

SUBMISSION FROM RIAI TO THE DEPARTMENT OF THE ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT REGARDING THE REVIEW OF S.I.9 OF 2014.



MAY 2015.

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1. INTRODUCTION

1.1 In preparation for this review, the RIAI has engaged in a number of consultation exercises both within our profession and externally. One year into the application of S.I.9 many issues have arisen in operation that can now be addressed. We note that this review will deal with a broad range of concerns as set out in items (c) and (d) in the Terms of Reference in addition to concerns about one-off houses and extensions.

1.2 The RIAI has welcomed many aspects of the new Building Control regulations including the introduction of mandatory Inspection Plans by professionals, the BCMS (notwithstanding teething problems) and the up-skilling of all concerned in the Building Industry on foot of the introduction of S.I.9. In particular the setting up of CIRI is a fundamentally important step in improving and controlling standards in construction and it is very important that putting CIRI on a statutory basis is progressed as quickly as possible.

The RIAI has also been consistent in highlighting the shortcomings in S.I.9, particularly in relation to consumer protection. The RIAI fully endorses accountability as an integral component of any system of Regulation but remains deeply concerned that those who actually build non-compliantly can dissolve their corporate bodies after (say) apartments are sold leaving the professional standing alone with his / her Professional Indemnity Insurance as the only form of redress for the consumer.

Credibility and buy-in are two recognised pillars in the successful adoption of Regulations as can be seen in other areas of public concern such as drink-driving and Health and Safety. Regulation without enforcement is futile.

1.3 Consumers are best protected by detecting and preventing defects. Our ongoing objective is to improve standards in design and construction and the RIAI is a leader in promoting this. Standards in the past have been inconsistent because the industry was effectively unregulated. Even with adequate inspection activity, however, there will be problems and the consumer should not have to rely on legal remedies to get redress. Latent Defects Insurance is an essential component of consumer protection.

1.4 The ability of a for-profit developer to act as their own Assigned Certifier is not in the consumers' or indeed the country's interest. Anecdotally we note that this is already happening. We are at the start of another spate of activity in the **Speculative Residential** sector and if we do not address this issue in this review, it will be too late for the next generation of home buyers.

Under S.I.9 a developer can design, build and self-certify the design and construction of a project only partial third party inspection of design and no inspection of the construction. This is not in the consumer's interest.

RIAI urges the Department to ensure that there is inspection by BCAs, Design teams and Assigned Certifier and meaningful independent inspection where risk analysis indicates this is necessary particularly for speculative housing and apartment development.

1.5 There is a view that the standard of Compliance implied in the legislation is impossible to achieve – **certification of absolute compliance** - and this drives a defensive attitude to inspection and necessitates excessive record keeping. A simple amendment to the wording of the Certificate would have an immediate effect on costs and help achieve the Minister's objective.

- 1.6 The RIAI has been proactive in promoting a Register for **Architectural Technologists**. The RIAI is working with QQI in setting academic standards for this profession and, subject to the detail involved, believe that experienced competent Architectural Technologists, who meet the standard, can play a full and appropriate part in Building Control in the future when these standards and controls are in place. Currently, many are providing ancillary certification and audit roles in conjunction with other members of design teams.
- 1.7 It is to be expected that improving standards will lead to an increase in capital costs. Our ambition as a country should be to be recognised for the quality of our buildings, which in turn will impact of Foreign Direct Investment and reduce costs-in –use. Up to 2014, many of our one-off houses, were built without the benefit of detailed working drawings or the involvement of professionals after Planning Permission. S.I.9 has begun to change that practice. The RIAI cannot give guidance on what Architects should charge for their services but would point to the requirement under S.I.9 that the Building Owner has to ensure that adequate resources are put in place by the Design and Assigned Certifiers. Costs should be appropriate for the service provided which in turn relates to the extent and complexity of the risk associated with the project. As mentioned above, there is an element of defensive work that arises from the wording of the Certification of Compliance. A simple amendment to the wording would alleviate that. Consideration might be given to reduce the VAT rate on the Certifiers fees on the basis that these are statutory roles.
- 1.8 Public awareness of the importance and purpose of the Building Regulations will create a demand for, and an expectation of, higher standards. Many Building Owners fail to understand their primary role in relation to compliance and as stipulated in S.I.9. A public awareness campaign on these important issues would be of great assistance and the RIAI urges the Department to proceed

with putting such a campaign in place. We have seen how such campaigns help build a cultures of compliance in other sectors such as Road Safety, Health and Safety, Drink Driving, etc.

