

*Irish Building Control Institute (IBCI)
National Building Control Conference
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**BUILDING CONTROL:
LEGISLATIVE AND REGULATORY FRAMEWORK**

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AN ROINN COMHSHAOIL, OIHRÉACHTA AGUS RIALTAIS ÁITIÚIL

DEPARTMENT OF THE ENVIRONMENT, HERITAGE
AND LOCAL GOVERNMENT





Part 1 -National Building Regulations

Regulations 1991-2004

- Building Regulations first made in 1991; and consolidated/upgraded in 1997.
- List of currently operative **Building Regulations 1997 – 2004**, at **Appendix 1**.

Operative Dates

- 1991 Building Regulations operative, since 1 June 1992.
- 1997 Building Regulations operative, since 1 July 1998.

Applicable Building Activities

- all new buildings.
- extensions to existing buildings.
- material alterations to existing buildings.
- provision/replacement of certain services, fittings and equipment to which Part G (Hygiene), H (Drainage and Waste Water Disposal) or J (Heating Producing Appliances) would impose a requirement.



Part 1 -National Building Regulations

Primary Objective

-Building Control Act 1990-section 3 (2): protection of the health, safety and welfare of persons in or around buildings.

-Insurance Companies: have additional focus, the protection of property.

Responsibility for Compliance

Primary responsibility rests with:

- Designers

- Builders

- Owners of buildings



Part 2 - Responsibility of Building Control Authority

Multiple Role

- to promote local awareness, particularly since the extension of Part M (Access of People with Disabilities) to new dwellings commencing on or after 1 January 2001, among new house purchasers/ small builders; and to informally advise.
- to monitor building works, by site inspections
- to seek cooperation of designer/builder/owner in rectifying non-compliance
- to enforce, by notice, injunction or prosecution, in the absence of co-operation.



Part 2 - Responsibility of Building Control Authority

Register

- Public Record of
- Commencement Notices (CN)
- Fire Safety Certificates (FSC)
- Local Dispensations/Relaxations, from Building Regulations
- Outcome of Appeals to District Court (enforcement notices)
- Outcome of Appeals to An Bord Pleanala (FSC) for particular buildings.



Part 2 - Responsibility of Building Control Authority

Relevant Statutory Provisions

- *Compiling/Access to Register: Article 21 of S.I. No. 496 of 1967*
- *Freedom of Information Act 1997: applicable to Local authorities since 21 October 1998*
- *Copyright and Related Rights Act 2000: copying of public records not an infringement, in specified circumstances.*
- *Public Access to Building Control Documentation:*
- *Circular Letter BC1/2005 dated 28 February 2005 (Appendix 2)*



Part 2 - Responsibility of Building Control Authority

Commencement Notice (CN)

- New form of CN prescribed by **S.I. No. 85 of 2004** (collection of improved data on “housing starts”)
- lodged (without plans) not less than 14 and not more than 28 days **prior** to commencement.
- Local authority must inform person giving notice, within 7 days of receipt of notice, that notice is invalid or that accompanying fee is incorrect; and request submission of correct notice/additional fee.
- Alerts authority to imminent start of building so that plans can be requested and/or inspection(s) can be arranged, if desired.
- **Circular Letter BC1/2000 dated 4 February 2000**: Local authorities advised to **regard Commencement Notices, without Fire Safety Certificate Number, as invalid**.
- Circular Letter BC4/2003 dated 6 February 2003** asked Managers to introduce a new numbering system for Fire Safety Certificate to eliminate the practice of application reference number being quoted on the Commencement Notice prior to finalising the processing of the application.



Part 2 - Responsibility of Building Control Authority

Fire Safety Certificate (FSC)

- on foot of plans lodged, for non-residential buildings and apartments/ flats, with FSC fee.
- Over 6,500 FSC granted *per annum*.
- **Cost:** Substantial volume of work/commitment by Fire Officers/Service
- **Benefit:** FSC has improved the quality of fire engineering in design and contributed significantly to **fire prevention**.

Right of Appeal to Bord Pleanala

- Section 7 of Building Control Act, 1990
- Appeals: average of **20 per annum** over period 1999-2004, represents **appeal rate of less than 0.5%**.

