

**RESPONSE TO THE FENNELL REVIEW**

**AND**

**REPLIES/SUBMISSIONS TO THE RECOMMENDATIONS**

**FOR CONSIDERATION BY**

**THE DEPARTMENT OF THE ENVIRONMENT, COMMUNITY**

**AND LOCAL GOVERNMENT**

**ON BEHALF OF**

**ARCHITECTS' ALLIANCE OF IRELAND**

**Author: John O'Callaghan, Barrister at Law.**

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# SECTION 1

## RESPONSE TO THE FENNELL REVIEW

### 1. Background.

In September 2013, Mr. Garrett Fennell, Solicitor and Chair of the Admissions Board which was established under Section 13 of the Building Control Act, completed a review called "*Independent Review of the registration for Architects under the Building Control Act 2007*". This was conducted at the request of Mr. Phil Hogan TD, the Minister for the Environment, Community and Local Government at that time.

The Architects' Alliance of Ireland, having received this review, requested Appelbe Solicitors in Bandon, Co. Cork to issue a response to its contents, who in turn, commissioned the Author with instructions to review the Fennell Review and other documents having relevance.

The Author is a practising Barrister at Law based in Dublin whose areas of speciality are Administrative / Constitutional Law having studied in U.C.C under Professor David Gwynn Morgan (Constitutional Law in Ireland) and then devilled under Dr. Oran Doyle, Barrister at Law and Head of School/Associate Professor at School of Law, Trinity, (Constitutional Law: Text, Cases and Materials), and Planning Law and Land Law having studied in U.C.C under Professor John Mee for Land and Property Law whose books include "Land Law" and devilled under Dr. Oran Doyle who specialised in Planning and Environmental Law.

This is my report, prepared after working closely with the Architects' Alliance of Ireland (AAOI) in furtherance of this response,

The report is divided into two sections. Section 1 is a Response to the Fennell Review and Section 2 contains Replies/ Submissions in respect to the Recommendations contained within the Review. The Response and Submissions are to be forwarded to the Department of the Environment, Community and Local Government for consideration, the RIAI and any interested parties as determined by the AAOI.

Along with the Fennell Review the Author took into consideration the observations and reactions of members of the AAOI following the implementation and administration of the Building Control Act 2007.

These replies/ submissions also address possible reasons for the low level of applications from Practically Trained Architects for registration by the RIAI.

The replies and/or submissions also examine in detail the manner in which the said Act is currently being administered by the Royal Institute of Architects of Ireland and the manner in which they have effected such registration.

## 2. Architects' Alliance of Ireland

The Architects' Alliance of Ireland comprise of a body of persons whose livelihoods have been severely affected subsequent to the Building Control Act 2007 being implemented. Prior to 2007 these professional people were legally entitled to earn a livelihood while practicing and using the word "Architect" to describe and identify their profession. Following the implementation of the 2007 Act however they were no longer legally entitled to use the word "Architect" as a description of their profession and have been re-classed as "Practically Trained Architects". This re-classification is not a legal classification that entitles them to continue in practice as Architects and as a result has greatly impacted on their ability to earn their livelihoods.

Section 18 of the Building Control Act 2007 no longer affords them the right to identify themselves as "Architects". This section states the using of such title without being registered as an "Architect" by the Registration Body is breaking the law and those so found "*shall be liable... to a fine not exceeding €5000 or imprisonment for a term of not exceeding 12 months or both.*"

## 3. The Fennell Review:

The Fennell Report was conducted as a result of Mr. Phil Hogan TD, the then Minister for the Environment, Community and Local Government, requesting Mr. Garrett Fennell, Solicitor and Chair of the Admissions Board of the Royal Institute of the Architects of Ireland, to conduct an independent review of the arrangements for the registration of Architects under the Act. The Minister specifically requested the review take account of four distinct aspects namely:

1. The overall experience to date in relation to the registration system for Architects under the Act.
2. The identification of any possible improvements to the registration system.
3. More specifically, a review of the number of applications from practically trained Architects and
4. Recommendations on how the registration of practically trained Architects can be encouraged,

The Architects' Alliance of Ireland recognises the review undertaken by Mr. Garrett Fennell was fair and objective and that the said review was conducted in an independent manner despite the fact of Mr. Fennell being the Chair of the Admissions Board of the Royal Institute of Architects of Ireland. This does not however say that the Alliance agrees totally with all the comments of Mr. Fennell as can be seen from the replies and submission within Section 2.

### Context to the Review:

Mr. Fennell, within the "Context to the Review", addresses a number of important contexts that assist with understanding the concerns of the various groups and individuals in respect to the registration of Architects.

Firstly, Mr. Fennell believes the downturn in the economy has had an extremely negative impact on those involved in architectural practice, including registered and Practically Trained Architects. He believes this has resulted in constrained resources for those practicing architecture and those seeking to become Architects.

The AAOI is of the opinion that most of the impact has been felt where large architectural practices closed down and as a result of such closures quite a number of Architects were subsequently left unemployed. This has had a greater impact on Registered Architects given that the majority of Practically Trained Architects are self-employed within their own practices. The AAOI is in agreement with current Government policy where it believes small SME's should be encouraged and helped. The AAOI believes the current method of registration through the Technical Assessment process has proven to be far too costly and is reflected in the low numbers applying. They also believe this is in contrast to current Government policy of help and encouragement in an effort to reduce unemployment figures.

Secondly, Mr, Fennell alerts us to the fact there is a renewed focus on building controls following high profile controversies relating to poor building standards expressly naming Priory Hall and Pyrite controversies as examples of these.

