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Mr. Paris Beausang
Architecture/Building Standards,
Department of the Environment, Community and Local Government,
Custom House,
Dublin 1.

Draft Building Control (Amendment) Regulations 2012

In response to the invitation to industry stakeholders, members of the public and other interested parties, I hereby forward my comments on the above.

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Where the second person personal pronoun is used in the following text, the plural and not the singular number is to be understood.

1 Opening remarks

You invite comments and submissions.

This isn't a *submission* except in the most attenuated sense of that word. It's a set of comments.

I have reviewed your "template for submissions". I am not acceding to your request that I use same in making these comments.

Your puny Excel template is a despicable attempt to corral comment, and is an inadequate vehicle to (a) express the anger I feel on reading your material at the outrage which you and your colleagues are attempting to foist on an over-worked Minister who relies on you for considered and competent advice or (b) express my own outrage – word here used with a different meaning to that in the previous phrase – at your purpose of criminalising me as a substitute for the non-action of public bodies and the inaction or deceit of private ones or (c) explain why what you are proposing is ignorant, lazy and illegal and finally (d) set out how I intend to react to this Statutory Instrument, if promulgated in a version as or close to your draft.

You advise, as if by way of warning, that this submission is "*subject to release under the Freedom of Information Acts*". Grand. Release it to anybody you like and to everybody who asks for it. The more, the better. I am myself circulating it to a number of colleagues, so that at least some people know that the State Apparatus, if it proceeds as it proposes, is doing so in the knowledge of the injustices it is creating.

To save you the trouble, I'm also sending a copy to the Secretary General of your department, and another to Minister's Private Secretary. Just so they know. I have considered also copying the national and professional print media but decided against that for the moment as my purpose is to seek to change your policy and not to point the finger of blame, yet.

2 My Locus Standi

I'm the person you are fingering to do the certifying. I'm the guy at the pointy end of the stick. This stuff will affect *me*. I'm the one who's going to lie awake at night for another new reason. Not you.

I am an architect and have been in private professional practice in Ireland for the past 30 years. I have designed and built several hundred projects. I have direct first-hand everyday experience of designing buildings, of seeing them built, of dealing with building control authorities, of making fire safety certificate applications, of working with clients, engineers, builders I like to think that I know how to design buildings and how to act on a construction site. Many clients seem to share that opinion.

Do not underestimate the value of all this experience. *None* of the administrators in the Department involved in drafting these regulations has any experience of any of this. *Not one of you* would know how to design a building, even prepare a drawing, even make a fire safety certificate application under your own regulations, or understand anything if you looked into

a hole in the ground on a building site. No Departmental Administrative official has the remotest idea of the “responsibility chain” for construction. In these drafts you are playing with words of which you know the meaning but not the implications. You are legislating for activities of which you believe you know something but of which in reality you know *nothing*. A degree in economics, history, classical studies or sociology does *not* equip the most brilliant mind, let alone one or even several mediocre minds, with an understanding of construction.

I was a member of the Building Regulations Advisory Body between 2001 and 2007.

Over six years, I saw and heard the contributions of all stakeholders in the industry. Mr. Michael Mc Carthy, if you are still in touch with him, will confirm that I was one of the two most effective and contributing members of BRAB during that time. I like to think that I talk sense. I believe others hold that view. So, ... *verba sapientiae*.

I have provided YOU with expert services on your own building regulations technical guidance. Under my personal supervision, my firm drew all the first batch – 200 or something – illustrations in all your technical guidance documents: up to that time you had borrowed them from your colleagues in London. We drew and, more than that, advised on the air-tightness and thermal bridging material currently on your website. I like to think that I know something. Some of your people did seem to agree.

I author the section on building regulations in the Thompson Round Hall publication on Construction Law and Practice in Ireland. This work, perhaps unknown in the Custom House, is the industry-standard publication on the subject of its title. I author the 50 pages on building regulations, updated annually, more work on the way it seems. I like to think that I have some knowledge of how the Building Control System works. I like to consider myself the leading authority on the subject of building regulations in Ireland. The publishers appear to hold that view also.

I was RIAI President in 1998-1999. I had close contact with the Minister of your Department at that time. Having had that contact, and having had contact with your present Minister in other unrelated matters, I believe that I can calibrate the fairness and intelligence of Members of Government including the Minister to whom you are preparing to put these regulations to sign. I believe you are doing neither the Minister nor the Government nor the State any favours with your draft material.

This equips me intellectually, experientially and morally to comment with authority on your work.

3 The background to these regulations

Your predecessors first drafted “Draft Building regulations” (beige cover) which turned into “Proposed Building Regulations” (pale blue cover) which kicked around the State for years. At that time, the regulations were championed by your excellent Mr. Joe Twomey. From the technical side of your house. Affable, discreet, a Liverpudlian, a good engineer and a good listener, Joe always responded. Ask Michael Collins. So, we got some perspective here. I know how consultation should work and what good regulation looks like.