- 1.9 The RIAI proposals are focussed on improving **Consumer Protection** by promoting **Better Building standards** and fostering a **Culture of Compliance** as well as addressing issues of efficiency and cost. Our submission is in three sections:

- Eight general proposals for change
- Specific proposals for amending S.I.9 in the format given
- Responses to the Information Documents issued by the DECLG as part of the Review Process

Appendix 1 is the RIAI's analysis to the Cost Calculations relating to the Sample PIP for Single Dwellings. For the purposes of the exercise, the RIAI is not adjusting the hourly charge out rates used by the DECLG but would comment that a charge out rate of €35 per hour equates to a salary well below a living wage.

2. GENERAL PROPOSALS

2.1 EXPERT WORKING GROUP

Proposal no. 1

Set up a cross-industry Expert Working Group as a priority. This group would work with the BCMS in advancing meaningful and appropriate Risk Assessment element to Building Control, developing exemption criteria based, and progressing work on the PIP for on-off houses as well as procuring standardised construction details and guidance for use in one-off houses.

Context.

Risk Assessment.

- 2.1.1 The Regulations, Code of Practice and Framework all require a risk assessment process. This now needs to evolve from a statement of intent to a detailed and workable process, consistent with the objective of developing a Culture of Compliance. Resources – public and private - are limited and must be directed where they are most likely to detect and prevent non-compliant work. Such targeting of resources will also help address costs.
- 2.1.2 Project Risk assessment is a fundamental part of the BC(A)R system. Development of a meaningful Risk Assessment regime, already inherent in the existing regulations, has the potential to be a powerful dynamic tool to achieve good building. The system might involve the Design and Assigned Certifiers registering the particular project at inception on the BCMS where a series of straightforward questions would set the basic risk rating.

The risk rating would help the BCAs identify which projects they should inspect and would also inform the intensity of the Inspection Plan and consequent costs.

- 2.1.3 The Inspection Plan is the framework for identifying defective work and forms the basis for sign off by the professional or firm carrying out the inspections. It is therefore of great importance that the Inspection Plan is informed by the Risk Assessment and is a realistic regime for inspecting construction.

Exempted Development

- 2.1.5 In the case of domestic extensions, the risks of defective or non-compliant work are not directly proportionate to the floor area. For example, a house might be extended by 39 m² including the removal of one of the main structural walls, the attic converted involving serious interventions in the roof structure and implications under Part B as well as other significant changes to internal structure and services. Under S.I.9, this work is deemed exempt. A simple 41 m² extension with minimal intervention in the structure and no internal changes to the interior of the house is not exempt. In the first example there is a compelling case for effective inspection of the works and for ensuring that all consequences of the interventions are thoroughly dealt with at design stage. The second example is far less complicated and the risks are less but the full S.I.9 regime will be applied. A more appropriate way of defining exempted development should be identified by the Expert Working Group as in Proposal no 1.
- 2.1.6 The comparison with exemptions under the Planning Acts is not necessarily appropriate. The visual and amenity impact a domestic extension has is a clear parameter when considering Planning Exemptions. In the case of Building Control, the risk of non

compliant work and the impact that has on the consumer should be the determining yardstick when considering exempted development.

One-Off Houses

- 2.1.7 A large percentage of Irish families live in one-off houses, largely in rural communities. These developments are no more immune to non-compliant work than any other sector and the consumer deserves a realistic level of oversight to ensure their homes meet the objectives of the Building Regulations.
- 2.1.8 The Minister has proposed a sample Preliminary Inspection Plan for one-off houses. The RIAI has concerns about the current draft including the proposal that a single inspection by the Assigned Certifier is adequate from the time the floor slab is complete until the roof is complete.
- 2.1.9 The Minister rightly highlights the need for keeping costs down to a realistic level. This requires balancing consumer protection with a meaningful regime of inspection. The development of an appropriate Standard Inspection Plan that would be supplemented on the basis of Risk Assessment can lead to a more competition from professionals as the scope of work becomes more easily defined. *(Note: see 2.6 below on Completion Certificates).*
- 2.1.10 Many of the Building Regulations are very complex as expressed through the TGDs, in particular Part L. An easy to understand set of standard construction details and explanations could improve levels of compliance, reduce costs and add to a culture of compliance.

2.2 LATENT DEFECTS INSURANCE (LDI)

Proposal no. 2

The DECLG should immediately engage with the progressing of LDI as committed to in Construction 2020. A statement about the need

for LDI would give confidence to new entrants in the market. Mortgage Lenders should have LDI as a condition of lending and this should be announced in advance to prime to the market place. The Code of Practice should define what the principle elements of appropriate LDI are. LDI should be taken as a factor that reduces the risk profile of a project because of the addition layer of oversight and inspection.

