

**Relevant legislation:-**

The Building Control Act 1990 (No. 3 of 1990)

The Building Control Regulations 1997 (S.I. No. 496 of 1997)

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The Building Control Act 1990 and the regulations made under it (“the regulations”) constitute a system for regulating building works and lay down minimum standards for design, construction, workmanship, materials etc. Different standards apply depending on the use of the building.

New Building Regulations and Building Control Regulations were published in 1997. They are the Building Control Regulations, 1997 and the Building Regulations, 1997. These regulations consolidate, with amendments, the earlier regulations made in 1991 and as amended 1994. They came into force on the 1st of July 1998.

The regulations are divided into twelve sections:-

- A STRUCTURE
- B FIRE SAFETY
- C SITE PREPARATION AND RESISTANCE TO MOISTURE
- D MATERIALS AND WORKMANSHIP
- E SOUND
- F VENTILATION
- G HYGIENE
- H DRAINAGE AND WASTE WATER DISPOSAL
- J HEAT PRODUCING APPLIANCES
- K STAIRWAYS, LADDERS, RAMPS AND GUARDS
- L CONSERVATION OF FUEL AND ENERGY
- M ACCESS FOR DISABLED PEOPLE

The Department of the Environment has issued Technical Guidance Documents in relation to each section. It is not obligatory to follow the Technical Guidance Documents but doing so constitutes prima facie evidence of compliance with the regulations. (Building Regulations, 1997 - Article 7)

The regulations themselves are expressed in extremely general terms with generous use of phrases such as “adequate” and “reasonable” so that they leave considerable room for interpretation.

Under the 1991 and 1994 Regulations, the main provisions came into force on 1st June 1992. From that date all works for the erection of buildings or the alteration or extension

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of existing buildings were required to comply with the regulations unless the works were covered by any of the exemptions specified below. The provisions of the 1997 Regulations came into operation on the 1st day of July 1998. There is a transitional period which applies in relations to works commenced or a material change of use taking place after the 1st of July 1998. If a fire safety certificate issues under the Building Control Regulations, 1991 & 1994 then that fire safety certificate remains valid in respect of works commenced or a material change which takes place before 31st of December 2002.

The regulations apply to a change of use of a building from a single dwelling to multi residential use. They also apply where a change of use occurs which, if the building had been originally designed for the new use would require a higher standard of performance to comply with the regulations than the existing use (a “material change of use”).

EXEMPTIONS

The principal exemptions from the requirement to comply with the regulations are:-

- (a) Works commenced before 1st June 1992.
- (b) Alterations to buildings which do not affect the structural or fire safety aspects of the building.
- (c) Detached domestic garages with a floor area not exceeding 25 square metres and a height of not more than 3 metres, or in the case of a pitched roof, 4 metres.
- (d) Single storied detached buildings ancillary to a dwelling which is detached from any other building, with a floor area not exceeding 25 square metres, a height of not more than 3 metres or in the case of a pitched roof, 4 metres, and used exclusively for recreational or storage purposes or the keeping of plants, birds or animals for domestic purposes as opposed to use for trade or business or human habitation.
- (e) Single storey extensions to existing dwellings ancillary to a dwelling and consisting of a conservatory, porch, carport or covered area with a floor area not exceeding 25 square metres (or 2 square metres in the case of a porch) and a height less than 3 metres, or if a pitched roof, 4 metres.
- (f) Certain temporary structures.
- (g) Certain farm buildings.

COMMENCEMENT NOTICES

Not less than 14, and not more than 28 days notice in writing of the commencement of works, or the making of a material change of use must be given to the building control authority (“the Authority”). The 1991 and 1994 regulations provided for service of not less than 7, and not more than 21 days.

