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Explanatory Memorandum](#)

AN BILLE UM RIALÚ FOIRGNÍOCHTA 2005
BUILDING CONTROL BILL 2005

Mar a tionscnaíodh
As initiated

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Building Control Act 1990

1990, No. 3

Petty Sessions (Ireland) Act 1851

1851, Vict. c. 93



AN BILLE UM RIALÚ FOIRGNÍOCHTA 2005
BUILDING CONTROL BILL 2005

BILL

entitled

5 AN ACT TO AMEND AND EXTEND THE BUILDING
CONTROL ACT 1990; TO IMPLEMENT CERTAIN
PROVISIONS OF DIRECTIVE 2002/91/EC OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL OF
10 16 DECEMBER 2002 ON THE ENERGY PERFORMANCE
OF BUILDINGS; TO REGULATE THE USE OF THE
TITLES “ARCHITECT”, “QUANTITY SURVEYOR” AND
“BUILDING SURVEYOR”; TO IMPLEMENT CERTAIN
PROVISIONS OF DIRECTIVE 2005/36/EC OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL OF
15 7 SEPTEMBER 2005 ON THE RECOGNITION OF
PROFESSIONAL QUALIFICATIONS AND TO PROVIDE
FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

20 PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Building Control Act 2005.

Short title,
collective citation,
construction and
commencement.

(2) The Building Control Act 1990 and this Act may be cited together as the Building Control Acts 1990 and 2005 and shall be construed together as one.

25 (3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation.

30 “Act of 1990” means the Building Control Act 1990;

“adaptation period” means an adaptation period of such character as the Admissions Board determines;

“Admissions Board” means an Admissions Board established under *section 10, 25 or 39*, as the context requires;

“Appeals Board” means an Appeals Board established under *section 21, 35 or 49*, as the context requires;

“aptitude test” means an aptitude test of such character as the Admissions Board determines; 5

“Directive” means Directive 2005/36/EC¹ of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being; 10

“Member State” means a Member State of the European Union and includes the following:

(a) on the State being required to recognise a relevant measure having an effect corresponding to that of a directive, including the Directive, a Member State of the EEA; 15

(b) the Swiss Confederation;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement; 20

“Minister” means the Minister for the Environment, Heritage and Local Government;

“Professional Conduct Committee” means a Professional Conduct Committee established under *section 20, 34 or 48*, as the context requires; 25

“registered professional” means, as the context requires, an architect, building surveyor or quantity surveyor registered under this Act;

“Registrar” means a person appointed under *section 16, 30 or 44*, as the context requires; 30

“registration body” means, with respect to—

(a) *Part 3*, the Royal Institute of Architects of Ireland,

(b) *Parts 4 and 5*, the Society of Chartered Surveyors,

(c) *Parts 6 and 7*, each of the bodies referred to in *paragraphs (a) and (b)*, with respect to such body performing its functions for the purpose of the relevant Parts; 35

“relevant measure” means—

(a) any EEA measure having an effect corresponding to that of a directive, including the Directive, and

(b) a measure that is in force by virtue of the Swiss Confederation Agreement; 40

¹O.J. L255/22 30.9.2005

“specified”, in relation to a fee or an amount of a fee, means specified under *section 58*;

5 “Swiss Confederation Agreement” means the agreement between the European Union and the Swiss Confederation on the free movement of persons, signed at Luxembourg on 21 June 1990;

“Technical Assessment Board” means a Technical Assessment Board established under *section 19, 33 or 47*, as the context requires.

10 (2) A word or expression used in *Part 3, 4, 5 or 7* and which is also used in the Directive has, unless the context otherwise requires, the same meaning in that Part as it has in the Directive.

PART 2

AMENDMENT OF BUILDING CONTROL ACT 1990

15 **3.**—Section 1(3) of the Act of 1990 is amended by substituting “, paragraph or subparagraph” for “or paragraph” in both places where it occurs.

Amendment of section 1 (interpretation) of Act of 1990.

4.—Section 6 of the Act of 1990 is amended—

Amendment of section 6 (building control regulations) of Act of 1990.

(a) in subsection (2)(a)(ii), by deleting “and”, after “provisions of building regulations as may be prescribed,”,

20 (b) in subsection (2)(a)(iii), by substituting “the requirements of building regulations,” for “the requirements of building regulations;”,

(c) in subsection (2)(a), by inserting the following after subparagraph (iii):

25 “(iv) the submission (before grant of the relevant fire safety certificate) of a notice in writing to a building control authority (in this Act referred to as a ‘7 day notice’) by a person who intends to commence work on the construction of a building or an extension of or a material alteration to a building, giving not less than 7 days notice of that person’s intention to carry out those works, and requiring that such notice shall be accompanied by a valid application for a fire safety certificate,

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45 (v) the submission to a building control authority by a person who submits a 7 day notice of a statutory declaration (in this Act referred to as a ‘7 day notice statutory declaration’) made by that person stating that the application for the relevant fire safety certificate has been completed in all respects and complies with the relevant provisions of the building control regulations, that any works that have been commenced before the grant of such certificate will comply with the building

regulations and that the person will promptly carry out any modification of such works that is required by or under the fire safety certificate, including any condition attached to it, when it is granted by the building control authority concerned,

- (vi) where an application for a fire safety certificate in respect of the construction of a building or an extension of or a material alteration to a building has been submitted before planning permission has been granted in respect of such construction, extension or alteration, the submission, if required by the subsequent grant of such planning permission, of a further application to a building control authority for a fire safety certificate (in this Act referred to as a 'revised fire safety certificate') for the purpose of ensuring that the revised design arising from the grant of planning permission (including any condition attached to it) complies with the building regulations,
- (vii) where work has been commenced or completed in respect of the construction of a building or an extension of or a material alteration to a building, and no application has been made for a fire safety certificate that is required under building control regulations for such construction, extension of or material alteration to a building, the submission to a building control authority of an application for a certificate (a 'regularisation certificate') which shall be accompanied by drawings of the relevant works (as they have been constructed) and a certificate from the applicant stating that such works comply with the provisions of the building regulations relating to fire safety, and enabling the authority to specify in a regularisation certificate that the regularisation certificate shall not have effect unless, within 4 months after its being granted, any conditions attached to it by the authority (including conditions as to the carrying out of additional works) are complied with,
- (viii) a building control authority to inspect (before it decides whether to grant such a certificate) a building in respect of which an application has been submitted for a regularisation certificate and enabling the authority to grant, if it considers it appropriate, in its discretion, to do so, a regularisation certificate specifying that in its opinion the works, as constructed in accordance with plans, documents and information submitted with the

5 application for the certificate, comply with the provisions of building regulations relating to fire safety, subject to compliance (within the period of 4 months there mentioned) with any conditions attached to the certificate of the kind mentioned in subparagraph (vii),

10 (ix) the submission to a building control authority of an application for a certificate of compliance with respect to requirements under the building regulations for provision of access to a building for persons with disabilities (a 'disability access certificate') and enabling the building control authority to grant such certificate if in its opinion the building or extension of or material alteration to the building in respect of which the submission is made would comply with the relevant requirements of the building regulations,

25 (x) the submission to a building control authority of an application for a fire safety certificate (in this Act also referred to as a 'revised fire safety certificate') or a disability access certificate (in this Act referred to as a 'revised disability access certificate') if significant revision is made to the design or works of a building or an extension of or a material alteration to a building in respect of which a fire safety certificate or a disability access certificate has been granted by a building control authority, and

35 (xi) that a new building, or an existing building in respect of which an extension or a material alteration has been made, shall not be opened, operated or occupied or permitted to be opened, operated or occupied, unless a fire safety certificate or disability access certificate (or, as the case may require, a revised certificate of either kind) required by regulations under this Act has been granted by the building control authority;”,

(d) in subsection (2)(b), by substituting the following for subparagraph (i):

50 “(i) the form and content of certificates of compliance, applications for fire safety certificates, revised fire safety certificates, regularisation certificates, disability access certificates, revised disability access certificates, fire safety certificates, 7 day notices, 7 day notice statutory declarations, revised fire safety certificates, regularisation certificates, disability access certificates, revised disability access certificates, applications

for certificates of approval and certificates
of approval,”

(e) in subsection (2)(b)(ii), by inserting “7 day notices, 7 day
notice statutory declarations, revised fire safety
certificates, regularisation certificates, disability access
certificates, building energy rating certificates, revised
disability access certificates” after “fire safety
certificates,”,

(f) in subsection (2)(h)(ii), by inserting “, 7 day notices, 7 day
notice statutory declarations, revised fire safety
certificates, regularisation certificates, disability access
certificates, revised disability access certificates” after
“fire safety certificates”,

(g) in subsection (2)(k), by substituting “regulations;” for
“regulations.”, and

(h) by inserting the following after subsection (2)(k)—

“(l) prescribing the period for which a building
energy rating certificate (as provided for in
section 6B) shall be valid, the time when it
shall be provided to a person and the manner
in which such certificate shall be displayed in
the building for which it was issued.”.

Amendment of Act
of 1990 — new
sections 6A and 6B.

5.—The Act of 1990 is amended by inserting the following after
section 6:

“Alternative
energy systems
for large
buildings.

6A.—(1) Where a person proposes to construct
a building with a total useful floor area exceeding
1,000 square metres, the person shall ensure,
before work commences on its construction, that
due consideration has been given to the technical,
environmental and economic feasibility of using
alternative energy systems in the proposed
building, and use of such systems has been taken
into account, as far as practicable, in the design of
the proposed building.

(2) The alternative energy systems to be
considered for the purposes of subsection (1)
shall include—

(a) decentralised energy supply systems,
based on renewable energy,

(b) combined heat and power systems,

(c) district or block heating or cooling, if
available,

(d) heat pumps.

(3) Compliance with the requirement specified
in subsection (1) shall be demonstrated either by
reference to—

(a) a study, approved by the Minister,
which assesses the appropriateness or

otherwise of the alternative energy systems which may be technically, environmentally and economically feasible for buildings or particular types of building, or

(b) a particular feasibility study carried out for the proposed building.

(4) The feasibility study referred to in subsection (3)(b) shall be carried out by a suitably qualified person, and shall include specific recommendations for or against the utilisation of alternative energy systems, including those specified in this section, to serve the building in question.

Requirements
respecting a
building
energy rating
certificate.

6B.—(1) A person who constructs a building of a prescribed class construction of which commenced on or after such date as may be prescribed for the purposes of this subsection shall, before such building is occupied for the first time, secure a building energy rating certificate (hereafter in this section referred to as a ‘BER certificate’) in relation to the building and shall produce such certificate—

(a) where the construction of the building was commissioned by another person, to that person, and

(b) to the building control authority in whose functional area the building is situated, on demand being made by that authority for its production.

(2) A person who offers for sale or letting (whether in writing or otherwise)—

(a) a building construction of which commenced on or after such date as may be prescribed for the purposes of this paragraph (in subsection (4) referred to as a ‘new building’), or

(b) a building that is in existence on or before such date as may be prescribed for the purposes of this paragraph,

and any agent acting on behalf of such person in connection with such offering, shall produce a BER certificate in relation to the building to any person expressing an interest in purchasing or taking a letting of the building and, on demand, to the building control authority in whose functional area the building is situated.

(3) Different dates may be prescribed for the purposes of subsection (1) and paragraphs (a) and (b) of subsection (2) in relation to different classes of building.

(4) Where a new building of a prescribed class is constructed, the following applies for the purposes of subsection (2):

(a) where the building is being offered for sale or letting (whether in writing or otherwise) on the basis of the plans for its construction, a provisional BER certificate in relation to the building shall be produced to any of the persons referred to in subsection (2); and

(b) on the completion of construction of the building referred to in paragraph (a), a BER certificate in relation to the building which takes account of any changes implemented during its construction shall be produced to any purchaser or tenant, before completion of such sale or letting, or to the relevant building control authority if required by the authority to be produced to it.

(5) In this section, ‘building energy rating certificate’ or ‘BER certificate’ means a certificate—

(a) in a prescribed form and containing prescribed information, and

(b) issued by a person who possesses prescribed qualifications and training,

respecting the rating of a building according to its energy performance and the reference to a provisional such certificate is a reference to such a certificate respecting the rating of the relevant building according to its energy performance based on the plans for the building’s construction referred to in subsection (4)(a).

(6) The fee (if any) charged by a person referred to in subsection (5)(b) for the issuing by him or her of a BER certificate shall not exceed a prescribed amount (and different amounts may be prescribed by reference to different classes of building (as defined in the regulations for this purpose) in respect of which such certificates are issued).”.

Amendment of
section 7 (appeals)
of Act of 1990.

6.—Section 7(1) of the Act of 1990 is amended—

(a) in paragraph (c), by substituting “approval, or” for “approval,” and

(b) by inserting the following paragraphs after paragraph (c):

“(d) section 6(2)(a)(vii), for a regularisation certificate, or

(e) section 6(2)(a)(ix), for a disability access certificate.”.

7.—Section 12 of the Act of 1990 is amended by inserting the following after subsection (1):

Amendment of section 12 (order of High Court in relation to buildings and works) of Act of 1990.

“(1A) Where the construction of any building or works to which building regulations apply is or has been commenced or completed and in respect of which—

(a) a fire safety certificate, a disability access certificate or a regularisation certificate is required to be granted and such construction—

(i) is or has been commenced without the fire safety certificate, disability access certificate or regularisation certificate having been granted, or

(ii) is or has been completed without the fire safety certificate, disability access certificate or regularisation certificate having been granted,

or

(b) an enforcement notice has not been complied with,

the building control authority concerned may apply to the High Court for an order requiring the removal, alteration or making safe of any structure, service, fitting or equipment, or the discontinuance of any works or restricting or prohibiting the use of the building until the fire safety certificate, disability access certificate or regularisation certificate has been granted and complied with or the enforcement notice has been complied with.”.

8.—Section 17 of the Act of 1990 is amended—

Amendment of section 17 (penalties) of Act of 1990.

(a) in subsections (1) and (2)(a)—

(i) by substituting “€5,000” for “£800”, and

(ii) by substituting “€500” for “£150”,

(b) in subsection (2)(b) by substituting “€25,000” for “£10,000”, and

(c) in subsection (5) by substituting “under this Act” for “to which subsection (1) applies”.

9.—The Act of 1990 is amended by inserting the following after section 17:

Amendment of Act of 1990 — new sections 17A and 17B.

“Payment of fines to building control authority.

17A.—Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under this Act in proceedings brought by a building control authority, it shall, on application of the building control authority (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the building control authority and

such payment may be enforced by the authority as if it were due to it on foot of a decree or order made by the court in civil proceedings.

Evidential
value of
electronically
stored
information.

17B.—In any proceedings under this Act, a certificate issued by a building control authority purporting to be a printout of data stored by the authority in electronic format or data stored in photographic, digitised or other modern format, being, in either case, data relating to the performance by the authority of any function under this Act or to any plans, documents or information submitted to it under this Act or regulations thereunder, shall have evidential value.”.

PART 3

REGISTRATION OF ARCHITECTS

Registration body
and Admissions
Board (*Part 3*).

10.—(1) The Royal Institute of Architects of Ireland shall be the registration body for the purposes of this Part.

(2) For the purposes of the Directive, the registration body is the competent authority in the State as respects architects.

(3) The registration body shall establish an Admissions Board for the purpose of registering persons under this Part.

(4) The Admissions Board shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

(a) 3 architects nominated for such appointment by the registration body;

(b) 4 persons nominated for such appointment by the Minister, being persons who are not architects.

(5) The chairperson of the Admissions Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body, subject to the prior approval of the Minister.

Registration of
architects.

11.—(1) The registration body shall establish a register for architects (the “register”).