Context.

- 2.2.1 Effective Building Control systems can greatly reduce the incidence of serious building failures but will not eliminate them entirely. In circumstance where the consumer becomes the victim of a building failure, the system of redress should provide for addressing the problems in a timely manner without having to resort to lengthy and costly litigation with uncertain outcome. This is particularly important for residential buildings given the daily stress caused to residents by serious building defects.
- 2.2.2 Latent Defects Insurance exists in most comparable countries and allows the home-owner call in the insurance cover to fix the problem and lets the Insurer worry about pursuing the parties who have contributed to the problem. The one-off insurance premium is typically paid for by the Developer. It is time that concentrated and effective effort was put into providing LDI as standard in Ireland and for lending institutions to insist that Developers take out the cover before they sell a house or apartment. This is prudent and appropriate risk management of consumers largest investment. It also provides the quickest redress with greater certainty and less cost than legal action
- 2.2.3 The exact cover will vary with the provider but the consumer needs clarity regarding exactly what cover is provided. Minimum standards of cover should be set out in a working paper so that entrants to the market can be clear about what is meant by

appropriate LDI. Lending Institutions have a role to play in making appropriate LDI a requirement when providing mortgages.

2.3 OVERSIGHT OF CONSTRUCTION

Proposal no. 3

The Code of Practice should set out the parameters for Design and Assigned Certifiers in projects and sectors identified as being high risk (e.g. speculative apartment / housing sector). This should include the requirement for either mandatory BCA inspections or objective independent inspection. It should also indicate the need for adequate input from Design Team professionals during the construction stage.

Context.

- 2.3.1 S.I.9 is widely seen as a response to non-compliant construction in the speculative residential sector during the boom years leading up to 2007. The normal procurement and contractual systems with checks and balances that come with having a Building Contract and the full service of a Design Team were not the norm in housing and apartment schemes where the Developer was also the Builder. The objectives of a Developer who was purely motivated by commercial considerations, were inadequately controlled,
- 2.3.2 This has not radically changed under S.I.9, despite best intentions. It is still possible for a Developer to dispense with the full services of a Design Team at construction stage and to directly employ an individual who meets the registration requirements stipulated, to act as Assigned Certifier. This compromises the effectiveness of proper oversight and risks the repeating of past problems.
- 2.3.3 Appropriate layers of oversight are needed and these need to be decided by risk analysis as discussed at Section 2.1.1 above. It

should be the assumption that Developer led multi-unit schemes are high risk on the basis of the instances of building failure of the last eight years and bearing in mind the impact that non-compliant construction has on the consumer.

- 2.3.4 Building Professionals are trained to take an objective view on matters relating to Building Regulations and construction standards and are capable of acting with an appropriate level of independence.

2.4 NATIONAL BUILDING CONTROL BODY

Proposal no. 4

Put in place, as previously committed to, a national body to oversee all aspects of Building Control; this might be an expansion of the BCMS resource. This body could deal with:

- ***Oversight of the national building control system***
- ***Appeals arising from activities of the building control authorities***
- ***Referrals to the Building Control Authorities from relevant parties requesting clarification of Building Control issues.***
- ***The exercise of building control***
- ***Analysis of building control performance***
- ***Commission and carry out research***
- ***Review, update and expand on existing guidance***
- ***Resourcing of the Building Control System***
- ***Liaison with stakeholders in the Building Control Process***
- ***The regularisation process***
- ***Lowering nugatory transaction costs***

Context.

2.4.1 National standardisation of procedures improves efficiency. The centralised system that BCMS has provided is a very positive start, despite understandable teething problems. The need for standardisation across all Building Control Authorities is urgent.

2.4.2 There is a need for a system, such as Part V in Planning, whereby an issue can be referred for a definitive interpretation by an expert panel within a short and defined period. The outcomes of such referrals would build into a database of information. A standardised approach to enforcement would increase the clarity with which enforcement measures are applied. Risk assessment data and identification of common or newly occurring areas of concern should be centrally gathered, responded to and reported on. Such a body could also deal with Regularisation of projects where retrospection is appropriate to avoid 'limbo' situations.

The expansion of the BCMS may be an appropriate way of achieving this objective.

