



BUILDING CONTROL ACT AND BUILDING REGULATIONS

The Conveyancing Committee has been considering the implications for Solicitors of the above Act and Regulations thereunder the main provisions of which come into effect on 1st June and 1st August next.

The May Gazette includes an Article on the topic by Joan Fagan and John Furlong of William Fry Solicitors. Rory O'Donnell, who is a member of the Committee has also prepared a paper on the subject of the Building Regulations and the Committee has decided to circulate a copy of this which covers the main provisions of the Act and Regulations.

We are aware that Solicitors are anxious to know the Committee's views in relation to necessary changes in contracts and requisitions.

General Condition 36 of the Contract will required to be altered by adding in an additional warranty that all development to which the Building Regulations applied have been carried out in accordance with the terms of the Act and Regulations. The provisions about Building Bye-Laws will not be deleted yet because they will still apply where appropriate to buildings started up to the 1st June 1992 and all buildings which are built on foot of the transitional arrangements. In the Committee's opinion a substantial percentage of the new buildings which will be constructed over the next year or so in the Building Bye-Law areas, will be carried out on foot of the transitional arrangements which will apply for some years, and these developments will not have to comply with the Building Regulations. For example if a developer applies for a planning permission and building bye-laws approval on 30th May 1992 it may receive Bye-Laws Approval in say three months' time, Planning Permission in say six months' time and be entitled to build availing of the transitional arrangements for the life of that planning permission, without having to concern itself with the new Building Regulations.

Pending the revision of the printed contract this should be dealt with by Special Condition.

It seems to the Committee that the investigation of the position in relation to Fire Safety Certificates will be a matter which should be dealt with pre contract. Rory O'Donnell's suggested pre-contract requisition is as follows:

"Has there been in relation to the property any development (including change of use) to which the Building Control Act, 1990 and any Regulations made thereunder apply?

In respect of any such development furnish (where applicable) :

1. A copy of the commencement notice given.
2. A copy of the entire application for the Fire Safety Certificate;
3. A copy of the Fire Safety Certificate issued; and



4. A Certificate of Opinion by an Architect or a suitably qualified person confirming that the works or change of use to which the Building Regulations apply have been carried out in substantial compliance with the Building Regulations. ”

NOTE: The reason for asking for a copy of the Application is that the Regulations made under the Building Control Act do not oblige the Building Control Authority to retain for inspection copies of the Application and it is anticipated that problems will arise in future due to the inability of Architects and other professionals to get access to documentation upon which the Fire Safety Certificate was granted. Obviously a copy of the Application would not be essential if one received a satisfactory Certificate of Compliance.

The Committee has been advised that a new house costing £50,000 in Dublin would cost about £1,000 more to be built in compliance with the new standards. The regulations are unlikely to have any marked effect on the cost of construction of commercial or industrial buildings most of which have been built to an equal standard over the last five years or so.

A Sub-Committee of the Conveyancing Committee has commenced discussions with the representatives of the Royal Institute of Architects of Ireland over the form of Certificates of Opinion that Architects will give in relation to compliance with Building Regulations. It will obviously be some time before the issues arising and any form of certificate will be resolved but in the meantime the Committee's preliminary view is that solicitors will want Certificates of Opinion of substantial compliance with Building Regulations in relation to new structures and buildings which have been materially altered or undergone a change of use in accordance with the usual form. Architects are concerned about the strict liability involved under the Act and the liabilities they may incur by giving certificates. They are happy to certify that the design of a building complies with the Building Regulations when they have actually designed it. There are obvious difficulties where part of the relevant design was carried out by a Structural or Mechanical and Electrical Engineer. Should the Architects get certificates from these other professionals and include them in an overall certificate? Also if the building contains a lift the lift may be designed by the manufacturer. The greatest problem seems to be in relation to speculative developments. Normally the Architect designs the development and gets planning permission but then has no involvement at all until houses are finished when the architect would carry out a superficial inspection for the purposes of planning and bye laws certification. The responsibility to build in accordance with the design and the Building Regulations is on the Builders. Some Architects feel that they could not certify compliance with the construction phase under the Building Regulations unless they or the Building Control Authority monitored compliance with construction. The Conveyancing Committee will do what it can to address these issues and will have the profession notified as soon as anything meaningful is resolved.

