



Appendix 1

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1.0 Supports for Homeowners in Donegal

1.1 Report of the Expert Panel on Concrete Blocks

In response to reports that external walls of dwellings in Counties Donegal and Mayo were cracking due to crumbling concrete blockwork, an expert panel was established in 2016 by the then Minister for Housing and Urban Renewal. Having investigated the matter, the panel concluded in the [Report of the Expert Panel on Concrete Blocks](#)¹ that the disintegration of the concrete blocks used in the construction of the affected dwellings in Donegal and Mayo was primarily due to excessive amounts of deleterious materials in the aggregate used to manufacture the concrete blocks. The deleterious material in Donegal was primarily muscovite mica and in Mayo it was primarily reactive pyrite. For many of the affected dwellings, the problems appear to have been exacerbated by their location in geographic areas of severe exposure and the ingress of moisture into the concrete blocks, which was possibly accelerated by the extreme weather conditions arising in the winters of 2009 and 2010.

On foot of the [Report of the Expert Panel on Concrete Blocks](#), the National Standards Authority of Ireland (NSAI) published an Irish Standard in November 2018, I.S. 465:2018², for the assessment, testing and categorisation of damaged buildings incorporating concrete blocks containing certain deleterious materials. This standard establishes a protocol, to be used by competent persons, for assessing and determining whether a building has been damaged by concrete blocks containing certain excessive amounts of deleterious materials. The standard

- describes methods for establishing the extent of the problem;
- describes the scope of testing required; and
- provides guidance on categorising buildings and associated remediation measures.

Engineers Ireland has established a register of Chartered Engineers who have the necessary direct professional experience, competence and specialist training in accordance with the requirements set out in I.S. 465:2018.

1.2 Defective Concrete Blocks Grant Scheme

In January 2020, Regulations were made to provide for a grant scheme to financially support affected homeowners in counties Donegal and Mayo, the *Defective Concrete Blocks Grant Scheme*. Local authorities were tasked with operating and administering the scheme. The

¹ <https://www.gov.ie/en/publication/0218f-report-of-the-expert-panel-on-concrete-blocks/>

² I.S. 465:2018 +A1:2020 Assessment, testing and categorisation of damaged buildings incorporating concrete blocks containing certain deleterious materials and Amendment 1:2020



scheme opened for applications at the end of June 2020. All relevant details are available on the local authorities' websites (e.g. <https://www.donegalcoco.ie/defectiveconcreteblocks/>).

In the case of contract disputes between private parties (in this case homeowners and builders/suppliers) the State would normally not interfere and has no liability or legal requirement to do so. As the State does not consider that it has a liability, the *Defective Concrete Blocks Grant Scheme* is not a compensation or redress scheme. It is a grant scheme, of last resort, put in place by Government in order to voluntarily assist homeowners who are in a very difficult position, with no other apparent options open to them to remediate actual damage to their principal private residences and financially assist people so they can remain in their homes. Any funding has to be used prudently, so as to benefit as many homeowners as possible.

1.3 Review of the Defective Concrete Blocks Scheme

In July 2021, in response to concerns raised by homeowners in counties Donegal and Mayo in regard to the *Defective Concrete Blocks Grant Scheme*, the Minister for Housing, Local Government and Heritage established a working group to review and address issues in relation to the operation of the Scheme. The report of the Working Group on Defective Concrete Blocks was published in October 2021.

On foot of this report, the Government announced the *enhanced Defective Concrete Blocks Grant Scheme* in November 2021, which includes a significant suite of improvements, including:

- to remove the financial barrier to scheme entry by simplifying and streamlining the application process;
- to increase the grants available from 90% to 100% of allowable costs;
- to increase the maximum grant level per dwelling from €247,500 (existing scheme) to €420,000;
- to revise the grant calculation methodology;
- to include alternative accommodation and storage costs;
- to provide for a second grant in certain circumstances;
- to introduce an independent appeals process;
- to extend the scheme to cover certain rental properties; and
- to strengthen the certificate of remediation available to homeowners.