2.5 DEFINITION OF COMPLIANCE

Proposal no. 5

Insert a clear definition and explanation of the meaning of "Compliance" in the Code of Practice for inspecting and Certifying Buildings. Insert clear guidance on the extent of non compliance which warrants the issue of enforcement proceedings in the BCA Code of Practice. Suggested wording would be aligned with the Building Control Act and might be: for Design. 'Compliance' shall mean that the relevant building or works have been designed to meet the purposes of The Building Regulations as detailed of Section 3(2) of The Building Control Act 1990 subject only to such variance as is identified at Section 9 (1) a, b, and e, of the same Act and for Construction:

'Compliance' shall mean that the relevant building or works have been constructed to meet the purposes of The Building Regulations as detailed of Section 3(2) of The Building Control Act 1990 subject only to such variance as is identified at Section 9 (1)a, b, and e, of the same Act.

Context.

2.5.1 The Building Control Act 1990-2014 (BCA) requires that *'Every building to which the Building regulations apply shall be designed and constructed in accordance the provisions of such regulations'*. The Building Regulations are made for the purposes of:

- a. Securing the health and safety of persons, in, about, or affected by, buildings.
- b. Ensuring that buildings meet the special needs of people with a disability
- c. Conserving fuel and energy
- d. Ensuring the efficient use of resources
- e. Ensuring good building (practice)
- f. Ensuring that buildings meet the EU energy performance legislation requirements
- g. Ensuring compliance with such other requirements as the Minister may specify in regulations.

2.5.2 Section 9 of the BCA provides that the following grounds may form the basis of a defence against a Building Control Authority notice of non compliance; *The extent of any non compliance is so insignificant as to render the cost of its rectification disproportionate and The extent of any non compliance is not so significant as to warrant enforcement.* The subtexts to section 9 are that non compliance will occur but unless that non compliance is of such significance as to warrant enforcement, and the cost of its

remediation is not excessive, only then must it be rectified or be subject to the enforcement process

- 2.5.3 The significance of any non compliance may be measured by the extent, if any, to which that non compliance poses a threat to the objectives of the Building Regulations objectives at a) to g) above.

From the foregoing it is clear that absolute compliance in accordance/conformity with the Building regulations is not the objective of the Building Control Act. Section 9 effectively recognises, and provides for, the realities of the construction process as opposed its being treated and certified as if a manufacturing process.

- 2.5.4 For the purposes of clarity for all concerned, in particular the consumer who may misunderstand what compliant compliance means with respect to the Building Regulations, this concept should be clearly defined. There are many elements of the design and construction of buildings which are not subject to the Building Regulations but which are often critically important to the consumer. In circumstances where the true meaning and intent of the document is neither defined nor clear, it is understandable that the consumer may assume that a Certificate of Compliance may be relied on to mean that all elements of the building are without any fault whatsoever.

2.6 COMPLETION DOCUMENTS

Proposal no. 6

Amend the completion document that the Assigned Certifier signs. The key change would be along the lines: “... I now certify, having exercised reasonable skill, care and diligence, that I do not find any material non-compliance with the requirements of the Second Schedule to the Building Regulations...”

Context.

- 2.6.1 The RIAI believes the concept of an Inspection Plan and Framework is a positive element of SI9 and should increase the effectiveness of inspection of construction. However, the primary responsibility for building in accordance with Building Regulations remains with the Builder. His supervision regime is of central importance and no level of oversight by Inspectors can catch all defective work. The Builder alone is in a position to certify that he has constructed the works in accordance with the Building Regulations. The Assigned Certifier can credibly certify that s/he has implemented an appropriate Inspection Plan in accordance with the Code of Practice, and based on that, finds no non-compliance with the Building Regulations. To go further than this misrepresents the reality of what an Inspection regime can achieve. Amended wording should make the Assigned Certifier concentrate more on the appropriateness of the Inspection Plan at the outset and its evolution during the construction stage and less time on administrative work which is of limited value to the consumer.
- 2.6.2 Consumers are generally not conversant with the processes involved in building. They are entitled to believe an Assigned Certifier when s/he certifies that the building is fully compliant. Those of us involved in this industry know this to be a misleading statement. We have a duty to be more honest in what we can and cannot certify as fact.
- 2.6.3 Comment has been made about costs quoted for providing Assigned Certifier services. It the opinion of the RIAI that by aligning the Certificate wording more closely with the Inspection Plan, the role will become clearer, the market of those willing to act Assigned Certifier will expand and much of the defensive work the current wording leads some practitioners to undertake will be rationalised; thus the cost to the consumer will pay for the level of service required and not for excessive work.

2.6.4 This approach also allows for tailored templates for Inspection Plans for certain building types that can act as a base document to be supplemented by risk assessment. This should help bring about norms in the activity of Inspecting which in turn would inform what range of normal charges might be expected.