Fire Regulations

- Separate paper being given to IBCI Conference by: **Sean Hogan, Fire Adviser, DEHLG**



Part 3-(Graduated) Enforcement Powers of BCAs

Building Control Act, 1990

- **Power of Inspection**, right to demand information, documentation, take samples (section 11 of 1990 Act).
- **Informal discussion/caution.**
- **Enforcement Notice** on builder/owner (Sections 8 to 10 of 1990 Act), must be complied within specified period (not less than 14 days) subject to outcome of any appeal to District Court (Section 9) on specified grounds [Section 9(1)(a)] - local authority should use as "checklist".
- On failure to comply, **authority can enter site/building execute remedial works and recover cost from owner/builder**- but few do so.
- **Criminal Prosecution** (mainly, on indictment, via DPP) – rarely invoked.
- **High Court Injunction, where imminent danger** (section 12 of 1990 Act) - rarely used.



Part 3-(Graduated) Enforcement Powers of BCAs

Minister's power to prohibit sub-standard materials

- **Section 13 of 1990 Act**
- Minister not asked to invoke prohibition power, to date.

Preparing a Case for the DPP

- Stringent evidential/proof requirements required by DPP- interests of justice/courts/juries, in case of prosecution by indictment.
- **Proposal**: option of **summary prosecution** in District Court, at discretion of BCA, would be easier to pursue.

Evidential Value

- Documents (Section 15 of 1990 Act).
- **Proposal**: Recognise evidential value of building control records held in **electronic format**.



Part 4 - Sanctions

Penalties

- *On Summary Conviction, maximum fine of €1,000 and/or prison term not exceeding 6 months. If offence continues after conviction - fine not exceeding €190 per day.*
- *Following Conviction, on Indictment (breach of Regulations, non compliance with Enforcement Notice) - maximum fine of €12, 500 and/or prison term not exceeding 2 years (indictment rarely arises, in practice).*
- **Proposal: increase penalties for summary convictions**

High Court Injunction

- *Where serious/imminent risk to public safety is involved - grounds for injunction to be broadened.*
- *Use more often, better deterrent than conviction/fine?*
- **Proposal: broaden injunction power**, (e.g. to cover cases where FSC procedure or Enforcement Notice are not complied with).



Part 5 - Enforcement Objectives/Activity

Service Indicator:

- ***“Delivering Value for People (January 2004) sets service indicators for Local Authorities, including P5 (page 44):***
- ***“Buildings inspected, as a percentage (%) of new buildings notified to the local authority”.***

Building Control Officer (BCO):

- ***100% of Building Control Authorities have appointed BCO. Some County Council BCO act as BCO in urban areas, within County (2005 List of BCOs at Appendix 3).***
- ***When appointed, BCOs should attend FAS training course : can be taken in modules, at local/ regional level, depending on demand. Managers have responded well to requests to release BCOs for FAS training.***
- ***Building Control Officers should be full time - some Building Control Officers carrying out other duties.***
- ***Continuity needed: Building Control Officer should, ideally, be appointed for a reasonable time period. Otherwise, there is a continuing loss of valuable trained/experienced personnel, with ongoing problem of filling vacancies.***



Part 5 - Enforcement Objectives/Activity

Inspections:

- *100% of Authorities carrying out inspections.*
- **Target Level:** *80% of 37 BCA meeting re-stated inspection target of 12%-15% of buildings covered by valid Commencement Notices.*
- ***All authorities should aim to achieve minimum inspection target, by end 2005.***

Measures introduced by Minister

- *substantially increased and new **building control fees** (with effect from 1 July, 1998).*
- *approval of the creation of **additional posts**, where justified, to allow appointment of Building Control Officers, and reasonable administrative support staff.*
- *Re-launching **FAS customised training package, in CD-ROM format, in 2001***

Enforcement Statistics for 2003/2004

- *Statistics for 2004, and comparison with same period in 2003, are set out at **Appendix 4.***



Part 6 – Promoting Greater Local Awareness/Customer Services

- ***Organise local/ regional /educational Seminars for builders, in partnership with CIF and/or Home Bond/Premier Guarantee, to outline the background /requirements of the Regulations together with the Technical Guidance Documents - this should help to prevent problems which would otherwise arise at a later stage.***
- ***DOE/H/LG leaflet “Guide to the Building Control System” – PL. 11: to issue with every Planning Permission drawing attention to requirement to comply with Building Regulations: as per Circular Letter PD 3/2003 dated April 2003 issued to all planning authorities and Bord Pleanala.***
- ***Early response to complaints made to authorities in regard to non- compliance with Building Regulations, particularly in regard to Part M (Access for People with Disabilities).***
- ***Ensure a visible presence on building sites, with a good geographical spread, and send out the signal that the authority "means business"***



