



January 2014

The Building Control (Amendment) Regulations 2014

The Building Control (Amendment) Regulations 2014 (“the Regulations”) were published by the Minister for Environment, Community and Local Government (“the Minister”) on the 15th January, 2014, and shall be enacted on the 1st March, 2014. The Regulations have been introduced to prevent a reoccurrence of the construction issues arising from defective materials such as pyrite, breaches of fire regulations, poor workmanship, insolvency of the contractor, a lack of accountability and certification, all of which have been the subject of high profile actions in recent times. The Regulations will change and improve building control in Ireland by providing greater regulation to the construction industry in an effort to ensure that all construction works are carried out, completed and certified to an acceptable industry standard. The significant reforms impose a greater onus on the owner, builder and registered professionals before, during and after the construction works. They also provide a revised formal process for commencement notice applications to include the completion of mandatory forms and certificates, the requirement of increased inspections by registered professionals, an online building control management system (as the means of building control administration) and a public register. The key areas of reform are outlined in more detail hereunder.

Commencement Notice

A commencement notice is to be:-

- (a) filed electronically on the building control management system; and
- (b) is to be accompanied with:-

www.dilloneustace.ie

/682868v2

For further information on any of the issues discussed in this article please contact:



Paul Eustace
DD: +353 (0) 1673 1814
paul.eustace@dilloneustace.ie



Louise Wright
DD: +353 (0) 1673 1817
louise.wright@dilloneustace.ie

- (i) plans, calculations, specifications and particulars in respect of the proposed works evidencing how they will comply with the Regulations, the completion of an online assessment via the building control administration of the proposed approach to compliance with the requirements of the Second Schedule of the Regulations and the preliminary inspection plan prepared by the Assigned Certifier;
- (ii) a certificate of compliance with design;
- (iii) a notice of assignment of a person qualified to inspect and certify the works (“Assigned Certifier”);
- (iv) a certificate of compliance (undertaking) of the Assigned Certifier;
- (v) a notice of assignment of the builder;
- (vi) a certificate of compliance (undertaking) by the builder; and
- (vii) the fee.

In the event that the Authority does not accept the commencement notice due to non-compliance it may respond within seven (7) days of receipt of the notice filed electronically or within twelve (12) days of receipt of the notice in writing as appropriate by notifying the person who submitted the notice and outlining their reasons. All of the notices and certificates are to be in the mandatory format outlined in the Second Schedule of the Regulations. An architect on the register pursuant to the Part 3 of the Building Control Act, 2007, or a building surveyor on the register pursuant to Part 3 of the Building Control Act, 2007, or a chartered engineer on the register pursuant to section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act, 1969, can act in the capacity of an Assigned Certifier and may also execute a design certificate. In the event that the owner (“Owner”) of the building opts to change the Assigned Certifier or the builder then the Owner is obliged within fourteen (14) days to notify the building control authority (“Authority”) electronically or otherwise by providing the necessary forms of assignment and undertaking in accordance with the Regulations. Also, if there is a change of ownership of the building or of the building works then the new owner is obliged to notify the Authority electronically or otherwise within fourteen (14) days of the change of ownership.

Reforms to the application of a commencement notice also apply to an application of a seven day notice.

Construction, Completion and Certification

The Owner is obliged during the design stage of the building works to appoint a registered architect, chartered engineer or registered building surveyor to design the building works and certify

compliance of the design in accordance with the Regulations. The Owner then appoints an Assigned Certifier who undertakes using reasonable skill, care and diligence to inspect the building works, to coordinate the inspection work of others and to certify that the building works are in compliance with the Regulations following the implementation of an inspection plan. The builder confirms that he is competent to undertake and to carry out the building works in accordance with the plans, calculations, specifications, ancillary certificates and particulars listed in the commencement notice, that he will co-operate with the inspections detailed in the inspection plan prepared by the Assigned Certifier and will take all reasonable steps to ensure that all works carried out are certified in accordance with the Regulations.

Upon completion of the works, a certificate of compliance on completion (“the Certificate”) in the format documented in the Sixth Schedule of the Regulations, the plans and specifications (in the event that they may be at variance to the plans and specifications previously submitted) and the inspection plan as implemented by the Assigned Certifier are to be lodged with the Authority. The Certificate is executed by both the builder and the Assigned Certifier. Upon receipt of the documentation the Authority will record the date of receipt of the Certificate and will consider within twenty one (21) days of receipt of the Certificate as to whether or not it is valid. If the Authority validates the Certificate then it shall no later than twenty one (21) days of receipt of the Certificate enter the particulars of the Certificate on the public register and shall notify the person who submitted the Certificate. In the event that the Authority does not accept the Certificate then it may within twenty one (21) days of receipt of the Certificate notify the person in writing who submitted the Certificate of the position and their reasons. Alternatively, it may require the person who submitted the Certificate to submit a revised Certificate or such additional documentation as may be rendered necessary. The Certificate must be submitted, validated and placed on the public register before a building may be used and occupied.

The Regulations apply to building works that require a fire safety certificate, new dwellings (to include houses and apartments) and extensions with a floor area greater than forty square metres. Failure to comply with the Regulations shall be an offence resulting in fines and/or imprisonment.

The Minister may publish a code of practice for inspecting and certifying building works to accompany the Regulations for the purposes of providing guidance in relation to inspecting and certifying building works or a building in compliance with the Second Schedule to the Regulations.

Conclusion

The Regulations standardise the procedure and approaches involved in relation to building works. They will also provide Owners with an assurance and comfort that any building works which have been completed pursuant to the Regulations have been approved and certified to industry standard. Although the Regulations are welcome concerns have been expressed by professional bodies involved in the construction industry. There is a view that the increased responsibility and liability of the builders and professionals may involve a review of the insurance cover that is necessary to be put in place. It needs to be established as to whether or not the liabilities extend beyond the professional indemnity cover that is currently available to builders and the professionals. There

have been requests that a latent defects insurance scheme is made available and that a national system of registration for builders is implemented in order to ensure that the Regulations can operate effectively. Concern has also been expressed over the fact that the designer of the building works who is certifying the design may also (in the event that he has been appointed as the Assigned Certifier) certify that the building works have been completed in accordance with the Regulations. It is presumed that any challenges that lie ahead will be successfully resolved to ensure the enforcement of the Regulations. In any event, the reforms introduced by the Regulations should improve construction standards and ensure that building works are completed in a quality controlled, certified, transparent and regulated environment.

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2014 Dillon Eustace. All rights reserved.