(2) Each of the following is eligible for registration in the register:

(a) a graduate of—

(i) the National University of Ireland,

(ii) the Dublin Institute of Technology, or

(iii) such other educational body as may be prescribed,

who has received from it the degree of B. Arch., the diploma, Dipl. Arch. or such other degree, diploma or

qualification as may be prescribed and who, in each case—

(I) has passed a prescribed professional practice examination, or

(II) can demonstrate that he or she has 7 years of post-graduate experience of performing duties commensurate with those of an architect such as would entitle the person to seek the grant of an exemption by the body referred to in *subparagraph (i), (ii) or (iii)*, as appropriate, from having to undergo the examination referred to in *clause (I)*;

(b) a fellow or member of the registration body;

(c) a person eligible for such registration by virtue of *section 12 or 13* (which relate to holders of qualifications from other states);

(d) a person in respect of whom a notice in writing, dated 7 January 1997, 13 March 1997 or 11 June 1997, was sent by the Minister for the Environment (whether to the person or to an organisation representing the person in the matter) stating that the person was successful in his or her application to be included in the relevant list;

(e) a person who has been employed in the State for at least 7 years under the supervision of an architect who is eligible for registration under this section and who, as part of a social betterment scheme or part-time third level course, attains a certificate or diploma of degree standard equivalent to:

(i) the degree of B. Arch. at the National University of Ireland; or

(ii) the degree of B. Arch. or the diploma, Dipl. Arch., at the Dublin Institute of Technology;

and who has passed a prescribed professional practice examination;

(f) a person who—

(i) has at least 7 years' practical experience of performing duties commensurate with those of an architect,

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

(iii) has passed a prescribed register admission examination;

(g) a person who has been assessed as eligible for registration by the Technical Assessment Board established under *section 18* and in accordance with the procedures provided under *section 19*.

(3) Membership of the registration body is not a prerequisite for registration in the register or continuance of registration but all registered professionals are eligible for membership of the registration body and the same fee shall be charged for registration

in the register whether or not the particular person is a member of the registration body.

(4) No prescribing in respect of an educational body or in respect of any degree, diploma or other qualification that is awarded or conferred by it shall be done for the purposes of *subsection (2)(a)* unless the Minister is satisfied that the course provided by the body leading to the award or conferral of the degree, diploma or other qualification provides the requisite instruction in the various elements of the discipline of architecture. 5

(5) For the purposes of the Minister satisfying himself or herself of the foregoing matter, the Minister shall consult with the National Qualifications Authority of Ireland. 10

(6) In *subsection (2)(d)* “relevant list” means the list of persons who had been proposed to be certified by the Minister for the Environment under the terms of the amendment that the State had proposed should be made, in accordance with the procedures under the Treaty establishing the European Community, to Council Directive 85/384/EEC² of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services. 15 20

Registration of
nationals from
certain other states
— main categories
of such nationals.

12.—(1) In addition to the persons so eligible otherwise under this Part, each of the following is eligible for registration in the register:

- (a) a national of a Member State who holds evidence of a formal qualification as an architect listed in Annex V, point 5.7.1 of the Directive that satisfies the minimum training conditions referred to in Article 46 of the Directive and which is accompanied, if appropriate, by a certificate listed in Annex V, point 5.7.1 of the Directive; 25
- (b) a national of a Member State who holds evidence of a formal qualification as an architect listed in Annex VI, point 6 of the Directive (whether or not it satisfies the minimum training requirements referred to in Article 46 of the Directive) and which is accompanied by a certificate of the competent authority of the Member State which issued the qualification stating that the person was authorised to use the professional title of architect, the date on which the person was so authorised (which date shall not be later than the respective date within the meaning of Article 49(2) of the Directive), and that he or she has been performing duties commensurate with those of an architect for at least 3 consecutive years during the 5 years preceding the date of the award of the certificate; 30 35 40
- (c) a national of a Member State who, as attested by a certificate of the competent authority of his or her home Member State, is authorised to use the title of architect by virtue of a law in that Member State that gives that competent authority the power to award that title to a national of a Member State who is especially distinguished by the quality of his or her work in the field of architecture; 45 50

²O.J. L223/15 21.8.1985

5 (d) a person who holds evidence of formal qualifications issued by a state, other than a Member State, and which is accompanied by a certificate issued by the competent authority of a Member State that recognised the qualifications that the person performed duties commensurate with those of an architect for 3 years in the territory of that Member State;

10 (e) a national of a Member State who is not eligible for registration in the register under *paragraph (a), (b), (c) or (d)* but who is eligible for such registration under one of the derogations to Article 46 of the Directive provided for in Article 47 of the Directive as follows, namely—

15 (i) by the person's obtaining training existing as of 5 August 1985 provided by 'Fachhochschulen' in the Federal Republic of Germany over a period of 3 years, followed by, as attested by a certificate of the professional association in whose roll the person appears, a 4 year period during which he or she performed duties commensurate with those of an architect, or

20 (ii) by the person's having—

25 (I) been employed for not less than 7 years under the supervision of an architect who is eligible for registration under this Part, or who is registered in the register,

(II) as part of a social betterment scheme or part-time third level course, attained a certificate or diploma of university standard, and

30 (III) passed a professional practice examination in a Member State.

(2) The entry of a person's name in the register pursuant to *subsection (1)* may be subject to the Admissions Board being satisfied that the person applying for registration pursuant to that subsection has a knowledge of language necessary for practising
35 architecture in the State.

(3) In relation to an application for registration pursuant to *subsection (1)*, the Admissions Board may seek verification of documents furnished to it in accordance with Article 50 of the Directive.

40 (4) A person who is registered pursuant to *subsection (1)* or *section 13* shall, when using his or her academic title or an abbreviation of it, express the title or abbreviation in the language or one of the languages of the Member State in which the body conferring the title is located and shall follow it with the name and
45 location of such body.

(5) The Admissions Board shall make a decision on whether or not to register an applicant pursuant to *subsection (1)* as quickly as possible and, in any event, within 3 months after the date of submission of the necessary documentation by the applicant to the
50 Board or (if it falls later than the foregoing date) the date of completion by the Board of verification of the documentation under *subsection (3)*.

13.—(1) A person who wishes to be registered by virtue of satisfying conditions for recognition of his or her qualifications under Chapter I of Title III of the Directive may apply to the Admissions Board for a decision that he or she is eligible to be registered in pursuance of this section.

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(2) A person who makes an application under this section shall submit the following to the Admissions Board:

(a) an attestation of competence issued by another Member State in relation to that person;

(b) evidence of formal qualifications; 10

(c) where appropriate, evidence that the person has, on a full time basis, performed duties commensurate with those of an architect for not less than 2 years during the previous 10 years.

(3) The Admissions Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for an interview if it considers it necessary. 15

(4) Where an interview is required, at least 4 members of the Admissions Board shall be present for the interview. 20

(5) The interview shall be recorded in writing or in such other form as the Admissions Board may decide, and additional information may, subsequent to the interview, be required to be submitted by the applicant to those who conducted the interview.

(6) An applicant may be accompanied at the interview by a professional advisor, including a lawyer, but any expense incurred by the applicant in being so accompanied shall be borne by the applicant. 25

(7) In relation to an application under this section, the Admissions Board may seek verification of documents furnished to it in accordance with Article 50 of the Directive. 30

(8) The Admissions Board may decide, in accordance with Article 14 of the Directive, that a person who makes an application under this section, shall complete an adaptation period of up to 3 years or take an aptitude test before it decides whether he or she is eligible for registration pursuant to this section. 35

(9) The Admissions Board shall satisfy itself that the person who makes an application under this section has a knowledge of language necessary for practising architecture in the State.

(10) Where the Admissions Board decides— 40

(a) that the applicant is eligible for registration in the register pursuant to this section, it shall take the necessary steps to register the applicant on payment of any applicable registration fee, or

(b) that— 45

(i) the applicant is not eligible for registration in the register pursuant to this section, or

- (ii) the applicant should complete an adaptation period or take an aptitude test or obtain a knowledge of language necessary for practising architecture in the State before it can decide whether or not he or she is eligible for such registration in the register,

the chairperson shall immediately send a notice in writing to the applicant, by prepaid post to the address of the applicant as furnished in his or her application, advising the applicant of the decision, the date on which it was made and the reasons for it.

(11) The Admissions Board shall make a decision on whether or not a person is eligible for registration in the register pursuant to this section as quickly as possible and, in any event (but subject to *subsection (12)*), within 3 months after the date of submission of the necessary documentation by the applicant to the Board or (if it falls later than the foregoing date) the date of completion by the Board of verification of the documentation under *subsection (7)*.

(12) If in the particular circumstances of the matter the Admissions Board determines that it is not practicable for it to make the decision referred to in *subsection (11)* within the period referred to in that subsection it may, by notice in writing sent to the applicant, extend that period once or more than once (but the period or the aggregate of the periods of such extension shall not be more than one month).

14.—(1) A person applying for registration under this Part shall, at the time of applying, pay the specified fee to the registration body and, in addition, as a condition of continuing to be registered, pay a specified annual fee on a date as may be specified by the registration body. Fees (*Part 3*).

(2) Where the Registrar has twice sent a notice by prepaid post to a registered professional's address as given in the register, requesting payment of the annual fee the Registrar may, if the person has not paid the fee within 2 months after sending the second notice, remove the person's name from the register and thereupon shall send a notice by registered post informing the person that he or she is no longer registered.

(3) Notwithstanding *subsection (2)*, the Registrar may, in cases of verified hardship, waive the requirement to pay a fee under this section, direct that a fee of an amount lesser than the specified amount may be paid for the purposes of this section or remit a fee paid under this section, in whole or in part.

(4) Where a person's name has been removed from the register for non-payment of fees and the person pays the outstanding fees together with any other specified fees, the Registrar shall re-enter the person's name in the register and it shall be treated as having been re-entered on the date it was removed.

15.—(1) A person who—

- (a) not being registered under this Part, uses the title "architect", either alone or in combination with any other words or letters, or name, title or description, implying that the person is so registered,

Prohibition against using term "architect" unless registered.

- (b) with intent to deceive, makes use of a certificate issued under this Part to such person or any other person,
- (c) makes or causes to be made, any false declaration or misrepresentation for the purpose of obtaining registration under this Part, or aids or abets such action, or 5
- (d) practises or carries on business under any name, style or title containing the word “architect”, unless he or she is registered under this Part,

shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 10

(2) If the contravention in respect of which a person is convicted of an offence under *subsection (1)* is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €500. 15

(3) *Subsection (1)* does not prevent a body corporate, firm or partnership from carrying on business under a name, style or title containing the word “architect” if— 20

- (a) the business, so far as it relates to architecture, is under the control and management of a registered professional, and
- (b) in all premises where its business relating to architecture is carried on, it is by or under the supervision of a registered professional. 25

(4) The registration body may by rules provide that *subsection (3)* shall not apply in relation to a body corporate, firm or partnership unless it has provided to the registration body such information, necessary for determining whether that subsection applies, as may be provided for in such rules. 30

(5) For the purposes of this section, a person is not to be regarded as not practising by reason only of that person being in the employment of another person.

(6) In this section, “business” includes any undertaking which is carried on for fee or reward or in the course of which services are provided otherwise than free of charge. 35

Registrar (*Part 3*). **16.—**(1) The registration body shall appoint a Registrar to be responsible for keeping the register under this Part.

(2) The registration body, in addition to paying the Registrar a salary or fee, may pay a pension to the Registrar or make contributions to the payment of a pension, and may pay the Registrar allowances and expenses. 40

(3) The register shall be in such form, including electronic, photographic or other form, as the registration body decides.

(4) Where a person has applied for registration in accordance with this Part, if the Admissions Board is satisfied that the person is entitled to be registered, the Registrar shall enter the person’s name in the register. 45

(5) Where a person's name is entered in the register, the Registrar shall send to the person a certificate stating that the person is registered.

5 (6) Where a person receives a certificate under *subsection (5)*, the person shall forthwith cause the certificate to be displayed at the place where the person practises architecture at all times during which his or her registration continues, but not otherwise.

10 (7) The Registrar shall ensure the register is kept up to date and shall make it available for inspection at the office of the Registrar during normal working hours.

(8) A registered professional shall notify the Registrar of any change in the name under which or the address at which he or she carries on business.

15 **17.—**(1) Subject to *subsection (3)*, a registered professional may apply to the Registrar to have his or her name removed from the register and, on receipt of the application and on payment of the specified fee, the Registrar shall remove it. Removal from register (*Part 3*).

20 (2) A person whose name has been removed from the register may apply to the Registrar to have his or her name restored to the register and, on application and payment of the specified fee, but subject to any conditions imposed by the Admissions Board with respect to such restoration, the Registrar shall restore it to the register.

25 (3) Where a complaint is being investigated by the Professional Conduct Committee under *Part 6* in relation to a person, no application shall be entertained by the Registrar to remove the person's name from the register until the investigation has been completed and the Committee has decided what action to take.

30 (4) Nothing in this section shall prevent a Professional Conduct Committee from refusing to restore a person's name to the register on the grounds of unfitness to practise architecture or attaching conditions to such restoration.

35 (5) Where the Professional Conduct Committee decides to refuse to so restore a person's name or decides to attach conditions to such restoration, the Registrar shall forthwith send a notice to the person by prepaid registered post to the last address given in the register informing the person of the decision, the date on which it was made and the reasons for it.

40 **18.—**(1) The registration body shall establish a Technical Assessment Board to consider applications for registration in the register from persons who do not fall within any of *paragraphs (a) to (f) of section 11(2)*. Technical Assessment Board (*Part 3*).

45 (2) The Technical Assessment Board shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

(a) 3 architects nominated for such appointment by the registration body;

(b) 4 persons nominated for such appointment by the Minister, being persons who are not architects.

(3) The chairperson of the Technical Assessment Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body, subject to the prior approval of the Minister.

Technical
Assessment Board
procedure (*Part 3*).

19.—(1) The following person may apply to the Technical Assessment Board for a decision that he or she is eligible to be registered in the register pursuant to this section, namely, a person who has been performing duties commensurate with those of an architect for a period of 10 or more years in the State (but no period of such performance that occurs on or after the passing of this Act shall be reckoned for the purposes of this subsection).

(2) A person who makes an application under this section shall submit the following to the Technical Assessment Board:

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

(3) The Technical Assessment Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for an interview if it considers it necessary.

(4) Where an interview is required, at least 4 members of the Technical Assessment Board shall be present for the interview.

(5) The interview shall be recorded in writing or in such other form as the Technical Assessment Board may decide, and additional information may, subsequent to the interview, be required to be submitted by the applicant to those who conducted the interview.

(6) An applicant may be accompanied at the interview by a professional advisor, including a lawyer, but any expense incurred by the applicant in being so accompanied shall be borne by the applicant.

(7) The Technical Assessment Board shall use the following criteria in assessing an application under this section:

- (a) whether or not for the period referred to in *subsection (1)*, the applicant had been performing duties commensurate with those of an architect;

- (b) whether or not the work submitted was equivalent to the work of an architect, having regard to its scale, complexity and quality;
- 5 (c) whether or not the applicant can demonstrate that he or she has acquired the competencies specified in Article 46 of the Directive;
- 10 (d) whether or not the work submitted had been realised by the applicant, and, if the applicant was not totally responsible, what level of responsibility by the applicant for the work could be established.
- (8) Where the Technical Assessment Board decides—
- 15 (a) that the applicant is eligible for registration in the register pursuant to this section, the chairperson shall advise the Admissions Board which shall take the necessary steps to register the applicant on payment of any applicable registration fee, or
- 20 (b) that the applicant is not eligible for registration in the register pursuant to this section, the chairperson shall immediately send a notice in writing to the applicant, by prepaid post to the address of the applicant as furnished in his or her application, advising the applicant of the decision, the date on which it was made and the reasons for it.
- 25 **20.**—(1) The registration body shall establish a Professional Conduct Committee (the “Committee”). Professional Conduct Committee (*Part 3*).
- (2) The Committee shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:
- (a) 3 architects nominated for such appointment by the registration body;
- 30 (b) 4 persons who are not architects—
- (i) 3 of whom are nominated for such appointment by the Minister, and
- 35 (ii) one of whom is nominated for such appointment by the Minister, with the consent of the Minister for Enterprise, Trade and Employment.
- (3) The chairperson of the Committee shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body subject to the prior approval of the Minister, with the consent of the Minister for
- 40 Enterprise, Trade and Employment.
- 21.**—(1) The registration body shall establish an Appeals Board. Appeals Board (*Part 3*).
- (2) The Appeals Board shall consist of a chairperson and 5 ordinary members, the latter appointed by the registration body as follows:
- 45 (a) 2 architects nominated for such appointment by the registration body, neither of whom shall be a member of

any other Board or Committee established under this Part;

(b) 3 persons who are not architects—

(i) 2 of whom are nominated for such appointment by the Minister, and 5

(ii) one of whom is nominated for such appointment by the Minister, with the consent of the Minister for Enterprise, Trade and Employment,

none of whom shall be a member of any other Board or Committee established under this Part. 10

(3) The chairperson of the Appeals Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body subject to the prior approval of the Minister.