The AAOI totally agrees with his assessment that consumers should be protected against poor building standards. His review does not however address whether these particular controversies occurred while under the control of either a Registered Architect or a Practically Trained Architect. In respect to Priory Hall, the AAOI. states it is public knowledge that the architects involved were Registered Architects. In respect to the Pyrite problem that has emerged in hundreds of buildings, it can be assumed, given the fact that the percentage of Registered Architects easily outweighs the number of Practically Trained Architects, the percentage of Registered Architects employed on these developments easily outweighed the number of Practically Trained Architects who may also have been involved in this particular controversy.

Thirdly, Mr. Fennell addresses the standards a person requires for qualifying as a professional in a particular discipline and accepts that certain persons will not reach the level of competence or proficiency that is required.

The AAOI are in agreement where Mr. Fennell states that it is important that any such system is rigorous, fair, proportionate and transparent. The problem that the AAOI members have is they do not see the system of admission as administered by the RIAI in respect to the registration and/or admittance as being fair, proportionate or transparent.

Fourthly, Mr. Fennell states *"where the State confers the responsibility for performing a regulatory function concerning a profession on a private entity, particularly one which acts as both a regulatory and support body for the profession concerned, it is important that the developed regulatory role is carried out in a fair, accessible and transparent manner, while applying the legal regulatory requirements and seen as such"*.

The AAOI agrees that any regulatory body should be fair, accessible and transparent. The AAOI however is of the opinion the most important requirement is missing from the above list, namely it should be "independent". If the regulatory body is independent, it is then not influenced or restricted by internal matters which can pressurise decision making. Given the past history of self-regulation within Ireland, the perception, whether proved or not, is that this does not work.

Fifthly, Mr. Fennell makes reference to the fact it is open to a Member State to create a category of Architect that meets national criteria while not matching the competencies set out in Article 46 of the Directive and where he is of the opinion this would be a regressive step and could potentially undermine the worth and value of the registration of Architects in Ireland generally.

The AAOI believes this “category of Architects that meets national criteria” was in existence prior to the introduction of the Building Control Act 2007 and it was only subsequent to the introduction of the Act they are stopped from using the identity of “Architect” to describe their profession.

It could be asked whether the identification of successful applicants under Section 14 (2) (f) or 14 (2) (i) through being designated the letters MRIA (Irl) could be classed as a “category of Architects that meets national criteria”.

Finally, Mr. Fennell states *“that if some of the recommendations for change are to be given effect, legislative changes will be required to the Act. The transposition of the new Professional Qualifications Directive (the new Directive) which must be applied across all member states by 2014 provides an opportunity to introduce any required changes to the Act”*

The AAOI believes the opportunity to effect change to the Act should be now and encourages the Department to seriously consider the Replies / Submission contained herein.

## SECTION 2

### REPLIES / SUBMISSIONS TO THE RECOMMENDATIONS OF THE FENNELL REVIEW

The following Replies/ Submissions are done in numerical order to the 3<sup>rd</sup> of September 2013 Recommendations of Mr. Garrett Fennell, Solicitor, and Chair of the Admissions Board established under Section 13 of the Building Control Act 2007.

#### GENERAL

1. Streamline routes to admission

*In any proposals to amend the Act, consideration should be given to streamlining the current routes of entry to the Register of Architects with the deletion of routes which are either obsolete or unutilised.*

Reply / Submission:

It is the belief of the AAOI the current routes to entry to the Registrar of Architects have greatly hindered those considering applying for registration. This has been reflected in the numbers that have applied and evidences the fact that the routes for entry need further consideration in respect to the Technical Assessment and Prescribed Register Admissions Examination.

2. Accessible communications concerning admissions

*The RIAI should review all documents and forms used for external communications concerning the admissions processes to ensure that they are accessible, user friendly and understandable. While the admissions processes are complex some of the materials produced by the RIAI to guide applicants through the process are unnecessarily complex and could benefit from review and simplification. A review of this nature could be carried out with the assistance of the National Adult Literacy Agency Plain Language Editing and Training Service.*

Reply / Submission:

There is no dispute in respect to these findings. It further reiterates the response from members of the AAOI that major improvements are urgently required in order to eliminate or change the current process.

3. Membership of the registration body should not of itself create eligibility for registration.

*The process undermines the intention behind the Act that substantive decisions on Admissions should rest with an independently chaired Admissions Board with a majority of non-architect members.*

*Section 14(2) (b) of the Act should be amended to make provision for registration for a person who is a fellow or member of the registration body, who is not eligible for registration through any of the other routes to admission and who it can be demonstrated to the Admissions Board has achieved the required standard for registration as an architect in Ireland.*

Reply/Submission:

One of the purposes of Part 3 of the 2007 Act was to comply with Article 46 of the Professional Qualifications Directive (2005/36/EU). Article 46 is quite clear in its objectives and addresses the training of architects.

It should be noted that the letters FRIAI or MRIAI are proof of membership of the RIAI however they do not in themselves confer formal academic qualifications. In order to retain these letters on an annual basis a yearly subscription to the RIAI is the only method by which this can be done. Where no payment is received by the RIAI the use of these letters is stopped.

It is submitted the inclusion of such persons to the register, who do not hold the required formal qualifications as laid down within Article 46, goes beyond the scope of the Article and while included within the Act under Section 14 (2) (b), this does not reflect the true purpose of Article 46.

### **TECNICAL ASSESSMENT**

4. *It would strengthen the process if the panel appointed under Section 21(4) was maintained at 3 Architects, but was independently chaired by another construction professional (Engineer, Surveyor) appointed by the Minister. Such a change would assist in facilitating an enhanced perception of an independent, but expertly led assessment process.*

Reply / Submission:

It is the belief of the AAOI that Technical Assessment is not working and this is obvious from the exceptionally low number of applicants to date. The AAOI however fully supports the above recommendation in the context of other improvements needed within the Technical Assessment process.