2.7 ABILITY OF CORPORATE BODIES TO ACT AS DESIGN AND/OR ASSIGNED CERTIFIERS.

Proposal no 7

Amend the wording in S.I.9 to provide for a Firm or Body Corporate performing the roles of Certifier, both at Design Stage and Completion Stage. Include in the Code of Practice definitions Section the requirements for when a body corporate the Certifier or the Building Owner.

Context.

2.7.1 The Regulations allow the Builder sign as a corporate entity while, it appears, the Design and Assigned Certifier are signing in their personal professional capacity. This is causing practical, operational and professional difficulties where the certifier is not the principal or partner of the firm and arguably impacts on costs. Questions arise about what happens when a Certifier moves to a different firm or when the firm they were with at the time of certification ceases practice.

2.7.2 In many cases the Design and/or Assigned Certifiers will be acting on behalf of a professional firm and it is this Firm that will carry the Professional Indemnity Insurance to cover potential negligence on the part of the Certifier. In such circumstances, it would be more appropriate for the Firm (or Body Corporate) to carry out the role. Of course, the qualifications and competence of the personnel

involved in doing the actual work still remains the priority. To ensure consistency, the authorised signatory should be one of the three stipulated professional bodies and the Firm (or Body Corporate) should be majority controlled by a member or members of the three bodies.

2.7.3 The Office of Public Procurement in the Department of Public Expenditure and Reform has already recognised this in their Guidance Note 1.1.1 where they say in Section 1.2 that The Design Certifier and the Assigned Certifier may be an individual or a body corporate.

2.7.4 Disproportionate liability is an important consideration and the provisions of the Civil Liabilities Act need to be reviewed

2.8 PRODUCT /MATERIALS PROBLEMS IN THE CONSTRUCTION INDUSTRY AND BUILDING REGULATION COMPLIANCE.

Proposal no 8

The DECLG should immediately engage in a more direct manner with industry stakeholders in support of the objectives set out in the National Sector Specific Market Surveillance Programme 2014-15. Subsequent to this engagement SI no 225 of 2013 (EU(CONSTRUCTION PRODUCTS) REGULATIONS 2013) should be used to drive improvements with the compliance of products in particular areas of concern. Compliance with the EU products Directive/ Regulations should form part of a wider public awareness campaign regarding the need for building regulation compliance.

Further to our proposal no 4 "Put in place a national body to oversee all aspects of Building Control" we request that the Minister confirm the national body as a Competent Authority further to section 11 (1) (b) (Appointment of authorised officers) of Part 3 (Market surveillance and safeguard procedures) of SI 225 of 2013.

Context.

- 2.8.1 Concerns have been expressed by Architects, Engineers and Building Control Officers regarding some products and materials that have been used in the construction process in Ireland. These concerns were restated at the recent Irish Building Control Institutes Building Control Conference 2015. Recent examples include fire rated glazing, plywood, and OSB (oriented strand board). Problems with materials including pyrite and mica have previously been identified and remain an area of strong concern for the industry.
- 2.8.2 We note Irelands National Sector Specific Market Surveillance Programme 2014-15 and Section F of that programme relating to Building Control Authorities and Construction Products. We understand that the identification of products will be dependent on market intelligence which will be triggered on foot of acting on information received from complaints (e.g. from the public, public bodies, contractors, designers, customs, police or other market surveillance authorities etc.).
- 2.8.3 Given the potential serious consequences of non-compliant materials or products we would recommend that the Department engage in a more direct manner with industry stakeholders, including architects, engineers, contractors, sub-contractors and manufacturers, so as to most effectively address problems with construction materials and products. Given the large number of products and the relative technical complexity of establishing their compliance there are clear benefits from this engagement in raising levels of conformance. We confirm our willingness to co-operate with this engagement in a prompt manner.
- 2.8.4 We recommend that subsequent to this engagement that SI no 225 of 2013 (EUROPEAN UNION (CONSTRUCTION PRODUCTS) REGULATIONS 2013) is used to drive improvements with the compliance of products in areas of particular concern.
- 2.8.5 We recommend that compliance with the European Products Directive/ Regulations forms part of a wider public awareness campaign regarding the need for building regulation compliance