The 1997 Regulations provide a specific form on which a commencement notice must be served. The notice must contain the following information:-



1. The address of the building and its use or intended use.
2. A description of the proposed works or change of use.
3. The name and address of
 - (a) The building owner,
 - (b) The Designer,
 - (c) The Builder,
 - (d) The person from whom notification of the pouring of foundations and of the covering up of any drainage system can be obtained,
 - (e) Persons from whom such plans, documents and any other information, as are necessary to show that the building or works will, if built in accordance with the design, comply with the requirements of the Building Regulations, may be obtained.

Also a fee must now accompany the commencement notice form and this is set out in the Fifth Schedule. It is usually £25.00.

On receipt of the commencement notice, the building control authority is now required to follow the specified procedure. The authority must stamp the notice with the date of receipt. Where the authority considers that the commencement notice has not been completed correctly, they may within seven days of receipt of the notice, inform the person giving the commencement notice that the notice is invalid and is unacceptable and require a revised notice to be submitted with an additional fee, where necessary.

A COMMENCEMENT NOTICE is not required in respect of:-

1. Works exempt from the requirement to comply with the regulations.
2. The provision of services fittings and equipment to a building not involving a material alteration.
3. Exempt development under the Planning Acts except where a fire safety certificate is required.
4. Material alterations consisting solely of minor work in a shop, office or industrial building not requiring a fire safety certificate.
5. Works, or a building as regards which a material change of use takes place, by a building control authority in its functional area.
6. Works, or a building as regards which a material change of use takes place, in connection with Garda stations and other such connected building, courthouses, barracks and related buildings of the Defence Force and certain Government buildings.
7. Works or material changes of use of buildings which have taken place for reasons of national security.

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A "material alteration" is an alteration where the works, or any part of the work, carried out by itself would be subject to a requirement of the regulations concerning structure or fire safety.

"minor works" means works consisting of the installation, alteration, or removal of a fixture or fitting, or works of a decorative nature.

"shop" is defined as including a building used for retail or wholesale trade or business (including retail sales by auction, self-selection and over-the-counter wholesale trading, the business of lending books or periodicals for gain and the business of a barber or hairdresser) and premises to which the public is invited to deliver or to collect goods in connection with their hire, repair or other treatment, or where they themselves may carry out such repairs or other treatments.

"office" is defined as including premises used for the purpose of administrative or clerical work (including writing, book keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication, handling money (including banking and building society work) or telephone system operation).

"industrial building" is defined as including a factory or other premises used for manufacturing, altering, repairing, cleaning, washing, breaking-up, adapting or processing any article, generating power or slaughtering livestock.

These definitions differ from those in the exempt development regulations.

FIRE SAFETY CERTIFICATES:

A Fire Safety Certificate is required for:-

- (a) works in connection with the design and construction of a new building;
- (b) works in connection with the material alteration of
 - (i) a day centre,
 - (ii) a building containing a flat,
 - (iii) a hotel, hostel or guest building,
 - (iv) an institutional building,
 - (v) a place of assembly, or
 - (vi) a shopping centre, but excluding works to such buildings, consisting solely of minor works;
- (c) works in connection with the material alteration in a shop, office or industrial building where
 - (i) additional floor space is being provided within the existing building, or
 - (ii) the building is being subdivided into a number of units for separate occupancy;



- (d) works in connection with the extension of a building by more than 25 square metres;
 - (e) a building as regards which a material change of use takes place;
- to which the requirements of Part B of the second schedule to the Building Regulations (i.e. Fire Safety issues) apply.

A “day centre” means a building used for the provision of treatment or care to persons where such persons do not stay overnight and includes a day care centre, a pre-school, a creche, and a day nursery.

A “guest building” means a building (other than a hotel or hostel) providing overnight guest accommodation for reward, and includes a guesthouse.

An “institutional building” includes a hospital, nursing home, home for old people or for children, school or other similar establishment used as living accommodation or for the treatment, maintenance of persons suffering from illness or mental or physical disability or handicap, where such persons sleep on the premises.

A “place of assembly” includes (i) a theatre, public library, hall or other building of public resort used for social or recreational purposes, (ii) a non-residential school or other educational establishment, (iii) a place of public worship, (iv) a public house, restaurant or similar premises used for the sale to members of the public of food or drink for consumption on the premises, but no building shall be treated as a place of assembly solely because it is a building to which members of the public are occasionally admitted.