The AAOI are however concerned with the expectation that the Panel can be expertly led by the inclusion of 3 architects and an independently led chair from another construction professional. It is the AAOI's belief the Panel as it currently stands is composed of MRIAI 's who have been "trained" by



the registration body namely the RIAI. The AAOI note with concern that assessors appointed to the Panel are not obliged to hold any formal qualifications in assessment procedures.

It is the Author's belief that an RIAI assessor who is assessing the quality of work submitted by a practically trained architect, could have a possible conflict of interest if the said applicant was in local competition with him or her. The Author is of the belief that it should be a requirement that the practice of each assessor is at least a distance of 100 Km. from that of the practice of the applicant to ensure any possible conflict of interest is reduced.

The Author is in agreement that another professional, within the construction industry, be appointed as chairman of the interview panels.

It is submitted a method by which independence could be transparent is where all work related documents submitted under Section 22 (2) should not show the identity of the applicant and any names should be redacted. In a manner similar to a University Examination a number should be allocated to the applicant by the RIAI who would then submit this work for assessment without any possibility of the identity of the person being revealed until the interview stage at Section 21 (5) (b).

The AAOI submits the administration of Section 21 (5) should be subdivided into two separate gradings whereby 70% of the overall assessment should be allocated to subsection (a) on the documents furnished and the remaining 30% to subsection (b) the interview. .

5. *There should be a cyclical process to Technical Assessment – it would assist applicants if there was some cycle introduced for Technical Assessment, so that the dates on which submissions had to be made and subsequent meetings arranged, either with the Technical Assessment Panel or the Technical Assessment Board, were known to applicants before engaging in the process. This would improve the predictability, certainty and efficiency of the process.*

Reply/ Submission:

The AAOI welcomes any process that streamlines the process of Technical Assessment and fully supports these recommendations. We believe these recommendations have now been introduced and await the result of these changes.

6. *An in-depth pre-assessment screening process should be introduced – before a candidate embarks on the Technical Assessment process they should first have the opportunity to undergo a pre-assessment screening process to assist them in determining whether this process is the correct and appropriate route to registration. The benefit of such an approach would be to assist with identifying potential applicants who might be more suitable for the registered admission examination process, given particular gaps in their skills, experience or knowledge.*

Reply / Submission:

The AAOI believes there is no difficulty understanding the Technical Assessment Admission Rules. The Act clearly outlines the documents required in order for a Technical Assessment to be completed. While the above “in-depth pre-assessment screening process” may be a welcome addition it may also add an extra layer to an already burdensome process. While the recommendation may be to try and assist persons as to what direction they should attempt to make an application either by the Technical

Assessment route or by the Registered Admission Examination process, the previous work related experience of the applicant often dictates what routes are available to him or her.

The uptake of the Registered Admission Examination over that of the Technical Assessment route is as outlined above not due to freedom of choice but more to do with a perceived bias against the Technical Assessment. The route of Registered Admission Examination as delivered by ARAE Ltd. seems to be the more favoured route chosen.

The Architects Register Admission Examination administered by ARAE Limited under S.I No. 341/2012 – Building Control (Prescribed Bodies and Courses) Regulations 2012 allows persons so interested to undertake an examination of current skills, experience and knowledge gained over 7 years of suitable working experience. The examination process having been completed and passed does not automatically confer however any recognised academic qualification on the applicant. This is quite unusual when one considers the enormous qualifying period of 7 years suitable working experience and a further year of study, preparation, a programme of assessments including two sets of written examinations, a design project and oral examinations. Given the pre-requirements and subsequent learning and examination process it is submitted that on successful completion of this process a formal qualification should be available in recognition of those who were successful in its completion.

The AAOI notes there is a practice by the ARAE Ltd in deciding the eligibility of an applicant and this is done under **Stage 1**:

***Assessment of Eligibility and Verification of Experience***

*This Stage requires candidates to quantify and substantiate their professional experience and demonstrate 'seven years at a level commensurate with that of an architect'. The submission takes the form of drawings and documentation in a pre-defined format. Candidates are issued with template documents for this purpose.*

The Author believes this “Stage 1” acts as a pre-assessment, however the AAOI believes the cost of this Stage 1 pre-assessment is excessive given the fact this assessment is restricted under Section 14 (f) (i) to only being a verification process in determining that the applicant “*has at least 7 years practical experience of performing duties commensurate with those of an architect in the State*”.

The Author believes that power in respect to eligibility for registration is not expressly given within the Act to the AREA Limited.

In respect to pre-assessment and the Technical Assessment route, the AAOI submits the Panel's work in determining whether the applicant is eligible or not is by its nature a pre-assessment process.

7. *There should be mentoring provided through a panel – there is a sense from some applicants who went through the Technical Assessment Process that they found the process difficult because of a lack of support or guidance from colleagues or suitably qualified mentors.*

Reply / Submission:

The AAOI notes that Part 4 (Quantity Surveyors) and Part 5 Building Surveyors) have Technical Assessment Boards which are empowered to make registration of title decisions without considering the opinions of a special panel.

There is certainly no disputing the findings that some applicants found the process difficult because of a lack of support or guidance. While it is acknowledged the processes involved are new to both the RIAI and the applicants, it is surely those tasked with administration and registration that should try and make the journey to being registered as straightforward as possible.

Any assistance offered through a panel of colleagues or suitably qualified mentors would be of enormous assistance to those wishing to go through this process. The most important thing however is that they give such guidance as colleagues and more importantly they are in reality suitably qualified mentors.

It is the AAOI's submission before any such mentoring takes place or any such Panel is established, the said panel will have to be administered to an agreed participation format, where those offering support and/or guidance to such applicants will have to operate to an agreed method, totally and without exception in compliance with guidelines laid down for participation in the Technical Assessment.