After the Draft and Proposed regulations were around for, if memory serves, five years or so, it took the Stardust tragedy to deliver the Building Control Act 1990. Sudden action.

This time around, it's (1) Priory Hall and (2) the pyrites. Another Dublin tragedy, peoples' lives ruined, even if, thank Goodness, nobody lost. But families destroyed socially and financially; and a nationwide tragedy, floors buckling, plaster bulging, billions to fix.

Sure, a response is needed. But your response is the wrong one.

Don't pretend by your silence that Priory Hall and Pyrites aren't the reasons for your proposals. The problem with your silence is that it conceals the true problem, "inadequate enforcement of the law as it currently exists", by proposing a solution, "pick a scapegoat and make him responsible for the lot" which is unjust, contrary to Government policy, and will make the situation worse.

4 Your measures will not prevent another pyrites scandal

Pyrites, hardcore, aggregate, a construction product.

Under article 10 of your European Communities (Construction Products) Regulations, S.I. 198 of 1992 as amended by S.I. 210 of 1994, you have *already* given Local Authorities powers of entry, inspection, sampling and testing of construction products. If they couldn't catch the pyrites, what chance has the single professional person?

Your proposals will not solve this problem.

Given that the future quarry owners will shelter behind the unfortunate certifier – do you honestly believe that they will be less, and not more, likely, to break the law?

Your draft regulations make future pyrites issues more, not less, likely.

If you wanted to "prevent a future pyrites" – or similar – you have the solution in your own hands already under existing legislation.

Under article 9 of the same regulations, your own Minister *already* has the power to subject any products placed on the market to special conditions. If you wanted, you could *already*, in the morning, without any new regulations, advise your overworked Minister to require all quarried material to have third party testing prior to its being sold. Indeed if this had been done years ago when you heard about the problem, you might even have contained its size. "*Do nothing, and then we can't be blamed*" – the administrators' strategy.

"Oh, but we don't know whether it'll be pyrites next time."

And how do you expect *Us* to know? The resources of the one-person architect or engineer, as compared with the resources of Central and Local Government?

Truth is, you don't expect us to know; you just want to be able to blame us when something goes wrong. What you now propose is to finger somebody else to be responsible for *everything*.

It looks very much as if you are trying, not to prevent building failure, but, rather, to find somebody to blame. Your references to Insurance look as if they are intended to find somebody to pay up. Just let the accidents happen, then: blame somebody, who didn't even cause the problem in the first place.

Your proposals will fail even in that same outrageous regard. Have you no inkling of how insurance works? Do you not know that one cannot insure against Breach of statutory Duty? And that that is precisely what your proposals are creating – a new breach of Same? And do you not know that subrogations, joint and several, premium hikes will all kick in? Why did you not ask? You cannot have. If you had, you would have learned.

5 Your objectives are laudable

Your ostensible purpose in these regulations is to 'strengthen the building control system'. A laudable objective.

Laudable objectives don't make a bad law into a good one.

In the early eighteenth century, Irish lawmakers probably no less intelligent and certainly as well-intentioned as you and your colleagues today, passed laws which provided for the hanging of children convicted of stealing sheep. Their intention was to strengthen the law dealing with the protection of private property. That, too, is a laudable objective. Some young convicts were indeed so hung.

Today's consensus might be that the Dublin Castle officials who drafted those sheep-stealing laws were, well, a little out of touch by today's standards.

The first problem, apart from contemporary concerns about child welfare, and apart from the proportionality of crime *vis-à-vis* punishment, was that children were only stealing sheep because their parents told them to. The children were made responsible for the sins of others. The fact that the parents might have been starving was not a mitigating factor under the law.

That's what your draft legislation does. It makes *me* responsible for the acts, omissions and deliberate concealments of others. It sets out to make me certify that everything designed, whether or not by me, or engineers (Part A) – or balustrade suppliers (Part K) or window fabricators (Part L) – boiler suppliers (Part L) – or hardcore suppliers – not only complies with the building regulations but is free from defect. How can I know that? How can I be responsible for what others tell me?

Oh and by the way a lot of this stuff isn't even designed at the time the job starts. But you wouldn't know that because you don't know how the construction sector actually operates. This means that I cannot give you the drawings at the outset. (Why do I have to take time to explain all this? Why do you not know this?)

Worse. I am to be made responsible for certifying not only design, but also construction. How on earth can I know that everything is built per the regulations? I'm not on site every day. I don't inspect all the stuff. How can I know if the foundations are adequate when I rely on the engineer to see to that? Nobody is on site every day except the builder's site agent. But of course maybe you think I'm there every day? And if you don't so think, that makes it worse.