Appeals procedure
(Part 3).

22.—(1) A person adversely affected by a decision of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee may appeal to the Appeals Board against the decision. 15

(2) An appeal shall be in writing and lodged with the Appeals Board within 2 months after the date of the decision being appealed against. 20

(3) The appeal shall specify the decision to which the appeal relates and the grounds on which the appeal rests.

(4) An appeal may be based on either procedural or substantive matters. 25

(5) A person may, at any time before the appeal is heard, withdraw the appeal in whole or in part by notifying the Appeals Board in writing of the withdrawal.

(6) A witness at a hearing conducted by the Appeals Board has the same immunities and privileges as if he or she were a witness before the High Court. 30

(7) The chairperson of the Appeals Board may—

(a) direct in writing an appellant to attend before the Appeals Board on a date and at a time and place specified in the direction, 35

(b) direct in writing any other person whose evidence the Appeals Board may require, to attend before the Appeals Board on a date and at a time and place specified in the direction, and may direct the person to bring any document in the person's possession relating to the appeal, 40

(c) request the relevant Board or Committee whose decision is being appealed against to produce any documents in its possession relating to the appeal, together with its observations on the appeal, 45

(d) give any other direction for the purpose of the proceedings that appears to the chairperson to be fair and reasonable.

(8) The procedures of the Appeals Board shall make provision for—

5 (a) notifying the appellant and the chairperson of the relevant Board or Committee of the date, time and place of the sitting of the Appeals Board,

(b) advising the appellant of the appellant's right—

(i) to be present at the Appeals Board's sitting, and

10 (ii) to present his or her case in person or, at his or her own expense, through a legal representative,

(c) the examination of witnesses,

(d) determination by the Appeals Board as to whether or not evidence should be given under oath,

15 (e) recording of proceedings.

(9) On the hearing of an appeal under this section, the Appeals Board may—

20 (a) confirm the decision of the relevant Board or Committee, subject to any amendment thereof the Appeals Board thinks fit,

(b) annul the decision and direct the relevant Board or Committee to make a new decision, or

(c) give such other directions as it thinks fit.

(10) The chairperson of the Appeals Board shall notify—

25 (a) the appellant in writing, sent by prepaid registered post to the appellant's stated address, of the decision taken on the appeal, the date on which it was made and the reasons for it, and shall also advise the appellant of the right to appeal to the High Court against the Appeal Board's decision,

30 (b) the relevant Board or Committee against whose decision the appeal was made of the decision taken on the appeal, the date on which it was made and the reasons for it,

35 (c) where the appellant was the person who had lodged the complaint with the Professional Conduct Committee under *Part 6*, the registered architect in respect of whom the complaint was made, stating the decision taken on the appeal, the date on which it was made and the reasons for it.

40 **23.—**(1) A person adversely affected by a decision of the Appeals Board may, within 2 months after the date of such decision, appeal to the High Court against the decision. Appeal to High Court from decision of Appeals Board (*Part 3*).

(2) On the hearing of an appeal under this section, the Court may—

- (a) confirm the decision of the Appeals Board, subject to any amendment thereof the Court thinks fit,
- (b) annul the decision and direct the Appeals Board to make a new decision, or
- (c) give such other directions as the Court thinks fit,

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and the Court may direct how the costs of the appeal are to be borne.

(3) On the hearing of an appeal under this section from a decision of the Appeals Board relating to a decision of the Professional Conduct Committee, the High Court may admit evidence of any person of standing in the architectural profession as to what constitutes professional misconduct.

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Certain other jurisdiction of Appeals Board (Part 3).

24.—(1) If the Admissions Board fails to make a decision—

(a) referred to in *subsection (5) of section 12* within the period specified in that subsection, or

(b) referred to in *subsection (11) of section 13* within—

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(i) unless *subparagraph (ii)* applies, the period specified in that subsection, or

(ii) if that period has been extended under *subsection (12) of section 13*, the period of that extension (or, if that period has been extended more than once under that *subsection (12)*, the last period of such extension),

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the applicant referred to in *section 12* or *13* may make a complaint to the Appeals Board that such a failure has occurred.

(2) On the hearing of such a complaint and having given the Admissions Board an opportunity to be heard, the Appeals Board may, as it thinks appropriate—

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(a) give a direction to the Admissions Board to make the decision concerned forthwith, or

(b) make itself a decision on the application concerned referred to in *section 12* or *13* (and where the Appeals Board does so *section 23* shall apply to such a decision as it applies to any other decision of the Appeals Board).

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PART 4

REGISTRATION OF QUANTITY SURVEYORS

Registration body and Admissions Board (Part 4).

25.—(1) The Society of Chartered Surveyors shall be the registration body for the purposes of this Part.

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(2) For the purposes of the Directive, the registration body is the competent authority in the State as respects quantity surveyors.

(3) The registration body shall establish an Admissions Board for the purpose of registering persons under this Part.

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(4) The Admissions Board shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

5 (a) 3 quantity surveyors nominated for such appointment by the registration body;

(b) 4 persons nominated for such appointment by the Minister, being persons who are not quantity surveyors.

10 (5) The chairperson of the Admissions Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body, subject to the prior approval of the Minister.

26.—(1) The registration body shall establish a register for quantity surveyors (the “register”).

Registration of
quantity surveyors.

(2) Each of the following is eligible for registration in the register:

15 (a) a graduate of—

(i) the Dublin Institute of Technology,

(ii) the Limerick Institute of Technology, or

(iii) such other educational body as may be prescribed,

who has received from it—

20 (I) the diploma called the Construction Economic Diploma,

(II) the degree of B.Sc. in Quantity Surveying, or

(III) such other degree, diploma or qualification as may be prescribed,

25 and who, in each case, has at least 7 years appropriate experience of performing duties commensurate with those of a quantity surveyor;

(b) a fellow or associate of the Society of Chartered Surveyors, Quantity Surveying Division;

30 (c) a fellow or associate of the Chartered Institute of Building, who has at least 3 years practical experience of performing duties commensurate with those of a quantity surveyor;

35 (d) a former fellow or member of the Architecture and Surveying Institute, Quantity Surveying Section (now merged with the Chartered Institute of Building), who has at least 5 years practical experience of performing duties commensurate with those of a quantity surveyor;

40 (e) a fellow or member of the Association of Building Engineers, Quantity Surveying Section, who has at least 5 years practical experience of performing duties commensurate with those of a quantity surveyor;

- (f) a fellow or member of the Institution of Civil Engineering Surveyors who has at least 5 years practical experience of performing duties commensurate with those of a quantity surveyor;
- (g) a person who on or after 1 January 2001 attained a degree in Quantity Surveying (B.Sc.) and is enrolled as a fellow or member of the Chartered Institute of Building, Architecture and Surveying Institute, the Association of Building Engineers or the Institution of Civil Engineering Surveyors;
- (h) a person holding a higher education diploma awarded on completion of professional education and training of at least 3 years duration, in—
 - (i) quantity surveying, or
 - (ii) an equivalent profession recognised under the Directive;
- (i) a person eligible for such registration by virtue of *section 27* (which relates to holders of qualifications from other states);
- (j) a person who has been assessed as eligible for registration by the Technical Assessment Board established under *section 32* and in accordance with the procedures provided under *section 33*.

(3) Membership of the registration body is not a prerequisite for registration in the register or continuance of registration but all registered professionals are eligible for membership of the registration body and the same fee shall be charged for registration in the register whether or not the particular person is a member of the registration body.

(4) No prescribing in respect of an educational body or in respect of any degree, diploma or other qualification that is awarded or conferred by it shall be done for the purposes of *subsection (2)(a)* unless the Minister is satisfied that the course provided by the body leading to the award or conferral of the degree, diploma or other qualification provides the requisite instruction in the various elements of the discipline of quantity surveying.

(5) For the purposes of the Minister satisfying himself or herself of the foregoing matter, the Minister shall consult with the National Qualifications Authority of Ireland.

Nationals from other states eligible for registration (*Part 4*).

27.—(1) A person who wishes to be registered by virtue of satisfying conditions for recognition of his or her qualifications under Chapter I of Title III of the Directive may apply to the Admissions Board for a decision that he or she is eligible to be registered in pursuance of this section.

(2) A person who makes an application under this section shall submit the following to the Admissions Board:

- (a) an attestation of competence issued by another Member State in relation to that person;
- (b) evidence of formal qualifications;

(c) where appropriate, evidence that the person has, on a full time basis, performed duties commensurate with those of a quantity surveyor for not less than 2 years during the previous 10 years.

5 (3) The Admissions Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for an interview if it considers it necessary.

(4) Where an interview is required, at least 4 members of the
10 Admissions Board shall be present for the interview.

(5) The interview shall be recorded in writing or in such other form as the Admissions Board may decide, and additional information may, subsequent to the interview, be required to be submitted by the applicant to those who conducted the interview.

15 (6) An applicant may be accompanied at the interview by a professional advisor, including a lawyer, but any expense incurred by the applicant in being so accompanied shall be borne by the applicant.

(7) In relation to an application under this section, the
20 Admissions Board may seek independent verification of documents furnished to it in accordance with Article 50 of the Directive.

(8) The Admissions Board may decide, in accordance with Article 14 of the Directive, that a person who makes an application under this section shall complete an adaptation period of up to 3 years or
25 take an aptitude test before it decides whether he or she is eligible for registration pursuant to this section.

(9) The Admissions Board shall satisfy itself that the person who makes an application under this section has a knowledge of language necessary for practising quantity surveying in the State.

30 (10) Where the Admissions Board decides—

(a) that the applicant is eligible for registration in the register pursuant to this section, it shall take the necessary steps to register the applicant on payment of any applicable registration fee, or

35 (b) that—

(i) the applicant is not eligible for registration in the register pursuant to this section, or

(ii) the applicant should complete an adaptation period or take an aptitude test or obtain a knowledge of
40 language necessary for practising quantity surveying in the State before it can decide whether or not he or she is eligible for such registration in the register,

the chairperson shall immediately send a notice in writing to the applicant, by prepaid post to the address of the applicant as furnished in his or her application, advising
45 the applicant of the decision, the date on which it was made and the reasons for it.

(11) A person who is registered pursuant to this section shall, when using his or her academic title or an abbreviation of it, express

the title or abbreviation in the language or one of the languages of the Member State in which the body conferring the title is located and shall follow it with the name and location of such body.

(12) The Admissions Board shall make a decision on whether or not a person is eligible for registration in the register pursuant to this section as quickly as possible, and in any event (but subject to *subsection (13)*), within 3 months after the date of submission of the necessary documentation by the applicant to the Board or (if it falls later than the foregoing date) the date of completion by the Board of verification of the documentation under *subsection (7)*.

(13) If in the particular circumstances of the matter the Admissions Board determines that it is not practicable for it to make the decision referred to in *subsection (12)* within the period referred to in that subsection it may, by notice in writing sent to the applicant, extend that period once or more than once (but the period or the aggregate of the periods of such extension shall not be more than one month).

Fees (*Part 4*).

28.—(1) A person applying for registration under this Part shall, at the time of applying, pay the specified fee to the registration body and, in addition, as a condition of continuing to be registered, pay a specified annual fee on a date as may be specified by the registration body.

(2) Where the Registrar has twice sent a notice by prepaid post to a registered professional's address as given in the register, requesting payment of the annual fee the Registrar may, if the person has not paid the fee within 2 months after sending the second notice, remove the person's name from the register and thereupon shall send a notice by registered post informing the person that he or she is no longer registered.

(3) Notwithstanding *subsection (2)*, the Registrar may, in cases of verified hardship, waive the requirement to pay a fee under this section, direct that a fee of an amount lesser than the specified amount may be paid for the purposes of this section or remit a fee paid under this section, in whole or in part.

(4) Where a person's name has been removed from the register for non-payment of fees and the person pays the outstanding fees together with any other specified fees, the Registrar shall re-enter the person's name in the register and it shall be treated as having been re-entered on the date it was removed.

Prohibition against using term "quantity surveyor" unless registered.

29.—(1) A person who—

- (a) not being registered under this Part, uses the title "quantity surveyor", either alone or in combination with any other words or letters, or name, title or description, implying that the person is so registered,
- (b) with intent to deceive, makes use of a certificate issued under this Part to such person or any other person,
- (c) makes or causes to be made, any false declaration or misrepresentation for the purpose of obtaining registration under this Part, or aids or abets such action, or

(d) practises or carries on business under any name, style or title containing the words “quantity surveyor”, unless he or she is registered under this Part,

5 shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(2) If the contravention in respect of which a person is convicted of an offence under *subsection (1)* is continued after the conviction, the person shall be guilty of a further offence on every day on which
10 the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €500.

(3) *Subsection (1)* does not prevent a body corporate, firm or partnership from carrying on business under a name, style or title containing the words “quantity surveyor” if—

15 (a) the business, so far as it relates to quantity surveying, is under the control and management of a registered professional, and

(b) in all premises where its business relating to quantity surveying is carried on, it is by or under the supervision
20 of a registered professional.

(4) The registration body may by rules provide that *subsection (3)* shall not apply in relation to a body corporate, firm or partnership unless it has provided to the registration body such information, necessary for determining whether that subsection applies, as may
25 be provided for in such rules.

(5) For the purposes of this section, a person is not to be regarded as not practising by reason only of that person being in the employment of another person.

(6) In this section, “business” includes any undertaking which is
30 carried on for fee or reward or in the course of which services are provided otherwise than free of charge.

30.—(1) The registration body shall appoint a Registrar to be Registrar (*Part 4*). responsible for keeping the register under this Part.

(2) The registration body, in addition to paying the Registrar a
35 salary or fee, may pay a pension to the Registrar or make contributions to the payment of a pension, and may pay the Registrar allowances and expenses.

(3) The register shall be in such form, including electronic, photographic or other form, as the registration body decides.

40 (4) Where a person has applied for registration in accordance with this Part, if the Admissions Board is satisfied that the person is entitled to be registered, the Registrar shall enter the person’s name in the register.

(5) Where a person’s name is entered in the register, the Registrar
45 shall send to the person a certificate stating that the person is registered.

(6) Where a person receives a certificate under *subsection (5)*, the person shall forthwith cause the certificate to be displayed at the

place where the person practises quantity surveying at all times during which his or her registration continues, but not otherwise.

(7) The Registrar shall ensure the register is kept up to date and shall make it available for inspection at the office of the Registrar during normal working hours.

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(8) A registered professional shall notify the Registrar of any change in the name under which or the address at which he or she carries on business.

Removal from
register (*Part 4*).

31.—(1) Subject to *subsection (3)*, a registered professional may apply to the Registrar to have his or her name removed from the register and, on receipt of the application and on payment of the specified fee, the Registrar shall remove it.

