

# **Strengthening the Building Control System**

## **A Document to inform public consultation on Draft Building Control (Amendment) Regulations 2012**

**Department of the Environment, Community and Local Government**

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## **1. Background**

In July 2011, the Minister for the Environment, Community and Local Government, Mr. Phil Hogan, T.D., announced a number of measures to be advanced by the Department and by local authorities with a view to improving compliance with, and oversight of, the requirements of the Building Regulations. In broad terms, the measures involve:-

- (a) the introduction of mandatory certificates of compliance confirming that the statutory requirements of the Building Regulations have been met;
- (b) the lodgement of drawings at both commencement and completion of construction, demonstrating how the building has been designed and built to comply with all parts of the Building Regulations;
- (c) more efficient pooling of building control staff and resources across the local authority sector to ensure more effective and meaningful oversight of building activity;
- (d) standardised approaches and common protocols to ensure nationwide consistency in the administration of building control functions;
- (e) better support and further development of the building control function nationwide.

The above reforms will be introduced in 2012, leading to an enhanced regulatory regime and better quality buildings. Mandatory certificates and lodgement of drawings [items (a) and (b) above] will be achieved through an amendment to the Building Control Regulations. The remaining measures are largely administrative and will be pursued by the Department in conjunction with the City and County Managers Association.

## **2 Current Arrangements for Building Control**

### **2.1 Statutory Framework**

The Building Control Act 1990 provided for the establishment of building control authorities and the making of Building Regulations and Building Control Regulations in respect of the construction of buildings. Although the building regulations were introduced and came into operation in the years immediately following the Act, enforcement arrangements developed more gradually across the local government sector leading to the nationwide system of local building control authorities that has been in place for the past 10 years or so.

A clear statutory framework for construction activity, underpinned by the Building Control Act 1990, is therefore in place and is based on:

- clear legal standards as set out in the Building Regulations;
- detailed Technical Guidance Documents to outline how these standards can be achieved in practice;
- the burden and responsibility for compliance resting first and foremost with developers/builders, designers and building owners;
- a statutory responsibility for professionals to design in accordance with the building regulations; and
- the responsibility for enforcing compliance with the building regulations resting with the 37 local building control authorities.

### **2.2 The role of the Minister**

The Minister's responsibility is to ensure that appropriate statutory requirements, technical standards and administrative provisions are in place to give practical effect to the Act. In particular this involves the making of Building Regulations and Building Control Regulations.

Building Regulations set out the legally enforceable minimum requirements that a building must achieve. The requirements are set out in 12 parts (classified as Parts A to M) each of which addresses a key aspect of ensuring the safety and wellbeing of persons in and around the building. A Technical Guidance Document (TGD) is published to accompany each part indicating how the requirements of that part can be achieved in practice. Adherence to the approach outlined in a TGD is regarded, prima facie, as evidence of compliance with the requirements of the relevant part of the Building Regulations.

The Building Control Regulations deal with the administrative and procedural arrangements in place for the purpose of securing the implementation of, and compliance with, the requirements of the Building Regulations..

Contrary to popular belief the Minister has no role in relation to enforcement activity which the Act of 1990 delegates to local building control authorities who are independent in the exercise of their statutory powers.

### **2.3 The role of the owner/developer**

Under the Act of 1990 responsibility for compliance with the requirements of the Building Regulations is placed first and foremost on the owner and the builder/developer of a building.

The onus is on the builder /developer and owner to demonstrate compliance with the Building Regulations when required to do so by the relevant local building control authority. Failure to do so is an offence under the Act which may if successfully prosecuted in court lead to a fine and/or a term of imprisonment

Remediation of defects is a matter between the parties concerned i.e. the owner and the builder/developer and their insurers. This applies even where the owner is a local authority. If satisfactory resolution cannot be achieved through dialogue and negotiation the option of seeking civil legal remedy may be considered. In such situations, the statutory requirements provide a yardstick by which the owners/builders,

their technical consultants and the courts can determine whether a building is fit for purpose or not.

#### **2.4 The role of Professionals**

The requirements of the Building Regulations apply to the design, as well as the construction, of a building and there is a responsibility on designers to ensure that their designs are in compliance with the minimum legal requirements.

More generally, construction professionals play a key role in the planning, design, and construction of our built environment. Notwithstanding the responsibility of the Minister and the Department to guide and regulate development; the quality of our built environment depends to a large extent on the quality of the contribution of construction professionals.

Construction professionals play a key role in designing, developing, and certifying buildings. Where these buildings prove to be less than fit for purpose, construction professionals must be held to account for the consequences of their actions.

#### **2.5 The role of Local Authorities / Building Control Authorities**

Under the Act of 1990 local authorities have strong powers to:

- scrutinise proposals and inspect works in progress;
- serve enforcement notices for non-compliance;
- institute proceedings for breaches of regulatory requirements;
- seek High Court injunctions if non-compliance poses considerable and serious danger to the public.