The nightmare goes on. You set out to criminalise me by requiring me to certify that it's all built free from defect. Defect? What does that mean? Specky paint? A scratch on the glass? (Why do I have to take time to explain all this? Why do you not know this?)

Like with the sheep-stealers' mothers, the fact that somebody else might have designed or built the defective work or the breach of building regulations is not to be a mitigating factor under the law. That won't let me off. I'm deemed to know everything.

I am the child who is being hung for stealing a sheep because my starving mother told me to. *You* working out of the former British Custom House are the equivalent of the Dublin Castle Administration who criminalised a class of innocents. At least you won't be able to do it and at the same time be able to say truthfully that you acted out of ignorance.

I am *outraged* that servants of the State, paid for out of the public purse, are either cynical or incompetent or both. Take your pick.

The second problem is that despite the child hangings, those law-makers failed in their objective, as, despite the forthcoming jailings, you are going to fail in your objective today. If, that is, your objective is to improve standards.

6 Your premise is sloppy

The Great Pretence in all this is that the Local Authorities are inspecting, and that this hasn't delivered the required quality standards. This is a *Pretence*. Either (1) there are *no inspections worth the name* or (2) *everything is more or less built OK*. Take your pick. One or the other.

You say they inspect 15% of all buildings. OK. Right.

Problem is, until last year there have been next to no prosecutions under the BCA. You have the number of such prosecutions in your possession because you get them in your quarterly returns as shown to the BRAB. I don't have the numbers because you don't publish them. You say they are secret... or did so in my BRAB days. Nonsense. Publish so the citizen can see the reality! Go on! Publish the number of prosecutions under the BCA year-by-year for each local authority over the past ten years! And what did you do about it at the time? Tell us!

Look at the numbers: let me guess: same as when I was on the BRAB: the number of prosecutions is next to zero! Probably jumping up now since Priory Hall. But don't pretend standards have gone down since the recent court proceedings. And don't pretend the officials hadn't time to inspect before now. It doesn't take all day to stamp a Commencement Notice.

Back to the Great Pretence:-

On the one hand you say:- 15% inspections

On the other hand your secret figures say: Next to No Prosecutions

But: 15% inspections + Next to no prosecutions = Next to perfect compliance!!

But on the other hand again you are now telling us:- Poor compliance and we need new regulations and to find somebody to hang.

This doesn't stack up. The truth is:

No inspections = next to no prosecutions = The proof of no inspections

The entire basis for your initiative is a mess. The Truth seems to be, you want to do something about building regulations enforcement, and all you can think to do is to Find Somebody To Hang.

7 Your "Figures for buildings inspected" are incredible

Look at this 15% inspections figure for a moment.

Your returns from local Authorities say they inspect 15% of all buildings built. Some such words or something: this is not an argument about semantics. The substance of what you are accepting as truth is that 15% of buildings are inspected.

I do not believe that. I cannot believe it and I reject it. This 15% figure is untrue. They are not inspecting on that basis. Inspect: to look carefully, to scrutinise, to question: never. 15%? In my *hundreds* of projects, and except as below once in very particular circumstances I have never, *never*, had a building control inspector visit a site where I was involved. I know. The contractor would have told me, as architect. That's the way it works.

My guess is that what happens is as follows. This isn't rocket science, I sat here for 11 minutes and sketched the following scenario.

If I were sitting in the County Offices, I might think... how'll I persuade that crowd up there in the Custom House that I'm working hard?

So, I count the files and find I have 100 Commencement Notices, to cover...

1 block of 15 flats, and ...

.... 99 bungalows, schools, shops, pubs, whatever.

And they want a 15% inspection rate!

Better rack up a few inspections!

How do I solve this?

I drive out and have a little look at the flats which, being in the County Town, are just down the road from my office.

Half an hour out, half an hour back, an hour on site, 2 hour's work = 15 flats on the site = 15% of buildings inspected!

Time to go home!

Everybody's happy!

Except that I have achieved nothing useful, except keeping DoE happy, nothing of value to the dwelling owners.

It might be on that basis.

I cannot think of any other way that I have never met a local authority official inspecting works under the BCA.

Though in thirty-two years' professional work I *do* agree that I *have* seen *one* set of inspections.

This, on two occasions on the same site, was by the excellent and hard-working officials of Cork County Council Fire Prevention Department in connection with the exceptional circumstances of a regularisation application. Those people work hard. They have respect among all my colleagues. We make sure to get it right for Errol Flynn and his assistants. We remember them. Frankly, we fear them – and that's a compliment to their work. And I hope and believe that their diligent work delivers good compliance. May I suggest, and I have not discussed it with them, that you call those people at their office in Bishopstown and get *their* view of the true local authority inspection regime. They don't inspect every site. But they do inspect. And they follow up. The BCA system can and does work.

By the way, no other regularisation application of mine has resulted in any inspections of any site I have been on. And I've had a few. And I'm talking last month, last week, the day before yesterday.