8. *Candidates should be given guidance around the assessment process by the Technical Assessment Panel and how it will be determined. Some applicants ...found the process .... uncertain as to which aspects of the required competencies would be afforded particular priority in the assessment. Any process which is established to determine the competence of a person for a particular role or function, must primarily involve the assessment of a person's abilities by reference to a set of defined criteria if the process is to have a level of certainty and consistency required to give it credibility. This process should be no different.*

Reply / Submission:

The AAOI totally agrees that that any process should clearly have a level of certainty and consistency in order to give it credibility.

Building Control Act 2007. Section 22 (7) *The Technical Assessment Board shall use the following criteria in assessing an application under this section namely:*

- (a) *Whether or not for the period referred to in subsection (1)[ the following person may apply to the Technical Assessment Board for a decision that he or she is eligible to be registered in the register pursuant to this section, namely, a person who has been performing duties commensurate with those of an architect for a period of 10 or more years in the State (but no period of such performance that occurs on or after the commencement of this section shall be reckoned for the purposes of this subsection)] the applicant has been performing duties commensurate with those of an architect:*
- (b) *whether or not the work submitted was equivalent to the work of an architect, having regard to its scale, complexity and quality:*
- (c) *Whether or not the applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive:*
- (d) *Whether or not the work submitted has been realised by the applicant, and, if the applicant was not totally responsible, what level of responsibility by the applicant for the work could be established,*

*And, in addition, shall have regard to the opinion of the architects referred to in section 21(5) as to whether the applicant is eligible for registration pursuant to this section (but that opinion shall not be binding on the Board).*

The Technical Assessment under the Act is the method used to define his or her competence in respect to whether he or she meets the criteria he or she is obliged to fulfil in order to meet the requirements as laid down under section 22 (7) to be eligible for registration pursuant to this section.

The requirements as defined under section 22 (7) are laid out where subsections (a), (b), and (d) relate to historical performance of the applicant and do not necessary relate to current building regulations and technical standards. The work submitted relates to historical building regulations and technical standards which are likely to be superseded. Section 22 (7) (c) requires that the applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive.

Section 21 (4) allows the Technical Assessment Board to “*establish a panel of architects being architects who the Board considers possess the requisite expertise for the purpose of performing the functions assigned to members of the panel under subsection (5)*”.

Subsection (5) directs the Technical Assessment Board to appoint “*not less than 3 of the members of the panel established under subsection (4) to*

- (a) *Examine the documents furnished to the Board under subsection (2) of that section (and any additional information furnished to it under subsection (3) of that section).*
- (b) *Interview the applicant, and*
- (c) *Give to the Board their opinion as to whether the applicant is eligible for registration pursuant to that section.*

Section 22 (1) allows the person to make an application to the Technical Assessment Board for a decision that he or she is eligible to be registered and Section 22 (2) outlines the requirements in respect to documents that have to be submitted namely:

- (a) *A curriculum vitae providing details of the work carried out by the applicant in the field of architecture during the period referred to in subsection (1);*
- (b) *Information on projects for each year of that period for which the applicant was responsible, declarations as to the authorship of the projects and all documentation necessary to support the information;*
- (c) *A file containing at least 4 projects, including graphic material, for which the applicant was responsible, being projects that the applicant considers are the most suitable for the purposes of the consideration of his or her application;*
- (d) *Such independent verification, as the Technical Assessment Board may reasonably require, of the documentation submitted under this section.*

It is the belief of the Author that Section 22 (1) acts as a pre-assessment process.

Under Section 22 (2) (d) the Technical Assessment Board may reasonably require “*independent verification of the documentation submitted under this subsection*”. Such “independent verification” is not defined within the Act and as a result leaves such a requirement open to a number of interpretations.

It should be noted the RIAI's mandatory competencies index does not form part of the list of documents as required under Section 22 (2). Any reference to and/or request for information and/or comparison for assessment purposes to such index could be *ultra vires* of the Act.

Section 22 (3) “*the Technical Assessment Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for interview if it considers it necessary*”. Given the word “may” and not “shall” is present the Board does not possess any automatic rights to demand additional information and /or demand the applicant to attend for

interview. It would therefore be very questionable if the Board decided in each and every case that it required the applicant to provide additional information and attend for an interview. If this was the case it could demonstrate the Board were not adhering to the spirit of this section.

It should be noted that the "Panel" are not empowered by the Act to request additional information as that power is expressly reserved to the Technical Assessment Board alone under Section 22 (3).

9. *Current work and current projects should be included for assessment – Candidates must be able to submit current or recent projects which they are involved in for assessment under Section 22 of the Act. If the assessment process is to determine a person's current level of knowledge, skill and competence, they should be permitted to bring forward recent projects which can in turn be assessed by current standards and requirements.*

Reply / Submission:

Section 22 (7) (c) of the Act which requires the "*Technical Assessment Board determine whether or not the Applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive*".

Article 46 includes the requirements that an architect "*guarantee the acquisition of the following knowledge and skills (a) ability to create architectural designs that satisfy both aesthetic and technical requirements*" and possess "*(d) adequate knowledge of urban design, planning and the skills involved in the planning process*".

The Act does not include any section which states the assessment process has to determine a person's current level of knowledge, skill or competence. It is submitted by the Author however if the Applicant has to guarantee he has the required "technical requirements" or knowledge of Planning Law, etc. such knowledge should refer to the knowledge that was required at the particular time of the commissioning of the "work". If the applicant wishes to submit current work then the technical requirements that pertain at the date of commissioning of this work should be up-to-date technical requirements.

The Technical Assessment Board however are obliged to assess each project only with regard to the rules that applied at that time and cannot judge the project in comparison with that of a current project.

