

The Implications of the New Building Regulations.

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The Implications of the New Building Regulations.

- The opinions expressed in this presentation are those of Cormac Bradley, given with the sanction of Engineers Ireland.
- The focus of the presentation will be on the changes to the Building Regs. in the context of the associated Code of Practice and the implications for the notifications and construction phases of a building project.
- The implications for Building Control Authorities is based on my participation in the working group discussions, a more definitive assessment will have to be provided by others.
- **Note: I am NOT a Building Design Engineer.**

• Why do we need new Building Control Regulations?

- Extracts from a newspaper article (Irish Times) from the time the new regulations (S.I. 80) were published suggest the following.
- *“to ensure builders and other professionals can be held legally liable for poor quality buildings!”*
- *“to prevent the recurrence of poorly constructed dwellings, pyrite damage and structures breaching fire regulations.”*
- *“to provide consumers with a more comprehensive service.”*

BACKGROUND

- Dept officials invited to Clyde Road in advance of submission deadline to discuss the New Building Regulations initiative.
- Engineers Ireland indicated that they were supportive of the initiative.
- Engineers Ireland submission to Dept. ran to 16 pages.
- Officials encouraged by support from Engineers Ireland.
- Promotion of role of Chartered Engineers within the New Building Regulations matches the ambitions of Engineers Ireland for members to achieve the “gold standard” of recognition – C.Eng.
- RIAI submission ran to over 90 pages.

BACKGROUND

POST - SUBMISSION DEADLINE

- Dept officials convened a meeting of the “institutions” in early July 2012 to discuss the way forward for the proposed Regulations.
- Present were:- Engineers Ireland, ACEI, RIAI, SCSi, CIF, CCMA, Housing Agency.
- Engineers Ireland were represented by Orla Lonergan, John Bailey & Cormac Bradley.
- Agreement that a working group would be formed to draft an associated Code of Practice for the Building Regulations.
- Single representative of each of the “institutions” under the Chairmanship of John O’Connor, Housing Agency.
- Engineers Ireland represented by Cormac Bradley.

WHY DO WE NEED NEW BUILDING REGULATIONS?

- Colloquially – to avoid a repeat of the Priory Hall problem.
- To provide a more robust system of building control.
- To try and make best use of limited resources.
- Can these ambitions be realised?

WHAT ARE THE AMBITIONS OF THE NEW BUILDING REGS?

- Robustness
- Transparency
- Accountability
- Traceability
- Responsibility for specific works.....and
- Encouraging a mutually supportive environment on the project.

The Implications of the New Building Regulations.

- Definitions
- Certification of the design and inspection elements of the project
- Sign-off by individuals
- Inspection Notification Framework (INF)
- Register of “building contractors”.
- On-line submission of documentation.

The Implications of the New Building Regulations.

- Definitions (Personnel)
 - Building Owner
 - *Means any natural or legal person, public or private, who has for the time being, whether permanently or temporarily, legal title to or a beneficial interest in the building, or who is responsible for its care and maintenance.*
 - Assigned Certifier
 - *Means the person so assigned, in accordance with the Building Control Regulations.*
 - Builder
 - *Means a competent builder appointed, for purposes of the Building Control Regulations, by the owner, to build and supervise the works.*
 - Design Certifier
 - *Means the person who signs the Certificate of Compliance (Design).*
 - Building Control Authority
 - *Means a Local Authority to which Section 2 of the Building Control Act 1990 applies;*

The Implications of the New Building Regulations.

- Definitions (Activities)
 - Construction
 - *Includes the execution of works in connection with buildings and any act or operation necessary for, or related to the construction, extension, alteration, repair or renewal of a building;*
 - Design
 - *Includes the preparation of plans, particulars, drawings, specifications, calculations and other expressions of purpose according to which the construction, extension, alteration, repair or renewal concerned is to be executed and “designed” shall be construed accordingly;*

The Implications of the New Building Regulations.

- Paperwork
- Assignment.
 - *Notice of Assignment of Person to Inspect & Certify Works (Assigned Certifier).*
 - *Notice of Assignment of Builder*
- Certification.
 - *Certificate of Compliance (Design).*
 - *Certificate of Compliance (Undertaking to inspect & certify).*
 - *Certificate of Compliance (Undertaking by Builder).*
 - *Certificate of Compliance (Completion).*

The Implications of the New Building Regulations.