BUILDING CONTROL ACT AND BUILDING REGULATIONS

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**BUILDING CONTROL
ACT AND BUILDING
REGULATIONS**

(Contd.)

The Conveyancing Committee suggests that Solicitors should ensure that clients embarking on new building projects should get the whole issue of certification and the forms to be given sorted out at the time the Architects and other members of the design team are appointed.

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**SUMMARY OF THE MAIN PROVISIONS
OF
THE BUILDING CONTROL ACT, 1990
FROM THE CONVEYANCING COMMITTEE OF THE
INCORPORATED LAW SOCIETY OF IRELAND**

By Rory O'Donnell

Introduction

The purpose of the new Building Regulations is to have a legally enforceable code of building practice which applies to the whole country. The existing codes of practice are Building Bye-Laws made under the Public Health Acts made a century ago and only applied in Dublin City and County, Cork, Limerick and a few other urban areas.

The Building Control Act 1990 sets out a new system to regulate building practice. The new framework provides the Minister for the Environment with the power to make building regulations. To date, there have been two statutory instruments which set out in great detail the new requirements. The Act imposes a duty on everyone to comply with these Regulations.

Commencement

1st June 1992: Date of commencement of Building Regulations (except for Fire Safety Certificates)

1st August 1992: Date of commencement of requirement to get Fire Safety Certificates.

Highlights

1. A statutory duty is imposed to comply with Building Regulations in relation to all new buildings, material alterations or extensions or changes of use from 1st June 1992 (save those for which building bye-law approval has been applied for and/or granted prior to 1st June 1992).
2. A statutory duty is imposed to get a fire certificate in relation to all new buildings (other than single dwellings - not flats), extensions or changes of use from 1st August 1992 (save those for which building bye-law approval has been applied for and/or granted prior to 1st June 1992).



3. No obligation is imposed on the new Building Control Authority to monitor buildings. They are given power to enter, inspect, take samples, demand to know the proposed use of a building and serve enforcement notices if buildings are being constructed in breach of the Building Regulations. Where an enforcement notice has been served, the owner may apply within fourteen days to the District Court to have the notice quashed or altered. Random inspections of building works are likely. The Building Control Authority can proceed by injunction in the High Court if there is a risk to health or safety.
4. An amnesty is given in relation to buildings completed prior to 13th December 1989 to which Building Bye-Laws applied. These buildings are deemed to have building bye-law approval (whether they actually comply with the Building Bye-Laws or not) unless the Building Control Authority serve on the owner a notice stating that the works constituted a danger to public health or safety within six months of the 1st of June, 1992. Buildings developed between the 13th December 1989 and the 1st June 1992 for which building bye-law approval was not obtained will not be easily saleable without a certificate of opinion from a competent architect or engineer that such building was built in substantial compliance with the Building Bye-Laws.
5. Enforcement notices cannot be issued by the Building Control Authority before a development commences or after five years from the completion of a building or a change of use.
6. No further building bye laws shall be made under the Public Health Act except in relation to roads and drainage outside the curtilage of the site. The new Building Regulations do not deal with drainage outside the curtilage of the site.
7. Solicitors will require certificates of opinion of substantial compliance with building regulations in relation to new structures, and buildings which have been materially altered or undergone a change of use as part of the ordinary conveyancing process.
8. The Act provides a range of severe penalties for breaches including fines of up to £10,000 and imprisonment of up to two years.
9. The Multi-Storey Buildings Act no longer applies to new buildings commenced after the 1st June 1992 under the new system. It still applies to multi-storey buildings commenced after 1st June 1992 which have obtained or applied for building bye-law approval.
10. Conveyancers acting for purchasers in relation to buildings other than single dwelling houses should clearly advise their client(s) to establish pre-contract that a Fire Safety Certificate was obtained in relation to the building. They will probably try to persuade vendors to furnish evidence to this effect.
11. The Building Regulations apply nationwide unlike the various Building Bye-Laws which applied to Dublin, Cork, Limerick and a few other urban areas.
12. Landlords will almost certainly impose an obligation in all new leases to provide that tenants will comply strictly with the Building Regulations in any work carried

BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)



BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)

out on a leased property and to furnish the landlord with copies of:

- (a) all applications for Fire Safety Certificates;
 - (b) all Fire Safety Certificates issued, and;
 - (c) an architect's certificate of opinion that all such works have been carried out in substantial compliance with the plans lodged with the application for the Fire Safety Certificate as amended by any conditions imposed by the Building Control Authority and that the works comply with the Building Regulations.
13. Compliance with the Guidance Documents is prima facie evidence of compliance with the Building Regulations but the methods set out in the Guidance Documents are not to be taken as the only method of complying with them.
 14. There are special provisions about domestic attic conversions. These include a more sensible rule about the ceiling height and quite stringent conditions about fire safety.
 15. Section 21 of the Building Control Act provides that no civil action shall lie for breach of statutory duty. However, the Act imposes strict liability on designers and builders for which they may be liable in contract and/or tort.

What is effected by the Act?

The Building Regulations will apply to the following:

(a) *New buildings*

The new regulations apply to all buildings commenced after 1st June, 1992 except for those which are exempted.

(b) *Material alterations and extensions to existing buildings*

This sounds simple but in practice it will be complicated. Simply stated, a material alteration must be such that it effects either the structure or the fire safety of the building. An extension to an existing building must itself comply with the Building Regulations. If the extension adversely affects either the structure or the fire safety of the existing building then both the extension and the alteration(s) to the existing building must comply with the Building Regulations.

(c) *Material change of use of existing Building Regulations*

This means where any other building is converted to a dwelling or where a single dwelling is converted into more than one dwelling, or where buildings were changed to a use for which there are special provisions in the regulations.

This provision is intended to ensure that an existing building is not changed to a new use which would require a higher standard of safety. On change of use the building is looked at by comparison with a new building in relation to the following:

- (a) structure.
- (b) fire safety.
- (c) ventilation.
- (d) hygiene.



- (e) drainage.
 - (f) heat producing appliances.
 - (g) conservation of heat and energy.
- (d) *Refurbishment*
The replacement of services, fittings and equipment as part of a refurbishment project must comply with the provisions of the Building Regulations. Where refurbishment work has implications regarding fire safety, a Fire Safety Certificate will be required.
- (e) *Fitting Out*
The fitting out (including the installation of services, fittings and equipment) of new commercial or industrial buildings built to shell standards must comply with the Building Regulations and a Fire Safety Certificate must be obtained.

NOTE: There is provision in the Act and the Regulations for the granting of dispensations or relaxations from the requirements of the Regulations.

The effect on new buildings

The Regulations envisaged by the Building Control Act 1990 have been implemented to date by the following three Statutory Instruments namely, SI 304/91, SI 305/91 and SI 306/91.

Building Control Act, 1990 (Commencement Order, SI 304/1991)

This order provides for the commencement of the Act and the Building Regulations made pursuant to the Act.

The Building Control Regulations 1991 (SI 305/1991)

1. *The Scope of the Regulations*

These Regulations provide for notices to Building Control Authorities in relation to all developments, obligations to obtain Fire Safety Certificates, obligations on the local authority to consider and issue Fire Safety Certificates, refusal of Fire Safety Certificates and rights of appeal and the keeping of a register of applications. The regulations also provide the forms of application for a Fire Safety Certificate and the Fire Safety Certificate.

2. *Commencement Notices*

The regulations require that commencement notices are lodged with the Building Control Authority at least seven days and not more than twenty one days before any development to which the Act applies is to start. The notice requires the following information:-

- (a) the address of the building.
- (b) the description of the works.

BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)



BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)

- (c) the name and address of the owner and architect.
- (d) the name and address of the builder.
- (e) no drawings or specification are required to be lodged although the name and address of the person from whom such plans, documents and information as may be necessary to show that the building or work will comply with the requirements of the Building Regulations must be furnished.

There is no obligation on the local authority to maintain a register of commencement notices or to carry out inspections of building works.

NOTE: Where a building is started after 1st June 1992 which has obtained or lodged an application for building bye-law approval commencement notice does not have to be lodged with the Building Control Authority.