The Department has set a target inspection rate of 12-15% of all buildings covered by valid commencement notices. Statistical returns for 2010 show that all but four Building Control Authorities met or exceeded this target, and a general average inspection rate of 24% of all buildings was recorded.

While local authorities do use the courts to effect compliance where reasonable and appropriate to do so, desired results can also be achieved, and often are, through discussion and persuasion with the threat of legal action.

In addition, statutory processes such as those under the Building Control Acts 1990 to 2007 and the relevant Building Control Regulations in relation to applications for Fire Safety Certificates and Disability Access Certificates also enable local authorities to positively influence the quality of a building.

## **2.6 Proposed Reforms**

While the above sets out a brief overview of the existing arrangements in relation to building control, it is clear that, from a regulatory perspective, there is much that can be done to improve the system.

Following extensive consideration of a number of reports/recommendations for change put forward by the Building Regulations Advisory Body and various industry stakeholders and discussed in detail at various stakeholder consultations events, the Minister in July 2011 announced his intention to proceed with the following measures:-

- (i) the commencement of section 6(2)(a)(i) of the Building Control Act 1990 requiring the submission to building control authorities of certificates of compliance with the building regulations in respect of particular buildings or works;
- (ii) the preparation of an amendment to the Building Control Regulations that will
  - a. Set out the form of the proposed certificates of compliance and the administrative procedures that will govern their use;
  - b. Require the lodgement of drawings and documentation prior to the commencement of works and, again, on completion of works, demonstrating compliance with the requirements of the Building Regulations;

- (iii) engagement with the City and County Managers Association (CCMA) to make arrangements for:-
  - a. the move to a regionalised/shared services model for the administration of building control functions
  - b. the agreement of standardised approaches and common protocols to ensure nationwide consistency in the administration of building control functions and the meaningful oversight of building activity
  - c. agreement on common measures for the support and further development of the building control function nationwide.

The above measures represent a credible set of proposals that will lead to an enhanced system of building control that can be achieved in the short term and that will serve the interests of the consumer, the Government, the industry and the built environment in a better manner into the future.

This document is focussed primarily on the draft Building Control (Amendment) Regulations which will give practical effect to the proposals relating to mandatory certification and the submission of drawings. However, these measures are part of a broader strategy based on the full set of measures outlined above. Those measures relevant to more meaningful oversight of building activity by building control authorities and improved functioning of building control authorities are being advanced separately by the Department in conjunction with the CCMA.



### **3. Overview of proposed Building Control (Amendment) Regulations:**

#### **3.1 Aim and purpose of draft Regulations**

The draft Building Control (Amendment) Regulations aim to provide for

- (a) the introduction of certificates of compliance (as referred to under Section 6 of the Building Control Act 1990) to be signed prior to, and on completion of building works;
- (b) the lodgement, at the commencement and on completion of works, of documentation demonstrating how compliance with all relevant requirements of the Second Schedule of the Building Regulations has been achieved; and
- (c) ancillary amendments to existing regulations and prescribed forms necessitated by the introduction of the provisions at (a) and (b) above.

#### **3.2 Information notes individual articles of proposed Building Control (Amendment) Regulations**

**Article 1:** The new regulations will be known as the Building Control (Amendment) Regulations 2012. The Building Control Regulations 1997 and all amendments thereto including the amendments currently proposed will be referred to collectively as the Building Control Regulations 1997 to 2012.

**Article 2:** It is intended that the new regulations will come into effect at the latter end of 2012 on a date to be decided by the Minister when the regulations are signed into law in July 2012. A three month lead in time, for instance would see the proposed regulations come into effect in October 2012. Any views from individual stakeholders in relation to the appropriate implementation date would be a welcome addition to any submissions received.

**Article 3:** Standard interpretations of terms used in the draft regulations are included here for the avoidance of doubt. All interpretations are consistent with existing interpretations used in the principal regulations. A definition of the term “certificates of compliance” is provided in order to clearly identify such certificates as being those comprehended under section 6(2) of the Building Control Act 1990.

**Article 4:** The title of Part II of the principal regulations is changed to make reference to certificates of compliance before construction.

**Article 5:** This article substitutes new text for article 9 of the principal regulations which deal with the format of a Commencement Notice. There will be a new requirement at commencement stage to submit the following:

- (i) plans, calculations, specifications and particulars as necessary to demonstrate how compliance with the building regulations will be achieved in relation to the proposed works or building,
- (ii) a *Certificate of Compliance (Design)* signed by the person responsible for the design of the proposed works or building and certifying that the designs are neither defective nor contravene any requirements of the Second Schedule of the Building Regulations,
- (iii) a notice signed by the owner of the building assigning a competent person to inspect and certify the works
- (iv) A *Certificate of Compliance (undertaking by person assigned to inspect and certify works)* signed by the person accepting responsibility and legal liability for inspecting and certifying the works or building, during and after construction.

