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A Building Surveyor’s perspective on Building Control Amendment Regulations (2014)

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Overview of Presentation

1 Background & Context
2 Consultation Process
3 Amended Regulations/COP
4 Lodgements & Roles of key Players
5 Issues for consideration
BUILDING CONTROL Amendment Regulations (2013)

• S.I. No. 80 of 2013 signed into law by the Minister for the Environment Community & Local Government, Later Superseded by SI 9 of 2014 and will come into effect from 1 March 2014

Supporting COP issued February 2014
Statutory Instrument S.I. No. 105 of 2014

Building Control (Amendment (NO. 2) Regulations 2014 2 [105]
Evolution of Building control system

- Dublin Corporation etc Bye-laws (Prescriptive) 1880. (Ceased to have effect after 31 May 1992)
- 1992: Commencement of Current Regulatory regime
- 1997: Regulations revised/consolidated
- 2007 Building Control Act – Registration of Titles
- Code of Practice for Inspecting and Certifying Buildings and Works
- Technical Framework for Building Control Authorities
- Unlike UK we never had a Local Authority Building Regs approvals system
Scope of buildings or works requiring New BCA certification etc

1 Buildings and works that require a fire safety certificate

2 New Dwellings – houses and apartments

3 Extensions to dwellings

with a floor area greater than 40 square metres

Note-S.3(5) of 1990 BC Act requires that every building to which building regulations apply shall be designed and constructed in accordance with the provisions of the Regulations
Fire Safety Certificates

11. (1) Subject to sub-article (2) and articles 3 and 6, this Part applies to—
   (a) works in connection with the design and construction of a new building,
   (b) works in connection with the material alteration of—
      (i) a day centre,
      (ii) a building containing a flat,
      (iii) a hotel, hostel or guest building, or
      (iv) an institutional building, or
      (v) a place of assembly, or
      (vi) a shopping centre,
   but excluding works to such buildings, consisting solely of minor works,
   (c) works in connection with the material alteration of a shop, office or industrial building where:
      ◦ (i) additional floor area is being provided within the existing building, or
      ◦ (ii) the building is being subdivided into a number of units for separate occupancy,
   (d) works in connection with the extension of a building by more than 25 square metres,
   (e) a building as regards which a material change of use takes place, to which the requirements of Part B of the Second Schedule to the Building Regulations apply.
Building Control Regulations - Key Elements

Building Control Acts

- Building Regulations

Technical Guidance Documents

Building Control Regulations

- Commencement Notices
- Fire Safety Certificates
- Disability Access Certificates
- 7 day Notices
- Lodgement of Plans
- Design Certificates
- Notices of Assignment by owner of “Assigned Certifier & Builder”
- Certificates of Undertaking by Assigned Certifier and Builder
- Completion Certificates
- Inspection Plans
- Public Register of Notices and

Code of Practice
Initially Complex (Legal Interpretations) & implementation problems

A ‘business as usual’ approach was not an option (new BCAR regs were required)

Given the rising tide of customer frustration & expectations we needed to improve quality and give better value to our customers?

Surrogate regulators (industry associations assisting towards administering self-regulatory process)

Chain of responsibility
2 Stakeholder Engagement
Stakeholders

Industry/Professions
- lending agencies
- Legal Profession
- Insurers
- DoECLG
- Registration Bodies

Local Authorities

Consumers
Professional and Industry bodies made **formal Submissions to DoECLG in 2011/2012**

Stakeholder/COP groups reconvened over the Summer in 2013 to attempt to **change** aspects of SI BCAR Regs (SI 80 -2013) & COP e.g. re-wording of certificates

Desire to **embrace** the system **without compromising** member or consumer protection

Clock **to implementation** was ticking

Now more clarification **and guidance** is evolving
2 Stakeholder Engagement

Limited time to influence at this stage

No quick Fix

Gun to the head

Don’t shoot the messenger

Where we are now

Wording of Regulations allowed only Limited scope of influence

Not Blank sheet of paper

Reporting back at the ranch

Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.