It is estimated that the enhanced scheme will cost approximately €2.2Bn. In February 2022, the Minister for Housing, Local Government and Heritage signed amending Regulations which made provision for some of the above enhancements, along with a provision for essential immediate repair works where such works relate to the structural stability of an affected home. Primary legislation is required to give full effect to the enhanced scheme with the increased grant amounts, which is currently being prepared with the intention of bringing



it before the Oireachtas as soon as possible, with Spring 2022 being the indicative target timeline.

In recognition of the extreme toll this issue has had on people's mental health, enhanced mental health supports will also be made available to defective concrete block homeowners.



2.0 Regulatory Landscape – Construction Products

2.1 Construction Products Directive (CPD)

Turning now to the regulatory regime, The [Report of the Expert Panel on Concrete Blocks](#) notes that the affected dwellings seemed largely to be constructed between 2000 and 2007. At that time, the Construction Products Directive 89/106/EEC³(CPD) was in force. The aim of the CPD was to address the problem of technical barriers to international trade caused by varying national standards.

The CPD provided for the harmonisation of the methods of testing, the methods of declaration of product performance values and the method of conformity assessment for construction products. It established a system of harmonised technical specifications; for traditional construction products, this meant the development of harmonised European Standards (hENs) published by CEN/CENELEC. Following a transitional arrangement, known as a period of coexistence, set out in the harmonised standards, conflicting national standards were to be withdrawn. The transition from national standards to harmonised European Standards for construction products commenced circa 2002 and was implemented on a phased basis.

An Irish national conference took place in November 2002 on the transition from National to European Standards. A guidance document titled *Marking of Construction Products under EU Directive 89/106/EEC* was produced by the Building Regulations Advisory Body (BRAB). In addition, ongoing and regular liaison took place with industry and NSAI on the implementation of the CPD.

The CPD was legally implemented in Ireland by the [European Communities \(Construction Products\) Regulations 1992 \(SI No. 198 of 1992\)](#)⁴ as amended by the [European Communities \(Construction Products\) \(Amendment\) Regulations 1994 \(S.I. No. 210 of 1994\)](#)⁵. Persons placing construction products on the market had specific legal responsibilities under these legislative instruments. In summary, suppliers of construction products “... shall not place a product⁶, other than a minor product, on the market unless it has such characteristics that the works in which it is to be incorporated, assembled, applied or installed can, if properly designed and built, satisfy the essential requirements when, where and to the extent that such works are subject to regulations containing such requirements”. The [Building Regulations](#)⁷ are an example of regulations containing such requirements.

³ Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (known as the Construction Products Directive)

⁴ <https://www.irishstatutebook.ie/eli/1992/si/198/made/en/print>

⁵ <https://www.irishstatutebook.ie/eli/1994/si/210/made/en/print>

⁶ “product” is defined as “any construction product to which these Regulations apply which is produced for incorporation in a permanent manner in works”

⁷ <https://www.gov.ie/en/publication/1d2af-building-regulations/>



Building control authorities/local authorities were the principal enforcement agencies for these Regulations. Building control officers were appointed as authorised officers under these Regulations by their local building control authorities. The Regulations set out the specific powers of an authorised officer. Given the limited resources available, enforcement action relating to the Construction Products Directive was generally carried out on a reactive basis. Typically, market surveillance activity was triggered on foot of acting on information received from complaints, e.g. from the public, public bodies, contractors, designers, customs or other market surveillance authorities etc.

2.2 Construction Products Regulation (CPR)

The CPD was replaced by the Construction Products Regulation (EU) No 305/2011 (CPR), in 2011. The CPR is designed to simplify, clarify and improve the transparency and effectiveness of the framework and measures established under the CPD for placing construction products on the market.

In accordance with the CPR, since July 1st 2013, where a construction product covered by a harmonised standard is being placed on the EU market, the CPR requires the manufacturer to draw up a 'declaration of performance' and affix a 'CE' marking to the product. In order to do so, manufacturers must test and declare the performance of their construction products using a common technical language prescribed in the harmonised standard.