The above additional information is required for new dwellings and for buildings/works for which a Fire Safety Certificate is required in accordance with Part III of the Building Control Regulations. In other cases the Commencement Notice form and the appropriate fee will suffice.

Henceforth, a commencement notice which is not accompanied by the above items where required may be declared invalid by a building control authority.

In relation to the assignment of the person to inspect and certify the works, the amended regulations will require, in the event of a change in the person so assigned after works have commenced, the building owner to submit to the building control authority a new notice of assignment [as referred to at (iii) above] and a new Certificate of Compliance [as at (iv) above] signed by the newly assigned person.

*A Code of Practice for Inspection and Certification of Building Works* is currently being prepared and will be published by the Minister in advance of the implementation of the proposed regulations. The Code of Practice will address the role and responsibilities of the person assigned to inspect and certify building works, acceptable inspection arrangements, documentation to be retained by the assigned person (in addition to the certificates and particulars submitted to the local authority – this might include for example copies of certification received from other persons in respect of work carried out by them) and the compilation of as built records demonstrating compliance with the Building Regulations.

**Article 6:** A new Article 10A is included in the principal regulations which states that failure to comply with any of the requirements of Part II (Commencement Notices and Certificates of Compliance before construction) shall be an offence to which section 17(2) of the Building Control Act 1990 applies. Section 17(2) of the Act subjects a person found guilty of certain offences in contravention of the Building Control Regulations to liability:

- (a) on summary conviction, to a fine not exceeding £800 and/or a term of imprisonment not exceeding six months, and to a further fine not exceeding £150 per day in respect of each day on which the offence is continued after a conviction; or
- (b) on conviction on indictment, to a fine not exceeding £10,000 and/or a term of imprisonment not exceeding two years.

**Article 7:** The title of Part IIIA of the principal regulations is expanded to include certificates of compliance.

**Article 8:** This article substitutes new text for Article 20A(2) of the principal regulations which sets out the form of a 7 day notice application. As with a commencement notice (see article 5 above) there will be a new requirement when making a 7 day notice application prior to commencing works to submit

- (i) plans, calculations, specifications and particulars as necessary to demonstrate how compliance with the building regulations will be achieved in relation to the proposed works or building,
- (ii) a *Certificate of Compliance (Design)* signed by the person responsible for the design of the proposed works or building and certifying that the designs are neither defective nor contravene any requirements of the Second Schedule of the Building Regulations.
- (iii) a notice signed by the owner of the building assigning a competent person to inspect and certify the works
- (iv) A *Certificate of Compliance (undertaking by person assigned to inspect and certify works)* signed by the person accepting responsibility and legal liability for inspecting and certifying the works or building, during and after construction.

The revised text requires that the above three additional items must accompany a 7 day notice application. Henceforth, a 7 Day Notice which does not include the above items may be declared invalid by a building control authority.

In relation to the assignment of the person to inspect and certify the works, the amended regulations will require, in the event of a change in the person so assigned after works have commenced, the building owner to submit to the building control authority a new notice of assignment [as referred to at (iii) above] and a new Certificate of Compliance [as at (iv) above] signed by the newly assigned person.

**Article 9:** A new Part IIIC is added to the principal regulations dealing with Certificates of Compliance on Completion.

Article 20F(1) requires that a *Certificate of Compliance on Completion* must be submitted to a local building control authority and details of same must be included on the register maintained under Part V of the principal regulations before a relevant building or works can be opened, occupied or used.

It is intended that the Minister will publish a statutory code of practice for the inspection and certification of building works. Persons assigned to inspect and certify works on behalf of a building owner must act in accordance with the underlying principles and provisions to be set out in this code of practice.

Article 20F(3) requires that a *Certificate of Compliance on Completion* must be submitted on the form prescribed for that purpose (in the Fifth Schedule) and must be accompanied by :

- (i) such plans, calculations, specifications and particulars as are necessary to demonstrate how the building or works as completed differs from the plans, etc. submitted at commencement; and
- (ii) such plans, calculations, specifications and particulars as are necessary to demonstrate how the building as completed has achieved compliance with the Building Regulations.

Article 20F(4) deals with certain administrative/procedural matters relating to a building control authority's handling of Certificates of Compliance on Completion. Importantly, the authority had three weeks to consider whether the certificate received complies with the requirements of Article 20F(3). If a building control authority considers the certificate to comply with the requirements of Article 20F(3) it will enter particulars of the certificate on the register maintained under Part V of the principal regulations. Within three weeks after receiving a Certificate of Compliance on Completion, the building control authority must either:-

- (i) enter relevant particulars of the certificate on the register and notify the person who submitted the certificate that this has been done
- (ii) write to the person submitting the certificate requesting a revised certificate or such additional information as may be necessary to bring the certificate into compliance with the requirements of article 20F(3)

- (iii) inform the person submitting the certificate that the certificate is not in compliance with the requirements of article 20F(3) and cannot be accepted by the authority and give reasons for same.