True, I must also admit that I have *once* been asked for a set of drawings. (It was a 360 job number. My current latest job number in the office is job number 829.) David Galbraith, Dun Laoghaire Rathdown County Council BCA, a focussed official. Good guy. What DCC did with the drawings, I don't know though.

You may say “oh well, that's the figure the local authorities tell us, we have to rely on them, it's not our fault...” To say this would be and is nonsense. What steps have you ever taken to ask anybody else except your own local authorities about this? Of course the local authorities'll tell you what you want to hear. A child would know as much. Have you ever asked the RIAI or IEI to survey their members and tell you the results? Why not? Have you any reason other than what the High Court judge called (agreed, it *was* in a different “official” context) indolence for not so doing?

Are you afraid of what you might find out?

8 A word on inspections

When I inspect a site I

- Check to see the builder is building my design.
 - Getting the dimensions right
 - The doors are the right width
 - The floors are level
 - The window cills are in the right place
 - The blockwork is plumb
 - The right shade of blue paint is used
- Answer the builder's queries:-
 - What carpet will we use
 - Which brick sample do I want

- What detail do I use at that difficulty threshold / down pipe / radiator
- Draw what he wants by way of additional information
- Make sure the job is on time
 - Check progress achieved against the contractor's programme
 - Make sure there are no anticipated delays
 - Interrogate the subcontractors and adjudicate demarcation fights
 - Adjudicate on claims for more time for bad weather, supplier delays
- Control the cost
 - Limit the number of post-contract variations
 - Argue about the price of additional work which the client wants
- Check the contractor's insurances are still valid
- Check his Safety measures are adequate
- Improve the design when I can see it in reality and not on paper
- Make sure the engineers have detailed the steel / the wires / the distribution boards
- Try to deal with delays by State Agencies (ESB Networks / Bord Gais)
- Make sure the builder hasn't changed anything such that it breaches the planning permission or fire safety certificate or SEI grant conditions or Heritage Officer requirements

I have a lot to do. You can check this list with, let's say, the Chief Architect in OPW.

When your Local Authorities inspect, they have *one* job:-

- Make sure the construction complies with the building regulations

Just get them to do their job. I'll continue to do mine. I have enough to do. The above list is of course the "full service list". If I'm on a half service, which is what some of my clients can afford or will pay for, I do less. And then I have less time, which makes matters worse.

9 The current powers of inspection are adequate to deliver compliance

The local authorities have inspection powers under the BCA. If they inspected 15% of the time, and properly inspected, up scaffolds, down trenches, plumb the walls, measure the treads and risers, all would be well. That's the way it works with the audits by your well-organised colleagues in the Revenue Commissioners. (You may not know a whole bunch about that system, but a phone call to Revenue would give some insights.)

The reality is that if the existing powers of inspection were used, there'd be no problem of compliance. There'd have been no Priory Hall. The reality is that the Dublin City Council building control authority used the time at its disposal to focus on accessibility standards *in excess of* the then current TGD-M. If DCC had inspected Priory Hall, as they had the right to do under the BCA, we might *all* have been spared what has happened.

There'd have been no pyrites either. A hundred quarries – all known. The local authorities have trained staff. Why did nobody ever stop and think? They had and have the inspection and sampling powers. Why not use them?

And it's not all DCC's fault. The problem is all over the country. The evidence? The septic tanks! One off houses in the countryside since 1991 Building Regulations? Guess – 20 years –

15000 per year conservatively – 300,000. Building Regulations TGD-H – refers to SR;6: IIRS: 1975. If this had been adhered to, there'd be no ground water problem.

And your new regulations won't solve that. Why do you propose to exempt one-off houses?

No inspections = get away with it = break the law.

Good chance of inspections = fear of being caught = build it properly.

This isn't *my* logic; it's normal human logic; it's the logic behind the Revenue Commissioners' methods; it works in Bandon, Rosscarbery and Mallow.

Have you asked DCC how many times they inspected Priory Hall when under construction? Have you asked how many quarry inspections all the local authorities did under the Construction Products regulations? The answer must be, None, because anything else would be even a worse answer to give. The follow-up question is, what else were they doing at the time? Get a list of buildings and quarries they inspected. Let's publish it under FOI. There should be file records. Why should you do this? Because the truth is that this draft law is your reaction to Priory Hall and the pyrites. The least you could do is check the facts before you set out to make other people criminals.

The truth is that you have decided that, rather than rely on local authorities to do their job, others can take responsibility for what they cannot deliver. Let's ... make ... somebody responsible ... who now ... contractor ... no ... to slippery; building owners To complicated... the designer! Get the designer to certify *everything!* That'll solve it!