Ireland has given effect to the CPR in national law by means of the [European Union \(Construction Products\) Regulations 2013 \(S.I. No. 225 of 2013\)](#)⁸. Under these Regulations, Ireland maintains the enforcement structures that had been established under the CPD of having each of the building control authorities (local authorities) designated as the principal market surveillance authorities for construction products that fall within the scope of the CPR, within their administrative areas. However, in addition, the National Building Control & Market Surveillance Office (NBC&MSO), under Dublin City Council, has been appointed as competent authority for the carrying out of market surveillance functions for all construction products within the scope of the CPR in the State, [S.I. No. 682 of 2020](#)⁹. The service delivered by NBC&MSO is complementary to the existing role of the 31 building control authorities as market surveillance authorities but also provides for a co-ordinated approach. Building control authorities liaise with the NBC&MSO to support compliance with the CPR and to determine appropriate action on enforcement matters, as they arise.

NBC&MSO and building control authorities have powers to obtain access to premises to examine, test or inspect products, request documentation regarding the performance of a product, take samples of the product, request the Minister for Housing, Local Government and Heritage to prohibit or restrict the use of a product and prosecute offences.

⁸ <https://www.irishstatutebook.ie/eli/2013/si/225/made/en/print>

⁹ <https://www.irishstatutebook.ie/eli/2020/si/682/made/en/print>



The Market Surveillance Regulation (Regulation (EU) 2019/1020) which came into effect in July 2021 strengthens the existing provisions in the CPR (and other Union harmonisation legislation), relating to the compliance of products, the framework for cooperation with organisations representing economic operators or end users, the market surveillance of products and controls on products entering the EU market. This Regulation establishes an EU wide framework for market surveillance.

Ireland's National market surveillance programme 2021 is published on the website of the European Commission. Section 2.5 provides specific details with the market surveillance of construction products and outlines a market surveillance campaign led by NBC&MSO, to perform risk assessments of selected quarrying and pit operations, follow-up inspections, sampling and testing as appropriate to ensure compliance with the CPR. Geological Survey Ireland are providing technical assistance and expertise to this campaign. See Section 2.5 below for further specific market surveillance activity in Donegal.

The CPR requires each Member State to designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of the bodies to be authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance (AVCP) for the purposes of the CPR, and for the monitoring of notified bodies, including their compliance with the provisions of Article 43. In the case of Ireland, the Department of Housing, Local Government and Heritage, is the designated notifying authority under the CPR. Currently there are 10 Notified Bodies and 3 Technical Assessment Bodies designated in Ireland.

The CPR also requires all Member States within the European Union to designate Product Contact Point for Construction. Ireland Product Contact Point for Construction is available at the following link; <https://www.gov.ie/en/publication/0fd41-product-contact-point-for-construction/>

[An Information Note on the Construction Products Regulation¹⁰](#) was produced by the Building Regulations Advisory Body (BRAB) in conjunction with NSAI, National Roads Authority, Office of Public Works, Building Materials Federation and the Department of Housing, Local Government and Heritage, to support understanding and adoption throughout industry. In preparation for BREXIT, an [information campaign¹¹](#) was also launched to promote preparation and ensure continued compliance with the CPR. These sources of information are in addition to ongoing and regular liaison with industry and NSAI on the implementation of the CPR in Ireland.

¹⁰ <https://www.gov.ie/en/publication/5def4-construction-products-regulation-information-note-june-2013/>

¹¹ <https://www.gov.ie/en/publication/9a771-brexit-construction-products-regulation/>



2.3 Review of Construction Products Regulation (CPR)

The European Commission has been examining the implementation of the CPR for some time now. Following the publication of a report on the evaluation of CPR in October 2019, the *Review of the CPR* was confirmed by the [European green deal](#)¹² in December 2019 and the [circular economy action plan](#)¹³ in March 2020.

Ireland has collaboratively engaged with the European Commission and Member States in the review of the CPR and is very supportive of main objectives of the CPR review;

- to repair and enhance the core of the CPR legal framework;
- to improve the functioning of the internal market;
- to address Member States' regulatory needs;
- as well as enhancing the sustainability of construction products.

