s deliberations on the matter between now and Report Stage there are two issues to consider. In planning law, planning authorities can take into account certain forms of past behaviour, whether it is a failure to comply with terms of planning permissions or a failure to complete planning conditions. It does not apply to building control - we have separate legislation to achieve that - but there is an element of retrospectivity in making future planning decisions. Likewise with procurement law there has been an interesting discussion in another committee of the Houses of the Oireachtas to determine whether past breaches of building controls or of planning could be worked into conditions for future tendering in regard to procurement for public contracts. It was suggested by a Minister in the previous Government that this might not be legally possible but other European jurisdictions do it. As long as the rules apply to everybody in the same way, there is no legal question. These types of provisions, when crafted properly, in certain circumstances can be applied retrospectively. I urge the Minister of State to look at those examples, as well as what has been said by Deputy Cian O’Callaghan.

Amendment put and declared lost.

**Deputy Cian O’Callaghan:** I move amendment No. 31:

In page 36, lines 26 and 27, to delete “, within the last 10 years or since the establishment of the register whichever is the shorter period,”.

Amendment put and declared lost.

**Deputy Cian O’Callaghan:** I move amendment No. 32:

In page 36, lines 35 and 36, to delete “, within the last 10 years or since the establishment of the register whichever is the shorter period,”.

Amendment put and declared lost.

Question, “That section 34 stand part of the Bill”, put and declared carried.

## SECTION 35

**Chairman:** Amendments Nos. 33 and 34 are related and may be discussed together.

**Deputy Eoin Ó Broin:** I move amendment No. 33:

In page 37, line 24, to delete “90 days” and substitute “20 days”.

Sections 35 and 37 deal with the decisions on an application for registration and a renewal of registration. Both sections specify “within a period of 90 days”, beginning on the date of receipt of a fully completed application. Ninety days is a long time. What is the rationale for it? I presume the Minister of State’s response will be that it does not have to be on day 90, it can be day 40, 50 or 60, but why 90 days? Is that comparable with any other type of registration process such as, for example, the Royal Institute of the Architects of Ireland, Society of Chartered Surveyors Ireland and so on? Where did the 90 days come from?

**Deputy Peter Burke:** I am advised it is adequate time for the board to meet and approve it.

**Deputy Eoin Ó Broin:** It is 90 days.

**Deputy Peter Burke:** I will read the substantive reply, which may provide some good news for the Deputy. Amendments Nos. 33 and 34 seek to shorten from 90 days to 20 days the period within which the board must make a decision on any application for registration or renewal. A meeting of the board is required to make a decision on an application for registration or renewal and so 20 days is not sufficient. However, I am minded to review the timeframe and to examine if it can be shortened, on which I will revert to the Deputy on Report Stage. I am unable to accept amendments Nos. 33 and 34.

**Deputy Eoin Ó Broin:** On reflection, 20 days is probably too short, particularly where all of the document is received too close to a board meeting and there is not a further board meeting for a month or so. I still think 90 days is too long. If we could find an appropriate timeframe that would be helpful. On that basis, I am happy to withdraw the amendment.

Amendment, by leave, withdrawn.

Section 35 agreed to.

Section 36 agreed to.

## SECTION 37

Amendment No. 34 not moved.

Section 37 agreed to.

Section 38 agreed to.

## SECTION 39

**Deputy Eoin Ó Broin:** I move amendment No. 35:

In page 42, line 33, after “Board” to insert “, in partnership with SOLAS and the National Training Fund,”

This is a fairly simple amendment. Section 39 deals with continuing professional development. It states, “The Board shall establish and maintain a system of continuing professional development of providers of building works”. It makes sense to me for the board to do that in partnership with the existing bodies that are involved in the provision of training for construction industry professionals, such as SOLAS or the National Training Fund. I accept my list might be too short or too prescriptive, but requiring the board to have some kind of a relationship with other providers of what is in many instances continuing professional development makes sense. There might be a more elegant way of wording this amendment but I think members get the principle of what I am trying to do.

**Deputy Peter Burke:** We will not be accepting this amendment as the Bill provides a wide range of training providers that can be used by registrants to provide evidence of continuing professional development, CPD. Sections 28 and 29 of the Bill, in relation to competence criteria and eligibility for registration, provide that the Minister or the board may consult with SOLAS, among other bodies, when determining the qualifications, experience or combination of both that confer eligibility for registration. Training courses supported by SOLAS, the National Training Fund and a large body of training providers will be eligible for approval by the board to demonstrate evidence of CPD.

Amendment put and declared lost.

Section 39 agreed to.

Sections 40 to 43, inclusive, agreed to.

## SECTION 44

**Chairman:** Amendments Nos. 36 and 37 are related and may be discussed together.

**Deputy Eoin Ó Broin:** I move amendment No. 36:

In page 45, between lines 34 and 35, to insert the following:

“(i) failure to comply with building control regulations.”.

