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NEW BUILDING REGULATIONS

■ RUAIRÍ HAYDEN



Since the collapse of the property market in 2007, the reputation of the Irish construction industry has been in sharp decline. This is mainly due to poorly constructed homes, pyrite damage and breaches in the fire regulations which left homeowners in vulnerable positions and many with large bills for rectifying their properties of building defects. The most high-profile of these cases was the order of the High Court to evacuate Priory Hall in North Dublin, as a result of major defects in the fire proofing. The government came under increasing pressure to ensure that the problems experienced by the residents of Priory Hall do not visit any future property owners.

Background

The modern system of building control in Ireland was introduced by the Building Control Act 1990. This Act and the subsequent building regulations

were introduced to promote good practice in the design and construction of buildings in the interest of the health, safety and welfare of people who use buildings. There has however, always been a question mark over compliance with these regulations. Up to now, the industry operated a system of "self-certification" where the person undertaking a development was responsible for compliance with the building regulations, but was not required to provide evidence of this compliance. The construction industry tends to be divided into two sectors, the house and apartment sector and the commercial and industrial sector. It is suggested that compliance with the regulations in the house and apartment sector tended to be less than that of the commercial and industrial sector. This is also evident from the projects that have been highlighted to be defective in the last few years.

The expected increase in construction

activity this year along with the current housing shortage will result in a greater number of projects commencing. These projects however are entering a much more regulated landscape and it is imperative that the construction professionals involved are fully aware of all the changes to the regulations. Some of these changes are:

- Building Control (Amendment) Regulations 2014
- Part L Conservation of Fuel and Energy (Technical Guidance Documents)
- Part M Access and Use
- Construction Products Directive

New regulations

On 1 March the new Building Control (Amendment) Regulations 2014 came into law. These regulations impact on all professionals, builders and specialist subcontractors within the construction and property industry. The regulations apply to any buildings and works that require a fire safety certificate, new dwellings or extensions with a floor area greater than 40m². As a result of the new regulations, the owner, designer and builder are responsible for ensuring that the projects they are involved in have certification for the design and construction. The key requirement of the Building Control (Amendment) Regulations 2014 is the increased level of certification and documentation. The building owner needs to ensure that the following certificates are completed:

- Certificate of Compliance (Design), by the design certifier
- Certificate of Compliance (undertaking by person assigned to inspect and certify works), by the assigned certifier
- Certificate of Compliance (undertaking by builder)
- Certificate of Compliance (Completion), by the assigned certifier and the builder
- Notice of Assignment by the Building Owner of a Competent Person as assigned certifier and appointment of a competent builder

Design certifier

Under the new Act, when submitting the commencement notice at commencement stage, it will be the design certifier's role to submit the design certificate of compliance along with any plans, specifications and any other design documentation depending on the nature of the works. Along with this, the building owner will also have to submit the notice of assignment of person to inspect and certify the works, the assigned certifier, together with the assignment of the builder. The prediction in most cases is that the design certifier and the assigned certifier will be the same individual and this is confirmed to be the case from the building register on the localgov.ie website. These roles however, are separate and the responsibilities of each role are different. It is the design certifier's role to ensure that all the design is compliant with the building regulations and to provide sufficient information to the assigned certifier to enable them to fulfil their role.

Assigned certifier

The assigned certifier should be competent to inspect and certify the works. The assigned certifier is also required to be one of the following:

- Architects on register pursuant to Part 3 of the Building Control Act 2007
- Building surveyors on register pursuant to Part 5 of the Building Control Act 2007
- Chartered engineers on

register pursuant to Section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969

The assigned certifier holds a key role under the new regulations and is responsible for completing the inspection plan prior to any work commencing on site. The inspection plan is a risk assessment of the particular project pointing out all areas that may require inspection. It is unlikely that this would be fully completed at commencement stage on more complex projects, but will have to be updated throughout the project to account for all inspections. The assigned certifier will be responsible for completing inspections and coordinating inspections by others, the latter being completed through the use of ancillary certifiers. The ancillary certifiers will be responsible for providing the assigned certifier with certificates for works or design they may have completed. On larger projects it is envisaged that the ancillary certificates will make up a major part of the inspection plan.

On completion, the builder and assigned certifier certify that the building is constructed in accordance with the building regulations. The building cannot be used or occupied until the certificate is accepted and the building is entered on the register. All certificates must be uploaded to the new local authority online 'Building Control Management System' (BCMS). BCMS allows building owners, assigned designers and assigned certifiers to submit all documentation through its online system. A code of practice was published by the Department of the Environment, Community and Local Government (DECLG) to provide guidance with respect to inspecting and certifying works or a building for compliance with the requirements of the building regulations.

The local authority

One of the criticisms of the new legislation is the role of the local authority in building control, with many believing that they should take a far more active role in ensuring

compliance with the building regulations. The local authority will be responsible for checking and assessing plans and specifications submitted through the BCMS and ensuring that all the documentation is validated on submission. It is important to note that validation does not mean approval; it is more an administrative than a technical assessment. As under the old regulations, the local authority are responsible for monitoring building works through inspections. An inspection rate of 12 – 15% of all projects has been set by DECLG. This rate would appear to be quite low, but inspections should be targeted so as to ensure that sectors where compliance has traditionally been deficient are inspected more frequently. The BCMS will allow the building control authority far greater visibility on what is happening in their area and what type of risks are involved. This should make them far more efficient.