“Shopping centre” includes a building which comprises a number of individually occupied premises to which common access is provided principally for the benefit of shoppers.

The definition of “flat” refers to separate and self-contained premises constructed or adapted for residential use and forming part of a building from some other part of which it is divided horizontally. Duplex apartments are clearly flats under this definition.

The application for a fire safety certificate must be in the prescribed form set out in the Third Schedule of the 1997 Regulations and be accompanied by a detailed plan identifying and describing the works or building to which the application relates which will enable the authority to determine whether the works or building complies with the requirements of Part B of the Second Schedule to the Building Regulations. The required fee must also accompany the form. The fee is calculated by reference to the size of the area affected by the works or change of use and is set out in the Fifth Schedule. The procedure which must be followed by the authority on receipt of a Fire Safety Certificate application mirrors the procedure set out in relation to commencement notices. Any application which does not

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contain the necessary information is invalid. The authority may require the applicant to submit a revised plan if necessary. The certificate is issued by the Authority.

The authority has two months within which to issue the certificate, with or without conditions, or to refuse it. If it fails to issue a decision within that time a default procedure, akin to that applicable to a planning application, applies, whereby the certificate must automatically issue to the applicant.

There is a procedure whereby the applicant can appeal to An Bord Pleanála against the decision of the Authority, either in part or in its entirety.

It is an offence to carry out works or make a material change of use without first obtaining a fire safety certificate.

A FIRE SAFETY CERTIFICATE is not required in respect of:-

1. Works exempt from the requirement to comply with the regulations.
2. Works commenced or a material change of use made before 1st August 1992.
3. The provision of services, fittings and equipment to a building not involving a material alteration.
4. A building, or works in connection with a building, used as a dwelling other than a flat.
5. A single storey building used as a domestic garage or works in connection therewith.
6. A single storey building, or works in connection with a building, ancillary to a dwelling which is used exclusively for recreational or storage purposes or the keeping of plants, birds or animals for domestic purposes and is not used for the purposes of any trade or business or for human habitation.
7. Certain single storey buildings used solely for agriculture and works in connection therewith.
8. Works in connection with a material alteration, consisting solely of minor works, of a day centre, a building containing a flat, a hotel, hostel or guestbuilding, an institutional building, place of assembly or shopping centre.
9. Works in connection with a material alteration in a shop office or industrial building unless additional floor space is being provided within an existing building or the building is being subdivided into a number of units for separate occupancy.
10. Works carried out to a building in compliance with a notice served under Section 20 of the Fire Services Act 1981.

The definition of "agriculture" is identical to that contained in the Local Government (Planning & Development) Act 1963.



THE REGISTER

Under the 1991 Regulations, the building control authority were required to maintain a register of all applications for Fire Safety Certificates with details of the decision of the authority or of the Board of appeals.

Now the 1997 Regulations require the authority to keep a register of not just any valid application for a fire safety certificate, but also any valid applications for a dispensation or relaxation, a commencement notice (including details of the name and address of the applicant, the date of receipt of the application, and brief details of the works or building forming the subject of the application) and an enforcement notice and any decision made by the District Court in respect of an enforcement notice.

ALTERATION OR EXTENSION OF EXISTING BUILDINGS

The regulations apply to all material alterations (not being repair or renewal) or extensions of existing buildings, in that all works done must comply with the regulations. In addition, the alteration or extension cannot result in a new or greater contravention of the regulations in relation to the building itself.

SERVICES FITTINGS AND EQUIPMENT

The regulations apply to all works in connection with the provision of services fittings and equipment (whether new or by way of replacement) which are subject to the requirements of the Hygiene, Drainage and Waste Water Disposal, and the Heat Producing Appliances regulations. There is no requirement to serve a Commencement Notice or obtain a Fire Safety Certificate for such works unless the works involve a material alteration.

