

*Number 3 of 1990.*

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**BUILDING CONTROL ACT, 1990.**

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Petty Sessions (Ireland) Act, 1851	1851, c. 93
Public Health (Ireland) Act, 1878	1878, c. 52
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*Number 3 of 1990*

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## **BUILDING CONTROL ACT, 1990**

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AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF BUILDING CONTROL AUTHORITIES AND THE MAKING OF BUILDING REGULATIONS AND BUILDING CONTROL REGULATIONS AND TO PROVIDE FOR MATTERS RELATING TO THE CONSTRUCTION OF BUILDINGS AND TO PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH.

[21st March, 1990]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### **Interpretation.**

**1.**—(1) In this Act—

"authorised person" has the meaning assigned to it by *section 11*;

"building" includes part of a building and any class or classes of structure which are prescribed by the Minister to be a building for the purposes of this Act;

"building control authority" means a local authority to which *section 2* applies;

"building control regulations" means regulations made by the Minister pursuant to *section 6*;

"building regulations" means regulations made by the Minister pursuant to *section 3*;

"Building Regulations Advisory Body" means the body established pursuant to *section 14*;

"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 and

"constructed" shall be construed accordingly;

"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;

"enforcement notice" has the meaning assigned to it by *section 8*;

"fire authority" means a fire authority within the meaning of the Fire Services Act, 1981;

"functional area" has, in relation to a building control authority, the meaning assigned to it by *section 2 (3)*;

"functions" includes powers and duties;

"the Minister" means the Minister for the Environment;

"operative day" has the meaning assigned to it by *section 22*;

"prescribed" means prescribed by regulations made by the Minister;

"works" includes any act or operation in connection with the construction, extension, alteration, repair or renewal of a building.

(2) A reference in this Act to a section is to a section of this Act unless it is indicated that reference to some other enactment is intended.

(3) A reference in this Act to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.

(4) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by any subsequent enactment.

### Building control authorities.

**2.**—(1) Each of the following local authorities shall be a building control authority for the purposes of this Act—

( a ) the council of a county,

( b ) the corporation of a county borough,

( c ) the Corporation of Dún Laoghaire,

( d ) subject to *subsection (2)*, the Corporation of any other borough and the council of any urban district which is, at the commencement of this Act, a fire authority.

( 2 ) ( a ) Where the Minister, by order under *section 9 (2)* of the Fire Services Act, 1981, provides that *section 9 (1) ( d )* of that Act shall cease to apply to a particular corporation or council, that body shall cease to be a building control authority within the meaning of this Act on the day specified in that behalf in the order.

(b) Where the Minister, by order under section 9 (2) of the Fire Services Act, 1981, provides that section 9 (1) (d) of that Act shall cease to apply to a particular corporation or council, section 17 of that Act shall apply to a building control authority referred to in paragraph (a) of this subsection as if it were a fire authority subject to such modifications and ancillary provisions as the Minister considers necessary and provides in the order.

(3) The functional area of a building control authority shall be—

(a) in the case of a council of a county, the administrative county, excluding any borough or urban district, the corporation or council of which is for the time being a building control authority pursuant to the provisions of *subsection (1) (d)*,

(b) in the case of any other local authority, its administrative area.

(4) Building control authorities may make arrangements for the joint performance of any of their functions.

(5) Where it appears to the Minister that an agreement under section 59 of the Local Government Act, 1955, ought to be made between two or more building control authorities for the purpose of any of their functions, he may, after affording an opportunity to the authorities concerned to make representations to him, require those authorities to enter into such an agreement, and the Minister may direct that any such agreement shall contain such terms as he may specify and the authorities concerned shall comply with any directions given under this subsection by the Minister.

### Building regulations.

**3.**—(1) The Minister may, for any of the purposes specified in *subsection (2)*, make regulations (in this Act referred to as "building regulations") in relation to all or any of the following—

(a) the design and construction of buildings;

(b) material alterations or extensions of buildings;

(c) the provision of services, fittings and equipment in, or in connection with, buildings;

(d) buildings as regards which any material change takes place in the purposes for which the buildings are used.

(2) Building regulations may be made for all or any of the following purposes—

(a) making provision for securing the health, safety and welfare of—

(i) persons in or about buildings, and

(ii) persons who may be affected by buildings or by matters connected with buildings;

(b) making provision for the special needs of disabled persons in relation to buildings;

(c) making provision for the conservation of fuel and energy in relation to buildings;

(d) making provision for securing in relation to buildings the efficient use of resources;

(e) making provision for the encouragement of good building practice; and

(f) making provision for such other matters as appear to the Minister to be necessary or expedient and are specified in the regulations.

(3) In addition to the provisions of any regulations made for the purposes of *subsection (1) (d)*, there shall be deemed to be a material change in the purposes for which a building is used if, on or after the operative day—

- (a) a building, being a building which was not originally constructed for occupation as a dwelling, or which, though so constructed, has been appropriated to other purposes, becomes used as a dwelling,
- (b) a building, being a building which was originally constructed for occupation as a dwelling by one family only, becomes occupied by two or more families, or
- (c) where building regulations contain special provisions in relation to buildings used for any particular purpose, a building to which the regulations apply and which was not being used for that purpose, becomes so used.