10 A substantial part of your draft legislation has no basis in the BCA

If I, who have been architect, lead designer, for hundreds of buildings and on whom my clients rely for maintaining standards, am to sign these notices, you want:

- details of my insurance
- me to certify that everything is designed free from defect
- that everything is built free from defect
- full designs before the job starts
- full sets of drawings
- revised sets of drawings on completion

By what authority do you seek to establish whether I, or a contractor, has insurance for anything? What section of the BCA entitles you to do that? What business is it of yours anyway? Those parts of your Commencement and Completion notices are *ultra vires*. When these are struck down as such, and when the Minister of the day brings in your Departmental Secretary to know what's going on – may that man or woman know when she or he reads this submission that:- You were told. The Department knew. His or her staff knew. Even if their own ignorance prevented them from knowing of their own accord, they were told. You are drafting secondary legislation for which the primary legislation holds no remit.

But of course you know that. The proof is that there is no penalty for not having insurance, because you are powerless to impose one. So what's your reason for asking for details of my insurance? Hold on a minute, let's work that out ... So people can know I have insurance? Now ... why is that important?

I am *outraged* by your seeking to dump onto me and onto my family the consequences of local authorities not doing their job. I am not giving you or your local authority colleagues details of any insurance which I may or may not have. Back off. Get your own insurance and pay for it yourselves.

By what authority do you seek to require me to certify that works either designed by me or, worse, designed by others or, worse again, built by others comply with the building regulations? Others have statutory duties, to design and to build in accordance with the regulations. *How* can I be your policeman? I'm not there every day. I don't see everything. Even what I do see, I do not always understand – that's why my clients retain civil or structural or mechanical or electrical engineers. *Why* should I be your policeman?

(Why not ask somebody how the construction industry actually operates? When were you last on a building site? Can you read a drawing? So why draft legislation to penalise others in a system which you don't understand? Why do I have to explain all this?)

By what authority do you seek to require me to certify that works either designed by me or, worse, designed by others or, worse again, built by others are not defective? What section of the BCA entitles you to do that? What do you mean by defective? Painting can be defective! By what authority do you seek to extend the remit of your Regulations into areas where the BCA doesn't tread? These parts of your Notices are an *outrage*.

How can you propose to exact full designs before the job starts on site? The simplest job with foundations requires the foundation design to be finalised when the ground is opened. The simplest job with windows or handrails or a bit of heat sees the designs under BldgRegs Parts L, K and J prepared when the job is under way. So why do you ask for all this before the job starts? (Why do I have to explain all this?)

Why do you want all the rolls of drawings and specifications? Do you have any idea what is involved by way of project documentation? Drawings / specifications / bills of quantities / schedules / engineers work / detail construction drawings? Do you know how much this stuff costs to produce? Have you ever seen an Invoice for printing costs? Do you realise that the entire industry has gone digital and we email pdf material and have web-based collaboration? Paper is finished, except for what we have to feed the State in outmoded planning and fsc applications? Who is going to pay for all this?

Who's going to read the paper? The truth is, nobody. The truth is, you want to keep all the stuff on file so that you can dig around when there's a problem. No help, just sit and *whack*.

Defective? Defective legislation? Water meters? Household charges? Have you no shame?

11 Your proposals clash with Government policy

Paragraph 1.50 of the Government's 2012 Action Plan for Jobs sets as a goal to:

Deliver the potential for reduction in administrative burdens in national regulatory regimes across the following Departments: Social Protection, Communications, Energy & Natural Resources, Public Expenditure & Reform, Transport, Tourism & Sport, Health, Environment, Community & Local Government, Agriculture, Food & Marine, and the Offices of the Revenue Commissioners.

Your proposals increase the burden. There is of course a “proportionality argument”, in other words, the “it’s worth it” argument. But you owe it to the Minister and to those most affected to set out the rationale for imposing more burdens on me and my colleagues. I am already “on the business floor”; you are not reducing the burden; you are not even leaving the burden alone; you are increasing it.

Do not for a moment imagine that I will get paid more fees for these extra responsibilities. Do not for a moment imagine that I will get paid the extra copy and print charges. To imagine this is not to know the reality of clients’ needs in 2012 Ireland or the reality of economic pressures on architects at this time either.

I do of course accept that the Department couldn’t care less about me or my colleagues or about how we can earn a living in recessionary Ireland.

This is a political argument and this is one of the reasons I am copying the Minister’s Private Secretary. There have been too many political wrong steers served up by your colleagues in recent months and we are *all*, household-charge-payers and the rest, water-meter-consenters and objectors alike, the worse off for that.

12 Your proposals will make matters worse

If you think that by introducing the twenty-first century equivalent of hanging children for stealing sheep, that is to say, jailing architects for certifying that other peoples’ work is free from defect, you are a poor judge of human nature.

