

The Building Control Regulations 2009

Colm Traynor BE FIEI Chartered Engineer

Engineers Ireland, Fire & Safety Division

25th November 2009

!!!DISCLAIMER!!!

- Overview only, not a legal interpretation
- Certain provisions open to interpretation?
 - Different interpretation/application by building control authorities (fire officers)??
- No published guidance/interpretation

The Building Control Regulations 2009

- Building Control (Amendment) Regulations 2009
 - SI No. 351 of 2009
- Amend earlier Building Control Regulations
- Not consolidated regulations
 - Insert many text changes into previous versions
- Cited as the “*Building Control Regulations 1997 to 2009*”
- Highlights of fire-related changes

Principal Changes

- Commencement/Application
- 7-Day Notice
- Revised Fire Safety Certificate
- Regularisation Certificate
- Disability Access Certificate
- Statutory Declarations
- New Offences
- Issues Arising

Transitional Arrangements

2. Commencement.

- *These Regulations shall come into effect on 1 October 2009 except for the provisions of Article 8 (Disability Access Certificates) which shall come into effect on 1 January 2010.*

Application

3(5)

- Requirements relating to new forms of certificate apply only to works carried out after 1st October 2009, except that requirements relating to Regularisation Certificates apply to works carried out before that date.
 - Cannot require a Regularisation Certificate if more than 5 years since works have been completed
 - Section 17 (6) of the Building Control Act

Obligation to Obtain a Fire Safety Certificate

12(3)

- Not obliged to have a FSC in advance of works where a 7-Day Notice has been submitted

7-Day Notice

20A

- Submitted in advance of commencing work
 - Not less than 7 days in advance of commencement of work
- Must be accompanied by a (valid) application for a Fire Safety Certificate
- Statutory Declaration Form
- Double Fee

Revised Fire Safety Certificate

20B

- A Revised Fire Safety Certificate is required
 - Where the original FSC application was submitted prior to grant of planning permission and
 - If necessitated by subsequent grant of PP
 - To ensure the consequent revised design complies with Part B
 - or (separately from the above)

Revised Fire Safety Certificate

20B

- A Revised Fire Safety Certificate is required
 - Where a significant revision is made to the design for which a FSC has already been granted
- Works not to be carried out until the Revised FSC is granted
- (Not a 'retrospective' FSC where revised works have been carried out, only applies to revision of the fire safety design, prior to the works)

Regularisation Certificate

20C

- Required where works have been commenced or completed without obtaining a FSC or the submission of a 7-Day Notice
- Submit drawings of the works as they have been commenced or constructed, for assessment
 - Assessment of drawings, documents and information
- Statutory Declaration
- Quadruple Fees

Regularisation Certificate

20C (6)(a)

- A building control authority shall, having considered an application for a regularisation certificate and following an inspection of the buildinggrant such certificate, with or without conditions or refuse to grant the certificate....

Regularisation Certificate

20C (6)(e)

- A regularisation certificate granted ...shall only be construed as specifying, that *in the opinion of the building control authority, the works as constructed in accordance with plans, documents and information submitted, comply with the requirements of Part B of theBuilding Regulations, subject to compliance (within a period of 4 months there mentioned) with any conditions attached to the certificate, including conditions as to the carrying out of additional works.*

Disability Access Certificates

- Requirement to obtain a DAC linked to requirement to obtain a FSC
- Significant changes due in TGD M
 - Going from 26 to 72 pages
 - ‘Ambulant disabled’ stairs provision
 - Lifts
 - Visibility of signage
 - (Evacuation lifts in all buildings???)
 - etc

Disability Access Certificates

- Draft Regulation M
 - Out for public comment
 - ‘Adequate provision shall be made for people to access and use a building, its facilities and environs’
 - Not just ‘access for the disabled’

Part B – Part M

- Need for one to take account of the other
 - Door widths may be OK for Part B but inadequate for Part M
 - Signage
 - Text not to be in Capital Letters!
 - Contrast
 - Lighting levels
 - Door closers (max 20N force)
 - Escape stair widths
 - Audible/visual warnings

Prohibition on Opening

43

- (1) A new building or an existing building in respect of which an extension or a material alteration has been made, shall not be opened, operated or occupied or permitted to be opened, operated or occupied,
 - (i) unless a fire safety certificate, a disability access certificate, a revised certificate of either kind or a regularisation certificate...has been granted by the building control authority in relation to the building, or
 - (ii) if such appeal is made to it, pending the determination by An Bord Pleanala of an appeal relating to a refusal to grant any of the certificates ... referred to in clause (i) or the attachment of conditions to any of them.