- Certificate of Compliance (Design)
 - *The Design Certifier signs the Certificate of Compliance (Design) that is lodged with the Commencement Notice and ensures that any ancillary certificates from members of the design team are provided. The Design Certifier is responsible for co-ordination and compiling of the plans, specifications and documents that are lodged to which the certificate relates.*
- Certificate of Compliance (Undertaking to Inspect & Certify).
 - *The Assigned Certifier, appointed by the owner, gives an undertaking to co-ordinate the inspection and certification of the Works.*

The Implications of the New Building Regulations.

- Certificate of Compliance (Undertaking by Builder)
 - *The Builder, appointed by the Owner, gives an undertaking to construct, co-operate with the Assigned Certifier and sign the Certificate of Compliance (Completion) as required under the Building Control Regulations. As part of this undertaking, the Builder should co-ordinate the work of specialist subcontractors and designers should ensure that ancillary certificates of compliance are provided.*
- Certificate of Compliance (Completion)
 - *The assigned Certifier and the Builder sign the Certificate of Compliance on Completion, supported by ancillary certificates from other members of the Building Owner's design team and specialist sub-contractors.*

The Implications of the New Building Regulations.

- Assigned Certifier – Who?
 - Architects that are on a register under Part 3 of the Building Control Act 2007, or
 - Building Surveyors that are on a register under Part 5 of the Building Control Act 2007, or
 - **Chartered Engineers under Section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969.**

The Implications of the New Building Regulations.

- Ancillary Certifiers
 - *May be appointed by owner, his design team and/or by the builder.*
 - *Architects & Architectural Technologists/Technicians*
 - *Consulting Engineers (structural/civil/mechanical/electrical) - appointed by the owner to design, inspect & certify.*
 - *Designers (piling, mechanical, electrical, sewer and waste water, precast concrete) – appointed by the builder to design and certify specific elements of the works.*
 - *Other competent technical and trade persons that install products and/or test on completion.*
 - *The Builder, sub-contractors, suppliers, manufacturers in relation to certifying design and construction and also in relation to components or assemblies supplied for the works.*

The Implications of the New Building Regulations.

- At Commencement Stage, submit;
 - *Commencement Notice*
 - *Plans, specifications, etc.*
 - *Certificate of Compliance (Design)**
 - *Notice of Assignment by the Building Owner of Competent Person as Assigned Certifier**
 - *Certificate of Undertaking by the Assigned Certifier**
 - *Certificate of Undertaking by the Builder**
 - *The appropriate fee.*

The Implications of the New Building Regulations.

- Construction Stage – Inspection by Certifiers.
 - *The certifiers shall adopt an appropriate site inspection plan which takes full account of relevant factors for the building work concerned.*
 - *Relevant factors should be assessed at the outset and regularly reviewed so that effective control is maintained.....with adequate site inspections and records.....*
 - *The building control process, in order to be effective, requires an inspection plan of appropriate intensity and frequency.*
 - *The supervision by the Builder is therefore of critical importance.*

The Implications of the New Building Regulations.

- Emphasis on Inspection.
 - *The scope and frequency of inspection should be determined and incorporated in a formal written plan.*
 - *The plan shall be kept under review.*
 - *The Assigned Certifier shall as part of the inspection plan and before commencement of work on site agree with the Building Owner and Builder an Inspection Notification Framework (INF).*
 - *The INF should identify generally the stages or items of work which the Assigned Certifier wishes to be notified to him and/or to an Ancillary Certifier when they are ready for inspection.*

The Implications of the New Building Regulations.

- On Completion.
 - *A Certificate of Compliance (Completion) is submitted by the Assigned Certifier to the building control authority – it is signed by both the Assigned Certifier and the Builder.*
 - *Plans, specifications and particulars for any amendments from those submitted at commencement are also submitted by the Assigned Certifier.*
 - ***The Certificate must be submitted before a building may be opened, used or occupied.***
 - ***If rejected by the Building Control Authority within 3 weeks, it is not valid.***
 - *Between 3 and 5 weeks prior to the Building being completed, the Assigned Certifier may submit a Prior Notification.*
 - *Phased completion of buildings can be accommodated.*

Conclusion?

- Earlier this year S.I. 80 was published – Building Control (Amendment) Regulations 2013.
- The associated Code of Practice was also finalised.
- Job Done.....!!!!!!!
- NOT QUITE.
- A review of the published S.I. revealed a number of drafting errors and a significant change in the wording of two critical Certificates.
- The consequence.....