**Article 10:** Each local building control authority will now be required to enter on the register of building control activity details of certificates of compliance submitted to the authority including particulars of each certificate of compliance, details of the person who certified the design, and details of the person assigned to inspect and certify the building/works during construction and on completion.

In the interests of clarity and for the avoidance of doubts the amended regulations explicitly state that:-

- records relating to particulars included on the register may be accessed in accordance with the Freedom of Information Acts; and
- the register may be maintained electronically subject to the provisions of the Data Protection Acts.

**Article 11:** This article amends the second schedule of the principal regulations by replacing the existing *Form of Commencement Notice* with a revised form to be accompanied by the new forms of *Certificate of Compliance (Design)*, *Notice of Assignment of Person to Inspect and Certify Works* and *Certificate of Compliance (undertaking by person assigned to inspect and certify works)*.

The following features of the new form of commencement Notice are noteworthy:-

- (i) The new form of Commencement Notice must now be signed by the owner of the works or building to which the notice refers (previously the notice could be signed by a builder or person working on the owner/developers behalf) [Section 8 of the *Form of Commencement Notice for Development* refers].
- (ii) Details of relevant Insurance cover, being Project Insurance relating to the Works in question and/or Professional Indemnity Insurance (PII) for those who provide Certificates of Compliance, are requested from the builder and the building designer respectively (section 4 and 5 of the *Form of Commencement Notice for Development* refers).

While the Building Control Acts 1990 to 2007 do not specifically require insurance cover, the Minister has deemed it to be necessary and expedient that appropriate cover is in place and by seeking details of cover on the form is reminding builders and designers of their responsibility to ensure appropriate insurance arrangements are in place.

In the case of new dwellings or buildings or works requiring a Fire Safety Certificate under Part III of the principal regulations, the commencement notice must be accompanied by a number of new forms, also included in the schedule as follows:-

(a) *Form of Certificate of Compliance (Design) signed by the designer must accompany the Commencement Notice.* The designer must provide plans, specification, calculations and particulars as are necessary to show how compliance with the Building Regulations will be achieved in respect of the building/works concerned and must certify that the proposed design is neither defective nor contravene any requirements of the Building Regulations.

(b) *Notice of Assignment of Person to Inspect and Certify Works.* The building owner must use this form to assign a competent person to inspect and certify the works. The assigned person must be a person named on a register established under Part 3 or Part 5 of the Building Control Act 2007 or Section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969 and must be competent to inspect and certify the works in accordance with the requirements of the Building Regulations. The form is signed by the building owner making the assignment. The signature of the assigned person also appears on the form indicating that they have accepted the assignment. The building owner also undertakes to notify the building control authority in writing of any change in the person so assigned and notified on this form.

(c) *Certificate of Compliance (undertaking by person assigned to inspect and certify the works.* This form must be signed by the assigned person who in signing this form:

- (i) Accepts the assignment (Section 2 of the form refers)
- (ii) Undertakes to inspect and certify the works or building (section 3 refers)

- (iii) Accepts responsibility and legal liability for supervision and oversight of all works (notwithstanding the responsibilities of other person or firms) as necessary to ensure the works are neither defective nor contravene any requirements of the Building Regulations.

Particulars of a *Certificate of Compliance (Design)* and *Certificate of Compliance (undertaking by person assigned to inspect and certify the works)*, in addition to particulars of the Commencement Notice, must be included in the register of building control activity maintained by the relevant building control authority and available for viewing by members of the public.

**Article 12:** This article amends Schedule 3 of the principal regulations by replacing the existing *Form of 7 Day Notice* with a revised form to be accompanied by the new forms of *Certificate of Compliance (Design)*, *Notice of Assignment of Person to Inspect and Certify Works*, and *Certificate of Compliance (undertaking by person assigned to inspect and certify works)*. The prescribed forms in Schedule 3 replicate for the purposes of a 7 Day Notice application the new forms provided in Schedule 2 in respect of a Commencement Notice. The description and notable features of the forms outlined in article 12 above also apply here.

**Article 13:** This article includes a new fifth schedule to the principal regulations which prescribes the proposed new *Certificate of Compliance on Completion*.