The AAOI notes that the RIAI are now accepting current up-to-date work and documents in respect to the Assessment. The Author believes this to be a forward step as he believes "technical requirements" should by implication refer to current regulations, but is surprised as this is in direct conflict with the express requirements under Section 22 (1) of the Act. The AAOI notes that up-to-date work can be submitted under Section (2) (c) in respect to at least four projects only and such work does not refer to the Curriculum Vitae or information on projects for each year of that period for which the applicant was responsible etc. under subsections (a) or (b).

10. *Capacity for re-assessment – at present the process for technical assessment of applicants is regarded as a once only procedure – applicants have just one opportunity to be technically assessed and subject to rights of appeal, do not have a facility for re assessment. While the statutory basis for this approach is not clear it does seem unjustly harsh when the outcome of a failure to pass through Technical Assessment could be the loss of a person’s livelihood. There should be some procedure for a person to be reassessed through Technical Assessment in circumstances where they have taken clear and identifiable steps to address specific skills gaps which have been identified in the initial assessment process. This should be possible to achieve without undermining the integrity of the assessment process or the requirement for the maintenance of the highest necessary standards of competence, skill and experience among practically trained persons. It must also be recognised that in any process which is established to determine standards, there will always be some people who will fail to meet that standard, but the processes to determine competence, experience and skill should be fair and reasonable and where possible allow a person to improve their skill set by reference to defined measures so that they can be reassessed if appropriate. A pre-application assessment process should assist in identifying applicants that would be unlikely to meet the standards required as part of the Technical Assessment process.*

Reply / Submission:

In any application for examination there is normally a re-sit possibility. In any decision of a State body or any organisation appointed to administer a decision that affects the livelihood of a citizen there is a process of legal determination by way of Judicial Review. This is covered within Section 26 following the Appeals provision within Section 25 of the Act.

The Technical Assessment Board currently assess on what is submitted by the applicant. While it can request further information this cannot change what was initially submitted.

This is a skills-based assessment and applicants are being assessed only on previous work experience and skill. Where an applicant is rejected as a result of not possessing a certain skill-set the applicant is then prohibited from registration. As a consequence of not having previously acquired this skill-set the applicant, given the fact he cannot change his previous work experience, is denied a re-sit.

The AAOI would welcome any suggestions by which a re-assessment procedure can be introduced.

11. *Given the comparatively low take up of the Technical Assessment process the Department should commission a cost benefit analysis of the Section 14 (2)(h) process to determine if the maintenance of the process is justified in the context of another well-functioning mechanism for practically trained persons to gain access to the register. In the event that the Technical Assessment process is discontinued in a streamlining of the routes to entry to the register the costs currently incurred in administering the process could be allocated by the RIAI to reduce the cost of the Section 14 (2) (f) process or provide a bursary for applicants under that process.*

Reply /Submission:

This would seem to be a method by which the RIAI could justify, having commissioned a cost benefit analysis, the removal of the Technical Assessment as a process that does not justify its existence.

The author having looked at the take up would not describe the registration of 8 applicants over a 5 year period from a total of 428 architects admitted to the register as being “comparatively low” but closer to being “exceptionally low”. The proposal to transfer any cost saving that may occur having eliminated Section 14 (2) (h) and then transfer these funds in an effort to reduce the cost of the Section 14 (2) (f) on the face of it seems unusual given the even lower number of 4 since 2013. The author does recognise the fact that the ARAE examination was only prescribed in 2013 and another 28 people who completed the ARAE process were admitted to registration through Section 14 (2) (b), however this figure is not a reflection on the number of practically trained architects given these 28 were admitted through being Fellows or Members of the RIAI.

### **PRESCRIBED REGISTER ADMISSIONS EXAMINATION**

12. *the prescription of the register admission examination rests exclusively with the RIAI as the registration body. For the sake of consistency with the provisions applying to the prescription provisions in Section 14 (4) of the Act and in the context of a system of co-regulation, it would be preferable if QQI also had an integral role in the prescription process.*

#### Reply/ Submission

The AAOI believes the participation of the QQI would be of interest especially if this process could confirm an examination had taken place whereupon the result of an examinee would confer an academic recognition.

Having paid a large fee in order to undertake this examination, and, having passed the examination, it is most unusual that having passed same there is no formal acknowledgement bestowed upon the successful student

13. *Cost – the ARAE have indicated that greater numbers enrolling will lead to a lower cost per applicant and suggested for example that if numbers doubled the cost for applicants could half. This would bring the cost on a par with the current fee for Technical Assessment.*

#### Reply/ Submission.

The AAOI recognises that should a course cost a certain figure to run, then the greater level of participants that partake should reduce the cost of the course.

It is submitted, based on the above suggestion of reducing the cost per person, the RIAI should enter into discussions with the AAOI whereby a reduced fee would be offered to members of the AAOI based on a certain number taking part.

One of the concerns of the AAOI is, while this is called a course there is an absence of lectures, seminars, and tutorials etc. that one would expect for such a costly exercise.

The author is of the opinion, based on competition law, that additional PRAE's are required and the Part III post-graduate written examinations offered or to be offered by UCD, DIT, Cork, Limerick are suitable as PRAE's for the "Grandfathers".

14. *E Learning –ARAE Limited has indicated that it is developing some modules for the course leading to the prescribed examination which will be capable of online delivery. This should be of assistance for some applicants, but the nature of the process will always require some level of attendance at lectures, seminars and workshops – indeed it seems that this interpersonal element is a key attribute of the Section 14 (2) (f) process.*

#### Reply/ Submission

Distance learning and E Learning are now recognised as suitable formats for certain courses where access to tutors is freely available.

These modules however can only work where the said modules have already been tried and tested within class lectures and where the subsequent results attained by the students reflect the quality of the said modules as being an effective method of education.

It is respectfully submitted that before distance learning or E-Learning are considered that modules for lectures etc. need to be designed in such a way that lectures and tutorials are designed specifically for Architecture.