Part 7- Pending Developments

(A) PROPOSED BUILDING CONTROL (AMENDMENT) BILL 2005

- **Proposals under consideration, for inclusion in Bill:**
- **Stronger enforcement powers: for BCA**
- **Revised Fire Safety Certificate (FSC) procedures:** as recommended by BRAB
- **Disability Access Certificate (DAC)-Design:** as recommended by the Commission on the Status of People with Disabilities.
- **Option of Summary Prosecution by BCA:** as alternative to prosecution, on indictment by DPP.
- **Increased Maximum Fines;** for summary convictions.
- **High Court Injunction:** to cover wider category of cases.
- **Registration:** of title (not function) of “Architect”, “Building Surveyor” and “Quantity Surveyor”, a consumer protection measure.
- Legal Transposition of EU Directive on Energy Performance of Buildings (2002/91/EC) of 16 December 2002 –see below



Part 7- Pending Developments

(B) DISABILITY BILL 2004 (Section 23 and Part 6)

- Published in September 2004.
- **(Draft) DEHLG Sectoral Plan**: under Section 34 of Disability Bill 2004.
- **Existing (Pre-June 1992) Public Buildings**: to be made accessible to people with disabilities, by 31 December 2015.
- **Part M / TGD-M**: will be reviewed and amended, post enactment of Disability Bill 2004.
- **National Disability Authority (NDA)**: to publish **Codes of [Best] Practice** for public authority buildings; and operate proposed **Centre for Excellence in Universal Design**. Separate paper on NDA being given to IBCI Seminar by –

Mary Van Lieshout, Head of Research and Standards Development, NDA



Part 7- Pending Developments

(C) EU Energy Performance of Buildings Directive-EPBD (2002/91/EC)

- **Draft Action Plan:** for implementation of EPBD in Ireland- to be published for public/industry comment shortly.
- **Ireland:** is one of two EU Member States known to be producing integrated Action Plan- other is Lithuania.
- **Comments of IBCI:** will be welcome on draft Action Plan, when published. I'll just briefly mention two features:
 - **Heat Energy Rating (HER) methodology in TGD L:** to be based on framework methodology set out in Annex to EPBD. HER will probably be expressed in **Kilowatt hours / per square metre / per annum (kWh/m²/pa)**
 - **Building Energy Rating (BER) certificate** (“lable”) incorporating **Recommendations** for cost effective improvements in BER, must be issued for al newly constructed buildings and for all existing buildings (when existing buildings are offered for sale or letting). BER for new buildings will probably be based on HER but expressed in simple grading terms as **A, B, C, D, E, F** etc.
- **More details of “energy labelling” of buildings, under the EPBD:** will be outlined in a separate paper being given by Paula Rice, Sustainable Energy Ireland (SEI)



Part 7- Pending Developments

(D) Reviews of Technical Guidance Documents 2005/06

- **Part B/TGD-B (Fire Safety)** – implementing EU Fire Performance standards under Construction Products Directive (89/106/EEC) and upgrading certain national requirements, as published in draft form in August 2003. 37 public/industry comments considered by consultants (BRE), National Steering Group. Definitive text being finalised, in consultation with BRAB; and expected to be published by end June 2005.
- **TGD C (Site Preparation –Radon Prevention)**: new edition of TGD C published in October 2004, with stronger guidance on installation/ protection/identification of Radon prevention measures in light of **RPII Report/Recommendations (July 2003)** arising from RPII survey of Radon in new houses (post 1997 Building Regulations) built in Ennis Co. Clare. TGD –C now recommends post occupation survey of Radon in new buildings.
- **Part E/TGD E (Sound Insulation)**: **Home Bond Consultancy Study**, expected to be completed, by end of 2005 – sound insulation standards achieved in new dwellings in Ireland; and relevant standards in selected EU Member States (e.g. UK- durable sound insulation details, as alternative to post-construction sound testing). DEHLG to initiate review of Part E / TGD-E in light of Home Bond Study findings/recommendations, in 2006.



Part 7- Pending Developments

(D) Reviews of Technical Guidance Documents 2005/06 cond.

- **TGD-H (Drainage and Waste Water Disposal)** – draft amendment to call up new edition of ***EPA Manual on Wastewater Treatment Systems serving Single Houses***, when published by EPA in Autumn 2005 – in lieu of SR6: 1991 (expected to be withdrawn by NSAI). Will also take account of (pending) European Standards (EN 12566 Parts 1 – 5)
- **(Draft) Part L2/TGD-L2 (Conservation of Fuel and Energy)-Non Domestic Buildings:** published, for public/industry comment in July 2004. Less than 12 comments received. Will reduce CO2 emissions by 100,000 tonnes per annum. Draft Part L / TGD L now being amended to implement ***EPBD/HER methodology for dwellings***.
- **Part M/TGD M (Access for People with Disabilities):** to be reviewed and amended, following enactment of ***Disability Bill 2004***.