By signing this form the assigned person:

- (i) Confirms themselves to be the person assigned by the owner of the relevant building works to inspect and certify the works,
- (ii) Confirms that they have inspected the works in line with the code of practice published by the Minister,
- (iii) Certifies that the building or works as completed are neither defective nor contravene any requirement of the Second Schedule of the Building Regulations (Section 1 refers), and



- (iv) Attaches such plans specifications, calculations and particulars as listed and included at Annex 2 to (a) outline how the building/works differs from the design proposals submitted at commencement notice stage and (b) demonstrate how the works/building as completed achieves compliance with the requirements of the Building Regulations.

Particulars of *Certificate of Compliance on Completion* must be included in the building control register maintained by the relevant building control authority and available for viewing by members of the public.

## **4 Impact Analysis**

### **4.1 Background**

Prior to the introduction of the Building Control Act 1990 there was no nation-wide system of building control in Ireland. It was recognised when the Act was introduced that a full fledged system of building control could not be delivered instantly, but as had been the experience in other countries, would need to be developed gradually over time. With that in mind the Minister of the time made commencement orders for key provisions of the Act without commencing the Act in its entirety.

Since the introduction of the Act of 1990, the Department has kept the arrangements for building control stemming from the Act under ongoing review. During this time a number of reforms have been brought forward in order to develop the system further. In general, reform proposals must be reasonable and appropriate and must be in line with the public interest, developments in the industry and the capacity of the building control function within the local authority sector.

### **4.2 Preferred option**

Three options were considered as follows:

**Option (a):** No change in current arrangements. In view of a number of recent high profile failures on the parts of developers/builders and their agents to meet their statutory responsibilities it is considered that sticking with the existing arrangements is no longer tenable.

**Option (b):** Provide for mandatory certification of compliance and lodgement of documents demonstrating compliance. This option appears to be realistic and achievable having regard to the broadly-based stakeholder consultation undertaken to date and the impact analysis summarised here.

**Option (c):** Require full approval of buildings by local building control authorities. This option was discounted on the basis that (i) it would require considerable additional staffing and administrative resources for local authorities (ii) the trend in other countries which have previously adopted full approval systems is to move away from them in favour of independent private sector inspection/certification systems or mixed public/private inspection/certification systems. In exploring this option the Department does recognise the merits of an independent private sector inspection/certification system overseen by an approved public registration body. However this will require primary legislation and is therefore a medium- to long-term policy goal rather than a realisable option at present.

On the basis of the above, option (b) is identified as the preferred option.

#### **4.3 Public Consultation**

The Department has already consulted widely in relation to the next steps for developing the building control system. Such consultations have included:-

- (i) Detailed written proposals from the RIAI, ACEI, Engineers Ireland and SCSI (jointly and collectively); the Irish Building Control Institute, the Building Regulations Advisory Body and the Institute of Clerk of Works and Building Inspectors;
- (ii) A Consultative Forum on “Building Regulations: Compliance and Enforcement – The Next Steps” held in Dublin Castle on 18 January 2011;
- (iii) Workshops with Building Control Officers;
- (iv) The establishment of a Departmental/City and County Managers Association steering group on Building Control reforms; and
- (v) Written submissions received following the Minister’s announcement of proposed reforms (July 2011).

The Consultative Forum held in Dublin Castle on 18 January 2011 was well attended by representatives of key stakeholders. In many respects, this event drew together the disparate views of the various parties put forward under each of the consultations listed above. A summary of the proceedings at this event are appended to this document.

#### **4.4 Stakeholders affected / Regulatory Burden**

The following stakeholders will be directly affected by the proposed requirements: -

- (i) Owners who commission new buildings or certain works to existing buildings (i.e. works which would require a Fire Safety Certificate): Anyone commissioning relevant building works will be required to (a) submit drawings/documentation demonstrating how the works will comply with the Building Regulations at commencement and on completion of the works; and (b) assign a competent person to inspect and certify the works. The owner of the works must now sign the commencement notice.
- (ii) Building Professionals: Building professionals who are registered under the Parts 3 or 5 of the Building Control Acts 2007 or as a Chartered Engineer, and who are competent to oversee compliance with the requirements of the Building Regulations, will be ideally placed to benefit from additional opportunities for work relevant to their areas of expertise.
- (iii) Developers/Builders: Where the developer/builder is also the owner the burden at (i) above also applies. Design information will also increase which will have an impact on the builder's contribution on site.
- (iv) Building Control Authorities: Building control authorities will be required to adapt their administrative procedures to cater for the new requirements to submit mandatory certificates and compliance documentation. Storage of additional information will be a significant challenge but, subject to the capacity of each individual local authority, this can be achieved electronically.

#### **4.5 Key Costs and Benefits of the Proposed Amended Building Regulations**

- (i) Key Costs: Overall the costs associated with the new regulatory requirements are economic – there are no hidden environmental or societal costs associated with the proposals. The following costs will therefore arise:-
  - (a) Additional Design costs: Buildings for which detailed compliance drawings and documentation would typically have been produced will not incur significant additional design costs. However, there will be additional working time and administrative costs associated with the requirement to submit compliance documents to the local building control authority.