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(2) A person whose name has been removed from the register may apply to the Registrar to have his or her name restored to the register and, on application and payment of the specified fee, but subject to any conditions imposed by the Admissions Board with respect to such restoration, the Registrar shall restore it to the register.

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(3) Where a complaint is being investigated by the Professional Conduct Committee under *Part 6* in relation to a person, no application shall be entertained by the Registrar to remove the person's name from the register until the investigation has been completed and the Committee has decided what action to take.

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(4) Nothing in this section shall prevent a Professional Conduct Committee from refusing to restore a person's name to the register on the grounds of unfitness to practise quantity surveying or attaching conditions to such restoration.

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(5) Where the Professional Conduct Committee decides to refuse to so restore a person's name or decides to attach conditions to such restoration, the Registrar shall forthwith send a notice to the person by prepaid registered post to the last address given in the register informing the person of the decision, the date on which it was made and the reasons for it.

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Technical
Assessment Board
(*Part 4*).

32.—(1) The registration body shall establish a Technical Assessment Board to consider applications for registration in the register from persons who do not fall within any of *paragraphs (a) to (i) of section 26(2)*.

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(2) The Technical Assessment Board shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

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(a) 3 quantity surveyors nominated for such appointment by the registration body;

(b) 4 persons nominated for such appointment by the Minister, being persons who are not quantity surveyors.

(3) The chairperson of the Technical Assessment Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body, subject to the prior approval of the Minister.

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33.—(1) Each of the following may apply to the Technical Assessment Board for a decision that he or she is eligible to be registered in the register pursuant to this section: Technical Assessment Board procedure (*Part 4*).

(a) a person who—

(i) on 1 January 2001 was a non-corporate member of the Chartered Institute of Building, the Architecture and Surveying Institute (now merged with the Chartered Institute of Building), the Association of Building Engineers or the Institution of Civil Engineering Surveyors, and

(ii) has been performing duties commensurate with those of a quantity surveyor for a period of 8 or more years in the State (but no period of such performance that occurs on or after the passing of this Act shall be reckoned for the purposes of this subparagraph);

(b) a person who has been performing duties commensurate with those of a quantity surveyor for a period of 10 or more years in the State (but no period of such performance that occurs on or after the passing of this Act shall be reckoned for the purposes of this paragraph).

(2) A person who makes an application under this section shall submit the following to the Technical Assessment Board:

(a) a curriculum vitae providing details of the work carried out by the applicant in the field of quantity surveying during the period referred to in *paragraph (a)(ii)* or, as the case may be, *paragraph (b)* of *subsection (1)*; and

(b) such independent verification, as the Technical Assessment Board may require, of the documentation so submitted.

(3) The Technical Assessment Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for an interview if it considers it necessary.

(4) Where an interview is required, at least 4 members of the Technical Assessment Board shall be present for the interview.

(5) The interview shall be recorded in writing or in such other form as the Technical Assessment Board may decide, and additional information may, subsequent to the interview, be required to be submitted by the applicant to those who conducted the interview.

(6) An applicant may be accompanied at the interview by a professional advisor, including a lawyer, but any expense incurred by the applicant in being so accompanied shall be borne by the applicant.

(7) Where the Technical Assessment Board decides—

(a) that the applicant is eligible for registration in the register pursuant to this section, the chairperson shall advise the Admissions Board which shall take the necessary steps to register the applicant on payment of any applicable registration fee, or

- (b) that the applicant is not eligible for registration in the register pursuant to this section, the chairperson shall immediately send a notice in writing to the applicant, by prepaid post to the address of the applicant as furnished in his or her application, advising the applicant of the decision, the date on which it was made and the reasons for it. 5

Professional
Conduct Committee
(Part 4).

34.—(1) The registration body shall establish a Professional Conduct Committee (the “Committee”).

(2) The Committee shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows: 10

- (a) 3 quantity surveyors nominated for such appointment by the registration body;
- (b) 4 persons who are not quantity surveyors—
 - (i) 3 of whom are nominated for such appointment by the Minister, and 15
 - (ii) one of whom is nominated for such appointment by the Minister, with the consent of the Minister for Enterprise, Trade and Employment.

(3) The chairperson of the Committee shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment. 20

Appeals Board
(Part 4).

35.—(1) The registration body shall establish an Appeals Board. 25

(2) The Appeals Board shall consist of a chairperson and 5 ordinary members, the latter appointed by the registration body as follows:

- (a) 2 quantity surveyors nominated for such appointment by the registration body, neither of whom shall be a member of any other Board or Committee established under this Part; 30
- (b) 3 persons who are not quantity surveyors—
 - (i) 2 of whom are nominated for such appointment by the Minister, and 35
 - (ii) one of whom is nominated for such appointment by the Minister, with the consent of the Minister for Enterprise, Trade and Employment,

none of whom shall be a member of any other Board or Committee established under this Part. 40

(3) The chairperson of the Appeals Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body subject to the prior approval of the Minister.

36.—(1) A person adversely affected by a decision of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee may appeal to the Appeals Board against the decision. Appeals procedure (Part 4).

5 (2) An appeal shall be in writing and lodged with the Appeals Board within 2 months after the date of the decision being appealed against.

(3) The appeal shall specify the decision to which the appeal relates and the grounds on which the appeal rests.

10 (4) An appeal may be based on either procedural or substantive matters.

(5) A person may, at any time before the appeal is heard, withdraw the appeal in whole or in part by notifying the Appeals Board in writing of the withdrawal.

15 (6) A witness at a hearing conducted by the Appeals Board has the same immunities and privileges as if he or she were a witness before the High Court.

(7) The chairperson of the Appeals Board may—

20 (a) direct in writing an appellant to attend before the Appeals Board on a date and at a time and place specified in the direction,

25 (b) direct in writing any other person whose evidence the Appeals Board may require, to attend before the Appeals Board on a date and at a time and place specified in the direction, and may direct the person to bring any document in the person's possession relating to the appeal,

30 (c) request the relevant Board or Committee whose decision is being appealed against to produce any documents in its possession relating to the appeal, together with its observations on the appeal,

(d) give any other direction for the purpose of the proceedings that appears to the chairperson to be fair and reasonable.

35 (8) The procedures of the Appeals Board shall make provision for—

(a) notifying the appellant and the chairperson of the relevant Board or Committee of the date, time and place of the sitting of the Appeals Board,

(b) advising the appellant of the appellant's right—

40 (i) to be present at the Appeals Board's sitting, and

(ii) to present his or her case in person or, at his or her own expense, through a legal representative,

(c) the examination of witnesses,

45 (d) determination by the Appeals Board as to whether or not evidence should be given under oath,

(e) recording of proceedings.

(9) On the hearing of an appeal under this section, the Appeals Board may—

(a) confirm the decision of the relevant Board or Committee, subject to any amendment thereof the Appeals Board thinks fit, 5

(b) annul the decision and direct the relevant Board or Committee to make a new decision, or

(c) give such other directions as it thinks fit.

(10) The chairperson of the Appeals Board shall notify— 10

(a) the appellant in writing, sent by prepaid registered post to the appellant's stated address, of the decision taken on the appeal, the date on which it was made and the reasons for it, and shall also advise the appellant of the right to appeal to the High Court against the Appeal Board's decision, 15

(b) the relevant Board or Committee against whose decision the appeal was made of the decision taken on the appeal, the date on which it was made and the reasons for it,

(c) where the appellant was the person who had lodged the complaint with the Professional Conduct Committee under *Part 6*, the registered quantity surveyor in respect of whom the complaint was made, stating the decision taken on the appeal, the date on which it was made and the reasons for it. 20 25

Appeal to High Court from decision of Appeals Board (*Part 4*).

37.—(1) A person adversely affected by a decision of the Appeals Board may, within 2 months after the date of such decision, appeal to the High Court against the decision.

(2) On the hearing of an appeal under this section, the Court may— 30

(a) confirm the decision of the Appeals Board, subject to any amendment thereof the Court thinks fit,

(b) annul the decision and direct the Appeals Board to make a new decision, or

(c) give such other directions as the Court thinks fit, 35

and the Court may direct how the costs of the appeal are to be borne.

(3) On the hearing of an appeal under this section from a decision of the Appeals Board relating to a decision of the Professional Conduct Committee, the High Court may admit evidence of any person of standing in the quantity surveying profession as to what constitutes professional misconduct. 40

Certain other jurisdiction of Appeals Board (*Part 4*).

38.—(1) If the Admissions Board fails to make a decision referred to in *section 27(12)* within—

(a) unless *paragraph (b)* applies, the period specified in that *subsection (12)*, or

(b) if that period has been extended under *subsection (13)* of that section, the period of that extension (or, if that period has been extended more than once under that subsection, the last period of such extension),

the applicant referred to in *section 27* may make a complaint to the Appeals Board that such a failure has occurred.

(2) On hearing of such complaint and having given the Admissions Board an opportunity to be heard, the Appeals Board may, as it thinks appropriate—

(a) give a direction to the Admissions Board to make the decision concerned forthwith, or

(b) make itself a decision on the application concerned referred to in *section 27* (and where the Appeals Board does so *section 37* shall apply to such a decision as it applies to any other decision of the Appeals Board).

PART 5

REGISTRATION OF BUILDING SURVEYORS

39.—(1) The Society of Chartered Surveyors shall be the registration body for the purposes of this Part.

Registration body
and Admissions
Board (*Part 5*).

(2) For the purposes of the Directive, the registration body is the competent authority in the State as respects building surveyors.

(3) The registration body shall establish an Admissions Board for the purpose of registering persons under this Part.

(4) The Admissions Board shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

(a) 3 building surveyors nominated for such appointment by the registration body;

(b) 4 persons nominated for such appointment by the Minister, being persons who are not building surveyors.

(5) The chairperson of the Admissions Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body, subject to the prior approval of the Minister.

40.—(1) The registration body shall establish a register for building surveyors (the “register”).

Registration of
building surveyors.

(2) Each of the following is eligible for registration in the register:

(a) a graduate of—

(i) the Dundalk Institute of Technology, or

(ii) such other educational body as may be prescribed,

who has received from it the degree of B. Sc. in Building Surveying or such other degree, diploma or qualification as may be prescribed and who, in each case, has at least 7 years appropriate experience of performing duties commensurate with those of a building surveyor; 5

(b) a fellow or associate of the Society of Chartered Surveyors, Building Surveying Division, who has at least 2 years practical experience of performing duties commensurate with those of a building surveyor; 10

(c) a fellow or member of the Chartered Institute of Building, Building Surveying Section, who has at least 2 years practical experience of performing duties commensurate with those of a building surveyor;

(d) a former fellow or member of the Architecture and Surveying Institute, Quantity Surveying Section (now merged with the Chartered Institute of Building), who has at least 2 years practical experience of performing duties commensurate with those of a building surveyor; 15

(e) a fellow or member of the Association of Building Engineers, Building Surveying Section, who has at least 2 years practical experience of performing duties commensurate with those of a building surveyor; 20

(f) a person who on or after 1 January 2001 attained a building surveying degree (B.Sc.) and is enrolled as a fellow or associate of the Society of Chartered Surveyors, or as a fellow or member of the Chartered Institute of Building, Architecture and Surveying Institute or the Association of Building Engineers; 25

(g) a person holding a higher education diploma awarded on completion of professional education and training of at least 5 years duration, in— 30

(i) building surveying, or

(ii) an equivalent profession recognised under the Directive; 35

(h) a person eligible for such registration by virtue of *section 41* (which relates to holders of qualifications from other states);

(i) a person who has been assessed as eligible for registration by the Technical Assessment Board established under *section 46* and in accordance with the procedures provided under *section 47*. 40

(3) Membership of the registration body is not a prerequisite for registration in the register or continuance of registration but all registered professionals are eligible for membership of the registration body and the same fee shall be charged for registration in the register whether or not the particular person is a member of the registration body. 45

(4) No prescribing in respect of an educational body or in respect of any degree, diploma or other qualification that is awarded or 50

conferred by it shall be done for the purposes of *subsection (2)(a)* unless the Minister is satisfied that the course provided by the body leading to the award or conferral of the degree, diploma or other qualification provides the requisite instruction in the various elements of the discipline of building surveying.

(5) For the purposes of the Minister satisfying himself or herself of the foregoing matter, the Minister shall consult with the National Qualifications Authority of Ireland.

41.—(1) A person who wishes to be registered by virtue of satisfying conditions for recognition of his or her qualifications under Chapter I of Title III of the Directive may apply to the Admissions Board for a decision that he or she is eligible to be registered in pursuance of this section.

Nationals from other states eligible for registration (*Part 5*).

(2) A person who makes an application under this section shall submit the following to the Admissions Board:

(a) an attestation of competence issued by another Member State in relation to that person;

(b) evidence of formal qualifications;

(c) where appropriate, evidence that the person has, on a full time basis, performed duties commensurate with those of a building surveyor for not less than 2 years during the previous 10 years.

(3) The Admissions Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for an interview if it considers it necessary.

(4) Where an interview is required, at least 4 members of the Admissions Board shall be present for the interview.

(5) The interview shall be recorded in writing or in such other form as the Admissions Board may decide, and additional information may, subsequent to the interview, be required to be submitted by the applicant to those who conducted the interview.

(6) An applicant may be accompanied at the interview by a professional advisor, including a lawyer, but any expense incurred by the applicant in being so accompanied shall be borne by the applicant.

(7) In relation to an application under this section, the Admissions Board may seek independent verification of documents furnished to it in accordance with Article 50 of the Directive.

(8) The Admissions Board may decide, in accordance with Article 14 of the Directive, that a person who makes an application under this section shall complete an adaptation period of up to 3 years or take an aptitude test before it decides whether he or she is eligible for registration pursuant to this section.

(9) The Admissions Board shall satisfy itself that the person has a knowledge of language necessary for practising building surveying in the State.

(10) Where the Admissions Board decides—

- (a) that the applicant is eligible for registration in the register pursuant to this section, it shall take the necessary steps to register the applicant on payment of any applicable registration fee, or

(b) that—

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- (i) the applicant is not eligible for registration in the register pursuant to this section, or

- (ii) the applicant should complete an adaptation period or take an aptitude test or obtain a knowledge of language necessary for practising building surveying in the State before it can decide whether or not he or she is eligible for such registration in the register,

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the chairperson shall immediately send a notice in writing to the applicant, by prepaid post to the address of the applicant as furnished in his or her application, advising the applicant of the decision, the date on which it was made and the reasons for it.

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(11) A person who is registered pursuant to this section shall, when using his or her academic title or an abbreviation of it, express the title or abbreviation in the language or one of the languages of the Member State in which the body conferring the title is located and shall follow it with the name and location of such body.

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(12) The Admissions Board shall make a decision on whether or not a person is eligible for registration in the register pursuant to this section as quickly as possible and, in any event (but subject to *subsection (13)*), within 3 months after the date of submission of the necessary documentation by the applicant to the Board or (if it falls later than the foregoing date) the date of completion by the Board of verification of the documentation under *subsection (7)*.

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(13) If in the particular circumstances of the matter the Admissions Board determines that it is not practicable for it to make the decision referred to in *subsection (12)* within the period referred to in that subsection it may, by notice in writing sent to the applicant, extend that period once or more than once (but the period or the aggregate of the periods of such extension shall not be more than one month).

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Fees (*Part 5*).

42.—(1) A person applying for registration under this Part shall, at the time of applying, pay the specified fee to the registration body and, in addition, as a condition of continuing to be registered, pay a specified annual fee on a date as may be specified by the registration body.

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(2) Where the Registrar has twice sent a notice by prepaid post to a registered professional's address as given in the register, requesting payment of the annual fee the Registrar may, if the person has not paid the fee within 2 months after sending the second notice, remove the person's name from the register and thereupon shall send a notice by registered post informing the person that he or she is no longer registered.

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(3) Notwithstanding *subsection (2)*, the Registrar may, in cases of verified hardship, waive the requirement to pay a fee under this section, direct that a fee of an amount lesser than the specified

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amount may be paid for the purposes of this section or remit a fee paid under this section, in whole or in part.