3. *Fire Safety Certificates*

Fire Safety Certificates are required before work starts on all building work to which part (B) of the regulations apply.

This means all buildings other than single dwellings. Applications for Fire Safety Certificates is made to the Building Control Authority. An application form accompanied by detailed drawings, specifications, and calculations in respect of certain fire related matters require to be submitted. An application which does not contain the full information will be treated as invalid.

The Building Control Authority has two months in which to issue a Fire Safety Certificate unless an extension of time is agreed in writing between the applicant and the Building Control Authority.

The Building Control Authority may issue a refusal or issue a certificate (with or without conditions). The decision of the Building Control Authority may be appealed to an Bord Pleanála, whether it is against refusal or condition(s) imposed by it. The information to be submitted with the Fire Safety Application Certificate is set out in the first schedule of SI 305. The information ranges from location maps of the site, complete plans and sections of the building, details of construction and services, specification of construction and material along with certain calculations relating to the fire safety of the building.

There is no obligation on the Building Control Authorities to follow up their Fire Safety Certificates with any inspection of the works either before or during construction.

Register of Fire Safety Certificates

The Building Control Authority is required to maintain a register in respect of applications and decisions made in respect of Fire Safety Certificates. The register is to contain the applicant, description of the work, the decision and the outcome of any appeal.

4. *Exemptions:*

Exemptions from the Building Regulations



- (a) Buildings commenced before 1st June, 1992.
- (b) Buildings commenced after 1st June 1992 for which an application for building bye-law approval was lodged and/or granted before the 1st June 1992.
- (c) Alterations to buildings which do not affect the structure or the fire safety aspects of the structure.
- (d) Buildings for mining, storing explosives and electricity generating stations.
- (e) A national monument, temporary dwelling or temporary office.
- (f) Detached garages, sheds, glass houses, hen houses, of less than 23 sq. metres and ancillary to a dwelling.
- (g) Farm buildings not exceeding 300 sq. metres.

Exemptions from having to lodge a commencement notice

- (a) Any of the items listed at the last paragraph.
- (b) Exempted development under the Planning Act, except where a fire safety certificate is required.
- (c) Building or material changes of use of buildings carried out by Building Control Authority in its own functional area.

Exemptions from having to apply for and obtain Fire Safety Certificates:

- (a) Building works (which have obtained or applied for building bye-law approval prior to 1st June 1992) commenced before 1st August 1992.
- (b) All of the works listed in the last two paragraphs.
- (c) Single dwellings (not flats).

Technical Guidance Documents (SI 306/91)

There are twelve technical guidance documents which set out the technical building requirements to be complied with in the construction of buildings.

The Guidance Documents refer to over three hundred codes of practice, standards or other technical references which set out the required technical standards.

Certificates of Compliance

There is power in the Act to make regulations providing for certificates of compliance but this matter has been left to the construction and the property sector to sort out for themselves.

Solicitors will be seeking to have compliance verified in the same manner as heretofore in relation to the Building Bye-Laws or planning.

Multi-storey buildings

The provisions of the Local Government (Multi-Storey Buildings) Act, 1988 cease to have

BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)



BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)

effect on 1st June, 1992 except for cases coming within the transitional provisions of section 22 (2) of the Building Control Act, 1990. Multi-storey buildings which have applied for and/or received building bye-law approval started after 1st June, 1992 will require the usual certificate and must comply with the 1988 Act. In the event that only planning permission has been granted and that no application has been made or granted for building bye-law approval prior to 1st June 1992 the provisions of the Multi-Storey Buildings Act will not apply and the building must be erected in accordance with the Building Regulations. If work is commenced on multi-storey building post 1st June, 1992 and before 1st August, 1992 no Fire Safety Certificate is required under the Building Regulations.

Documentation

1. Building Control Act, 1990 (No.3 of 1990)
2. Building Control Act, 1990 (Commencement Order 1991) (SI No.304/1991)
3. Building Control Regulations, 1991(SI No.305/1991)
4. Building Regulations 1991 (SI No.306/1991)
5. Technical Guidance Documents (SI No.306/1991)