Some buildings which previously used generic designs or proceeded without detailed design information will inevitably incur additional design costs which will vary depending on the size and complexity of the building concerned. However as local authorities currently have the powers to demand such information for individual buildings, the degree to which this is an entirely new requirement is arguable.

- (b) Owners/Developers will now be required to assign a competent person to inspect and certify the works. For buildings where this would not previously have been the case, industry sources suggest this requirement could add say between €1,000 to €3,000 per housing unit to the overall building costs.
  - (c) Insurance premia for builders, developers and certifiers are likely to increase in a mandatory certification environment.
- (ii) **Key Benefits:** The submission of compliance drawings at commencement and on completion of building works together with the assignment of a person to inspect and certify works will both serve to significantly enhance the quality of buildings. They also offer the additional advantage, where defects or problems subsequently become apparent, of having established a clear chain of responsibility on the files of the relevant local building control authority.

The additional design, certification and insurance costs referred to above must ultimately be borne by the consumer or by the owner/developer by way of reduced investment returns. In the light of recent experience with defective buildings the combined costs are more than justified by the benefits outlined.

#### **4.6 Other Impacts**

##### **(i) Impact on National Competitiveness**

There will be no negative impact on Ireland's competitiveness.

##### **(ii) Compliance Burden on Third Parties**

Local authorities may incur additional overheads in processing mandatory certificates and in storing detailed compliance documentation.

Equally, time spent seeking additional information on buildings currently coming to attention may be reduced where full documentation has been submitted as a matter of course. Greater emphasis on electronic provision of services could potentially lessen the impact further.

**(iii) Impacts on the Rights of Citizens**

There are no impacts on the rights of citizens arising from the Building Control (Amendment) Regulations.

**(iv) Impact on Socially-Excluded or Vulnerable Groups**

The Building Control (Amendment) Regulations will apply to social housing projects, community building projects and public building works. As such they will have a positive impact on socially excluded or vulnerable members of society.

Quality of life improvements will also apply in the form of improved attention to detail in the design, and improved workmanship in the construction, of new buildings.

**(V) Impact on Small- and Medium-sized Enterprises (SMEs)**

The construction industry in Ireland and the residential sector in particular includes an unusually high number of SMEs. A large proportion of the work of such firms would involve repair, renewal and renovation work or extensions to existing dwellings. Such works would not come within the scope of the proposed Building Control (Amendment) Regulations. In addition such firms would operate as sub-contractors on larger projects. In such cases the impact and the administrative burden of the proposed regulations would fall on the principal contractor. The impact of the proposed regulations on SMEs has thus been kept to a minimum.

**4.7 Review**

The proposed changes will be released for public consultation for a period of 6 weeks. All submissions received will be carefully considered before a final draft of the Building Control (Amendment) Regulations 2012 is recommended to the Minister for signature into law.

The Department, in conjunction with building control authorities, will work closely with all concerned in order to ensure a smooth transition to the proposed new regulatory requirements that will result from this public consultation.

This will provide a suitable opportunity for reviewing the effect of the current proposals in practice prior to considering further reforms to the building control system such as those contemplated in part 5 of this document.

## **5 Future Focus**

### **5.1. Further Building Control Reform Measures currently under consideration**

From a regulatory perspective there is much that can be done to improve the system and the ongoing development of the arrangements in place for the control of building activity will continue to receive priority attention within the Department. In this section it is intended to outline a number of further measures that are currently being progressed or under active consideration. This will in particular give the construction industry an indication of likely future developments and an opportunity to plan and prepare for same. These include:

#### **(i) Register of Approved Inspectors /Certifiers**

The Department is considering a means of achieving independent inspection and certification of building works by approved competent persons. Essentially, this would involve the setting up of a register of approved inspectors and certifiers comprising of persons who (a) are included on a register of architects or surveyors established under Part 3 or 5 of the Building Control Act 2007 or are a Chartered Engineer and (b) are willing to commit to abiding by a proposed Code of Practice for inspecting and certifying building projects in accordance with the requirements of the Building Regulations. While entry on the register would be open to those fulfilling the above criteria at a relatively low cost, removal from the register would be possible on the grounds of professional misconduct or demonstrable failure to ensure compliance with the Building Regulations.

Because of the disciplinary and reputational issues associated with removal from the register, primary legislation would be necessary to establish the register of approved certifiers.

It will also be necessary to assign an agency to act as the registration body tasked with responsibility for establishing and maintaining the proposed register.