- 5 (4) Where a person's name has been removed from the register for non-payment of fees and the person pays the outstanding fees together with any other specified fees, the Registrar shall re-enter the person's name in the register and it shall be treated as having been re-entered on the date it was removed.

43.—(1) A person who—

Prohibition against
using term
“building surveyor”
unless registered.

- 10 (a) not being registered under this Part, uses the title “building surveyor”, either alone or in combination with any other words or letters, or name, title or description, implying that the person is so registered,
- (b) with intent to deceive, makes use of a certificate issued under this Part to such person or any other person,
- 15 (c) makes or causes to be made, any false declaration or misrepresentation for the purpose of obtaining registration under this Part, or aids or abets such action, or
- 20 (d) practises or carries on business under any name, style or title containing the words “building surveyor”, unless he or she is registered under this Part,

shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

- 25 (2) If the contravention in respect of which a person is convicted of an offence under *subsection (1)* is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €500.

- 30 (3) *Subsection (1)* does not prevent a body corporate, firm or partnership from carrying on business under a name, style or title containing the words “building surveyor” if—

- 35 (a) the business, so far as it relates to building surveying, is under the control and management of a registered professional, and
- (b) in all premises where its business relating to building surveying is carried on, it is by or under the supervision of a registered professional.

- 40 (4) The registration body may by rules provide that *subsection (3)* shall not apply in relation to a body corporate, firm or partnership unless it has provided to the registration body such information, necessary for determining whether that subsection applies, as may be provided for in such rules.

- 45 (5) For the purposes of this section, a person is not to be regarded as not practising by reason only of that person being in the employment of another person.

(6) In this section, “business” includes any undertaking which is carried on for fee or reward or in the course of which services are provided otherwise than free of charge.

Registrar (*Part 5*).

44.—(1) The registration body shall appoint a Registrar to be responsible for keeping the register under this Part. 5

(2) The registration body, in addition to paying the Registrar a salary or fee, may pay a pension to the Registrar or make contributions to the payment of a pension, and may pay the Registrar allowances and expenses.

(3) The register shall be in such form, including electronic, 10
photographic or other form, as the registration body decides.

(4) Where a person has applied for registration in accordance with this Part, if the Admissions Board is satisfied that the person is entitled to be registered, the Registrar shall enter the person’s name in the register. 15

(5) Where a person’s name is entered in the register, the Registrar shall send to the person a certificate stating that the person is registered.

(6) Where a person receives a certificate under *subsection (5)*, the person shall forthwith cause the certificate to be displayed at the 20
place where the person practises building surveying at all times during which his or her registration continues, but not otherwise.

(7) The Registrar shall ensure the register is kept up to date and shall make it available for inspection at the office of the Registrar during normal working hours. 25

(8) A registered professional shall notify the Registrar of any change in the name under which or the address at which he or she carries on business.

Removal from
register (*Part 5*).

45.—(1) Subject to *subsection (3)*, a registered professional may apply to the Registrar to have his or her name removed from the 30
register and, on receipt of the application and on payment of the specified fee, the Registrar shall remove it.

(2) A person whose name has been removed from the register may apply to the Registrar to have his or her name restored to the register and, on application and payment of the specified fee, but 35
subject to any conditions imposed by the Admissions Board with respect to such restoration, the Registrar shall restore it to the register.

(3) Where a complaint is being investigated by the Professional Conduct Committee under *Part 6* in relation to a person, no 40
application shall be entertained by the Registrar to remove the person’s name from the register until the investigation has been completed and the Committee has decided what action to take.

(4) Nothing in this section shall prevent a Professional Conduct Committee from refusing to restore a person’s name to the register 45
on the grounds of unfitness to practise building surveying or attaching conditions to such restoration.

5 (5) Where the Professional Conduct Committee decides to refuse to so restore a person's name or decides to attach conditions to such restoration, the Registrar shall forthwith send a notice to the person by prepaid registered post to the last address given in the register informing the person of the decision, the date on which it was made and the reasons for it.

10 **46.**—(1) The registration body shall establish a Technical Assessment Board to consider applications for registration in the register from persons who do not fall within any of *paragraphs (a) to (h) of section 40(2)*. Technical Assessment Board (Part 5).

(2) The Technical Assessment Board shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

15 (a) 3 building surveyors nominated for such appointment by the registration body;

(b) 4 persons nominated for such appointment by the Minister, being persons who are not building surveyors.

20 (3) The chairperson of the Technical Assessment Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body, subject to the prior approval of the Minister.

47.—(1) Each of the following may apply to the Technical Assessment Board for a decision that he or she is eligible to be registered in the register pursuant to this section: Technical Assessment Board procedure (Part 5).

25 (a) a person who—

30 (i) on 1 May 1999 was a non-corporate member of the Society of Chartered Surveyors, the Chartered Institute of Building, the Architecture and Surveying Institute (now merged with the Chartered Institute of Building) or the Association of Building Engineers, and

35 (ii) has been performing duties commensurate with those of a building surveyor for a period of 8 or more years in the State (but no period of such performance that occurs on or after the passing of this Act shall be reckoned for the purposes of this subparagraph);

40 (b) a person who has been performing duties commensurate with those of a building surveyor for a period of 10 or more years in the State (but no period of such performance that occurs on or after the passing of this Act shall be reckoned for the purposes of this paragraph).

(2) A person who makes an application under this section shall submit the following to the Technical Assessment Board:

45 (a) a curriculum vitae providing details of the work carried out by the applicant in the field of building surveying during the period referred to in *paragraph (a)(ii)* or, as the case may be, *paragraph (b) of subsection (1)*; and

(b) such independent verification, as the Technical Assessment Board may require, of the documentation so submitted.

(3) The Technical Assessment Board may request additional information to be submitted by the applicant within a specified period and may require the applicant to appear for an interview if it considers it necessary. 5

(4) Where an interview is required, at least 4 members of the Technical Assessment Board shall be present for the interview.

(5) The interview shall be recorded in writing or in such other form as the Technical Assessment Board may decide, and additional information may, subsequent to the interview, be required to be submitted by the applicant to those who conducted the interview. 10

(6) An applicant may be accompanied at the interview by a professional advisor, including a lawyer, but any expense incurred by the applicant in being so accompanied shall be borne by the applicant. 15

(7) Where the Technical Assessment Board decides—

(a) that the applicant is eligible for registration in the register pursuant to this section, the chairperson shall advise the Admissions Board which shall take the necessary steps to register the applicant on payment of any applicable registration fee, or 20

(b) that the applicant is not eligible for registration in the register pursuant to this section, the chairperson shall immediately send a notice in writing to the applicant, by prepaid post to the address of the applicant as furnished in his or her application, advising the applicant of the decision, the date on which it was made and the reasons for it. 25 30

Professional Conduct Committee (Part 5). 48.—(1) The registration body shall establish a Professional Conduct Committee (the “Committee”).

(2) The Committee shall consist of a chairperson and 7 ordinary members, the latter appointed by the registration body as follows:

(a) 3 building surveyors nominated for such appointment by the registration body; 35

(b) 4 persons who are not building surveyors—

(i) 3 of whom are nominated for such appointment by the Minister, and

(ii) one of whom is nominated for such appointment by the Minister, with the consent of the Minister for Enterprise, Trade and Employment. 40

(3) The chairperson of the Committee shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment. 45

49.—(1) The registration body shall establish an Appeals Board. Appeals Board
(Part 5).

(2) The Appeals Board shall consist of a chairperson and 5 ordinary members, the latter appointed by the registration body as follows:

5 (a) 2 building surveyors nominated for such appointment by the registration body, neither of whom shall be a member of any other Board or Committee established under this Part;

(b) 3 persons who are not building surveyors—

10 (i) 2 of whom are nominated for such appointment by the Minister, and

(ii) one of whom is nominated for such appointment by the Minister, with the consent of the Minister for Enterprise, Trade and Employment,

15 none of whom shall be a member of any other Board or Committee established under this Part.

(3) The chairperson of the Appeals Board shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court, appointed by the registration body subject to the
20 prior approval of the Minister.

50.—(1) A person adversely affected by a decision of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee may appeal to the Appeals Board against the decision. Appeals procedure
(Part 5).

25 (2) An appeal shall be in writing and lodged with the Appeals Board within 2 months after the date of the decision being appealed against.

(3) The appeal shall specify the decision to which the appeal relates and the grounds on which the appeal rests.

30 (4) An appeal may be based on either procedural or substantive matters.

(5) A person may, at any time before the appeal is heard, withdraw the appeal in whole or in part by notifying the Appeals Board in writing of the withdrawal.

35 (6) A witness at a hearing conducted by the Appeals Board has the same immunities and privileges as if he or she were a witness before the High Court.

(7) The chairperson of the Appeals Board may—

40 (a) direct in writing an appellant to attend before the Appeals Board on a date and at a time and place specified in the direction,

(b) direct in writing any other person whose evidence the Appeals Board may require, to attend before the Appeals Board on a date and at a time and place
45 specified in the direction, and may direct the person to

- bring any document in the person's possession relating to the appeal,
- (c) request the relevant Board or Committee whose decision is being appealed against to produce any documents in its possession relating to the appeal, together with its observations on the appeal, 5
 - (d) give any other direction for the purpose of the proceedings that appears to the chairperson to be fair and reasonable.
- (8) The procedures of the Appeals Board shall make provision for— 10
- (a) notifying the appellant and the chairperson of the relevant Board or Committee of the date, time and place of the sitting of the Appeals Board,
 - (b) advising the appellant of the appellant's right—
 - (i) to be present at the Appeals Board's sitting, and 15
 - (ii) to present his or her case in person or, at his or her own expense, through a legal representative,
 - (c) the examination of witnesses,
 - (d) determination by the Appeals Board as to whether or not evidence should be given under oath, 20
 - (e) recording of proceedings.
- (9) On the hearing of an appeal under this section, the Appeals Board may—
- (a) confirm the decision of the relevant Board or Committee, subject to any amendment thereof the Appeals Board thinks fit, 25
 - (b) annul the decision and direct the relevant Board or Committee to make a new decision, or
 - (c) give such other directions as it thinks fit.
- (10) The chairperson of the Appeals Board shall notify— 30
- (a) the appellant in writing, sent by prepaid registered post to the appellant's stated address, of the decision taken on the appeal, the date on which it was made and the reasons for it, and shall also advise the appellant of the right to appeal to the High Court against the Appeals Board's decision, 35
 - (b) the relevant Board or Committee against whose decision the appeal was made of the decision taken on the appeal, the date on which it was made and the reasons for it,
 - (c) where the appellant was the person who had lodged the complaint with the Professional Conduct Committee under *Part 6*, the registered building surveyor in respect of whom the complaint was made, stating the decision taken on the appeal, the date on which it was made and the reasons for it. 40 45

51.—(1) A person adversely affected by a decision of the Appeals Board may, within 2 months after the date of such decision, appeal to the High Court against the decision.

Appeal to High Court from decision of Appeals Board (*Part 5*).

5 (2) On the hearing of an appeal under this section, the Court may—

(a) confirm the decision of the Appeals Board, subject to any amendment thereof the Court thinks fit,

(b) annul the decision and direct the Appeals Board to make a new decision, or

10 (c) give such other directions as the Court thinks fit,

and the Court may direct how the costs of the appeal are to be borne.

15 (3) On the hearing of an appeal under this section from a decision of the Appeals Board relating to a decision of the Professional Conduct Committee, the High Court may admit evidence of any person of standing in the building surveying profession as to what constitutes professional misconduct.

52.—(1) If the Admissions Board fails to make a decision referred to in *section 41(12)* within—

Certain other jurisdiction of Appeals Board (*Part 5*).

20 (a) unless *paragraph (b)* applies, the period specified in that subsection (*12*), or

(b) if that period has been extended under *subsection (13)* of that section, the period of that extension (or, if that period has been extended more than once under that subsection, the last period of such extension),

25 the applicant referred to in *section 41* may make a complaint to the Appeals Board that such a failure has occurred.

(2) On the hearing of such a complaint and having given the Admissions Board an opportunity to be heard, the Appeals Board may, as it thinks appropriate—

30 (a) give a direction to the Admissions Board to make the decision concerned forthwith, or

35 (b) make itself a decision on the application concerned referred to in *section 41* (and where the Appeals Board does so *section 51* shall apply to such a decision as it applies to any other decision of the Appeals Board).

PART 6

FITNESS TO PRACTISE

40 **53.—**(1) The registration body shall prepare a code (in this Part referred to as the “code”) specifying the standards of professional conduct and practice that shall be adhered to by registered professionals.

Establishment of Professional Conduct Standards.

(2) The registration body shall review the code prepared by it from time to time and may amend its provisions if it thinks fit.

(3) The registration body shall provide a copy of the code it has prepared to anyone who requests it, on payment of a reasonable charge, or without charge where it considers it appropriate.

5

Complaints to
Professional
Conduct
Committee.

54.—(1) Any person may complain to the Professional Conduct Committee (the “Committee”) concerning an action of a registered professional which is alleged to amount to professional misconduct.

(2) In considering a complaint, the Committee shall have regard to the contents of the code; however, failure to comply with its provisions shall not, in and of itself, constitute a breach of professional standards but may be taken into account in making a determination.

10

(3) Where the Committee is of the opinion that a *prima facie* case has not been established for an inquiry under subsection (6) with respect to the complaint, it shall so inform the complainant in writing and shall not proceed further.

15

(4) The Committee may, where it considers it appropriate to do so, request the complainant and the registered professional who is the subject of the complaint to seek resolution of the complaint by mediation before a person or persons appointed under rules made by the relevant registration body and if the complainant and the registered professional consent to such mediation being conducted, such mediation shall be conducted accordingly.

20

(5) If the mediation does not result in the resolution of the complaint, the Committee shall proceed to consider the complaint.

25

(6) The Committee may decide to hold an inquiry with respect to a complaint and where it does so the chairperson of the Committee shall notify the other members of the Committee and the complainant and the registered professional of the date, time and place for the hearing, and the notice under this subsection to the registered professional shall be sent by prepaid registered post to the address given in the register, shall contain details of the nature of the alleged complaint against the registered professional and shall inform the registered professional of his or her right to appear before the Committee and to be represented at the hearing by a person of his or her choice.

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(7) For an inquiry under this section, the Committee has the powers, rights and privileges vested in the High Court or a judge thereof in hearing an action, for the purpose of—

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(a) enforcing the attendance of witnesses and examining them on oath or otherwise, and

(b) compelling the production of documents,

and, for such purposes, a summons signed by the chairperson of the Committee is equivalent to any formal procedure capable of being instituted in an action.

45

(8) Where a person summoned by the chairperson to attend before a hearing of the Committee or to produce a document—

(a) makes default in attending,

(b) fails or refuses to produce a document that is within that person's power to produce, or

(c) refuses to take an oath or refuses to answer a question which the Committee may lawfully ask,

5 that person shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(9) If the contravention in respect of which a person is convicted of an offence under *subsection (8)* is continued after the conviction,
10 the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €500.

(10) A witness at a hearing under this section has the same immunities and privileges as if he or she were a witness before the
15 High Court.

(11) On completion of an inquiry, the Committee shall produce a report embodying its findings, including the nature of the complaint, the evidence before it, such other matters relating to the registered professional as it thinks fit and its opinion respecting whether a case
20 of professional misconduct was established or not.

(12) The findings of the Committee on any matter referred to it shall not be made public, without the consent of the person who has been the subject of the inquiry, unless the Committee has found the person to be guilty of professional misconduct.

25 (13) Where the Committee has not found the registered professional guilty of professional misconduct it shall so notify the complainant and inform the complainant of his or her right of appeal to the Appeals Board against its finding.

55.—(1) Where the Professional Conduct Committee
30 (the "Committee") finds there has been no professional misconduct on the part of the registered professional, it shall take no further action in the matter and shall so inform the registered professional.