Statutory Declarations:

Statutory Declarations Act 1938

- Signed in the presence of a Commissioner for Oaths
 - *6.—Every person who makes a statutory declaration which to his knowledge is false or misleading in any material respect shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds or, at the discretion of the Court, to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.*

Statutory Declarations:

7-Day Notice Statutory Declaration

- ‘Declarer’ states that:
 - He has made an application for a FSC
 - Works will not commence in less than 7 days
 - The application has been completed in full
 - The application complies in all respects with the relevant provisions of the BC Regulations
 - Any works that have commenced before the grant of the FSC will comply fully with the Building Regulations
 - Will carry out any modifications , including conditions, required under the FSC, within the relevant timeframe
 - Foregoes Right of Appeal?

Statutory Declarations:

Regularisation Certificate Statutory Declaration

- ‘Declarer’ states that:
 - The drawings, documents and information supplied...are true and accurate
 - The works comply fully with Part B
 - Agrees to inspection of the works
 - Will abide by any conditions, including..to carry out additional work
 - Accepts that where conditions are not fully complied with ..within 4 months, the certificate will not have effect (?)

Application for a Regularisation Certificate

Application Form

- Is construction of the building completed?
- Date of completion?
- Is the building occupied or operational?
- Is the building still under construction
 - 25%? 50%? 75%?
- Any modifications to the original design during construction?
- Was Planning Permission sought for the modifications?
- To be accompanied by complete & certified plans as commenced or constructed

Form of Regularisation Certificate

- Building Control Authority certifies that, in its opinion, the works as constructed in accordance with the plans.....comply with the requirements of Part B.

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- Applicant for a Regularisation Certificate is highlighting that he has committed an offence by not having a FSC?
- Statement as to whether building is opened or occupied
 - Admitting to an offence?

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- Wording of certificate unclear; approves the works *as constructed as per the plans...*
- Application for Regularisation Certificate required where works have been commenced or constructed
 - i.e. Works may be only partially completed
 - If work just commenced, but significant works yet to be constructed, the certificate does not give approval for the works yet to be done?
 - Is a further Regularisation Certificate Application required when they are completed (otherwise how do these works get approved)??
 - 8 times fees??

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- Where a Fire Safety Certificate has been granted, but variations to the works have been carried out, is a Regularisation Certificate required to cover the altered parts of the works, or is it required only where no Fire Safety Certificate has been originally applied for?
 - Regulations would imply the former, BCAs might imply the latter??

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- Prohibition on opening where works are in part of a building?
 - New bar counter layout in the centre of a pub, which part should not be opened or occupied?
 - Offence to open, can be prosecuted, but not closed, by the BCA?
 - Cannot open even if a minor condition is under appeal?
- 7-Day Notice:
 - What happens if application is refused?
 - Statutory Declaration to comply with any conditions
 - Giving up right to appeal???

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- Statutory Declarations
 - Signed by the applicant???
- How can the Declarer' state:
 - The building has been constructed to Part B
 - The application complies in all respects with BC regs
 - Any works commenced before grant of FSC will comply with Part B
 - Will carry out any mods, conditions within the timeframe
 - Drawings.. are true and accurate
 - He 'accepts' that the cert '*will not have effect*' if not fully complied with (*to the satisfaction of the BC Authority*) within 4 months
 - Is the BCA obliged to check if the conditions have been fully complied with, within the 4 months??
 - If the BCA does not 'express satisfaction', is the Cert of no effect?
 - How is this reflected on the Register?
 - Will anyone ever know???

Thank you for your attention