## **Registration of Builders / Contractors**

The Department has had informal discussion with the Construction Industry Federation in relation to the establishment of a voluntary registration process for house builders / contractors. The CIF has been invited to prepare a paper setting out proposals for such a scheme for further consultation with the Department. The Department has indicated that the scheme should be in keeping with competition law, include strong quality assurance checks, provide strong consumer protection, have the cover of professional indemnity insurance and not add excessively to the economic cost of house purchase/rental.

### **(ii) Electronic lodgement of design drawings at Commencement**

A prototype system for the electronic administration of building drawings has been developed and will be piloted by Fingal County Council. The Department, although not directly involved, is broadly supportive of such initiatives. Electronic lodgement and electronic administration of the building control function would have obvious benefits for the public service, in terms of optimum use of resources, and for the consumer, in terms of guaranteeing the existence of access to key information in relation to houses in which they have an interest.



Comhshaol, Oidhreacht agus Rialtas Áitiúil  
**Environment, Heritage and Local Government**

**Building Regulations: Compliance and Enforcement – The Next Steps**

**Dublin Castle – 18 January 2011**

**Summary Report**

**Building Standards Section - February 2011**

## **Overview**

This document is a high level summary of proceedings at the above event. In particular it summarises the key points made by delegates at the open forum. Broadly speaking the discussion topics included certification requirements, full approval of applications, lodgement of drawings, inspection arrangements, enforcement, regionalisation of building control activity and funding arrangements.

The narrative is summarised around these broad areas and does not follow the exact sequence of individual contributions. The views expressed are not ascribed to any individual or organisation - a verbatim transcript of the proceedings is being prepared which guarantees that full details have been captured for future reference.

The Department has already signalled its interest in receiving written submissions from delegates. If, for any reason, a point has been missed or misunderstood then the invitation for written submissions stands as an effective way to clarify matters.

**Attendance:** ACEI; An Bord Pleanála; BRAB; CIAT; CIF; Chief Fire Officers Association; County/City Managers Association; IBCI; IHBA; IHBMA; ITFMA; Engineers Ireland; Homebond; IPFMA; Irish Planning Institute; Law Society; NSAI, RIAI; SCS; Various Fire Consultants; Others.

**Objective:** The purpose of the event was to share some early thoughts with key stakeholders on how building control arrangements might be enhanced with a view to getting some early responses and feedback in order to inform policy considerations and recommendations for change.

## **Introduction & Presentations**

Aidan O'Connor, Principal Adviser, Architecture and Building Standards, Housing Division, opened and chaired proceedings. The recent collapse in construction activity has been difficult for consumers, Government and the Construction Industry itself. As the industry regroups, an opportunity exists for all stakeholders to work together to redefine and rebuild our regulatory and control systems.

The Department has begun consulting with other public bodies in relation to how the State's responsibilities and priorities can be fulfilled in terms of framing regulation and control systems that are appropriate for now and into the future. A high level committee has been set up to look at how things function right across the system. A BRAB subgroup has also been asked to look at recommending how certification requirements can be enhanced.

The Committee is open to views and assistance from all stakeholders. The key challenges involve increasing the priority of building control, improving inspection arrangements, and ensuring that compliance is reached within the limits of existing powers and available resources. Provision for mandatory certification of work exists in the Building Control Acts but has not been activated to date. Clearly this has to be a starting point for consideration.

The Department has previously received strong recommendations on improving building control arrangements from BRAB, the IBCI and from industry sources coordinated by the RIAI. These reports are receiving full consideration for present purposes.

In order to stimulate discussion three presentations were prepared and a panel of speakers was on hand to clarify or respond to issues which arose. The panel included David O Connor, County Manager, Fingal County Council; John O'Connor, CEO, Housing and Sustainable Communities Agency; Frank Curran, Director of Services for Corporate Affairs and Housing, Waterford County Council; and Noel Carroll, BRAB Member and Chair of BRAB Working Group on Enforcement:-

The presentations (slides available separately) covered:

- A general overview of Building Control and issues arising (Aidan O'Connor)
- E-registration/administration of Building Control (David O Connor)
- Inspection arrangements in the context of limited resources (John O'Connor)

### **Open Forum**

There was a strong sense among delegates that change was needed – the existing system offered very limited protection and was under resourced. Consumer protection has to be the priority consideration in any future reform plan.

The practice of lodging drawings was raised by several delegates. The point was made that while FSCs and DACs are publicly registered, interested parties cannot independently check compliance with requirements unless drawings exist and can be accessed. It was commented that requiring design by licensed professionals and works by registered contractors would eliminate a lot of difficulties. The increasing technical complexity of building requirements will necessitate detailed design instructions for contractors and/or a move to a system of reliance on registered competent contractors.

Overly rigid adherence to Technical Guidance Documents constrains applications based on alternative yet perfectly acceptable approaches.

