



29th January 2014

Richard Bruton
Minister for Jobs, Enterprise & Innovation
23 Kildare Street
Dublin 2

By Post/Email: minister@djei.ie

Dear Minister Bruton

I am writing to you as RIAI President to bring to your attention our concerns about the timing of the introduction of the Building Control (Amendment) Regulations, S.I.9 of 2014 on 1st March, and about potential consequences for the building industry and for public projects.

As you seek to improve our position in the World Bank 'Best Places to do Business' rankings, you will note that Construction Permits is our area where our score is very low. As there may be impacts on this area following the regulation, I think that it is appropriate for me to contact you in this regard.

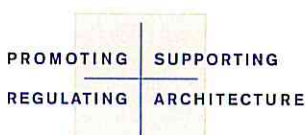
Background

The **Building Control (Amendment) Regulations, 2013, S.I. 80** of 2013, were made law in March 2013. Two separate Senior Counsel gave legal opinions indicating serious liability issues with potential consequences for architects and for their Insurers. Department officials started a process to review the wording in late 2013, in which the Housing Agency managed a Stakeholder Working Group, and a week ago the Minister published revised Regulations (S.I.9 of 2014), but with the same implementation date of 1st March 2014.

Basis for concern

The Regulations mark a significant change in the way building projects are managed: a new regime of Design Certifiers, Assigned Certifiers, inspection, documentation and records is involved. Some of the supports for proper implementation of the Regulations on 1st March are not yet in place or fully tested – including the electronic system for uploading submissions of notices, the final Code of Practice for Inspecting and Certifying Buildings and the Building Control Framework, while other elements such as the project insurance recommended by the Pyrite Panel are unlikely to be in place for some time. We fear that the confusion and problems arising in the absence of their readiness will lead to:

- delay in the roll out of badly needed projects,
- unforeseen costs and contractual claims from Contractors, and
- reputational damage to our building control system with consequent impact on Foreign Direct Investment.



Directors 2013: Michelle Fagan, David Power, Grainne Shaffrey, Anne Kiernan, Orla FitzGerald, Paul Keogh, Fionnuala Rogerson, Toal Ó Muiré, Robin Mandal, Eddie Conroy, Ali Grehan, Clare White, Peter Carroll, Anne Fletcher, Andrew Clancy, Michael Grace, Derek Meenan, Kevin Smyth, Laura Bowen, John Ruane, Darren Bergin, Robert Bourke, Fionan de Barra, Garrett O'Neill.

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Main issues

1. The new inspection and certification regimes will need to be provided for in all forms of **Building Contract**. The two principal forms of contract (GCCC and RIAI) have yet to be amended to reflect the Regulations published a week ago. Ad hoc clauses can be drafted as stop-gap measures but that is at odds with procurement policy built around standardised building contracts in which all parties and the industry are thoroughly trained. New or revised forms of building contracts have to be extensively checked to ensure risk is allocated where it belongs. This cannot be achieved before the 1st of March.
2. In order to procure valid and reliable tenders, the exact details of the contract that a successful tenderer will be asked to sign need to be included in the **Tender Documents**. Many private and public sector projects out to tender at present do not have the relevant contract clauses or the new requirements for Builders, Suppliers and Sub-contractors in relation to inspection, testing and certification – particularly at completion and handover of particular sub-contracts or of entire projects. Where tender documents are unavoidably incorrect or incomplete, unforeseen costs and delays may ensue, even where issues are resolved before a Contractor is appointed, and in some cases there is a risk of the tender award being challenged.
3. **Client procurement of the Design Certifier, Ancillary Certifier and Assigned Certifier**. These Certifier roles did not exist until now and, where Design Teams are already appointed on public projects, an issue of compliance with procurement rules will arise. Such procurement typically takes several months to complete, much longer than the five weeks currently available.
4. **Inspection Plan**. The Assigned Certifier is obliged to prepare an Inspection Plan before construction commences. This plan may have cost implications for the Contractor and arguably should to be a tender document (see 2 above). Once the Plan is done, negotiations with the preferred tenderer will inevitably take time; the alternative is to proceed with the contract and deal with contractual claims for delay and additional payment afterwards.
5. **Building Control Authorities** will have to manage a large amount of documentation at various stages of the new process. A National I.T. system is being put in place for the Building Control Authorities (BCAs) to handle this and much good work has been done, led by David O'Connor and the Local Government Management Agency, to progress this. Unfortunately the systems are not yet ready and have not been road-tested. Without streamlined administration, delays, confusion and frustration may be expected.

Foreseeable consequences

Hiatus: A significant hiatus in the Construction Industry is foreseeable in both private and public sectors. This is already happening with some project tenders being delayed until there is more clarity. Some tender processes already in train need to be revisited and tender processes about to start do not yet have the necessary contract forms to be referenced. Further delays will occur as the principal Certifier appointments are advertised or negotiated.

Confusion, Disputes and Litigation: In an environment where people are not prepared properly, an ordered and controlled process cannot be realised. Any confusion is likely to result in disputes, litigation and further unwelcome reputational damage to the construction permit process in Ireland, which is already well down in the World Bank's ratings. The RIAI has been told of GCCC projects which are already in some sort of dispute resolution process. The implementation of these Regulations will increase the areas of risk in such Contracts, with financial and delay implications for many important projects.

Solution

The solution is to defer the implementation date. Regulation represents an important stage in improving building standards. Such an important measure must not be compromised from the outset. It is my belief that all stakeholders in this matter would welcome a deferred implementation date.

Much could be achieved during the time allowed by deferral:

- a) An implementation task group can be quickly set up between commissioning bodies and various stakeholders involved to coordinate the preparation and development / completion of systems, with a defined delivery date.
- b) A realistic end date and a co-ordinated liaison could be set up among groups dealing with GCCC and RIAI Contracts so as to ensure that all are working towards that target and
- c) I.T. systems and procedures can be comprehensively road-tested and scenario-tested to anticipate problems, especially in the FDI and Public Sectors.

Conclusion

In the opinion of the RIAI, neither the public sector nor the private sector are ready for the Regulations implementation deadline of 1st March and the risk profile on many fronts would be high if we were to proceed, knowing this to be the case. Having waited twenty years for an overhaul of Irish building control, it would be inadvisable to start implementing it in haste without all the necessary components and supports being in place.

We consider that the stakeholders meetings should be reassembled and that the outstanding issues noted above should be integrated, so as to avoid delays, disputes and increased costs.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Mandal', written in a cursive style.

Robin Mandal
President