Section 44 deals with complaints and this specific provision details the grounds upon which complaints can be made by complainants. I understand the intention of the Bill, and the complaints section deals with complaints with respect to the specific requirements of the registration process and register. The officials very helpfully explained some of that to me after Second Stage in the Dáil, for which I thank them. However, I want to make the case that the grounds upon which a complaint can be made should extend beyond the pure formalities of the registration requirements.

It seems that in the drafting of the Bill, there was an attempt to separate the registration

process and the criteria required to comply with that and building control. The argument could be made that if somebody has a problem with a failure to comply with building regulations, he or she should raise the matter with the building control authority, which is the local authority or the National Building Control Office, or take the matter to the courts. The problem, which we know from extensive experience, is that neither of those options provide any meaningful remedy for which a person who is affected by, for example, a failure to comply with building control regulations, as per my first amendment, or failure to comply with planning permission, can seek adequate redress even in the limited form of having somebody struck off the register. It is virtually impossible for a homeowner affected by building defects to take a case to court and win. Both Deputy Cian O’Callaghan and I have a significant amount of experience of working with homeowners who have been in that situation. Unless a person has very deep pockets and a significant taste for gambling, the courts do not provide an effective remedy.

Likewise, for the building control authority to seek a remedy through building control enforcement is equally as lengthy and cumbersome. Somebody might say why do we not reform those two processes and that is the way to do it. I fully agree with that but when it comes to defective buildings, a belt and braces approach is the right approach. Therefore, if a company, individual contractor or professional is on this register and is in clear breach of building control regulations, the person affected by that should be able to make a formal complaint on the grounds of breaches of building control regulations. The consequence of that, were the person successful through the various processes provided for, would be to have somebody struck off the register. For example, the developer who was responsible for Priory Hall is back in the building game, albeit in the North of our country. There is nothing stopping that individual from coming to the South, setting up a new company and engaging in construction work activities. There is nothing in the Building Control Acts that ensures the individual is prevented from practising as a construction industry professional. They can be struck off a company’s board of directors or placed in insolvency or all sorts of other things.

We need to send out a clear signal that the value of this register is not only that individuals have to comply with the terms and conditions of the register but that they could be struck off and prevented from ever practising again if they are in breach of building control regulations and if the complaints process finds that to be the case. That would be a powerful signal to the industry. This is not just about complying with the paperwork. This is not just about complying with the registration requirements; it is about complying with the law. Today, there is nothing that allows any court in this country, as far as I am aware, to strike a construction industry professional off the register and put him or her out of business. We have an opportunity to do so and I urge the Minister of State to consider widening the scope of the Bill. I realise what I am proposing is outside the scope of what was originally intended. I understand that better now following the conversation I had with the officials. However, if we let this opportunity pass, we as an Oireachtas will not be forgiven for not having a very effective remedy to ensure a person or company that has built defective buildings in the past can be prevented from building another building or construction project in the future. That is a deterrent that would start to clean up those elements of the industry that have been in the past and, unfortunately, in small instances in the present, responsible for shoddy work.

**Deputy Cian O’Callaghan:** I support what Deputy Ó Broin is proposing. This would be very effective and would have knock-on effects. This morning in the Dáil, we raised a different issue on exploitative practices that affect some renters with the Minister for Housing, Local Government and Heritage. The Minister indicated that he would bring in measures whereby landlords engaged in such abhorrent behaviour could be struck off the register for landlords

and, therefore, would not be able to practise as a landlord anymore. That is one of the measures under consideration. This is very different but it is also a serious issue. Building defects have caused absolute devastation in people's lives, as well as the significant cost borne publicly as a result. It is entirely appropriate that there should be a fallout from that. We are not talking about minor mistakes or where there are learnings to be made. That is quite different. However, for very serious building defects that have devastating consequences, of course, a fallout from that should be that the individual responsible should not be able to build again and repeat those mistakes.

It is important for the homeowners to get a sense of justice, while they have gone through the stress of seeing their homes fall apart or have been worried about their kids falling asleep in a building that is not fire-safety compliant, there is the possibility of individuals or contractors not being able to build again because they cannot get on this register, if they are found to have failed to comply with building control regulations. As we all know, the threshold to achieve that can be quite high and difficult for residents and homeowners to get to. It is worthy of very serious consideration. I urge the Minister of State to include this as it would make things considerably different. The case for it is overwhelming. I can see no reason not to do it.

**Chairman:** As I expect there will be further discussion on these amendments. As it is now 8.30 p.m., I propose to adjourn this meeting until 5.30 p.m. on Thursday, 10 March 2022 when we will recommence with a response from the Minister of State on amendments Nos. 36 and 37. I thank the Minister of State and members.

Progress reported; Committee to sit again.

The select committee adjourned at 8.31 p.m. until 5.30 p.m. on Thursday, 10 March 2022.