Scenario 1:

- I am a builder.
- Not a good one, just human, just an average one.
- (It’s OK to be human)
- I am on a really tight price to build this job.
- I can save money by putting in an 88% efficient boiler and not a 90% one.
- I don’t have to certify compliance to anybody.
- Somebody else does though!
- Let’s keep quiet and I’ll get away with this.

- As the architect is to certify compliance and full defect-freedom, I'm scot free!
- (Sure I can be prosecuted, but, there's somebody else who's going to be the fall guy, specially if he's got insurance (but not insurance for breach of statutory duty – have you thought about that one, it seems not, more sloppiness)
- Amn't I more likely to try to get away with it when somebody else'll get the chop for my slipperiness?

Doesn't all this stand to reason?

Can you not just think clearly and fairly?

Don't blather about the builder also being liable for prosecution, in the real world this is just claptrap when there's a certifier fall-guy

Is this fair?

Do *you* think this is fair?

Such will be the effect of your draft law.

13 What am I to do when the State attacks me?

Your draft legislation if enacted in or close to its present form presents me with a choice:-

Either

I sign the certificates and say that everybody else's work is free from defect and complies with the regulations. In which case, I'm the fall guy, and everybody else will have known this in advance and will have calibrated their own actions accordingly;

Or

I say to the client, get somebody else to sign the certificates. In which case, I'm out of a job, because there's always somebody else to do it;

Or

I refuse to sign the certificates. In which case, there's a fight.

Can you see any other possibility? I cannot.

14 I cannot see how I can sign these documents

The scenario I see is as follows:-

- *Scenario 2*
- I am the architect on the job.
- I cannot or at any rate will not certify what I do not know.
- Unfortunately, I need to continue to earn a living.

- Therefore:
- I lodge your Completion certificate with the offending bits struck out.
- After three weeks it's rejected and sent back to me.
- I'll advise the BCA that "that's all you're getting".
- This'll go backwards and forwards for a while.
- Sooner or later, I'll be prosecuted under the BCA for this offence.
- I'll instruct my lawyers to serve witness summonses on you and your colleagues.
- We'll all go to Court and I'll say what the problem is.
- You'll be cross-examined on this submission and on how it has right now been brought to your attention that the regulations will be unlawful and unworkable.
- The journalists will attend and report the cross-examinations.
- The judge will decide what to do.
- Then we'll see what happens next, appeal and start all over in the next Court up, I guess.

As regards your immunity under the 1924 Ministers and Secretaries Act, or whatever – it might have been better to have invited the submissions to the Department. With personal visibility comes personal responsibility. After all, that's the very idea embodied in these draft regulations, isn't it? Making somebody personally responsible?

15 What you should do about all this

Under the system as it at present exists, no change needed, building control authorities may

- Require the submission of documents to show compliance with the building regulations (this, incidentally, is defectively worded, but leave bad enough alone)
- Inspect sites at any time
- Take samples at any time
- Prosecute designers, builders and building owners for non-compliance.

If you think that the present law isn't delivering adequate compliance, this is not because the present law is bad, but because it isn't being enforced. Identifying one person as a criminal responsible for everything, who in the eighteenth century was the child sheep-stealer and who today by your proposals is to be the lead designer, will deliver scapegoats and headlines, and did and will let a bunch of other people off scot free.

You should enforce the present law. If builders had a 50% chance of a site inspection by the local authority, everything would be squeaky clean. This isn't some pipe-dream: this used to happen. Dublin Corporation, building byelaws, inspected drains and foundations every single time, Adrian English on his bicycle in Dun Laoghaire, it used to happen. Every time. And the system worked when it was given the resources. Your fire service would have caught the Stardust if they had had the number of Fire Prevention Officers they have now. Just do it.

“Ah but there’s no money”

This is rubbish. The people are there to do it. How many Commencement Notices have to be stamped each day? Then:- redeploy the planners and put them out to do a job which is needed. Tell them it’s Croke Park. After all, these are skilled professional people, and, after all, every day I and my colleagues must work on planning *and* building regulations and not only check others’ work but actually initiate the stuff. If they won’t play ball, contract the inspections out. Adopt the English system. It’s not rocket science. Bord Pleanala did it. Just do it.

Enforce the existing law.

Get out and inspect the buildings and inspect the quarries and the concrete block factories and the fire-stop factories. The powers are there. Don’t set about hanging a bunch of people who do not have those powers and who cannot exercise them.

If you really want to change the law, *at least engage in a meaningful dialogue with the representative bodies of those whom you are setting out to criminalise.* The BRAB is not the place to do this, just face facts.

If you want to make a difference, fix it with the one-off dwellings. But I suppose you can’t take on the country-dwellers again, fair enough, €5 for a tank inspection, sure it’ll all work out, it’s only the IMF.

So instead of that we have the Custom House proposals for Sheepstealers Law.

16 Do not misconstrue silence as assent

I don’t know how many “submissions” or commentaries you’ll get on these draft Regulations. I rather suspect, not a whole lot. Here’s why.