3. SPECIFIC PROPOSED AMENDMENTS TO S.I.9 OF 2014

Template for comments / observations returned during the consultation		Document: Building Control (Amendment) Regulations 2014, S.I. 9 of 2014	
	Article / Part / Schedule of the Building Control Regulations	Brief Overview of area of concern	Proposed change (if any)
RIAI	SECOND SCHEDULE. FORM OF COMMENCEMENT NOTICE FOR DEVELOPMENT Article 9	Part 5 of the Form of Commencement Notice refers to the Building Designer. It is not made clear that this is the party who will sign the Design Certificate. In addition, a Building Designer is normally a Firm or Body Corporate and there is no facility to write this in the form contained in S.I.9	Define Building Designer as the lead designer of the works and the Design Certifier. Allow for the Building Designer to be a Body Corporate and for the Authorised signatory to be a member of the three professional bodies.
RIAI	SECOND SCHEDULE. DESIGN CERTIFICATE	The Design Certifier may be a Firm or a Body Corporate (see 2.7 above).	Change the wording in Part 3 of the Design Certificate to allow for the Design Certifier to be a Body Corporate (define this in the Code of Practice perhaps) and for the Authorised signatory to be a member of the three professional bodies.
RIAI	SECOND SCHEDULE. NOTICE OF ASSIGNMENT OF ASSIGNED CERTIFIER	The Assigned Certifier may be a Firm or a Body Corporate (see 2.7 above).	Change the wording in Part 2 of the Notice of Assignment of Assigned Certifier to allow for the Assigned Certifier to be a Body Corporate (define this in the Code of Practice perhaps) and for the Authorised signatory to be a member of the three professional bodies.
RIAI	SECOND SCHEDULE. CERTIFICATE OF COMPLIANCE ON COMPLETION (Article 20f)	The wording contained in Part B, 7 and 8, should relate more clearly to the Inspection Plan as being the basis for declaring the works to be in compliance.	Change the wording to 8. Based on the above, and relying on the ancillary certificates scheduled, I now certify, having exercised reasonable skill, care and diligence, that I do not find any material non-compliance with the requirements of the Second Schedule to the Building Regulations, insofar as they apply to the building or works concerned.

4. RESPONSES TO THE INFORMATION DOCUMENTS ISSUED BY THE DECLG AS PART OF THE REVIEW PROCESS

4.1 Information Document No 1

The terms of reference set out are clear and appropriate. The review of Building Control should be ongoing with regular revisiting of key elements to ensure the objectives are being met. There has been limited experience to date and next year will give a clearer picture of where further amendments or additions might be of value.

4.2 Information Document No 2

New Single Dwellings (including self-build) and extensions to existing dwellings

4.2.1 **Context**

The Terms of Reference defining the scope and objectives for the review include item (b):

To consider in particular the impact of S.I.9 of 2014 on single dwellings and extensions to existing dwellings having regard to specific concerns which have been raised in relation to the cost burden of the regulations and the level of certification for this sector.

4.2.2 The Department's information paper highlights some of the more common failures in single dwellings and extensions to existing dwellings:

- Inadequate drainage and wastewater treatment
- Poor insulation and energy performance standards
- Poor understanding / application of good building practice

Other evidence points to:

- The absence of fire detection systems in more than a third of Irish homes where fires resulted in fatalities in 2014
- The lack of radon barriers contributing to an estimated 150 – 200 deaths per annum from lung cancer
- The failure of over 50% of septic tanks since inspections began in 2013
- The absence of carbon monoxide detection with up to 40 people dying from accidental poisoning each year
- The level of cryptosporidiosis due to water contamination deemed one of the highest in Europe.

4.2.3 The Department has proposed the following options to “protect consumers in as far as possible from exorbitant and unjustifiable costs and professional fees”:

Option A – Revise Building Control Regulations 1997 to 2014 to make statutory certification and related requirements advisory rather than mandatory in the case of new single dwellings and extensions to existing dwellings.

RIAI Response:

The objective of S.I. 9, to strengthen the arrangements in place for the control of building activity in response to widespread failures, would not be achieved if this Option was pursued.

The environmental and health hazards posed by non-compliant dwellings have been identified in numerous studies undertaken by the Radiological Institute of Ireland, the Health Services Executive and the Environmental Protection Agency. The ability to opt out of the Building Control Regulations for single houses and extensions would result in even more widespread non-compliance with Building Regulations in a sector which has historically struggled to deal with the informal labour market and poor construction standards. This sector is only now beginning to embrace better building standards. Opting out would require a greater level of risk assessment by

Building Control Authorities and would inevitably result in a far greater requirement for BCA inspections. The costs associated with ensuring compliance relate not just to implementing an appropriate inspection regime but also to ensuring that the works are designed and detailed in accordance with Building Regulations. Typically many single houses and extensions in the past were designed only to demonstrate compliance with planning requirements with little or no information provided to demonstrate compliance with building regulation requirements. Reports from Building Control Authorities and the BCMS on their experience since the introduction of S.I.9 have been of the widespread improvement in the standard of documentation showing compliance with building regulations and the consequent improvement of standards on construction sites.

