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Construction Law

# BUILDING CONTROL AMENDMENT REGULATIONS 2013

Date: Wednesday 1<sup>st</sup> May 2013

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Published: Wednesday 1<sup>st</sup> May 2013

On 4 April 2013 the Minister for the Environment, Community and Local Government introduced the Building Control Amendment Regulations 2013 (“the Regulations”), which are due to come into force on 1 March 2014. The Regulations seek to prevent the future occurrence of the type of problematic buildings constructed during the property boom. The Minister hopes the Regulations will improve consumer confidence in the construction industry, noting that it has been significantly diminished due to troubled developments such as Priory Hall.

The Regulations will require that an Assigned Certifier will inspect building works at several intervals during the construction project and, as well as being a requirement for the builder, will certify that a finished building is compliant with the building regulations. This should amount to a chain of responsibility throughout the construction process, and an opportunity for the consumer to address compliance issues as they arise, rather than finding out when it is too late to do anything about it. The Assigned Certifier will be a registered architect, engineer or a building surveyor, and will be contracted by the developer/owner.

The following new procedures would apply under the Regulations:

- Drawings and documentation are to be submitted to local Building Control Authorities (“BCAs”) to demonstrate compliance with the Building Regulations 1997 to 2013;
- BCAs must be informed, via Notices of Assignment, of the Builder and Assigned Certifier assigned to the construction project;
- The Assigned Certifier must set out and execute an inspection plan in respect of the building works;
- The building designer must sign mandatory Certificates of Compliance prior to construction.
- Once the building is complete, the Assigned Certifier and Builder must also sign Certificates of Compliance.

These mandatory certificates would ensure a greater level of accountability, as once a party signs a certificate it is assuming legal responsibility for its work.

The Regulations provide for a revised form of Commencement Notice to be signed by the owner/developer and submitted to the BCA prior to the commencement of works. The documentation to be included with the Commencement Notice consists of:

- Plans and documentation which show that the proposed works will comply with the requirements of the Building Regulations 1997 to 2013;

- A Certificate of Compliance (Design);
- Notices of Assignment in respect of the Builder and the Assigned Certifier;
- Certificates of Compliance signed by the Builder and the Assigned Certifier undertaking to conduct their roles in accordance with the requirements of the Building Regulations.

The Regulations would oblige building owners to notify the BCA of any changes of ownership in the works or of the persons assigned as Builder or Assigned Certifier and to provide the appropriate Notices of Assignment and forms of undertaking in respect of the new assignees.

The Regulations make provision for Certificates of Compliance on Completion which must be sent to the BCA and included on the Statutory Register before the works or building can be opened, occupied or used. The Completion Certificate must be signed by the Builder and the Assigned Certifier and must be accompanied by plans and documentation showing compliance with the Building Control

Regulations 1997 to 2013 and pointing out any differences from the design documentation previously submitted. The inspection plan as implemented by the Assigned Certifier must also be submitted with these documents.

The Minister is to draw up a Code of Practice for Inspecting and Certifying Building Works to provide guidance on inspection and certification procedures and compliance with the Code will, prima facie, indicate compliance with the relevant requirements of the Regulations.

The Minister notes that the Regulations should be of benefit to the consumer, with the intention of offering peace of mind concerning the standard of building works of their property. Furthermore, BCAs will, on completion, retain all drawings and documents in relation to the works on its Statutory Register, including the final Certificate of Completion, so that subsequent purchasers or anyone obtaining an interest in the building will be able to access them. However, it is likely that building projects will take longer and cost more as a result. Building professionals will have to manage a greater workload and any non-compliance with the demands of their new role may constitute an offence and/or result in penalties from their professional body and there is likely to be significant concern regarding the onerous nature of the proposed new obligations. It is expected that the Regulations will improve the oversight capabilities of BCAs in that the Assigned Certifier will operate as a single point of contact for the BCA to liaise with before and during the construction process.

The Regulations are part of a wider plan to monitor construction work in a consistent manner through a unified system of building control administration. This is to be achieved through: electronic administration of building control documentation; greater reliance on regional and shared service models of service delivery; adoption of common protocols and templates for the administration of building control activities; and investment in technology to support building control activity. The Minister also hopes to address the related issue of insurance for construction projects before the Regulations come into force, and plans are underway to encourage the registration of practically trained architects to deal with this new work.

*For further information on this topic or generally please contact Margaret Austin, Partner, [maustin@efc.ie](mailto:maustin@efc.ie).*

*May 2013 - This note is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. It is given wholly without any liability or responsibility on the part of Eugene F. Collins Solicitors and does not replace the necessity to obtain legal advice.*