Simultaneously, the 'CPR Acquis' review process was initiated by the European Commission in Q4 2021 to correct, complete and renew technical specifications adopted under the CPR. This follows identification that the original process for delivering harmonised technical specifications under the CPD, and continued under the CPR, lacks coherence. The evaluation of the CPR also states that the current process of developing technical specifications is underperforming. Ireland is actively participating in the 'CPR Acquis' process and is sharing its experience regarding technical issues associated with the harmonised technical specifications and Regulatory needs, with the view to ensuring that future European Commission standardisation requests are fit for purpose.

2.4 Harmonised European Standards – Concrete Blocks

In relation to concrete blocks, the relevant suite of harmonised European Standards facilitating the specification of masonry units is the EN 771 series. In particular '*I.S. EN 771-3:2011+A1:2015*' deals with aggregate concrete masonry units.

Ireland has set requirements for masonry construction works and national rules relating to the essential characteristics of masonry units in accordance with the rules of the CPR and the EN 771 series. The CPR prevents Member States from introducing national laws which inhibit the free movement of construction products and from specifying other methods than those mentioned in the harmonized standards to determine the performances for essential characteristics.

Within these limitations, the National Standards Authority of Ireland (NSAI), has published additional guidance in the form of '*S.R. 325:2013+A2:2018/AC:2019 Recommendations for the design of masonry structures in Ireland to Eurocode 6*' which sets out appropriate

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN>



minimum performance levels for specific intended uses of, *inter alia*, the EN 771 series in Ireland.

The key provisions of S.R. 325 with respect to I.S. EN 771-3 are as follows:

- Category 1 aggregate concrete blocks are required for use in buildings. This requires independent third party oversight of factory production control by a Notified Body.
- Aggregate concrete blocks, intended to be used in elements subject to structural requirements, are required to meet the prescribed performance requirements set out in SR 325, including; density, compressive strength and moisture movement.
- The specification for aggregate concrete blocks and mortar classes required to achieve appropriate durability for finished work in Ireland are set out in SR 325.
- Aggregate concrete blocks are required to be made with aggregate conforming to 'I.S. EN 12620+A1:2008 - Aggregates for concrete' and 'S.R. 16:2016 Guidance on the use of I.S. EN 12620:2002+A1:2008 - Aggregates for concrete'.

In respect of aggregates, a key component of concrete blocks, NSAI has published 'S.R. 16:2016 Guidance on the use of I.S. EN 12620:2002+A1:2008 - Aggregates for concrete' which outlines the precautions to be taken in the quarry to reduce the risk of harmful impurities in aggregate production, including the requirement for independent third party oversight of factory production control by a Notified Body.

The manufacturer is responsible for compliance with the CPR and in particular for the Declaration of Performance/CE marking of the construction product he/she is placing on the market, having full knowledge of the raw material (as is legally required by the CPR via the relevant harmonised European Standards) and having regard to the end product's suitability for use in construction works in accordance with the relevant Standard Recommendations published by the NSAI.

Whilst the CPR focuses on the conditions which apply when placing a product on the market, national guidance advises clients, specifiers, designers and builders etc.,:

- when drawing up specifications, to refer to the harmonised technical specifications and specifically to the requirements of individual characteristics when necessary,
- when choosing the products most suitable for their intended use in construction works, to review the manufacturer's Declaration of Performance,
- check the Standard Recommendations published by NSAI, which give guidance on appropriate minimum performance levels for specific intended uses of the product in Ireland, and
- ensure compliance with the Building Regulations, in this regard all works should be carried out in a workmanlike manner, using proper materials which are fit for the use for which they are intended and for the conditions in which they are to be used.



2.5 Irish Technical Research and Review of Standards for Concrete Blocks

In light of the damage to dwellings, attributable to deleterious materials in defective concrete blocks and the large volume of technical data¹⁴ now available from applications to the *Defective Concrete Block Grant Scheme*, a review of the performance specification of aggregate concrete masonry units (including their constituent aggregate) in S.R. 325¹⁵ and S.R. 16¹⁶ has been called for by the Irish Government. This will include:

- Consideration of the provision of guidance on procurement of concrete blocks, more detailed and specific testing with respect to freeze thaw durability, certification and enhanced traceability;
- Consideration of a minimum cement content requirement in the standard for concrete blocks; and
- Consideration of specified maximum % content for deleterious materials e.g. pyrite, mica, pyrrhotite etc.