(Winston Churchill)
Initially Complex (Legal Interpretations) & implementation problems

A ‘business as usual’ approach was **not an option** (new BCAR regs were required)

Given the rising tide of customer frustration & expectations we needed to improve quality and give better value to our customers?

**Surrogate regulators** (industry associations assisting towards administering self-regulatory process)

Chain of responsibility
Building Control & Iceberg

Sea Level

Tip of the Iceberg

Earlier & Current (applicable) Building Control Regulations, FC Certs etc Planning Regulations, Various Acts /Regs /Fire certs etc

LA BCMS System including LA Validation & Risk based Inspection, QA framework & guidelines, targets & resourcing, training

Industry /state Registration systems, Public & Private Sector procurement, contractual aspects, Insurances, Client and Professions (Private Sector) Notifications, Certification, Lodgement, Supervision, Oversight Inspection, Compliance, BCA /BR Implementation supported by LA process & registration of completion
3 Responsibilities of various parties in BCAR
Consultation & Registration

Building Control Act 2007

Registration of:
- Architects Part 3
- Building Surveyors Part 5

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

- Signed up to a code of practice/ethics

- PI Insurance is mandatory requirement of professional bodies if offering a professional service

- Must have “job specific” competences to Design, and/or inspect and certify the types of works undertaken
The Preliminary Inspection Plan prepared by the Assigned Certifier, Certificate of Compliance (Design), Notice of Assignment of Person to Inspect and Certify Works (Assigned Certifier), Undertaking by Assigned Certifier) must be completed by the Assigned Certifier and submitted with the Commencement Notice. Notice of Assignment of Builder, Certificate of Compliance (Undertaking by Builder), the assigned Certifier should not become just a certification coordinator or a repository of ancillary certificates alone.

No work shall commence on site without a valid commencement notice (not possible to get it retrospectively).
**BCAR Process**

**Central Repository of Lodgements**

- **Assigned Certifier** uploads post-commencement stage changes

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**Commencement /Post Commencement Stage**

- **Ancillary Certs**
  - Structural - Civil
  - M&E
  - Other
  - Engineer
  - Engineer
  - Engineer
  - Specialists
  - Fire, Trades etc

- **Local Authority Interface** – AC responds to Requests for information (where applicable)

- **Notifications of changes to project** (design, changes of AC/Client/Builder (to BCA))

- **Builder supervises and Coordinates own ancillary certifiers with Assigned Certifier**. **Assigned Certifier/client ensures that ancillary certifiers provide appropriate certification**

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**Completion Certificate Stage**

- **Assigned Certifier & Builder submit Certificate of Compliance on Completion**

- **Plans, Specifications & particulars of Amendments from those submitted and inspection plan as implemented**

- **BCA satisfies itself of Completion Cert compliance** and either accept or reject subject to validity

- **LA Places completion cert on register**

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**Public interface with BCA accessible via Local Gov.ie (or LA portal)**

- **Client checks, approves & selects/appoints Assigned Certifier, Designer, Builder**

- **Post Planning stage/FC cert? (where applicable)**

- **Client/Certifiers Download Forms**

- **Lodgement of CN, Fees etc**
  - Either conventional Commencement notice stream or full compliance with new system (pertinent) applications post 1 March 14

- **Client/designer/ AC & Builder downloads & then upload appropriate Notices & Documents on line with GA Drawings/ Schedules, Design cert etc., preliminary inspection plan & undertakings & certificates**

- **Update drawings & supporting docs prior to construction of changes**

- **LA BC Dept validates C/N Application & issues Commencement Notice**

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**BCMS Local Gov.ie**

- **BCA satisfies itself of Completion Cert compliance** and either accept or reject subject to validity
Prior Notification process re Prospective Cert of Completion

Submit Plans Specifications and Particulars & Inspection Plan

Not more than 5 weeks
Or
less than 3 Weeks:

Building Control Authority Validation Period

Minimum 21 days notification

Submit Valid Cert of Compliance (1 day in advance of Nominated Day)

Further 7 days at the discretion of the Building Authority (within reason)

Place on Register?
Building owner (Client) includes a person who has commissioned or paid for the works and has legal entitlement to have such work carried out.