Decision of the Professional Conduct Committee.

(2) Where the Committee determines that a registered professional is guilty of professional misconduct, it may, subject to
35 the other provisions of this Act, do one or more of the following:

(a) advise, admonish or censure the registered professional in relation to the conduct complained of;

(b) impose on the registered professional a fine of a specified amount and failing payment by him or her of the fine to
40 the registration body within 2 months of his or her being notified of its imposition, the Registrar may erase the person's name from the register;

(c) direct that during a specified period, registration of the person's name in the register shall not have effect;

45 (d) erase the person's name from the register;

(e) direct that the person's name remain on the register but impose such conditions for the name remaining on the

register as it considers appropriate, to be complied with
by the registered professional,

and the chairperson of the Committee shall forthwith notify the
person by prepaid registered post sent to the person's address as
given in the register, of the Committee's decision, the date thereof 5
and the reasons therefor and of the person's right of appeal to the
Appeals Board against the decision.

(3) Without prejudice to the operation of the other provisions of
this Act in relation to appeals against decisions to exercise such
powers, none of the powers under *subsection (2)(b) to (e)* may be 10
exercised by the Committee unless the decision to exercise the power
has been confirmed by the High Court under *subsection (6)* or, as
the case may be, on an appeal to that Court under *section 23, 37 or*
51 as appropriate, and then may only be exercised subject to the
terms (if any) of such confirmation. 15

(4) Where a registered professional appeals against a decision of
the Committee to the Appeals Board within the period provided for
under this Act, the decision of the Committee is stayed until the
appeal is disposed of, including any period provided for a further
appeal to the High Court. 20

(5) *Subsection (6)* applies if—

(a) no appeal under this Act is taken against the decision of
the Committee mentioned in that subsection, or

(b) (i) such an appeal taken against the decision has been
disposed of and the decision has been confirmed 25
(with or without amendment of it), and

(ii) that confirmation is not a confirmation of the High
Court under *section 23, 37 or 51*, as appropriate.

(6) The Registrar may apply *ex parte* to the High Court for
confirmation of a decision of the Committee to exercise the powers 30
under *subsection (2)(b), (c), (d) or (e)* and, if the Registrar so applies,
the High Court, on the hearing of the application, shall, unless it
sees good reason to the contrary, declare accordingly and, where
the declaration relates to a decision to exercise the powers under
subsection (2)(d), either (as the Court may consider proper) direct 35
the Registrar to erase the name of such person from the register
concerned or direct that during a specified period (beginning not
earlier than 7 days after the decision of the Court) registration of the
person's name in that register shall not have effect.

(7) On erasing the name of a person from any register under this 40
section, the Registrar shall forthwith send by prepaid registered post
to such person, at the person's address as stated in the register, notice
in writing of the erasure.

(8) Where a direction is given under this section that during a
specified period registration of the name of a person in any register 45
shall not have effect, the Registrar shall, before the commencement
of that period, send by prepaid registered post to such person, at
the person's address as stated in the register, notice in writing of
such direction.

(9) The name of any person that has been erased under this 50
section may be restored to the register concerned on the direction of
the Committee, but not otherwise, and the Committee may attach

such conditions as it sees fit to the restoration (including payment of a fee not exceeding the fee provided for an application for registration in the first instance).

5 (10) Where the registration of a person in a register has ceased to
have effect under this section for a period of specified duration, the
Committee may, if it thinks fit, on application made to it by such
person, by direction terminate the suspension and the Committee
may attach such conditions as it sees fit to the termination (including
10 payment of a fee not exceeding the fee provided for an application
for registration in the first instance).

15 **56.**—Proceedings of or communications to or by a Professional
Conduct Committee in the course of an inquiry, and reports of the
Committee made in the exercise or performance of its powers, duties
or functions, under this Part shall, in any action for defamation, be
absolutely privileged. Proceedings privileged.

PART 7

MISCELLANEOUS PROVISIONS

20 **57.**—(1) A registration body may arrange with any person to
assist it, or any other board or committee established under this Act,
in the proper discharge of its or their functions. Registration body
may seek assistance
and make rules.

(2) Subject to *subsection (3)*, a registration body may make rules
for facilitating and carrying out its functions and the functions of the
other boards and committees, including the Appeals Board, provided
for under this Act.

25 (3) Before making rules, the registration body shall publish a draft
of the rules and circulate them to the board or committee affected
for its comments.

30 **58.**—(1) A registration body may specify that a fee of a specified
amount shall be payable to it in respect of the doing of any of the
following, namely: Registration body
may specify fees.

(a) processing applications for registration;

(b) the annual retention of a person's name in the register
(and a specification under this paragraph shall be made
in consultation with the Director of Consumer Affairs);

35 (c) restoring a person's name in the register after it has been
erased pursuant to a provision of this Act;

(d) removing a person's name from the register on the
application of that person;

40 (e) entering additional qualifications, not being qualifications
required for the purpose of registration, of a person in
the register;

(f) issuing a certificate of registration;

(g) providing any other service which the registration body
may provide.

(2) A registration body may determine that in respect of the doing of any of the things referred to in *subsection (1)(a) to (g)* a fee of a different amount shall be payable by reference to the different circumstances in which it is done.

Additional qualifications.

59.—(1) Subject to *subsection (2)* and payment of the specified fee, a person who is registered under *Part 3, 4 or 5* may apply to the registration body, in the form and manner it determines, to have an additional qualification noted in the register. 5

(2) The registration body shall determine what additional qualifications other than those required for registration may be noted in the register. 10

Regulations.

60.—(1) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed or to be prescribed, or in relation to any matter referred to in this Act as the subject of regulations. 15

(2) Regulations under this Act may contain such incidental, supplemental and consequential provisions as appear to the Minister to be necessary or expedient.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of any previously done thereunder. 20 25

Correction of register.

61.—(1) For the purpose of keeping a register provided for under this Act, the Registrar thereof shall correct all verbal and clerical errors in such register, remove therefrom all entries procured by fraud or misrepresentation, enter in the register every change which comes to the Registrar's knowledge in the addresses of registered professionals, and remove therefrom the names of all persons whose death has either been notified to, or comes to the knowledge of, the Admissions Board. 30

(2) Where the Registrar takes any action under *subsection (1)*, the Registrar shall forthwith notify the person concerned or next of kin, as the case may be, if such person can be identified, of the action taken and the reasons therefor. 35

Expenses of registration bodies, boards and committees, etc.

62.—(1) Expenditure incurred by a registration body in the performance of its functions under this Act shall be defrayed by the registration body from funds at its disposal. 40

(2) There shall be paid to the chairpersons and other members of any board or committee established under this Act by a registration body such remuneration and allowances for expenses as the registration body may determine and payment of such remuneration and allowances shall be made from funds at the disposal of the registration body. 45

Prosecution of offences under this Act.

63.—(1) Summary proceedings for an offence under *Part 3, 4, 5 or 6* may be brought and prosecuted by the registration body.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be commenced—

(a) within 12 months from the date on which the offence was committed, or

(b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,

whichever is later, provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was committed.

(3) For the purposes of this section, a certificate signed by or on behalf of the person initiating the proceedings as to the date or dates on which evidence referred to in *subsection (2)(b)* came to his or her knowledge shall be evidence of that date or dates and, in any legal proceedings a document purporting to be a certificate under this section and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(4) It shall be presumed, until the contrary is shown, that proceedings for an offence under this Act were commenced within the appropriate period.

64.—(1) In any proceedings, a certificate signed by the Registrar containing only information stated to be taken from the registration records under the control of the Registrar shall be sufficient evidence of the facts stated therein, until the contrary is shown.

Evidential value of an extract from register.

(2) In any proceedings, a document purporting to be a certificate under *subsection (1)* shall be deemed to be such a certificate and to have been signed by the Registrar concerned, until the contrary is shown.

(3) A certificate under this section that purports to bear a facsimile of the signature of the Registrar concerned or a copy of such signature applied by means of a stamp or produced by a computer shall be deemed for the purposes of this section to have been signed by the Registrar, until the contrary is shown.

65.—(1) A person appointed by a registration body to be a member of a board or committee established by it under this Act shall hold office for a period of 3 years, unless he or she sooner dies or resigns.

Tenure of members of boards, etc., appointed by registration body.

(2) No person appointed pursuant to a section of this Act shall hold office under that section for more than 2 consecutive terms of office.

(3) A member of a board or committee referred to in *subsection (1)* may resign from office by giving notice to the registration body in writing signed by him or her and the resignation shall take effect at the next meeting of the registration body.

(4) Where a casual vacancy occurs in the membership of such a board or committee, the registration body shall consult with the

board or committee in such manner as it considers appropriate, and it shall, as soon as convenient, appoint a person to fill the vacancy for the duration of the unexpired term of office.

(5) The registration body may make rules specifying grounds (such as repeated absence from meetings or unacceptable professional conduct) on which a member of a board or committee referred to in *subsection (1)* may be removed from office and the procedure for such removal and for so long as rules under this subsection are in force such a member may be removed from office subject to and in accordance with the rules.

Proceedings at meetings of boards or committees.

66.—(1) A board or committee established under this Act by a registration body shall hold such meetings as it considers necessary for the performance of its functions.

(2) The chairperson and each other member of such a board or committee shall have a vote.

(3) At a meeting of such a board or committee, the chairperson or, in the chairperson's absence a member chosen by those present, shall chair the meeting.

(4) Every question at a meeting referred to in *subsection (3)* shall be determined by a majority of votes of members present and the chairperson shall have a casting vote in the event of an equal division.

(5) The quorum for such a meeting shall be 4 members.

(6) An Admissions Board, Technical Assessment Board, Appeals Board or Professional Conduct Committee may perform its functions whether or not there is a vacancy in its membership and none of its proceedings are invalidated by any defect in the appointment of a member to it.

Functions in relation to regulations or directives of the Council of the EU or the European Parliament.

67.—A registration body, or a board or committee established under this Act by a registration body, shall carry out such additional functions as may be assigned to it, by order made by the Minister, in relation to the implementation of an Act adopted by an institution of the European Communities with respect to the relevant profession.

Annual report by registration body.

68.—(1) A registration body shall, as soon as may be after the end of each year, prepare a report of its proceedings under this Act during that year.

(2) That report shall include a copy of the body's accounts for the year concerned in so far as they relate to its income and expenditure in respect of the performance of its functions under this Act during that year and those accounts shall be accounts that have been certified by an auditor who has been appointed to carry out an audit of them for the year concerned.

(3) As soon as may be after the preparation of such a report, the registration body shall cause—

- (a) the report, with the copy of the foregoing accounts included in it, to be published, and
- (b) copies of the report, with the foregoing certification in respect of those accounts included in each such copy, to be made available for purchase by members of the public.

5



**AN BILLE UM RIALÚ FOIRGNÍOCHTA 2005
BUILDING CONTROL BILL 2005**

EXPLANATORY MEMORANDUM

General

In summary, this Bill provides for the following:

(1) Strengthening of Enforcement Powers of Local Building Control Authorities

- On foot of recommendations made by the Building Regulations Advisory Body (BRAB), the Bill introduces revised procedures for issue of Fire Safety Certificate (FSC), by local Building Control Authorities, confirming compliance with Part B (Fire Safety) of the Building Regulations of designs of new Non-Domestic Buildings (offices, factories, shops, hotels, etc.) and new Apartment Blocks.
- The Bill introduces a Disability Access Certificate (DAC) confirming that the designs of new Non-Domestic Buildings and Apartment Blocks comply with Part M (Access for People with Disabilities) of the Building Regulations.
- The Bill widens the right of building control authorities to seek injunctions from the High Court, e.g., authorities will, under the Bill, be able to seek injunctions to stop the construction or use of new buildings, the design of which has not been granted a Disability Access Certificate (DAC) or Fire Safety Certificate (FSC) or where an Enforcement Notice served by the authority has not been complied with.
- The Bill introduces the option for authorities to bring summary prosecution for all building code offences in the District Court, rather than by way of prosecution on indictment by the DPP in the Circuit Court. This will simplify the prosecution process.
- The Bill increases the maximum penalties for breaches of the national Building Regulations.

(2) Registration of Titles of Certain Building Professions

- The Bill provides that the use of titles of “Architect”, “Quantity Surveyor” and “Building Surveyor” will be confined to persons with recognised qualifications/training/experience, whose names are entered on a statutory register.

- The relevant registers will be administered by—
 - (a) Royal Institute of Architects of Ireland (RIAI), in the case of Architects; and
 - (b) Society of Chartered Surveyors (SCS), in the case of Building Surveyors and Quantity Surveyors.
- (3) Legal Transposition of relevant Provisions of the EU Energy Performance of Buildings Directive (2002/91/EC of 16 December 2002)**
- The Bill provides the legal basis for regulations to mandate the energy performance rating of new dwellings, with effect from 1 January, 2007; for new non-domestic buildings, with effect from 1 January, 2008; and for existing buildings, when buildings are sold or let, with effect from 1 January, 2009.
 - The Bill will enable regulations be made requiring that the design of large new Non-Domestic Buildings (over 1,000 m² or 10,800 square foot) take account of the economic/technical feasibility of using alternative energy systems, including district or block heating; combined heat and power (CHP); heat pumps using heat from ground; and energy supply systems using renewable energy, e.g., solar power, wind power.
- (4) Legal Transposition of relevant Provisions of the EU Directive on Mutual Recognition of Professional Qualifications (2005/36/EC of 7 September 2005)**
- The Parts 3, 4 and 5 of the Bill dealing with the registration of Architects, Quantity Surveyors and Building Surveyors take account of the recently adopted EU Directive 2005/36/EC of 7 September 2005 on Mutual Recognition of Professional Qualifications.

PART 1

PRELIMINARY AND GENERAL

(Sections 1 to 2)

Sections 1 and 2 contain the usual provisions of a general nature dealing with such matters as citation, commencement, and interpretation.

PART 2

GENERAL

(Sections 3 to 9)

Part 2 provides for amendments of the Building Control Act 1990. This part provides for improvements in the processing and format of applications for fire safety certificates by introducing a “regularization certificate” and a fast track procedure in cases where commencement of work is imminent. Part 2 also introduces a “disability access certificate” whereby the design of non-domestic buildings and apartment blocks will be certified as being in compliance with Part M of the building regulations, prior to commencement of work. Furthermore, Part 2 will simplify the prosecution process for building control authorities by giving authorities the option to bring summary

prosecution for all building code offences in the District Court. Finally, Part 2 provides for substantial increases in maximum penalties for breaches of the building code.

Section 3 contains an amendment to interpretation of section 1 of the Building Control Act 1990.

Section 4 amends section 6 of the 1990 Act by providing for revisions to the fire safety certificate (FSC) procedures and the introduction of a Disability Access Certificate as follows:

- (i) a 7-day notice may be submitted to a building control authority where commencement of work is imminent, to be accompanied by a valid fire safety certificate application together with a statutory declaration by the applicant in respect of the certificate and any necessary modification to works carried out prior to the granting of the relevant fire safety certificate;
- (ii) provision is made for application for a revised fire safety certificate in cases where a revised design of a building is necessary, following the grant of planning permission;
- (iii) provision is made for application for a “regularization certificate” in cases where works have been carried out without a fire safety certificate, to be accompanied by as constructed drawings and a certificate stating that the works are in compliance with the requirements of the fire safety requirements of the building regulations;
- (iv) provision is made for the granting, by the local building control authority, of a Disability Access Certificate (DAC) for non domestic buildings and apartment blocks to certify that the design, in the opinion of the building control authority, complies with Part M of the building regulations;
- (v) the opening, operation or occupation of buildings which require a fire safety certificate or disability access certificate is prohibited until DAC and FSC certificates are granted;
- (vi) the duration, manner of provision and display of building energy rating certificate will be specified by regulations made under the Bill.