In the past five years the income of the architectural profession in Ireland has **fallen by 90%.**

This is not a misprint for 9%.

Nor is it a misprint for 19%.

And this is not a public-sector-union-estimated 15% drop in income.

It’s a drop in income *six times as bad* as the public-sector-union estimate.

The *proof* of this drop is as follows.

(a) Construction sector output has fallen from €39bn (2006) to €8.7bn (2011). That’s a drop of over 80% when inflation (10% over 5 years) is added in.

(b) if private sector fees just followed at the same rate, that would be an 80% drop. However:-

(c) Fee competition has seen average fees drop by half on each job. Ask any architect or engineer or surveyor. Give the Chief Architect in the Department of Education Building Unit in Tullamore a call, they are on record as seeing “*a substantial drop in the fees charged by consultants.*” That gives you the other half.

90%.

A 90% drop in sub-sector income.

In the past five years the income of the architectural profession has fallen by 90%.

Now, as living by and with the Croke Park Agreement, you may find this hard to believe. Try. It's the truth.

Now *Per capita* income has *not* fallen by 90%. The 90% fall has worked itself out through hundreds of families being split up or leaving the Country. More colleagues have retired early as they have nothing to do. I myself am personally acquainted with colleagues and friends now living in Australia and in Dubai who only get to see their Irish school-going families by virtue of the Skype screen. I am glad that none of you have experienced this in your lives. I see some of my Past RIAI President colleagues in a condition which I hope you never, ever experience. I hope that the country will be able to continue to afford the taxes needed to feed the State machine.

Your Union leaders talk about the Civil Service being demoralised with the pay cuts. Well, my colleagues would *love* to have had *your* pay cuts. Your pay cuts and pension contributions would have been *heaven*. *Double* your pay cuts and pension contributions would still be heaven. Planet Private Sector Construction is further from the warm sun than Planet Civil Service.

The effect of this 90% drop in income is that you are dealing with a completely demoralised and traumatised profession.

Of course maybe you know all this already. Maybe you're counting on a demoralised profession to be able to ram through your proposals and then wash your hands. That possibility is there, I agree. But as that would be not only outrageous but also despicable, I prefer to assume otherwise.

So what? Why should a 90% drop in somebody's income affect their ability to comment on an important issue?

A demoralised and traumatised profession is not equipped to comment on your proposals. They are too busy occupied in worrying how the next month's rent, and mortgage, and doctor's bill, and lunchtime sandwich, is to be paid for. They don't have time to deal with invitations to comment in an Excel spreadsheet on draft legislation.

I hope I'm wrong. I hope my colleagues, even demoralised as they are, react.

(Oh and by the way, just try Microsoft Word when writing documents. It's amazingly easy to use when writing, as compared with using Excel for that purpose. The Croke Park flexibility and redeployment agreements allow you to do so. Faster. Increases productivity enormously. And it's already in your software packages. And you might even not need paid training: the rest of us just get on with it, "learning on the job", like.)

Do not take my colleagues' silence as meaning assent. And like with the Household Charges, don't imagine that silence now = no problems later.

17 Scrap these proposals totally

Your regulations propose	Comment
<i>Failure to comply with any requirement under Part II shall be an offence to which section 17(2) of the Act of 1990 applies</i>	Jail for two years or a £10,000 fine. These regulations will vastly extend the range of criminality under the BCA. This is your intention. You intend to make me as the principal designer go to jail when other people break the regulations. This is outrageous.
<i>Professional Indemnity Insurance Cover: Policy No: _____ Insurer: _____ who is satisfied that the cover provided is adequate for the risks associated with involvement in this development</i>	You have no business asking for this. There is no provision under the BCA for you to do so. All you seek to do is to have somebody to catch and pay up, to encourage people to sue me. Oh and by the way, there's no PII cover for breach of statutory duty. Do you not know even that much?
<i>I certify, having regard to the plans, specifications, calculations and particulars included in the schedule to the Commencement Notice to which this certificate is relevant, that the proposed design for the works or building are neither defective nor contravene any requirements of the Second Schedule of the Building Regulations</i>	How can I certify this? I don't do all the design. How do I know that the engineer has done his job (Part A)? The gas fire man (Part J)? The windows man (Part L)? Why, it's not all even designed yet. And as for defective? Who decides that one? And by what authority do you seek to have me so certify?
<i>Any requests for plans, documents, specifications and other information, as may be necessary to show that the building or works, if built in accordance with the design proposed, will comply with the requirements of the Building Regulations, may be directed to the person so assigned</i>	Well, that's the building owner let off. Lucky man.
<i>Notwithstanding the responsibilities of other person/s or firms/s in relation to the works, I accept responsibility and legal liability for the inspection of all works as necessary to ensure that they are neither defective nor contravene any requirements of the Second Schedule of the Building Regulations</i>	... and that's the builder, the window man, the boiler supplier, the plumber and electrician, the drain layer, the ground works man, the pyrites supplier, everybody else let off too. Do you honestly and sincerely believe that by shoving those peoples' responsibility onto me, those self-same other people will thereby give you better compliance with the building regulations?
<i>Notwithstanding the responsibilities of other person/s or firms/s in relation to the works, I accept responsibility and legal liability for</i>	As last