The AAOI submits the examination is solely and expressly an exam and not an academic course.

15. *c. Age limit – it is hard to understand the public policy justification for an age limit on applicants through the Section 14 (2) (f) process – this should be repealed.*

#### Reply/ Submission.

The Employment Equality Acts 1998-2011 prohibits direct, indirect discrimination and discrimination by association at work and in all aspects of employment on the grounds of gender, civil and family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. Discrimination is defined as the treatment of one person in a less favourable way than another person in a comparable situation on any of the grounds specified. It will cover not only current and past discrimination, but also discrimination that may exist in the future or is imputed to a person.

The AAOI is in agreement that this section should be repealed.

16. *It is important that the notification of the ARAE prescribed examination to the European Commission proceeds at a pace and is not delayed unnecessary. The absence of equivalence in the mutual recognition of practically trained Architects admitted through the two routes (Section 14 (2) (f) and (h)) in the Act adds to the perception among applicants that they are not treated as equivalent to academically trained Architects, in a material respect. While there are limits to the extent that this can be addressed with regard to the Technical Assessment process under the Directive which might be addressed in the New Directive, it is encouraging that the ARAE process is being notified.*



Reply/ Submission.

On completion of either the Technical Assessment or Prescribed Examination process by practically trained architects, it is noted that the designation of MRIAI (Irl) rather than that of MRIAI is accredited.

Mr. Fennell states “*This is done as the RIAI have indicated that they are precluded from allocating any other designation to the practically trained applicants being admitted through these routes as the assessment process would need to be notified to the European Commission to ensure that they are in compliance with the requirements set out in Article 46 of the Directive. The RIAI have indicated that while the Section 14 (2) (f) prescribed examination process is eligible for notification to the Commission and this is being prepared, the Technical Assessment process would not seem to fit the criteria in the Directive for notification*”.

The Act states;

*Section 14 (2) Each of the following is eligible for registration in the register...*

*(f). A person who –*

*(i) has at least 7 years practical experience of performing duties commensurate with those of an architect in the State,*

*(ii) is at least 35 years of age, and*

*(iii) has passed a prescribed register admission examination.*

*(h) a person who has been assessed as eligible for registration by the Technical Assessment Board in accordance with the practical experience assessment procedures.*

The access route through the Prescribed Register Admission Examination process is different from the Technical Assessment route.

Regardless of the route taken to comply with the Act, it is submitted that any applicant having been accepted for registration should subsequently be accredited with the letters MRIAI.

The AAOI notes that all on the “Minister’s List” were accepted and affixed with the letters MRIAI along with the first group registered under the Technical assessment route who were also affixed with the letters MRIAI.

The registered body appointed under Section 13 (1) of the 2007 Act is the Royal Institute of Architects of Ireland, whereas the register is operated by the Royal Institute of the Architects of Ireland Limited. All limited companies are restricted in their operation to what is contained within the Memorandum of Association and the Articles of Association.

For the sake of convenience the Author has outlined below the relevant sections in respect to accreditation of membership contained within these Articles of Association:

**MEMBERSHIP**

*5. All persons at present registered as members of the Institute together with such other persons as shall be elected as hereinafter provided shall be the members of the Institute. They shall be placed in classes corresponding with those to which they respectively belong or to which they shall be elected as hereinafter provided.*

## SECTION I

### THE CONSTITUTION OF THE INSTITUTE

6. *The Institute shall consist of the following classes:-, Architectural Technologists, Architectural Technologist Graduates, Associates, Architectural Graduates, Members, Fellows, Honorary Members, Honorary Fellows, Retired Members, Retired Fellows.*

10. *Members shall be persons admitted as Members prior to 13th June, 1963 or persons of good repute who shall have passed through such course of study, scheme of architectural education or curriculum as may, from time to time, be approved by the Council, and shall have passed such examinations as may from time to time be prescribed or approved by the Council; provided always that the Council shall be satisfied that such persons shall before they become eligible for election as Members have had such practical experience as shall from time to time be approved by the Council.*

11. *Fellows shall be (a) all persons who have been admitted as Fellows of the Institute prior to 13th June, 1963, and (b) such persons as shall be elected by a general vote of Members and Fellows, provided that they shall be Architects of good repute and are, in the opinion of the Council, worthy of that distinction.*

14. *A Member, whilst continuing to be a subscriber to the Institute, may use the affix MRIAI and a Fellow, whilst continuing to be a subscriber to the Institute, the affix FRIAI. An Architectural Technologist, whilst continuing to be a subscriber to the Institute, may use the affix RIAI (Arch. Tech.). An Architectural Graduate shall not be entitled to use any affix indicating a connection with the Institute. An Architectural Technologist Graduate shall not be entitled to use any affix indicating a connection with the Institute.*

15. *Persons not being in architectural practice in Ireland, who are eminent in or have rendered distinguished service to architecture or the allied arts and sciences, shall be eligible to be associated with the Institute as Honorary Members and Honorary Fellows without any contribution. Honorary Members and Honorary Fellows shall be entitled to use the affix Hon. MRIAI or Hon. FRIAI respectively.*

16. *Any Member or Fellow who has reached the age of fifty-five years and has retired from practice, may, if so desirous, subject to the approval of the Council, be transferred to the Class of Retired Members or to the Class of Retired Fellows as the case may be. A Retired Member or Retired Fellow may continue to use the affix "MRIAI" or "FRIAI" respectively.*

The above Memorandum and Articles were amended as per Special Resolution approved at the AGM of 27<sup>th</sup> of September 2012.

The Author cannot find any section under the said Articles which entitles the RIAI the use of the affix MRIAI(IRL), nor further amendments or bye-laws in respect to same.