Section 5 provides for the insertion of two new sections 6A and 6B to the 1990 Act. The new Section 6A requires that alternative energy systems be considered during the design of large buildings over 1,000 square metres (10,800 square foot). The new Section 6B provides for mandatory Building Energy Rating (BER) Certificates for classes of buildings to be prescribed. The Draft Action Plan for the Implementation of the Energy Performance of Buildings Directive (EPBD) in Ireland provides from the phasing in of the BER certification provisions as follows:

- for newly constructed Dwellings, with effect from 1 January 2007;
- for newly constructed Non-Domestic Buildings, with effect from 1 January 2008;
- for existing Buildings, when sold or let, with effect from 1 January 2009.

Section 6 amends Section 7 of the 1990 Act by providing for an appeal to An Bord Pleanála in respect of refusal of, or conditions attached by building control authorities to Regularisation Certificates or Disability Access Certificates under Section 6.

Section 7 amends Section 12 of the 1990 Act by providing for application to the High Court by a building control authority for an order for the removal, alteration or making safe of a building or works which have been commenced or completed without a fire safety, disability or regularization certificate where such certificate was required or the discontinuance of works, or restricting or prohibiting the use of the building until such certificates have been granted.

Section 8 amends section 17 of the 1990 Act to provide for the option for building control authorities to bring summary prosecution for all building code offences under the Act in the District Court. It also increases the maximum fines for summary convictions for offences under the Act from £800 to €5,000; and from £150 per day to €500 per day for ongoing offences. The maximum fine for conviction on indictment is being doubled from £10,000 to €25,000.

Section 9 provides for the insertion of two new Sections 17A and 17B to the 1990 Act. The new Section 17A provides for payment of fines to a local building control authority where the fine results from a prosecution brought by the authority. The new Section 17B provides for the evidential value of electronically stored building control records in any prosecutions under the Act.

PART 3

REGISTRATION OF ARCHITECTS

(Sections 10 to 24)

Part 3 provides for statutory protection of the title of “Architect” by restricting the lawful use of the title to suitably qualified persons whose names are entered on a statutory register to be established in accordance with the provisions of this Part. The registration system will be administered by the *Royal Institute of Architects of Ireland (RIAI)*. This Part also specifies criteria for automatic eligibility for admission to the Architects register. It provides for the setting up of an Admissions Board, a Technical Assessment Board, and a Professional Conduct Committee. Part 3 further provides for an Appeals Board to determine appeals against decisions of any of the aforementioned Boards or Committee, with an ultimate right of appeal against decisions of the Appeals Board to the High Court. Finally, Part 3 provides for payment of registration fees, the appointment of a Registrar, and for fines or penalties for misuse of the title of “Architect”.

Section 10 designates the Royal Institute of Architects of Ireland (RIAI) as the registration body and as the competent authority under Directive 2005/36/EC under this part. It provides that the registration body must establish an Admissions Board for the purpose of registering members of the architectural profession. Membership of the Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 architects to be nominated by the registration body;
- (ii) 4 persons (who are not architects) to be nominated by the Minister;

- (iii) the chairperson, who will be appointed by the registration body subject to the prior approval of the Minister will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 11 sets out the eligibility criteria for admission to the architects register for persons holding approved qualifications, including nationals of EU Member States, the European Economic Area (EEA) and the Swiss Confederation. It also provides that membership of the registration body is not a prerequisite for registration and that the same registration fee will apply to members and non-members of the body.

Section 12 sets out the detailed criteria for registration of persons who are nationals of EU Member States, and the European Economic Area in accordance with EU obligations.

Section 13 provides for application for recognition of qualifications by a further category of persons from Member States who are eligible to apply to the Admissions Board for registration under EU Directive 2005/36/EC (Chapter 1, Title 111). It sets out the procedures for assessment of such applications, including the procedures for interview by the Board, where such is considered necessary. The board must make its decision on the application within a 3 month period of the date of receipt of a valid application. There is provision for extending the period for assessment by 1 extra month in specified cases.

Section 14 provides for the payment of prescribed registration fees and annual retention fees to the registration body. The Registrar may remove the names of registrants from the register for non-payment of retention fees within two months of sending of a second notice by pre-paid post. Names may be restored to the register on payment of the fee. In cases of verified hardship, the Registrar may remit all or part of the fee.

Section 15 makes it an offence for persons to use the title “architect”, unless entitled to do so, either alone or in combination with either names, letters, titles or descriptions to imply that they are registered; with intent to deceive, makes use of a certificate issued under the Act; makes a false declaration for the purpose of obtaining registration, aids or abets any such action, or practices any business under the name or title containing the word “architect”. Persons who do so, will be guilty of an offence and will be liable on summary prosecution to a fine of €5,000 and €500 for each day of an ongoing offence, and/or imprisonment for a term not exceeding 12 months.

Section 16 enables the registration body to appoint a Registrar for keeping an updated register of the names of persons registered. It will also decide on the format of the register. Following registration, a certificate will be forwarded to the registrant. The Registrar will ensure that the register is available for public inspection during working hours. It also provides for payment of a salary or fee to the Registrar by the registration body, which may also pay pension contributions and allowances expenses.

Section 17 enables a registrant to apply to have his/her name removed from the register and to subsequently apply for restoration. An application for removal from a registrant will not be considered while an investigation is underway by the Professional Conduct Committee until such proceedings have been completed and necessary action decided. Nothing in this section will prevent the Professional Conduct Committee from refusing to restore a person’s name to the

register on the grounds of unfitness to practice architecture or attaching certain conditions to the entry, whereupon the registrar will notify the person of the decision taken, the date and the reasons therefor.

Section 18 provides for the establishment by the registration body of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under Section 11. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 architects to be nominated by the registration body;
- (ii) 4 persons (who are not architects) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 19 provides for the procedure of the Technical Assessment Board in assessing applications from persons who have 10 years experience in the field of architecture in the State, on the operative date. It cites the documentation to be submitted by applicants for registration, the criteria and format to be used for assessment of applications. It specifies that the board may interview applicants, if considered necessary. Where interviews are considered necessary, 4 board members will be present and the interview may be recorded in writing or any other format as the board may decide. The interviewee may, at his/her own expense, be accompanied by a professional advisor, including a lawyer. Applicants must be notified of the decision taken by the Board. Where a decision is favourable, the board will notify the registrar who will arrange to register the applicant, on payment of appropriate fee.

Section 20 provides for the establishment by the registration body of a Professional Conduct Committee to examine complaints made in regard to alleged professional misconduct. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 architects to be nominated by the registration body;
- (ii) 4 persons (who are not architects) to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment;
- (iii) the chairperson, who will be appointed by the registration body (subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment), will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 21 provides for the establishment by the registration body of an Appeals Board. The Board will be comprised of a Chairperson and 5 members as follows:

- (i) 2 architects to be nominated by the registration body, neither of whom will be a member of any other Board or Committee established under this Part;

- (ii) 3 persons (who are not architects), 2 of whom will be nominated by the Minister and 1 will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment, none of whom will be a member of any other Board or Committee established under this Part;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 22 sets out the procedures for making an appeal to the Appeals Board by persons who are adversely affected by decisions of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee. It details the requirements for processing of the appeal by the Board and informing the appellant of the outcome of the appeal. The appeal must be in writing, relate to either procedural or substantive matters and be lodged within 2 months of the date of the decision being appealed. A witness at a hearing will have the same immunities and privileges as a witness before the High Court.

The procedures of the Appeals Board shall make provision for:

- (i) notification of the appellant, the Chairperson of the relevant Board or Committee, and any other person whose evidence may be required to attend before the Board on a particular date and time at a specified venue;
- (ii) advising the appellant of the right to present the case or, at their own expense, through a legal representative;
- (iii) the examination of witnesses;
- (iv) whether evidence should be taken under oath;
- (v) recording of evidence.

The Board, having considered an appeal, may:

- (i) confirm the decision of the relevant Board or Committee, subject to an amendment;
- (ii) annul the decision and direct the relevant Board or Committee to make a new decision; or
- (iii) give such other direction as it thinks fit.

The Chairperson shall then notify the appellant by pre-paid registered post of the decision taken, the date of same and the reasons for the decision, and of the appellant's right of appeal to the High Court. The relevant Board or Committee against whose decision the appeal was lodged shall also be informed of the decision. Where the appellant had made a complaint to the Professional Conduct Committee under Part 6, the registered architect against whom the complaint was made, shall also be notified of the decision of the Board.

Section 23 provides for the right of appeal to the High Court by persons adversely affected by a decision of the Appeals Board. The appeal must be lodged within 2 months of the date of the decision of the Appeals Board. The Court may—

- (i) confirm the decision of the Appeals Board, subject to any amendment the Court may decide;
- (ii) overturn the decision and direct the Appeals Board to make a new decision;
- (iii) give any other direction the Court thinks fit.

In the case of an appeal from a decision of the Professional Conduct Committee, the Court may admit evidence of a person of standing in the architectural profession as to what constitutes professional misconduct. The Court may also direct how the costs of the application are to be borne.

Section 24 provides that the Appeals Board will also have jurisdiction in the case of complaints arising from non-decisions by the relevant Board within the period specified under *Section 12(5)* or *section 13(11)* in assessment of applications for registration.

PART 4

REGISTRATION OF QUANTITY SURVEYORS

(Sections 25 to 33)

Part 4 specifies the statutory protection of the title of “Quantity Surveyor” by limiting the lawful use of this title to suitably qualified persons whose names are entered on a statutory register. The registration system will be administered by the *Society of Chartered Surveyors (SCS)*. Part 4 also specifies the criteria for automatic eligibility for admission to the relevant register. It provides for the setting up of an Admissions Board, a Technical Assessment Board, and a Professional Conduct Committee. Part 4 further provides for an Appeals Board to determine appeals against decisions of any of the aforementioned Boards, with an ultimate right of appeal against decisions of the Appeals Board to the High Court. Finally Part 4 provides for payment of registration fees and appointment of a Registrar and for the determination of fines or penalties for misuse of the title of “Quantity Surveyor”.

Section 25 designates the Society of Chartered Surveyors as the registration body under this Part, and as the competent authority for quantity surveyors in the State. It provides that the registration body must establish an Admissions Board for the purpose of registering members of the quantity surveying profession. Membership of the Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 quantity surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not quantity surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 26 sets out the eligibility criteria for admission to the quantity surveyors register for persons holding approved qualifications, including nationals of EU Member States. It also provides that membership of the registration body is not a prerequisite for registration

and that the same registration fee will apply to members and non-members of the body.

Section 27 provides for application for recognition of qualifications by a further category of persons from Member States who are eligible to apply to the Admissions Board for registration under EU Directive 2005/36/EC (Chapter 1, Title 111). It sets out the procedures for assessment of such applications, including the procedures for interview by the Board, where such is considered necessary. The Board must make its decision on the application within a 3 month period of the date of receipt of a valid application. There is provision for extending the period for assessment by 1 extra month in specified cases.

Section 28 provides for the payment of prescribed registration fees and annual retention fees to the registration body. The Registrar may remove the names of registrants from the register for non-payment of retention fees within two months of sending of a second notice by pre-paid post. Names may be restored to the register on payment of the fee. In cases of verified hardship, the Registrar may remit all or part of the fee.

Section 29 makes it an offence for persons to use the title “quantity surveyor”, unless entitled to do so, either alone or in combination with either names, letters, titles or descriptions to imply that they are registered; with intent to deceive, makes use of a certificate issued under the Act; makes a false declaration for the purpose of obtaining registration, or aids or abets any such action; practices any business under the name or title containing the word “quantity surveyor”. Persons who do so, will be guilty of an offence and will be liable on summary prosecution to a fine of €5,000 and €500 for each day of an ongoing offence and/or imprisonment for a term not exceeding 12 months.

Section 30 enables the registration body to appoint a registrar for keeping an updated register of the names of persons registered. It will also decide on the format of the register. Following registration, a certificate will be forwarded to the registrant. The register will be available for public inspection during working hours. It also provides for payment of a salary or fee to the registrar by the registration body, which may also pay pension contributions and allowances expenses.

Section 31 enables a registrant to apply to have his/her name removed from the register and to subsequently apply for restoration. An application for removal from a registrant will not be considered while an investigation is underway by the Professional Conduct Committee until such proceedings have been completed and necessary action decided. Nothing in this section will prevent the Professional Conduct Committee from refusing to restore a person’s name to the register on the grounds of unfitness to practice quantity surveying or attaching certain conditions to the entry, whereupon the registrar will notify the person of the decision taken, the date and the reasons therefor.

Section 32 provides for the establishment by the registration body of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under Section 26. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 quantity surveyors to be nominated by the registration body;

- (ii) 4 persons (who are not quantity surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 33 provides for the procedure of the Technical Assessment Board in assessing applications from certain persons who have 8 or 10 years experience in the field of quantity surveying in the State, on the operative date. It cites the documentation to be submitted by applicants for registration, the criteria and format to be used for assessment of applications. It specifies that the board may interview applicants, if considered necessary. Where interviews are considered necessary, 4 board members will be present and the interview may be recorded in writing or any other format as the board may decide. The interviewee may, at his/her own expense, be accompanied by a professional advisor, including a lawyer. Applicants must be notified of the decision of the Board. Where a decision is favourable, the board will notify the registrar who will arrange to register the applicant, on payment of appropriate fee.

Section 34 provides for the establishment by the registration body of a Professional Conduct Committee to examine complaints made in regard to alleged professional misconduct. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 quantity surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not quantity surveyors) to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 35 provides for the establishment by the registration body of an Appeals Board. The Board will be comprised of a Chairperson and 5 members as follows:

- (i) 2 persons (who are not quantity surveyors), to be nominated by the registration body, neither of whom will be a member of any Board or Committee established under this Part;
- (ii) 3 persons (who are not quantity surveyors), to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment, none of whom will be a member of any Board or Committee established under this Part;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 36 sets out the procedures for making of an appeal by persons who are adversely affected by decisions of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee. It details the requirements for processing of the appeal by the Board and informing the appellant of the outcome of the appeal. The appeal must be in writing, relate to either procedural or substantive matters and be lodged within 2 months of the date of the decision being appealed. A witness at a hearing will have the same immunities and privileges as a witness before the High Court.

The procedures of the Appeals Board shall make provision for:

- (i) notification of the appellant, the Chairperson of the relevant Board or Committee, and any other person whose evidence may be required to attend before the Board on a particular date and time at a specified venue;
- (ii) advising the appellant of the right to present the case or, at their own expense, through a legal representative;
- (iii) the examination of witnesses;
- (iv) whether evidence should be taken under oath;
- (v) recording of evidence.

The Board, having considered an appeal, may:

- (i) confirm the decision of the relevant Board or Committee, subject to an amendment;
- (ii) annul the decision and direct the relevant Board or Committee to make a new decision; or
- (iii) give such other direction as it thinks fit.

The Chairperson shall then notify the appellant by pre-paid registered post of the decision taken, the date of same and the reasons for the decision and of the appellant's right of appeal to the High Court. The relevant Board or Committee against whose decision the appeal was lodged shall also be informed of the decision. Where the appellant had made a complaint to the Professional Conduct Committee under Part 6, the registered quantity surveyor against whom the complaint was made, shall also be notified of the decision of the Board.

Section 37 provides for the right of appeal to the High Court by persons adversely affected by a decision of the Appeals Board. The appeal must be lodged within 2 months of the date of the decision of the Appeals Board. The Court may—

- (i) confirm the decision of the Appeals Board, subject to any amendment the Court may decide;
- (ii) overturn the decision and direct the Appeals Board to make a new decision;
- (iii) give any other direction the Court thinks fit.

In the case of an appeal from a decision of the Professional Conduct Committee, the Court may admit evidence of a person of standing in the quantity surveying profession as to what constitutes professional misconduct. The Court may also direct how the costs of the application are to be borne.