2nd Round of Consultations

- Another round of consultations!
- Three separate Senior Counsel opinions on the applicability of the revised wording of the critical Certificates.
- Development of the online system of registration.
- Proposals for a review and appeal process where there is a conflict between a Builder/Assigned Certifier and a Building Control Authority Inspector over the registration process at the conclusion of the project.

Critical Certificates

- Wording of SI 80; Form of Certificate of Compliance (Design).
5. I certify, having regard to the plans, specifications, calculations, ancillary certificates and particulars referred to at 4 above, that the proposed design for the works or buildings is in compliance with the requirements of the Second Schedule of the Building Regulations insofar as they apply to the building works concerned.

Senior Counsel argued that this was, in effect a guarantee on the works.

- Revised wording as recommended by the Working Group; Form of Certificate of Compliance (Design).
5. I certify, **having exercised reasonable skill, care and diligence**, that having regard to the plans, calculations, specifications **which have been prepared by me and others and having relied on** ancillary certificates and particulars referred to at 4 above, the proposed design for the works or building is in compliance with the requirements of the Second Schedule to the Building Regulations insofar as they apply to the building works.

This emphasizes the reliance on other project team members to provide documentation in the case of design.

2nd Round of Consultations.

- Certificate of Compliance on Completion. (Undertaking by Builder)

Part A – Certificate signed by Builder

2. I certify that the works or building as completed has been constructed in accordance with the plans, specifications and particulars certified by the designer and listed in the schedule to the Commencement Notice relevant to the above works, together with such further plans specifications and particulars, if any, as have been subsequently certified and submitted to the Building Control Authority, and is in compliance with the requirements of the Second Schedule of the Building Regulations insofar as they apply to the building works concerned.

- Certificate of Compliance on Completion. (Undertaking by Builder)

Part A – Certificate signed by Builder

2. I certify **having exercised reasonable skill, care and diligence** that the works or building as completed has been constructed in accordance with the plans, specifications, calculations, ancillary certificates and particulars as certified under the Form of Certificate of Compliance (Design) and listed in the schedule to the Commencement/ 7 Day Notice relevant to the above works, together with such further plans, specifications, calculations, ancillary certificates and particulars, if any, as have been subsequently **issued to me and/or** certified and submitted to the Building Control Authority, and such other documents relevant to compliance with the requirements of the Second Schedule to the Building Regulations shall be retained by me as outlined in the Code of Practice for Certifying and Inspecting Building Works.

2nd Round of Consultations.

- Certificate of Compliance on Completion.
 - Part B – Certificate signed by Assigned Certifier
4. I now certify that the inspection plan drawn up in accordance with the Code of Practice for Inspecting and Certifying Building Works or equivalent has been fulfilled by the undersigned and other individuals nominated therein as appropriate having exercised reasonable skill, care and diligence and that the building or works is in compliance with the requirements of the Second Schedule of the Building Regulations insofar as they apply to the building works concerned.
 7. I now certify **having exercised reasonable skill, care and diligence** that the Inspection Plan, drawn up having regard to the Code of Practice for Inspecting and Certifying Building Works, or equivalent, has been **undertaken** by the undersigned and **relies on other parties** nominated therein, **as appropriate on the basis that all have** exercised reasonable skill, care and diligence.
 8. **Based on the above, and relying on the Ancillary Certificates scheduled,** the **construction of** the building or works is in compliance with the requirements of the Second Schedule of the Building Regulations, insofar as they apply to the building or works concerned.

- Further development of the proposed register of Builders that has been initiated by the CIF.
- Discussions on the application of the new Regulations to a building where works have been suspended (due to funding issues).
- Debate on the status of an Assigned Certifier employed by the same organisation as the Builder – Design/Build equivalent in Civil Works.

2nd Round of Consultations.

- If there is to be a voluntary register of builders, how will a self-build project be administered and what are the implications in a project of this type with respect to the appointment of an Assigned Certifier.
- Latent Defects Insurance – this is the one area where progress has been flagging. A proposal to place a model for LDI on the table has now become the subject of a direct submission to the Minister/Department.....due to “commercial sensitivities”. But in essence we are told that there is support for the principle of LDI from the insurance industry.

The Implications of the New Building Regulations.

- E-Lodgements!
 - Registration
 - Online Payments
 - Online receipts
 - F.o.I., versus Commercial sensitivity.
 - But online facility will not replace communication between the parties.
- Professional ethics – governed by Codes of Conduct of the appropriate registered professional bodies.