The builder

The builder's responsibility has changed under the new regulations and they are now required to sign the 'certificate of undertaking by the builder' where the builder undertakes to

"construct the building or works in accordance with the plans, calculations, specifications, ancillary certificates and particulars listed in the schedule to the Commencement Notice to which this undertaking refers and certified under the Form of Certificate of Compliance (Design)"

The builder also undertakes to co-operate with the assigned certifier for the implementation of the site inspection plan and to ensure that any design carried by them or their sub-contractors is certified and submitted. The Construction Industry Federation (CIF) responded to a request from DECLG to develop the register of builders. This change is a vast improvement for legitimate contractors within the industry, as it puts a responsibility on contractors



to ensure all the work is carried out as per the design. This register is the Construction Industry Register Ireland (CIRI) and it is anticipated that in the near future membership will be mandatory for all contractors completing works under the Building Control (Amendment) Regulations. CIRI's objective is to separate competent construction companies, sole traders and builders from those who have given the industry a bad name. It is probably worth noting that CIRI can achieve its objective without being embedded in the legislation; however being embedded would bring about a full list of registered builders more promptly.

Building regulations

Not to be confused with the building control regulations, building regulations deal with issues such as building standards, workmanship, conservation of fuel and energy and access for people with disabilities, while the building control regulations' purpose is to promote observance of the regulations by setting out procedure and penalties available to the building control authorities. The building regulations have undergone some significant changes since the

collapse of the property market in 2007. The most significant of these are in the areas of Conservation of Fuel and Energy (Part L) 2011 and Access and Use (Part M) 2010. Also since July 2013 designers, specifiers and builders must be aware of and understand the new requirements under the construction products regulation. This regulation aims to ensure that reliable performance-related data is made available on construction products being placed on the European market. CE marking is now mandatory for all construction products placed on the market for which harmonised standards are in place. A new home under construction today is required to reach far higher standards than it would have in 2006 when we constructed nearly 93,000 houses. It is unfortunate that these regulations were not in place during the period of greatest construction within the country, however their implementation now is very welcome.

Conservation of Fuel and Energy (Part L)

It is no longer sufficient to just depend on fabric insulation; all elements of the building that contribute to the energy use of the building need

to be considered, and guidance is given on each of these. The energy consumption rate (per m² of floor area) of a proposed home is stated as the energy performance coefficient (EPC), while the carbon emission rate (per m² of floor area) of the proposed dwelling is stated as the carbon performance coefficient (CPC). There are maximum rates that must not be exceeded in new dwellings. Changes have been made to the fabric insulation reducing the maximum u-value for elements of the building. Another major change to Part L relates to the use of renewables within new dwellings; each dwelling should have a minimum level of energy provision from renewable technologies.

Guidance is also given on thermal bridging and air permeability to avoid excessive heat losses. To prevent local condensation problems, care should be taken to ensure continuity of insulation and to limit local thermal bridging. Compliance in these areas is very much dependent upon strong competent supervision on site to ensure that the quality of the build meets the quality of the design. The assigned certifier's role is imperative in ensuring that the site



inspection plan takes these critical areas into consideration. Checks and assessments need to be properly in place and insulation that requires inspection should not be covered up prior to being signed off.

Access and Use (Part M) 2010

Part M 2010 was introduced to improve the standards of accessibility and to ensure that facilities within a building are inclusive to all people with a wide range of abilities. The changes to the technical guidance document increase the opportunities for the participation of all within our society. Section 3 of the technical guidance document deals with access and use within housing, and focuses on the approach, access, circulation, sanitary and switches and sockets within a domestic situation. There are a number of changes to door opening dimensions and provisions for clear open space within circulation areas and sanitary facilities. The National Disability Authority has highlighted an unacceptable level of compliance in one off housing and private housing developments in their 'Review of the effectiveness of Part M of the Building Regulations'. The new Building Control (Amendment) Regulations should

address this noncompliance, as the assigned certifier will be in breach of the legislation if construction work is certified, but does not comply with the regulations.

Conclusion

The legacy that has been left behind from the property boom of the last decade cannot be allowed to happen again and the correct implementation of the new Act should prevent another 'Priory Hall' taking place. There has been some criticism that the new system is self-certification and to a degree this is correct, however it is incumbent upon all professionals and builders within the industry to ensure that the projects they are involved in comply with the legislation.

DECLG is beginning the process of engagement with other departments, insurance providers and the broad industry on LDI (Latent Defects Insurance). It is predicted that this will gain some traction during the next twelve months. The view being expressed is that the building regulations will go so far, but that there needs to be some form of recourse (for householders in particular) when things go wrong.

The new regulations will be challenging at first with professionals and builders having to adapt their quality management systems to meet the requirements of the legislation. It will however provide owners with an assurance and security that their new home will be built to specified standards. There is little doubt that the new regulations and controls will bring about better quality and more energy efficient houses for all consumers. This can only be a positive for construction and needs to be embraced by all professionals within the industry.



Ruairí Hayden is lecturer in construction law and construction technology at the School of Surveying and Construction Management, Dublin Institute of Technology. In this article he outlines the Building Control (Amendment) Regulations and the revised technical guidance documents that give new home purchasers an assurance of a better quality home.