Ireland also has plans to conduct further research in the area of deleterious material in concrete blocks, focusing on the impact of Pyrrhotite on the long-term durability of concrete blocks, documents are being prepared for this at present.

The National Standards Authority of Ireland (NSAI), Geological Survey Ireland and the Department of Housing, Local Government and Heritage are working collaboratively on these projects.

In addition, last year, the National Standards Authority of Ireland (NSAI), Notified Body No.0050, advised the Department of Housing, Local Government and Heritage that two certificates of conformity of factory production control relating to the manufacture of aggregate concrete blocks (EN 771-3) by manufacturers based in County Donegal had been withdrawn.

The Minister for Housing, Local Government and Heritage immediately called for market surveillance authorities to investigate the matter and carry out an audit of all quarries in County Donegal. The purpose of the audit is to evaluate relevant economic operators' compliance with the Construction Products Regulation¹⁷ (CPR) when placing relevant construction products (aggregate concrete blocks and/or aggregates of use in concrete products) on the market.

¹⁴ There are over 800 technical reports submitted to local authorities to date under the DCB grant scheme

¹⁵ S.R. 325:2013+A2:2018/AC:2019 Recommendations for the design of masonry structures in Ireland to Eurocode 6

¹⁶ S.R. 16:2016 Guidance on the use of I.S. EN 12620:2002+A1:2008 – Aggregates for concrete

¹⁷ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0005:0043:EN:PDF>



The audit is led by the National Building Control and Market Surveillance Office in conjunction with Donegal County Council and Geological Survey Ireland. In due course, learnings from this audit may also inform NSAI's review of the relevant standards and offer an insight to the application of standards. The audit is well advanced and testing of products is underway. A report will be prepared for the Minister in due course.

Ireland is actively engaging on the review of European standards covering *aggregates* and will continue to inform the European Commission/CEN etc., of the findings of the various initiatives above, which may in turn inform the development of the harmonised European Standards for *concrete blocks* and *aggregates*.



3.0 Regulatory Landscape - Building Control

3.1 Building Control System

In Ireland, the design and construction of buildings is regulated under the Building Control Acts 1990 to 2020, in order to ensure the safety of people within the built environment. The Acts provide for the making of Building Regulations, Building Control Regulations and also set out the legislative basis for the system of enforcement.

3.2 Building Regulations

The Building Control Act 1990 provides, *inter alia*, for the making of [Building Regulations](#)¹⁸ in respect of the construction of buildings. The aim of the Building Regulations is to provide for the safety and welfare of people in and about buildings. The Building Regulations apply to the design and construction of a new building (including a dwelling) and certain works to an existing building.

The minimum performance requirements that a building must achieve are set out in the Second Schedule to the Building Regulations. These requirements are set out in 12 parts (classified as Parts A to M). Technical Guidance Documents (TGDs) are published to accompany each part indicating how the requirements of that part can be achieved in practice. Adherence to the approach outlined in a Technical Guidance Document is regarded, *prima facie*, as evidence of compliance with the requirements of the relevant part of the Building Regulations.

The primary responsibility for compliance with the Building Regulations rests with the designers, builders and owners of buildings. Interpretation of the legislation is, ultimately, a matter for the Courts and implementation of the Building Control system is a matter for the 31 local building control authorities, who are independent in the exercise of their statutory powers.

There is an overarching requirement under Part D (Material and Workmanship) of the Building Regulations which requires that all works should be carried out:

- Using proper materials which are fit for the use for which they are intended and for the conditions in which they are to be used.
- With a proper standard of workmanship and the appropriate use of any material to achieve compliance with the requirements of the Regulations.
- By competent persons with sufficient training, experience and knowledge appropriate to the nature of the work he or she is required to perform and having particular regard to the size and complexity of such works so as to ensure a proper standard of workmanship.