Articles of Association govern the operation of a company and for the RIAI to use this affix MRIAI(Irl) it has to be expressly written into the Articles that such is allowed. The use of the letters, where they are not expressly allowed, could be deemed *ultra vires* or not within the jurisdiction of the RIAI.

In respect to the affix MRIAI (Irl) the Author is of the opinion this is not a recognised qualification under the EU Directive. The Directive was enacted to ensure mutual recognition across EU borders therefore it is imperative that a qualification/title granted by the RIAI serves this purpose.

**Below is an extract from the website of the RIAI.**

#### **MEMBER (MRIAI)**

*RIAI Membership (MRIAI) is open to you if you can demonstrate through one of the routes provided that you meet all of the requirements for independent practice in Ireland. MRIAI is a listed qualification in Directive 2005/36/EC and, with an accompanying certificate, confers eligibility to seek automatic recognition in all other EU/EEA Member States.*

*An alternate architect membership affix MRIAI(IRL) is open to you if you demonstrate that you meet the requirements for registration in the State set out in the Building Control Act 2007 **but cannot, at this time, demonstrate compliance with the requirements of Directive 2005/36/EC for automatic recognition in the EU/EEA (Bold print - Authors) .***

Given the above the AAOI reiterates its submission that once accepted for registration the successful applicant should be affixed with the letters M.R.I.A.I. expressly.

#### **GRANDFATHER CLAUSE**

- 17. A number of submissions sought the introduction of a grandfather clause to facilitate practically trained Architects securing admission to the register of Architects, with differing views expressed on how the clause would be administered. Any system that purports to provide recognition for acquired rights and practical experience would need some provision for assessment of competence, skill, and knowledge that is robust, provides adequate assurance to consumers and maintains the protection of standards. A grandfather clause that did not achieve this would be contrary to the public interest. There is an existing grandfather clause mechanism in the Act through the Technical Assessment process, which has not been availed of by a significant number of potential applicants for some of the reasons set out above. I would expect that if the changes identified in these recommendations are implemented, the numbers proceeding through Technical Assessment should increase. In addition if the cost of registering for the ARAE course was reduced as a consequence of increased use or subvention, the numbers of practically trained Architects coming on the register through that process should also increase.*

#### Reply/ Submission

Within the Act the author could not find an express “Grandfather clause” mechanism but accepts the Technical Assessment process is a route which grandfathers could use.

The name Grandfather Clause arose from the exceptions that were made for veterans of the Civil War in America. If the veterans were qualified to vote prior to 1866 their descendants were also qualified,

Thus in effect, if a person's grandfather could vote, he could vote without restrictions. It has been followed that where a prior rule existed then when a new rule was introduced then an exception was made to allow the old rule to be used in certain situations.

Under the "Minister's List" system, the competence, skill, and knowledge were recognised and acknowledged by the tangible achievements and actual work in the field of Grandfather architects.

The Author notes at page 47 within the Joint Committee on Environment, Culture and the Gaeltacht Report of the Committee on the Title of Architect, July 2013, under Section 12, Committee Recommendations that subsection (1) "*That the Minister for Environment, Community and Local Government, notwithstanding the existence of the Technical Assessment, give consideration to the inclusion of a typical, self-extinguishing 'grandfather' clause in the Building Control Act 2007 – as is provided in other State legislation.*"

Given the above the AAOI submits that a review of the position of "Grandfather Clause" applicants should be undertaken with the intention of providing a clear route to registration based on the work experience and accrued knowledge of such persons.

### **PROFESSIONAL INDEMNITY INSURANCE**

*18. As matters stand, the absence of professional indemnity cover is a matter that is addressed through a breach of the Architects Code of Conduct. In light of recent high profile cases concerning poor building standards and the significant losses arising for consumers as a consequence, there would be a public policy justification for reviewing whether the right to practice as an Architect and offer services to the public should only be available to those that can demonstrate that they are adequately insured to provide such services for the level of work that they are engaged in. It is cold comfort for a consumer to discover that their Architect may be in breach of a code of conduct for not having PI cover in respect of professional services that the architect has provided, where the client has suffered a loss. And ultimately the absence of adequate insurance may lead to the State facing claims to recompense members of the public who have suffered as a consequence of a poor service having been provided by an uninsured professional. To address this inadequacy consideration should be given to making it a condition of annual registration as an architect that the applicant provide evidence of holding adequate professional indemnity cover to cover the scale of work that they intend to engage in.*

#### Reply/ Submission.

The requirement that anybody who practises as a registered architect should have the correct level of professional indemnity insurance is accepted by the AAOI. The A.A.O.I. accepts that Professional Indemnity Insurance (PII) should be mandatory for all Registered Architects however it believes such a requirement should not be used as a measure of eligibility in order to be accepted onto the register – noting that PII was but recently made mandatory for members of the RIAI.

The holding of P.I cover can only be obtained once an insurance company deems you acceptable on receipt of a proposal form. There is no automatic right to insurance cover based on a membership of a certain body or having academic qualifications.

The consumer protection is based on the type of cover you possess.

It is noted the Building Control Act 2007 and/or Article 46 of the Directive makes no express reference to professional indemnity insurance.

### **READMISSION PROCEDURES**

19. *The procedures for readmission to the register due to non-payment of a registration fee (Section 17) and the provisions dealing with voluntary removal (Section 20) need to be aligned to ensure that the Admissions Board can be satisfied that the person seeking readmission remains eligible – there should be some objective assessment by the Admissions Board of their capacity and competence for readmission.*

#### **Reply/ Submission**

Section 17 is quite clear as regards the re-admission process.

It is submitted that the proposal that “*there should be some objective assessment by the Admissions Board of their capacity and competence for readmission*” could be interpreted by a pessimist as saying “should you fail to pay your membership fees on an annual basis the Admissions Board posses the power to require you to take part in an assessment in order for them to decide whether they will allow you re-join”.