Owner: has **primary & legal responsibility** for compliance (**leveraging in relation to accountability & responsibility**)

Adequate resources and **competent persons**

Must exercise **diligence in selecting designated professionals and builders**

**(competence of all)**
Owner Responsibilities

• Not **Passive** but must exercise diligence in selecting Designer, Assigned Certifier & builder- (re qualifications & appropriate experience) –not just “Yellow Pages” selection

• **Must** enable certifiers to act in **independent** manner

• **Must allow adequate** time frame & budget

• Submit required notices including change of **the assigned certifier or builder** to the BCA **within 14 days** (if applicable)

• Smaller **one-off clients** are often reliant on local designers and builders

• **Client requires pro-forma checklists** for professionals and contractors to **demonstrate** that their selection process and compliance is rigorous
Contract conditions will need to be more explicit and robust to ensure protection of client and stakeholders

Self Builders may be playing Russian roulette unless they engage the right supervisory/professional staff

Building owners, Designers & Builders responsible for notices

Builders included on the CIRI Construction Industry Register may be regarded as competent for projects consistent with their registration profile (Client still needs to evaluate)
Builders Registration initially voluntary scheme,

Constructs in accordance with the plans and specifications – ”Reliant on the plans and specifications” (Squaring the Circle)

Constructs in accordance with the Building regulations

Co-operates with the Assigned Certifier regarding implementation of the site inspection plan, execution, Inspection milestones, sequence and programme of works & coordination and provision of all test certificates

Ensures that any design carried out by them or their sub-contractors is certified and available to assigned certifier. (P.I.?) Needs to ensure competence of employees and specialist contractors/sub contractors for specialist categories of operation.

Maintain records (6 years+)
(Company or sole trader)

Must ensure a **competent person** to oversee and supervise the works & sufficient qualified, **experienced/competent staff** on site

Must familiarise themselves with the drawings etc

Ensure materials & **workmanship** complies with Building regulations

Ensure **materials they select** and for which they are responsible complies with the Building regs

Coordination and provision of test certificates and confirmation to the assigned certifier
DoECLG position that a Self-Builder can “self-nominate” as the “Builder” and sign the undertaking and the Certificate of Compliance on Completion (Part A).

In nominating themselves as Builder and signing the Undertaking by the Builder, they are declaring that they are competent and undertaking to follow the certified design and to employ/engage competent persons, etc. and anyone signing these forms must of course be faithful to the undertakings so given.

In relation to the signature by a Self-Builder of the Undertaking by the Builder or Certificate of Compliance on Completion (Part A), the Department does not foresee a difficulty in a Self-Builder signing this form where they are clearly not a company and comply with the undertakings
Principal/Design Certifier:

• (General Arrangement Drawings, Drawing Schedules etc) prior to Commencement Notice, and any subsequent changes updated prior to construction.
• Should the designer becomes an “ancillary certifier” after the commencement stage?
• Additional design will still be required in most projects – how is this dealt with. While the Design Certificate is submitted with the Commencement Notice, the role of the Design Certifier does not end at that point as he/she is responsible for completing the submission of any further certification for such later elements as may occur

• Access to the BCMS to upload new certificates (AC)
• Does the Assigned Certifier have any role in coordination of DC design (where the AC & DC roles are split)?
• Alignment of certificate wording and responsibilities is important and wording consistency/alignment with primary certificates
Assigned Certifier Role Is

Primary **point of contact** with L.A BCA

Assigned by the Building Owner to inspect (including **random inspections**) & coordinate & develop/oversee inspection Plan

Provides and **signs** the relevant **statutory certificates**

Coordinates **ancillary certificates**

**Identifies all certificates , tests etc**

Acts as a **single point of contact** with LA BCA during construction

Seeks advice of BCA re disputes or differences (BCA will not adjudicate in disputes)

Maintains **records of inspection**

Project Management –(negotiating) & auditor role
Assigned Certifier Role

Focus on Key stages (method statement?) listed in Inspection plan & INF – he/she documents and then records inspections