Part 7- Pending Developments

(D) Reviews of Technical Guidance Documents 2005/06 contd.

- **Amendment of various TGDs: to call up emerging *European voluntary (EN) or harmonised standards (hEN)*, when transposed by NSAI as IS: EN.**
- **TFHC Report/Recommendations on Timber Frame Housing (December 2003): package of *building code amendments*, to more explicitly cater for timber frame, to be published in 2006, linked to-
 - (a) ***proposed 2005/06 NSAI Code of Practice for Erection of Timber Frame on Site; and***
 - (b) ***Training /Certification Course for Timber Frame Erection Supervisors: to be developed by NSAI, for FAS*****
- **Timber frame option: to be evaluated in procurement of 12 pilot Social Housing projects in 2005.**
- **Leaflet on “Loft Conversation: Protect Your Family” (December 2004): published, by DEHLG and disseminated widely. Focusses mainly on fire safety aspects of attic conversation**



Part 7- Pending Developments

(E) I T and the Building Regulations

- *IT is an important tool in ensuring an effective building control system.*
- *The first step in using Information Technology was the project initiated by FAS, in partnership with Offaly County Council, in producing the **building control system on CD-ROM in 2001.***

- **DOE/H/LG** have now put Building Regulations 1997-2003 and the related Technical Guidance Documents on the Departmental web site:

www.environ.ie

- ***Draft amendments of Building Code**, also now published on this website*
- *BCA, Builders, designers and owners of property will have **instant IT access to building code data***



Part 7- Pending Developments•

(F) Building Control Enforcement -Options

- **Farrell Grants Sparks Report (2002):**

- (i) Recommended, inter alia, that **Building Control be integrated into Fire Service**, as is already the case in a significant number of counties.

- (ii) Recommendation not listed in 4 priority areas of Change Agenda for Fire Service announced by Minister in February 2005.

- (iii) Still a matter for Manager to decide where to locate building control function e.g. in planning section or fire service.

- **RIAI/ ACEI, IEI & SCS Discussion Document (2004)**

- (i) Recommends **mandatory self-certification of compliance with Building Regulations** by relevant designer, main contractor and sub-contractors, under amended/strengthened provisions of **Building Control Act 1990**.

- (ii) Recommendation is being carefully considered by DOE/H/LG, in consultation with BRAB, CCMA.

- (ii) IBCI: will be consulted, if and when firm proposals emerge



Part 7- Pending Developments

(G)Proposed RIAI Code of Practice – (COP): Tall Buildings

- There are **8 tall buildings (up to 33 storeys)** known to be at the design / planning stage – principally in Dublin.
- RIAI, in partnership with relevant bodies (including DEHLG, CCMA, CFOA, IBCI) propose to develop a **Code of Practice** for the planning and design of tall buildings – covering planning, environmental, structural and fire engineering aspects, and taking account of Town Planning, Building Control and Fire Safety codes.
- RIAI to issue **Note for Members**; setting out interim advice.



Part 8- Supportive Role of Other Organisations

Role of IBCI

- *IBCI Annual National Conference, in partnership with DOE/LG is important mechanism for:*
 - *updating BCOs on developments; and*
 - *facilitating informal/frank exchange of views between national and local regulatory bodies.*
- *IBCI nominee on BRAB*

Role of FAS

- ***FAS Training Course***, in modular format, at regional centres-**should be availed of by every BCO, soon after appointment.**
- ***CD-ROM of Building Control Training Courseware***, made available, at reasonable cost, to (a) local authorities, (b) construction industry.



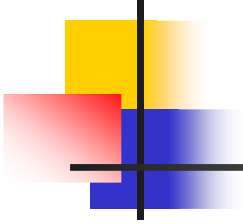
Part 8- Supportive Role of Other Organisations

Role of Home Bond

- *Annual Regional Seminars for Builders: on building code developments.
“Right on the Site” Leaflets
“House Building Manual”.*
- *New house inspections for guarantee purposes.*

Role of Premier Guarantee

- *New entrant to new house warranty market.*
- *Has already gained significant market share.*
- *Competing with Home Bond.*
- *New house inspections, for guarantee purposes*



Thank you for your attention