



## > PRACTICE NEWS BY JOE MILLER

### S.I. 365 of 2015

The work of the RIAI Steering Group continues with an assessment of the implications of S.I. 365 of 2015. The RIAI Steering Group comprises of: Joe Kennedy, Chair; Claire McManus; Fionnuala Rogerson; Michael Grace; Paul Kelly; and chair of the RIAI Practice Committee, John Mitchell.

For the purpose of this article I asked Joe Kennedy to set out their considerations of the implications of S.I. 365 and how the RIAI Steering Group can give guidance to RIAI Members whose clients choose to 'opt out' of S.I. 9 of 2014.

### Is the Opt Out for Domestic Projects Really Good News?

By Joe Kennedy, Chair of the RIAI Steering Group

On first look, it is tempting to see the 'opt out' from BC(A)R for one-off houses and domestic extensions (S.I.365) as good news and as a welcome respite from the rigours and liabilities brought in under S.I.9. For these projects, the Architect will no longer have to certify that everything is correct and the client won't have to pay for the additional inputs required. But is it that simple? Where a client decides to opt out and then runs into problems with conveying or borrowing, will the Architect (again) be in the firing line? How do we prevent the large number of defects from recurring in the absence of a control system? Do we really want the risks of light-touch regulation to return?

S.I.9. came about as a response to the totally ineffectual Building Control regime that has existed since the Act was introduced 25 years ago. There are many valid concerns about the nature of the system that came into force on the 1st March 2014 but very few would argue that some form of oversight and regulation of this industry wasn't badly needed. Removing a system deemed inappropriate by the Ministers but not replacing it with something meaningful is, frankly, questionable.

There is no reason to believe that Local Authorities are going to be adequately resourced anytime soon, without which effective inspections cannot be delivered. So are we back to the previous

world where anyone can call themselves a 'builder', where there is no requirement to engage an Architect to produce a proper set of construction drawings or to have anyone independently having oversight of construction activities? To go back to that situation is in the interests of neither the Architect nor the Consumer.

There needs to be an alternative system that is fit for purpose. We the RIAI Steering Group are finalising an alternative means of demonstrating compliance. We are adopting many of the proposals which we put forward in our submission to the DECLG earlier this year, for the review of S.I. 9 of 2014, and are in the process of discussing this alternative system with the Law Society and lending institutions with a view to the alternative system being the accepted evidence of compliance where building owners choose to 'opt out'.

We are keeping the concept of a basic Inspection Plan; it defines what we as Architects do in terms of inspection and, more importantly, what we don't do. We will not be 'certifying' as part of this process – we will be confirming that based on the implementation of the Inspection Plan, we find no evidence of material non-compliance. The builder will be expected to confirm that he has built compliantly. We will include a 'risk assessment' procedure and look at how deficiencies in design and construction can be caught before they are built. We are publishing our own Code of Practice to set the benchmark against which we can measure services and will continue to press for meaningful Local Authority inspections.

The changes made in S.I.365 by Minister Alan Kelly, TD and Minister Paudie Coffey, TD may have superficial attractions and have been largely motivated by concerns about costs attaching to Building Control. Some of the figures bandied about range from way to little too far too much. In reality, if all a client was paying for previously was some minimalist planning drawings and letting the builder do his own thing after that, then there will be an inevitable cost attached to doing things better and having proper professional input – the difference between 'value' and 'cost'.

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