The question of full approval was raised but met with limited support. It was pointed out that it exists in NI but there is no reason to believe their building stock is superior to ours. Moreover, the UK has moved away from full approval to independent certification and this is the trend in other countries such as Sweden. Full approval would require the review of designs to begin well in advance of commencement. A check and balance system incorporating approval based on trust with the onus on designers and constructors to notify and certify and an element of independent audit would be feasible. Certification must be clear and unambiguous - substantial completion or any other form of qualification undermines the system. Delinquent certification should result in suspension from practice.

The concept of a public file that would remain live and be kept up to date was seen as meriting consideration. Tick-box certification systems held the attraction of simplicity but the practical reality was that back-up documentation and an auditable paper trail were essential.

With regard to inspections, it was felt that random inspections and site visits are essential. Inspections should be based on risk analyses (having regard to both general safety considerations and particular knowledge of contractor's performance records). Again the importance of design arose, and it was questioned how an inspector can conduct a meaningful site visit without knowing the design or plan. Over reliance on visual inspections are fallacious (e.g. sound, insulation). It is important that the system acknowledges and addresses all requirements. The verification process should also be extended to address the ongoing maintenance of fire systems. Inspections and verification is not limited to the capacity of local building control systems. A number of speakers adverted to the role of Homebond. The end of the era of the floor area compliance certificates was also identified as a further weakening of the overall system of compliance checks. The use of outsourced approved inspectors such as in UK is a possibility once the necessary independence from the designer and constructor is maintained.

Effective enforcement is essential. HSA and Revenue have developed a culture of compliance through enforcement. Dependence on the professionalism and integrity of the industry will not guard against the downward pressure on standards that arises from competitive pressures. Ongoing public service regulation and intervention is therefore necessary. While a national framework is necessary for consistency, inspection and enforcement arrangements can be consolidated and a regionalised approach would achieve this while protecting against regulatory capture. The value of local knowledge in inspection/enforcement activity was stressed – the implication being that such knowledge might be retained in a regional approach but could be lost within a national framework. Judicial decisions are not necessarily the ultimate enforcement tool - withholding of services in the absence of certification (as currently happens with ETCI certificate) is worth considering.

In terms of funding more frequent and thorough inspections, one suggestion was a commensurate increase in commencement notice fees which would be borne by the consumer as the price of better protection. The site value taxes in the Government's four year budgetary plan was also advocated as a model which would provide a predictable income and supplant transactional levies/tax.

### **Closing Remarks:**

John O'Connor agreed with the view that full approval is not a panacea. A system which places clear responsibility on those who carry out works backed up by enforcement can be made to work. The lodgement of plans facilitates further scrutiny but does not necessarily imply design review. The local authority would merely determine whether or not an application was valid and act accordingly. Random reviews might be factored in but the authority would not review or stand over every application. The roles played by Homebond/Premier/Departmental FACC Inspectorate have been important checks within the system and it is only right to take account of such experiences and the potential for collaboration with others operating outside the building control sphere to fill the inspection gap. The points in relation to funding were well made and it has to be part of improving the inspection regime – lodgement of plans would help efficiency in itself as authorities spend a lot of time and effort chasing plans for buildings which come to their attention.

Noel Carroll observed that based on experience in the Departmental inspectorate the general quality of building output in 2010 was superior to that which pertained prior to the era of building control and that individual contractors/professionals across the industry generally preferred to be in a position of compliance with statutory requirements rather than non-compliance. The challenge in that sense becomes one of setting the bar at an appropriate level and working with industry to ensure that appropriate systems, procedures and supports are in place to enable all concerned to ensure that standards are maintained over time. Countries where major failures have occurred had similar systems to ours so any complacency based on our relatively benign experience to date is misplaced. It is important that we take an objective approach to our systems. Risk assessment and audits are essential, as is enforcement activity to deal with work which is below par.

Frank Curran emphasised the importance of moving to online application and administration systems. Business intelligence models and databases which can be interrogated facilitate informed decision making and purposeful intervention. If regionalisation of building control is pursued, it is important that the Fire Safety Certificate process moves in tandem in this approach. Issues regarding Regularisation Certificates and the need for inspection in such cases also need to be resolved.

David O Connor felt the event had been worthwhile and he was reassured by the response given to the committee's early thinking on the matter. The detail will be important in the final analysis and he encouraged all individuals and the organisations they represent to follow up with written submissions of their views. This will facilitate detailed engagement with groups on issues at the appropriate time.

**Next Steps:**

For clarity, delegates were invited to email their views to [buildingstandards@environ.ie](mailto:buildingstandards@environ.ie) within the next month.

The Department, the High Level Committee and the BRAB Working Group will continue to consider the issues in the coming months before making recommendations to the Minister. Any definitive proposals endorsed by the Minister will require further consultation in order to work out detailed implementation arrangements. All delegates / representative bodies will again be afforded the opportunity to contribute their views.