4.2.4 **Option B – Broaden the pool of persons who may sign statutory certificates of compliance**

RIAI Response:

Given the level of construction activity, as identified by the number of commencement notices lodged over the first year of operation of S.I.9, it does not appear that there is currently any shortage of suitably qualified professionals available to provide the necessary services. What is critical is that those acting in the roles of Design and Assigned Certifiers have the competence to do so and that the necessary academic training and assessment procedures for all those involved in Building Control, both within the Local Authorities and in the private sector, are available.

Feedback from RIAI members has indicated there are concerns that the implied standard of Compliance could be difficult to achieve.. It is the opinion of the RIAI that if the wording of the certificate of compliance was amended, to reflect what is realistically possible for a professional to determine, that the pool of persons willing to sign the statutory certificates would increase. *Also see 2.5 above.* We

also support the setting up of a Register of Architectural Technologists who we believe have a significant role to play.

4.2.5 **Option C – No change in regulatory requirements; but produce guidance for single dwellings**

RIAI Response:

Single dwellings, as with extensions to dwellings, vary widely in their level of complexity and inherent risks. These risks can be, inter alia, as a result of ground conditions, topography, structural design, construction techniques, competence or capacity of personnel. In addition the “deemed to satisfy” technical guidance to the regulations themselves has reached a level of complexity which is extremely difficult to achieve for even the most competent construction specialists. To rely on a standard Preliminary Inspection Plan for “non-complex” dwelling houses, and without any definition of what might comprise a “non-complex” dwelling, runs the risk of creating a level of complacency about inspection which will result in an inevitable lowering of standards. In addition it is simply not possible to adequately inspect even the simplest of dwellings in the proposed four stages, for example, radon barriers cannot be inspected at the same time as the insulation and floor structure and DPCs around windows or Thermal bridging cannot be inspected at the same time as roof coverings and flashings. Reducing or eliminating the need for a professional to assess the appropriate stages at which to inspect, and reducing the number of inspections required to an inappropriate number will not achieve the objective of the regulations.

On the other hand if good technical guidance was produced and easily accessed, through for example the use of XML tagged guidance linked to robust details, and if the TGDs were generally simplified and with more specific guidance on how to achieve the requirements for dwellings, efficiencies could be achieved which

would ultimately reduce costs and achieve better building. See *also* 2.1 above.

4.2.6 **Option D – Exemptions for extensions to existing dwellings should be determined having regard to building plot ratio**

RIAI Response

Plot Ratio is a planning tool which helps control the bulk and mass of buildings. It expresses the floor area in relation to the site area. It has no relationship to building regulation. An extension to a rural detached dwelling with a very low plot ratio could have a disproportionate impact on the capacity of a septic tank, the building's carbon footprint or its impact on the quality of water available for human consumption. By comparison an extension to a terraced house on a tight urban site with a high plot ratio, no septic tank, a treated water supply and only one external wall pose far less risk of non-compliance with building regulations.

4.2.7 **Specific Questions for Public Consultation**

Q.1 Do you agree with the proposed amendment to Building Control Regulations to provide that the requirements for statutory certification in line with S.I. 9 of 2014 be eased in the case of a new single dwelling and an extension to an existing dwelling by becoming advisory rather than mandatory and allowing for alternative means of demonstrating compliance?

A.1 The RIAI does not agree. See Section 4.2.3 above.

Q.2 Do you have any views in relation to the proposals for broadening the pool of professionals who may sign certificates of compliance, in particular proposals (c) and (d) at Option B above?

A.2 See Section 4.2.4. above.

Q.3 Do you have any further suggestions which would assist in broadening the pool of persons who may sign certificates of compliance for building control purposes?

A.3 Yes. See 2.5 and Proposal No 5 above.

Q.4 Do you agree that there should be no change in regulatory requirements for new single dwellings and extensions, to existing dwellings, but that the Sample Preliminary Inspection Plan for Single Dwellings should be incorporated into the existing Code of Practice for inspecting and certifying buildings and works thus becoming a statutory guidance document?

A.4 We believe the Sample Preliminary Inspection Plan needs some further work; for example there is only one inspection included for the period the floor slab is complete until the roof is complete. See Section 4.2.5 above.

Q.5 Do you have any views on the proposal that exemptions for extensions to existing dwellings should be determined having regard to a building plot ratio?

A.5 The RIAI does not consider that plot ratio has any relevance to compliance with building regulations or building control regulations. See Section 4.2.