More specifically, in relation to masonry construction;

¹⁸ <https://www.gov.ie/en/publication/1d2af-building-regulations/>



- Part A of the Second Schedule to the Building Regulations sets out the legal requirements in relation to structure. The accompanying Technical Guidance Document A provides guidance on how compliance can be achieved and, in the context of block work in houses; reference is given to the appropriate masonry design and construction standards.

The materials to be used, e.g. concrete blocks, wall ties etc. are required to meet the specified minimum designations, strengths and other qualities, as set out in Technical Guidance Document A and the referenced standards.

- Part C of the Second Schedule to the Building Regulations sets out the legal requirements in relation to site preparation and resistance to moisture. The accompanying Technical Guidance Document C provides guidance on how compliance can be achieved and in the context of masonry construction; reference is again made to the appropriate masonry design and construction standards.

3.3 Building Control Regulations

The Building Control Regulations set out the system of administrative controls to support compliance with the Building Regulations by requiring, *inter alia*, the submission of Commencement Notices, Fire Safety Certificates, Disability Access Certificates and Certificates of Compliance on Completion.

Enforcement

Responsibility for enforcement is delegated under the Building Control Acts to local building control authorities who are independent in the exercise of their statutory powers. Building control authorities have strong powers of inspection and enforcement under the Acts.

Authorised officers of each local building control authority have delegated powers to:

- scrutinise proposals and inspect works in progress;
- serve enforcement notices on owners and builders for non-compliance;
- institute proceedings for breaches of any requirements outlined in the Acts, or any
- regulations made thereunder; and
- seek High Court orders to mitigate danger to the public where serious non-compliance poses risks to public safety.

Failure by an owner or a builder, at the request of a building control authority, to demonstrate compliance with the Building Regulations or the Building Control Regulations, or to rectify any such non-compliance, may be an offence under the Building Control Acts. If successfully prosecuted in court, such offences may lead to a fine and/or a term of imprisonment. The use of these powers is, however, subject to a statute of limitations of five years from the date of completion of the buildings concerned.



3.4 Building Control Reform Agenda

In response to the building failures that emerged in some buildings built during the last construction boom (2000-2008)¹⁹, a three pronged Building Control Reform Agenda has been developed which focuses on ensuring strong and effective regulation in the building control system and the construction industry and on improving compliance with Building Regulations.

The three elements include:

- i. Introduction of Building Control (Amendment) Regulations 2014 (S.I. No. 9 of 2014). These Regulations empower competence and professionalism in construction projects and establish a chain of responsibility that begins with the owner. With certain limited exceptions, the owner must assign competent persons to design, build, inspect and certify the building works who, in turn, must account for their role through the lodgement of compliance documentation, inspection plans and statutory certificates. The roles and responsibilities of owners, designers, builders, assigned certifiers, etc. during building works are set out in the [Code of Practice for Inspecting and Certifying Buildings and Works](#)²⁰. The Code of Practice also provides guidance on use of proper materials and the need to check supporting documentation under the Construction Products Regulation (e.g Declaration of Performance) and additional national guidance (e.g. Standard Recommendations produced by NSAI).
- ii. Creation of the National Building Control Management Project and the establishment of the [National Building Control & Market Surveillance Office](#)²¹ to provide oversight, support and direction for the development, standardisation and implementation of Building Control as an effective shared service in the 31 Building Control Authorities.
- iii. The publication, in January 2022, of the [Regulation](#) of Providers of Building Works Bill 2021²². The legislation will put the Construction Industry Register Ireland on a statutory footing and aims to benefit consumers and the general

¹⁹ A range of supports have been put in place to support homeowners with certain legacy defect issues for example the Pyrite Remediation Scheme; Defective concrete blocks grant scheme; the publication of a Framework for enhancing Fire Safety in dwellings where concerns arise. In addition, a Working Group to Examine Defects in Housing was established in 2021 to examine fire safety, structural safety and water ingress defects in purpose built apartment buildings, including duplexes, constructed between 1991 and 2013.