Section 38 provides that the Appeals Board will also have jurisdiction in the case of complaints arising from non-decisions by the relevant Board within the period specified under Section 27(12) or section 27(13) in assessment of applications for registration.

PART 5

REGISTRATION OF BUILDING SURVEYORS

(Sections 39 to 52)

Part 5 provides for the statutory protection of the title of “Building Surveyor” by restricting the lawful use of the title to suitably qualified persons whose names are entered on a statutory register. The registration system will be administered by the *Society of Chartered Surveyors (SCS)*. Part 5 also specifies the criteria for automatic eligibility for admission to the register of Building Surveyors. It provides for the setting up of an Admissions Board, a Technical Assessment Board, and a Professional Conduct Committee. Part 5 further provides for establishment of an Appeals Board to determine appeals against decisions of any of the aforementioned Boards or Committee, with an ultimate right of appeal against decisions of the Appeals Board to the High Court. Finally Part 5 provides for payment of registration fees and appointment of a Registrar and for the determination of fines or penalties for misuse of the title of “Building Surveyor”.

Section 39 designates the *Society of Chartered Surveyors (SCS)* as the registration body under this Part and as the competent authority for building surveyors in the State. It provides that the registration body must establish an Admissions Board for the purpose of registering members of the building surveying profession. Membership of the Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 building surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not building surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 40 sets out the eligibility criteria for admission to the building surveyor’s register for persons holding approved qualifications, including nationals of EU Member States. It also provides that membership of the registration body is not a prerequisite for registration and that the same registration fee will apply to members and non-members of the body.

Section 41 provides for application for recognition of qualifications by persons from Member States who are eligible to apply to the Admissions Board for registration under EU Directive 2005/36/EC (Chapter 1, Title 111). It sets out the procedures for assessment of such applications, including the procedures for interview by the Board, where such is considered necessary. The Board must make its decision on the application within a 3 month period of the date of receipt of a valid application. There is provision for extending the period for assessment by 1 extra month in specified cases.

Section 42 provides for the payment of prescribed registration fees and annual retention fees to the registration body. The Registrar may remove the names of registrants from the register for non-payment of retention fees within two months of sending of a second notice by pre-paid post. Names may be restored to the register on payment of the fee. In cases of verified hardship, the Registrar may remit all or part of the fee.

Section 43 makes it an offence for persons to use the title “building surveyor”, unless entitled to do so, either alone or in combination with either names, letters, titles or descriptions to imply that they are registered; with intent to deceive, makes use of a certificate issued under the Act; makes a false declaration for the purpose of obtaining registration, or aids or abets any such action: practices any business under the name or title containing the word “building surveyor”. Persons who do so, will be guilty of an offence and will be liable on summary prosecution to a fine of €5,000 and €500 for each day of an ongoing offence, and/or imprisonment for a term not exceeding 12 months.

Section 44 enables the registration body to appoint a registrar for keeping an updated register of the names of persons registered. It will also decide on the format of the register. On registration, a certificate will be forwarded to the registrant. The register will be available for public inspection during working hours. It also provides for payment of a salary or fee to the registrar by the registration body which may also pay pension contributions and allowances expenses.

Section 45 enables a registrant to apply to have his/her name removed from the register and to subsequently apply for restoration. An application for removal from a registrant will not be considered while an investigation is underway by the Professional Conduct Committee until such proceedings have been completed and necessary action decided. Nothing in this section will prevent the Professional Conduct Committee from refusing to restore a person’s name to the register on the grounds of unfitness to practice building surveying or attaching certain conditions to the entry, whereupon the registrar will notify the person of the decision taken, the date and the reasons therefor.

Section 46 provides for the establishment by the registration body of a Technical Assessment Board to consider applications for registration from persons who are not eligible for registration under Section 40. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 building surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not building surveyors) to be nominated by the Minister;
- (iii) the chairperson, who will be appointed by the registration body subject to the prior approval of the Minister will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 47 provides for the procedure of the Technical Assessment Board in assessing applications from certain persons who have 8 or 10 years experience in the field of building surveying in the State, on the operative date. It cites the documentation to be submitted by applicants for registration, the criteria and format to be used for assessment of applications. It specifies that the board may interview

applicants, if considered necessary. Where interviews are considered necessary, 4 board members will be present and the interview may be recorded in writing or any other format as the board may decide. The interviewee may, at his/her own expense, be accompanied by a professional advisor, including a lawyer. Applicants must be notified of the decision of the Board. Where a decision is favourable, the board will notify the Registrar who will arrange to register the applicant, on payment of appropriate fee.

Section 48 provides for the establishment by the registration body of a Professional Conduct Committee to examine complaints made in regard to alleged professional misconduct. The Board will be comprised of a Chairperson and 7 members as follows:

- (i) 3 building surveyors to be nominated by the registration body;
- (ii) 4 persons (who are not building surveyors) to be nominated by the Minister, 1 of whom will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment;
- (iii) the chairperson, who will be appointed by the registration body subject to the prior approval of the Minister, with the consent of the Minister for Enterprise, Trade and Employment, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 49 provides for the establishment by the registration body of an Appeals Board. The Board will be comprised of a Chairperson and 5 members as follows:

- (i) 2 persons (who are not building surveyors), to be nominated by the registration body, neither of whom will be a member of any Board or Committee set up under this Part;
- (ii) 3 persons (who are not building surveyors), 2 of whom will be nominated by the Minister and 1 will be nominated by the Minister with the consent of the Minister for Enterprise, Trade and Employment, none of whom will be a member of any other Board or Committee established under this part;
- (iii) the chairperson, who will be appointed by the registration body, subject to the prior approval of the Minister, will be a solicitor, barrister or a former judge of the Circuit Court, High Court or Supreme Court.

Section 50 sets out the procedures for making of an appeal by persons who are adversely affected by decisions of the Admissions Board, the Technical Assessment Board or the Professional Conduct Committee. It details the requirements for processing of the appeal by the Board and informing the appellant of the outcome of the appeal. The appeal must be in writing, relate to either procedural or substantive matters and be lodged within 2 months of the date of the decision being appealed. A witness at a hearing will have the same immunities and privileges as a witness before the High Court.

The procedures of the Appeals Board shall make provision for:

- (i) notification of the appellant, the Chairperson of the relevant Board or Committee, and any other person

whose evidence may be required to attend before the Board on a particular date and time at a specified venue;

- (ii) advising the appellant of the right to present the case or, at their own expense, through a legal representative;
- (iii) the examination of witnesses;
- (iv) whether evidence should be taken under oath;
- (v) recording of evidence.

The Appeals Board, having considered an appeal, may:

- (i) confirm the decision of the relevant Board or Committee, subject to an amendment;
- (ii) annul the decision and direct the relevant Board or Committee to make a new decision; or
- (iii) give such other direction as it thinks fit.

The Chairperson of the Board shall then notify the appellant by pre-paid registered post of the decision taken, the date of same and the reasons for the decision and of the appellant's right of appeal to the High Court. The relevant Board or Committee against whose decision the appeal was lodged shall also be informed of the decision. Where the appellant had made a complaint to the Professional Conduct Committee under Part 6, the registered building surveyor against whom the complaint was made, shall also be notified of the decision of the Board.

Section 51 provides for the right of appeal to the High Court by persons adversely affected by a decision of the Appeals Board. The appeal must be lodged within 2 months of the date of the decision of the Appeals Board. The Court may—

- (i) confirm the decision of the Appeals Board, subject to any amendment the Court may decide;
- (ii) overturn the decision and direct the Appeals Board to make a new decision;
- (iii) give any other direction the Court thinks fit.

In the case of an appeal from a decision of the Professional Conduct Committee, the Court may admit evidence of a person of standing in the building surveyor profession as to what constitutes professional misconduct. The Court may also direct how the costs of the application are to be borne.

Section 52 provides that the Appeals Board will also have jurisdiction in the case of complaints arising from non-decisions by the relevant Board within the period specified under Section 41(12) or section 41(13) in assessment of applications for registration.

PART 6

FITNESS TO PRACTICE

(Sections 53 to 56)

Section 53 enables the registration bodies to prepare a Code of Professional Conduct and standards to which registered professionals must adhere. The code may be reviewed from time to time, as considered necessary by the registration bodies. A copy of the code will be available, at a reasonable charge, or without charge as may be determined by the registration bodies.

Section 54 sets out the procedures for examination of a complaint made to the Professional Conduct Committee (PCC) and the conduct of an inquiry into alleged professional misconduct of a registered professional. Where the Committee decides that a prima facie case has not been made for an inquiry, it will inform the complainant in writing of the decision.

The PCC, following consideration of the complaint and if considered appropriate, may provide for resolution of the complaint initially by mediation between the parties to the complaint, before a person/persons appointed by the relevant registration body. Where mediation is unsuccessful, the Committee must proceed to examine the complaint.

Provision is made whereby the Chairperson of the PCC will inform the members of the Committee, the complainant and the registered professional of the date, time and venue for the hearing. The notification to the registrant will outline the details of the complaint and advise of his/her right to appear before the Committee and be represented by a person of his/her choice.

The PCC, when holding an inquiry under this section, will have the powers, rights or privileges vested in the High Court or a judge of the High Court in regard to enforcing the attendance of witnesses, examining witnesses under oath or compelling the production of documents. Witnesses appearing at an inquiry under this section will have the same immunities and privileges as witnesses before the High Court.

On completion of an inquiry, the PCC must produce a report embodying its findings, to include the nature of the complaint and the evidence before it. The findings of the Committee will not be made public, without the consent of the registrant who has been the subject of the inquiry, unless he/she has been found guilty of professional misconduct by the Committee.

Where the PCC has found the registrant not guilty of professional misconduct, it must so notify the complainant and advise of the right of appeal to the Appeals Board. Persons who fail to attend a hearing, fail to produce necessary documents or refuse to take an oath or answer questions which the Committee may lawfully ask, will be guilty of an offence and will be liable, on summary conviction to a fine not exceeding €5,000 and €500 for each day of an ongoing offence and /or to imprisonment for a term not exceeding 12 months.

Section 55 provides that where the PCC finds there has been no professional misconduct by the registrant, it will notify the registrant of the decision and take no further action. Where the Committee finds that a registrant is guilty of professional misconduct it may do one or more of the following:

- advise, admonish or censure the registrant;
- impose a fine of a specified amount, which, if unpaid after a 2 month period has elapsed following notification of the fine, the Registrar may strike the registrant's name from the register;
- suspend the registrant from the register with provision to reapply for admission after a specified period;
- erase the registrant's name from the register permanently;
- allow for the registrant's name to remain in the register subject to the imposition of certain conditions for so remaining as it considers appropriate, to be complied with by the registrant.

The Chairperson of the PCC must inform the registrant by pre-paid registered post of the decision, the date thereof and the reasons for that decision and of the registrant's right to appeal to the Appeals Board. Without prejudice to the operation of the other provisions of the Act in relation to appeals against decisions to exercise such powers, none of the powers to suspend/remove the name of a registered professional from a register may be exercised by the PCC unless confirmed by the High Court. The decision of the PCC must be stayed where the registrant appeals to the Appeals Board within the specified period, until the appeal is disposed of, to include the time specified for appeal to the High Court.

Where no appeal is made against the decision of the PCC, or an appeal is made and has been disposed of, and where the decision of the Committee to strike the registrant from the register has been upheld, the Registrar may apply, *ex parte*, to the High Court for confirmation of the decision and the Court shall, on hearing the application, unless it sees good reason to the contrary, confirm the decision and either direct the registrar to remove the registrant's name from the register or direct that during a specified period (beginning not earlier than 7 days after the decision of the Court) registration of the professional's name shall not have effect.

The Registrar must notify the registrant by pre-paid registered post of either direction of the Court. The name of a registrant which has been erased or suspended under this section, may be restored to the register on the direction of the PCC, subject to any conditions specified, including payment of a fee which must not exceed the initial registration fee.

Section 56 provides that the proceedings of or communications by the PCC in the course of an inquiry, and any reports made in the exercise of its powers, duties or functions under this Part are absolutely privileged in any action for defamation.

PART 7

MISCELLANEOUS PROVISIONS

(Sections 57 to 68)

Section 57 provides that a registration body may arrange for assistance from persons for any board or Committee for the proper discharge of its functions. A registration body may also make rules to facilitate the execution of its functions and those of any board or committee, including the Appeals Board, as provided for under this Act. The registration body must publish the draft rules and circulate them to the board or committee affected by their requirements.

Section 58 provides that the registration body may prescribe the payment of fees for the following:

- (i) processing applications for registration;
- (ii) the annual retention of a name in the register maintained by the Body, *in consultation with* the Director of Consumer Affairs;
- (iii) restoring the name of any person in the register following removal pursuant to the provisions of the Act;
- (iv) removing the name of any person from the register on the application of that person;
- (v) entering additional qualifications of any person in the register, not being qualifications required for registration;
- (vi) issuing a certificate of registration;
- (vii) provision of any other service by the registration body (or a related board or committee).

Section 59 provides that a registrant may, on payment of a specified fee, apply to the registration body to have additional qualifications entered in the register. The registration body will decide what additional qualifications, other than those required for registration, may be entered in the register.

Section 60 provides that the Minister may make regulations for prescribing any matter referred to in the Act as prescribed or to be prescribed, or in relation to any matter referred to as the subject of regulations. Regulations may contain such incidental, supplemental and consequential provisions as the Minister considers necessary or expedient. It also includes the standard provision for the laying of regulations before both Houses of the Oireachtas.

Section 61 provides that the Registrar, in order to keep the register correct and updated, will be obliged to correct all errors in the register and to remove entries procured by fraud or misrepresentation; to amend addresses where necessary and to remove the names of professionals who are deceased. On taking such action, the Registrar must notify the persons concerned or the next of kin, if such person can be identified, of the action taken and the reason therefor.

Section 62 provides that expenses incurred in administrative functions under the Act by the registration body shall be defrayed by the body from funds at its disposal. It also provides for payment of remuneration and allowances for expenses of the chairpersons and

members of any board or committee established under the Act, to be determined by the registration body, which shall be paid from the funds at the disposal of the body.

Section 63 provides that summary proceedings for offences under Part 3, 4, 5 and 6 of the Act may be brought and prosecuted by the registration body. Notwithstanding the provisions of the Petty Sessions (Ireland) Act 1851, summary proceedings may be commenced within 12 months from the date of the offence or within 6 months from the date on which sufficient evidence to justify proceedings, comes to the knowledge of the person instituting the proceedings, whichever is later. However, no such proceedings can be commenced later than 5 years from the date of the offence committed. A certificate signed by the person shall be admitted as evidence in any legal proceedings as to the date or dates such evidence came to his or her knowledge, without proof of the signature of the person, unless the contrary is shown.

Section 64 provides that in any legal proceedings, a certificate signed by the relevant registrar containing only information stated to be taken from registration records will be sufficient evidence of the facts contained therein, unless proved to the contrary. Certificates of registration data stored in electronic format or photographic, digitized or other modern format will have evidential value.

Section 65 determines the term of office of members of boards or committees at 3 years, unless he or she sooner dies or resigns. A member shall not serve for more than 2 consecutive terms of office. It also provides for procedure for resignation of members, filling of casual vacancies and where the registration body may provide grounds for removal of a member from office and the procedure for so doing.

Section 66 provides for the procedures to be followed at meetings of any board or committee established under the Act.

Section 67 provides that a registration body shall carry out any additional functions assigned to it by Order made by the Minister relating to the implementation of an act adopted by an institution of the EU in regard to the relevant professions.

Section 68 provides that the registration body shall prepare an annual report on proceedings under the Act, to include account details as certified by an auditor. The report must be published and put on sale as soon as may be.

Staffing and Financial Implications

The staffing and financial implications are being assessed and will be addressed during the enactment of the Bill.

An Roinn Comshaoil Oidhreacht agus Rialtais Áitiúil
Mí na Nollaig 2005