• Compliance is the responsibility of the person carrying out the works.
• Important not to overly rely on Insurance as a crutch (Personal liability & Run off cover)
• Responsibilities & risks should be shared
• Assigned certifier should be appointed prior to tendering process
• AC is not A ‘clerk of works’ or Resident Engineer service,
• Sole person who can lodge updates/changes on line after initial design & declarations
Ancillary Certificates

Prepared by Main Consultants (Structural, M&E Services, Architectural Geotechnical, etc)
Curtain walling, lifts, heating and ventilation equipment, Specialist Contractors/Subcontractors (Cladding, Piling, Fire Safety Installations etc), Builders Specialist Designers & Specialist Trades-RECI, RGI, etc.
Ancillary Certificates may be signed on a company basis (person also includes a company)
Design certificates likely to be split between certification of the design and the associated inspection/verification
Sign-off process
Building Control Authority **Inspection/Enforcement Role**

(Adequate) resourced local authority/ coordinated/ centralised Response Unit? 

Or

Substantially confined to Barracks? (desktop reviews)

With minimalist on-site interventions?

Rapid Response!

Enforcers?

One would expect that BCO resourcing will facilitate meaningful intervention
• Cinderella function (career structure & staffing - apart perhaps from Fire Safety Services)
• BCA has power (but not duty) to check and assess documents lodged with commencement notice
• Validation by Building Control Authorities (does not mean approval)
• DECLG-target inspection rate of 12-15% of all (new) buildings covered by valid commencement notices.
• BCA reorganisation to allow for most efficient regional response to “policing” system-
• 34 Building Control Authorities centralised for the purpose of BC(A)R.
• Desktop risk analysis based on BCMS surveillance followed by selection for inspection including random inspections
Online Building Control and Management system overlapping with Planning System

To date - more focus on (FRONT END lodgement) on validation (more of an administration process) at this stage of process than (BACK END) technical auditing of performance on the ground - awaiting Framework/Guidance/Procedures

Risk profiling of inspection workload how will it work?

Unless LA BCO oversight is adequate the Assigned certifiers may be isolated and exposed to more “commercial pressures”
Issues for consideration

- Need to ensure adequate LA resources
- Designers/Assigned Certifiers need the capacity and the will to act in an “Independent manner”
- Implications for “self build” operations
- Stop/start projects with long intervening gap may require new commencement notices?
- Ancillary Certificates – More guidance; & agreed common Multi-disciplinary Professional/Industry templates (interprofessional working group)
- Consolidated Regs (Draft DoECLG) required
- Coherent Framework including inspection policy required and implemented by Local Authorities
Issues for consideration

- Training & Information for all required including BCA staff
- BCO inspection staff need to be instructed not to issue directions on site
- Standardised written QA procedures required
- Need for regular CPD updates
- Impact on small works e.g. direct labour only, small fit-outs
- Implications for full or partial services - redraft

Elephant in the room = Contractual & Civil Liability fears
Issues in the BCA system

- Contract documentation **under review**
- **Conditions of engagement** will be important
- **Testing** needs to be specified in **tender contract documentation**
- Inspection Guidance to all including risk analysis
- **PII** not mandatory in legislation but crucial for key certifiers
- Latent Defects Insurance not currently on offer
- A change in **approach, systems** and attitude is needed by all, embracing **partnership** to deliver the much needed improvements in the BCAR Process,
- Need to avoid a "**race to the bottom**" with tenders
BC Amended Regulations

Not a Panacea

- The best is the enemy of the good. –Voltaire
  (especially if the best is not on offer)

Balanced? Best fit on offer to ensure some progress?

COP working Group Prayer
God grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.

Rheinhold Niebuhr

Devil is in the detail
“We are made wise not by the recollection of our past, but by the responsibility for our future.”

Therefore we need to move forward and make the system work and put the legacy failures behind us.
Summary of Presentation

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Thank You-
Questions?

Disclaimer This information is for training purposes only. It does not constitute legal or professional advice.