²⁰ <https://www.housing.old.gov.ie/housing/building-standards/building-regulations/code-practice-inspecting-and-certifying-buildings>

²¹ <https://nbco.localgov.ie/>

²² <https://www.oireachtas.ie/en/bills/bill/2022/2/>



public by giving those who engage a registered builder the assurance that they are dealing with a competent and compliant operator. The legislation will require providers of building services to register with the appointed statutory body. This will apply to entities or individuals who hold themselves out for consideration as a provider of building works for both residential and non-residential buildings that are subject to the Building Regulations.

To further support the building control system, preparatory work is progressing on establishing an independent Building Standards Regulator to oversee building control nationwide and to act as custodian of the Building Control Management System.

3.5 Latent defects insurance

In recognition of the positive impact the Building Control Reform Agenda has on reducing risk and the incidences of defective buildings, insurance underwriters have introduced new latent defect type products in Ireland, despite a general retrenchment and conservatism in the wider insurance industry.

These new products are first party insurance policies which cover damage and non-damage (breaches of building regulations) claims, to varying degrees. This means that the purchaser does not have to make a claim through the builder but can submit a claim directly to the insurer. This would be of particular benefit to a homeowner in circumstances where the builder or developer has ceased trading.

It is worth noting, that while latent defects insurance is not a mandatory requirement, lending institutions and consumers are likely to, and often, demand it.

3.6 Other Consumer Protection Measures

Other significant pieces of redress and producers' liability legislation which may apply to construction products are the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980; and the Liability for Defective Products Act 1991.

It is, however, recognised that taking legal action in relation to building or construction product defects can be prohibitively expensive, time-consuming, complex and uncertain for individuals.

Sale of Goods

Through the Sale of Goods Act 1893, and Sale of Goods and Supply of Services Act 1980, consumers and businesses have remedies under this legislation where the materials purchased are not:

- Of merchantable quality – that means that they must be of a reasonable standard taking into account their price and what they are normally used for.



- Fit for the purpose they were bought for – they must do what they are reasonably expected to do.
- As described – in other words, you must not make false or exaggerated claims about them. The description can be something written on the package, for example, or something said by a sales assistant to the customer, or claimed in an advertisement.

The provisions are enforced, in the first instance, by the purchaser seeking redress from the seller (return or ask for a repair or to replace the faulty goods). If this is not forthcoming, the purchaser can make a claim against the seller in Court. The remedy available will depend on whether the fault is a major or minor one. The consumer can also complain to the Competition and Consumer Protection Commission (CCPC) where they are of the view that a seller is not complying with consumer law, but the CCPC does not take action on individual cases.

The proposed Consumer Rights Bill (CRB) will consolidate and update existing consumer law including contract law on the sale of goods and supply of services (including construction products). The new Bill seeks to move away from the archaic language and complexities of the 1893 and 1980 Acts and expand on the rights of consumers. This will make it clearer to consumers and businesses selling to consumers, what their rights and responsibilities are in respect of faulty goods and services. The proposed Sale of Goods and Supply of Services Scheme will reform the law in respect of contracts between commercial entities and update the remedies available to businesses for breach of contract.

The Defective Products Liability Act

The Liability for Defective Products Act 1991 transposed Directive No. 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. The Directive aims to ensure that producers take responsibility for defective products vis-à-vis consumers.

The Directive introduced the concept of strict liability, where producers are responsible for defective products, regardless of whether the defect is their fault. If a product is defective and causes personal injury or material damage above €500 to an item of property mainly for private use or consumption, producers are liable regardless of whether or not they are at fault. A product is considered defective if it does not provide the safety a person is entitled to expect. The Directive applies to all movable product, even if integrated into another movable product, and specifically includes electricity.

There are no market surveillance provisions for the Liability of Defective Products, and consequently, there is no market surveillance authority. Consumers affected under this legislation have recourse to the Courts.

Ireland awaits the receipt of a proposal following the evaluation undertaken by the European Commission with a view to updating it in light of technological advancement since 1985.