DISPENSATIONS / RELAXATIONS

One can apply to the Authority for dispensations or relaxations of building regulations. If no decision is made by the Authority within two months, the dispensation or relaxation is deemed to have been granted. The 1997 Regulations provide a form which must be completed and sent to the authority when applying for a dispensation or a relaxation. Under the old regulations, it was not mandatory to use the prescribed form.

There is an appeal procedure if an applicant is dissatisfied with the Authority's decision, the appeal again lying to An Bord Pleanala.

The Minister for the Environment also has power to dispense with, or relax, any regulations in respect of any particular class of building operation, works or materials, subject to such conditions as he deems appropriate.

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LIABILITY, PENALTIES AND ENFORCEMENT

Failure to comply with any requirement of the Building Control Act or the regulations is an offence. Fines of up to £10,000.00, and/or a term of imprisonment not exceeding two years can be imposed for failure to comply with the regulations, or failure to comply with an enforcement notice. If the offence is committed by a company with the consent or connivance of, or is attributable to any neglect on the part of any director, manager or secretary of that company, that person shall also be guilty of the offence.

Enforcement notices may be served by the Authority on the owner of the building or any other person involved in the works. It can set out the works required to ensure compliance with the regulations, and may prohibit the use of a building or part of it until these works are done.

The Authority has power to enter a building and carry out the remedial works if the enforcement notice is not complied with, and can recover the cost from the owner or the person who carried out works in breach of the regulations, as a simple contract debt.

The Authority also has power to enter buildings to inspect them and any plans or documents relating to the works, and to take samples of materials being used.

There is a limitation period of five years from completion of the works or change of use, after which no enforcement notice can be served.

The Act also provides for a procedure similar to the “Planning Injunction” under Section 27 of the 1976 Planning Act (as amended by the 1992 Planning Act), whereby the Authority can seek a High Court Order requiring alterations, the making safe of any structure, the discontinuance of works or prohibiting the use of the building where the Authority considers that there is a substantial risk to health or safety. There is no time limit on this action.

BUILDING BYE-LAWS

The Building Control Act 1990 replaces building bye-laws made under S.41 of the Public Health (Ireland) Act 1878, Section 23 of the Public Health Act (Amendment) Act 1890 and Section 33 of the Dublin Corporation Act 1890. Bye Laws had been made in the following areas:-

- Bray U.D.C.
- Dublin Corporation
- Dublin County Council
- Dun Laoghaire Corporation



Cork Corporation
Galway Corporation
Limerick Corporation
Naas UDC

In areas where Local Authorities had made building bye laws, it was necessary to obtain a building bye laws approval before carrying out structural works or other works involving drainage, sewerage disposal and the like. Such an approval could not be obtained retrospectively. Therefore technically the absence of a building bye laws approval was a defect which could not be cured other than by demolishing the structure. Accordingly in such a situation it became established practice to accept the certificate of an architect confirming that the works complied with the building bye laws as at the date the works were carried out, and that in the opinion of the architect, bye laws approval would have been granted if it has been applied for.

However, Section 22 (7) of the Building Control Act 1990 provides that all works carried out prior to 13th December 1989 are deemed to comply with building bye-laws unless a notice was served by the Authority before 1st December 1992 stating that the works constituted a danger to public health or safety.

Building bye-laws remain relevant in relation to works carried out between 13th December 1989 and 1st June 1992, and works carried out pursuant to building bye-law approvals applied for prior to 1st June 1992.

MULTI-STOREY BUILDINGS:

The Local Government (Multi-Storey) Act 1988 does not apply to buildings commenced after 1st June 1992 save where built on a foot of a building bye laws approval applied for on or before that date.

The 1988 Act does still apply to multi-storey buildings constructed between 1st January 1950 and 1st June 1992.

FIRE SERVICES ACT 1981

The Fire Services Act is unaffected by the Building Control Act and all of the enforcement powers of the fire officer under the Fire Services Act remain.

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1. See page 7.26 hereof.