<i>the inspection of all works</i>	
<i>... I now certify that I have inspected the works in accordance with the Code of Practice for the oversight of Building Works and that the building or works as completed is neither defective nor contravenes any requirement of the Second Schedule of the Building Regulations as applicable to the building works concerned.</i>	<p>I don't build it</p> <p>I don't even design the whole thing</p> <p>I don't supervise it</p> <p>I don't even inspect the whole thing</p> <p>But you are making me responsible for this while exonerating everybody else. The Dublin castle sheep-stealer-hangers would be proud of you</p>

There being nothing else in your regulations, they should be scrapped. The rubbish bin.

Then:

1. To improve the quality of design and construction, the local authorities should increase the number of site inspections as they are entitled to do under the present legislation. To check they are doing this, you should make a *submission* to the RIAI SCS and IEI to seek their help in establishing how many inspections are being done. This is a zero legislation approach which will not increase the costs on small businesses.

2. To improve the quality of materials used on sites, you should consult the engineers and my colleagues, and ask their advice on what should be tested and checked prior to arrival on site. One meeting, two at most, and you'll have the answers. Just *ask* and *listen*. Then: prepare a list for the Minister under the Construction Products Regulations.

3. In a properly-administered State, you would be consulting my and the other representative bodies to ask, "How can we help?" "How can we all work to improve matters?" "What's the worst problem you people have?" Some hope...

I have spent enough time on this. No taxpayer pays me for the time I spend on analysis in this *submission*.

18 Concluding remarks

Well:- first, the household charges; second, the water meters; third, the building regulations. Probably three different sets of Department of Environment officials advising the same Minister. Fiasco number three coming up! Boy, am I glad not to be in Phil Hogan's shoes!

This is a long submission. It rambles. It uses intemperate language.

But why should a submission be short? Why should I spare you half an hour's reading? And I am comforted by the thought that you're being paid to do the reading. After all, what you propose would affect the rest of my working life.

And why should submissions be "couched in temperate language"? After all, these proposals will put me in jail for other people's carelessness or, worse, for their honest mistakes or,

worse still, for their deliberate actions. And I am comforted by the fact that mistakes by you and your colleagues do not jail you, because we all make mistakes.

And why should everything be to the point? After all, you're the people who manage to grow every document you issue two and fourfold from one edition to the next. TGD-B? TGD-M? The Building Control Regulations? Before you grumble about others rambling, read your own stuff – which others have to deal with. Longer every time! And I am comforted by the thought that if you consult your BRAB files and you'll see that I was making this point years ago inside your own building.

And why should I not be angry? After all, my colleagues' families are split up. They have no pensions, no new cars, no *newspapers* for Goodness' sake. None of that's your fault; no blame on you there, even if your predecessors fought to get 83,000 dwellings built in a year and preferred hiking paper standards to getting out and inspecting; but what *is* your fault is the stick you draft to beat my demoralised (your own Union's word used in a context which would be positively rosy on Planet Construction Sector) colleagues into the witness box and into jail because your local authorities cannot or will not do their inspections and their work.

No, everything is *not* OK. No, you are *not* doing a good job. No, I do *not* respect what you have done.

Saeva indignatio.

If you want to, you may acknowledge receipt of this submission, but as I'm leaving it in by hand to the Offices of the Minister and Secretariat, you needn't go to the trouble just for my sake, because I'll be able to give sworn evidence that you received it. Paper copy only. I am forwarding no electronic version because I will not facilitate cutting and pasting this text.

I am a peaceable law-abiding highly-trained tax-paying establishment-supporting citizen in late middle age. Some of my closest relations have brought honour on themselves and pride to me and my family in their work in the Civil Service. That I feel myself driven to white-hot anger and to make a submission in the words and paragraphs used above astonishes and even appals me. I withdraw nothing.

Eoin O Cofaigh

Architect

Member, the Royal Institute of the Architects of Ireland, 1981 to date

President, the Royal Institute of the Architects of Ireland, 1998-1999

President, Architects' Council of Europe, 2000

Ehrenmitglied, Bund Deutscher Architekten

Ehrenmitglied, Bund Deutscher Baumeister (Landesverband Hamburg)

Honorary Member, the American Institute of Architects

Honorary Member, the Institute of Architects of Russia

Member 2001-2007, Building Regulations Advisory Body

Etc

Etc