In respect to the person seeking readmission remaining eligible, the Author notes Question 27 of the PQD Users’ Guide:

Q.27. *Are Checks Systematic?*

Answer: *No. Your qualification may only be checked the first time you are in the host Member State to provide a service there.*

The AAOI is of the opinion Section 17 as it currently stands is the correct way to administer such a procedure.

### **RECOGNITION OF CHARTERED ARCHITECTURAL TECHNOLOGISTS.**

20. *A significant number of submissions were received concerning the registration of Architectural Technologists in Ireland, with parallel submissions seeking a new registration system for Chartered Architectural Technologists. Such matters are not concerned with the registration system for Architects and as such I have not considered them as being within the scope of the review. I also understand that they are being addressed by the Department with the relevant bodies involved.*

#### **Reply/ Submission.**

This matter does not concern the AAOI and therefore wish to make no comment.

## REGULATION FOR CONSTRUCTION PROFESSIONALS.

21. *In the context of any future review of the overall regulatory structure for construction professionals there would be merit in determining if consumer confidence would be enhanced and the independence of the regulatory structure bolstered by the introduction of an overarching supervisory regulator to monitor and guide the self-regulatory or co-regulatory functions of the various professional bodies in this area. The manner in which the accountancy profession is regulated, whereby the Irish Auditing and Accounting Supervisory Authority monitors and guides the regulatory functions provided by the various accountancy institutes and organisations could provide an instructive model in this regard.*

### Reply/ Submission.

The AAOI believes that any body of professionals should be monitored by an independent regulatory structure.

In 2003, the Indecon report concluded “*While we support the proposed new register of architects we believe that it is important to ensure that this is not implemented in a manner that acts as a barrier to entry or gives the RIAI disproportionate control of the process.*”

In 2006, the Competition Authority recommended the making of an independent registration body.

In 2013, the Environment Committee recommended the making of an independent registration body.

The AAOI is disappointed the above recommendations have not been implemented and submits the profession should be regulated and monitored by an independent regulatory body and believe this body should regulate all construction professionals including, surveyors, architects etc...

END OF REPLY AND SUBMISSIONS.

### **MISCELLANEOUS:**

While researching the above review the Author makes these additional observations:

1. The Building Control Act 2007, under Section 13 (1) states

*“The **Royal Institute of Architects of Ireland** shall be the registration body for the purposes of this Part”.*

In practice however this is not the case. The Act is being administered by a Limited Company called “**The Royal Institute of the Architects of Ireland Limited**”, which is not the title of the body expressly written into the Act.

It should be noted a legal challenge is possible given a Court could decide “The Royal Institute of the Architects of Ireland Limited” lack any statutory power under the Act given they are not correctly named.

2. The Author notes very little attention is brought to Section 14 (2) (a) of the Act where under this section a graduate of either (i) the National University of Ireland, (ii) the Dublin Institute of

Technology or (iii) such other educational body as may be prescribed, who has received from it in any year prior to 2005 the degree of Bachelor of Architecture or the Diploma in Architecture of degree standard or in 2005 or any subsequent year the degree of Bachelor of Architecture (Honours), or such other degree, diploma or other qualification as may be prescribed and who, in each case \_ has passed a professional practice examination by the body referred to in subsection (i), (ii), or (iii), as the case may be, or can demonstrate that he or she has 7 years of post-graduate experience of performing duties commensurate with those of an architect such as would entitle the person to seek the grant of an exemption by the body referred to in subparagraph (i), (ii) or (iii) as appropriate, having to undergo an examination referred to in clause (I).

It is the belief of the Author this clause could be of assistance to some of their members in respect to eligibility for registration.

3. Below is an extract from an EC memo dated the 2<sup>nd</sup> of October 2013, Memo Number 13/839 where the EC are inviting Member States to review their restrictions on the access to professions and to access their proportionality.

#### **Evaluating national regulations on access to professions – frequently asked questions**

1. Why is the European Commission adopting a Communication on national regulations on access to professions?

Member States may reserve the right to access certain professional activities to the holders of specific qualifications (e.g. design of new buildings reserved to architects) for reasons of general interest. Such restrictions make the mobility of professionals within the single market more difficult. In addition, these measures may limit employment and competitiveness in the economic sectors concerned. The Commission is therefore inviting Member States to review their restrictions on the access to professions and to assess their proportionality.

The aim of this Communication is to prepare the transparency and mutual evaluation exercise foreseen in the revised Professional Qualifications Directive. A political agreement was reached on this proposal in June 2013 (see [MEMO/13/552](#)) and the revised Directive is due to be formally adopted before the end of the year. Article 59 of this Directive will introduce an obligation for Member States to list and describe the professions they regulate (including the activities reserved to qualified professionals) and to explain why the regulation is necessary. In addition, it foresees a mutual evaluation of the national legislation regulating the professions.

4. The Building Control Act 2007 under Section 73 obliges the RIAI at the end of each year to prepare a report of its proceedings under the Act during that year and the report shall include a copy of the RIAI's accounts for the year concerned in so far as they relate to its income and expenditure in respect of the performance of its functions under this Act during that year and those accounts shall be accounts certified by an auditor who has been appointed to carry out an audit of them for the year concerned. The Act requires the RIAI to publish these accounts and copies of the report, with the foregoing certification in respect of those accounts included in each such copy, to be made available for purchase by members of the public. The general accounts of the RIAI are available on their website, however the Author has been unable to find certified accounts expressly related to its operation as the registration body under Section 13 (1) and where under Section 73, the said accounts, in respect to this function are available to the public.

John G. O'Callaghan,

Barrister at Law.

DATE: 18<sup>th</sup> August 2014