APPENDIX 1

Cost Calculations for Assigned Certifier (AC) Implementing Sample PIP On Single Dwellings

Cost Calculations for Assigned Certifier (A.C.) implementing Sample PIP on Single Dwellings. DECLG, April 2015

DECLG Assessment					RIAI Assessment using DECLG rates						
Activity	Hours	Rate A.C.	Rate Ass't	Total	Activity	Hours	Rate A.C.	Rate Ass't	Total	Notes	
Commencement Stage					Commencement Stage						
1 Preparation of design drawings to show compliance with the regulations.	8	€65		€520	Review all plans and documents received from Design Certifier.	8	€65		€520	It is the Design Certifier who ensures drawings etc are prepared. See CoP 4.3 and elsewhere. The A.C reviews these and this is an essential task. The certified design forms the basis for the Builder for establishing compliance. See CoP 5.1	
2 Registration of the project on BCMS for commencement incl associated tasks.	4		€35	€140	Prepare Inspection Notification Framework in conjunction with Builder and schedule of Ancillary Certificates required.	8	€65		€520	The PIP needs to be converted into a INF to ensure the programme relates to the Inspection Plan and that the Ancillary Certifiers are signed up to the Plan. See CoP 3.5 (b), (c) & (f) and 7.3.	
3					Brief client on duties under SI9 from the appointment to Completion.	1	€65		€65	Due to the absence of a Public Awareness Campaign, this task falls to the AC to an extent. Experience confirms this to be required.	
4					Registration of the project on BCMS for commencement incl associated tasks.	12		€35	€420	Current experience is that this task takes approximately 8 - 16 hours on average. It is assumed that this will reduce in the future.	
Construction Stage					Construction Stage						
5 Inspections - 5 stages - site visits say half day / visit.	20	€65		€1,300	Site visits needed to implement sample PIP					5 inspections during a 6 month project falls well below standard of reasonable skill, care and diligence. For example, it would not be possible to implement stage 4 with only one inspection.	
6 Office - preparation of reports following site visits.	10	€65		€650	1. Formation Stage (page 3 PIP)	4	€65		€260	As per allowance in DECLG calculations	
7					Write up report after	2	€65		€130		
8					2. Foundation Stage (page 3 PIP)	4	€65		€260		
9					Write up report after	2	€65		€130		
10					3. Ground Floor Stage (page 3 PIP)	4	€65		€260		
11					Write up report after	2	€65		€130		
12					One reinspection arising from the above	4	€65		€260	Reinspections likely will be required at least twice during a project.	
13					Write up report after	2	€65		€130		
14					4. Roof Structure Stage (page 3 & 4 PIP)		€65		€0		
15					Wall construction: check wall ties, insulation, dpc, window installation, etc	4	€65		€260	This part of stage 4 will require a minimum of one inspection and possible two or three.	
16					Write up report after	2	€65		€130		
17					Roof Inspection: wall plates, chimney, roof structure, insulation, roof covering, flashings, etc	4	€65		€260	This part of stage 4 will require a minimum of one inspection and possible two or three.	
18					Write up report after	2	€65		€130		
19					5. Completion Stage (page 4 PIP)	4	€65		€260		
20					Write up report after	2	€65		€130		
21					One reinspection arising from the above	4	€65		€260		
22					Write up report after	2	€65		€130		
23					Upload post commencement Ancillary Design Certificates during construction.	8	€65		€520	See CoP 5.3.	
Completion Stage					Completion Stage						
24 Uploading of Statutory Completion Certificate	4		€35	€140	Gather all ancillary certificates from design and construction team. See CoP 4.6 (a)	4	€65		€260		
25 Uploading of Construction Drawings	4		€35	€140	Gather drawings, calculations etc. Prepare report on as built design as against design at commencement stage. See CoP 4.6 (b)	8	€65		€520		
26 Correlation of certificates - Assigned Certifier	2	€65		€130	Arrange the archiving of records	4		€35	€140	See CoP 9.	
27 Correlation of certificates - Assistant	2		€35	€70	Uploading of Statutory Completion Certificate	4	€65		€260	Should not be delegated to assistant. Consequences of making error too significant.	
					Uploading of Construction Drawings	4		€35	€140		
Nett total DECLG				€3,090	Nett total RIAI				€6,485		
VAT @ 23%				€711	VAT @ 23%				€1,492	VAT @ 13.5% instead would save €622	
Total				€3,801	Total				€7,977		

Note: The hourly charge out rates in the RIAI's analysis are taken from those in the DECLG analysis. This is not a confirmation that those rates are appropriate. For example, the RIAI would point out that an hourly charge out rate of €35 equates to a salary well below the average industrial or living wage.