(4) Building regulations which relate to—

- (a) buildings as regards which any material change takes place in the purposes for which the buildings are used, or
- (b) material alterations or extensions of buildings, or
- (c) the provision of services, fittings or equipment, in or in connection with, buildings,

may apply to a building, the construction of which was commenced before the operative day, in so far as such building is affected by any material change in the purposes for which such building is used or any material alteration, extension, provision of services, fittings or equipment, as the case may be, which occurs on or after the operative day and in all other cases building regulations shall, subject to *section 22 (2)* apply only to buildings the construction of which is commenced on or after the operative day.

(5) Subject to *subsection (11)* and to—

- (a) any dispensation or relaxation granted under *section 4* or *5*, or
- (b) any appeal under *section 7* which has been allowed,

every building to which building regulations apply shall be designed and constructed in accordance with the provisions of such regulations.

(6) Building regulations may—

- (a) prescribe standards (expressed in terms of performance, types of material, methods of construction or otherwise) in relation to all or any of the matters specified in the *First Schedule* to this Act or in relation to any other matter which, in the opinion of the Minister, is relevant to the purposes for which building regulations may be made,
- (b) require specified action to be taken in connection with buildings,
- (c) provide for the regulation of specified actions in and about buildings,
- (d) specify the manner in which construction operations are to be carried out.

(7) Building regulations may be made to any extent by reference to a document published by or on behalf of the Minister.

(8) Building regulations may specify different standards for, or make different provisions in relation to, different classes or descriptions of buildings.

(9) Before prescribing standards for any matter specified in *paragraph 17 (a)* of the *First Schedule* to this Act, the Minister shall consult with the Minister for Energy.

(10) Building regulations may contain such supplementary and incidental provisions as appear to the Minister to be necessary or expedient.

(11) Building regulations may exempt, in whole or in part, from all or any of the provisions of

such regulations such classes or descriptions of buildings, services, fittings or equipment as may be specified in the regulations, including classes or descriptions of buildings, services, fittings or equipment in any area specified in the regulations.

(12) Building regulations, or any provision contained therein, may be made so as to apply generally, or as regards any area specified in the regulations, and the regulations may contain different provisions for different areas.

(13) Subject to the provisions of this Act, building regulations shall apply to buildings belonging to or in the occupation of the State other than buildings which are used as prisons or places of detention.

#### Dispensation or relaxation of building regulations.

**4.**—(1) Subject to the provisions of this section, a building control authority may, if it considers it reasonable having regard to all the circumstances of the case, grant a dispensation from, or a relaxation of, any requirement of building regulations in respect of buildings or works which are situated within the functional area of the building control authority and—

(a) which are designed, constructed or carried out by or on behalf of the building control authority, or

(b) in relation to which an application for such dispensation or relaxation has been submitted pursuant to *subsection (2)*.

(2) An application for a dispensation from, or a relaxation of, any requirement of building regulations shall be made in the prescribed form, and any such application shall be accompanied by the prescribed fee (if any).

(3) Building regulations may provide that in respect of any specified requirement of the regulations, *subsection (1)* shall not apply.

(4) Where, within a period of two months beginning on the date of an application, or within such extended period as may at any time be agreed in writing between the applicant and the building control authority, the building control authority does not notify the applicant of the decision on the application, a decision by the building control authority to grant the dispensation or relaxation, as the case may be, shall be regarded as having been made on the last day of the period or such extended period, as the case may be.

(5) A building control authority may make a dispensation from, or a relaxation of, any requirement of building regulations granted pursuant to *subsection (1)* subject to such conditions (if any) as it sees fit.

#### Dispensation or relaxation to specified works or material.

**5.**—(1) Where the Minister considers that compliance with any requirement of building regulations would be unreasonable in relation to any specified class of building operation, works or material, the Minister may, as regards such compliance, by order dispense with or relax that requirement subject to such conditions as he sees fit and specifies in the order.

(2) The Minister may by order amend or revoke an order made under this section including an order made under this subsection.

#### Building control regulations.

**6.**—(1) The Minister may make regulations (in this Act referred to as "building control regulations") providing for matters of procedure, administration and control for the purposes of securing the implementation of, and compliance with, the requirements of building regulations and building

control regulations may make such incidental, consequential or supplementary provisions as may appear to the Minister to be necessary or expedient.

(2) Without prejudice to the generality of *subsection (1)*, building control regulations may make provision for all or any of the following matters—

(a) requiring—

- (i) the submission to building control authorities of certificates (in this Act referred to as "certificates of compliance") being certificates relating to compliance with the building regulations (subject to any relevant dispensation or relaxation already granted under *section 4* or *5* or to any appeal under *section 7* which has been allowed) prior to the commencement of, during, and after the completion of, the construction of any buildings, classes of buildings, works or classes of works, to which such building regulations apply,
- (ii) in respect of a building, or buildings, of a prescribed class or classes, the submission to a building control authority of an application for a certificate (in this Act referred to as a "fire safety certificate") that a building, if constructed in accordance with the plans, documents and information submitted, would, in the opinion of the building control authority, comply (subject to any relevant dispensation or relaxation already granted under *section 4* or *5* or to any appeal under *section 7* which has been allowed) with such provisions of building regulations as may be prescribed, and
- (iii) in respect of the design or construction of any buildings or classes of buildings or of the carrying out of any works or classes of works to which building regulations apply, the submission to a building control authority of an application for a certificate (in this Act referred to as a "certificate of approval") of the building control authority that in the opinion of the building control authority the design or construction of the buildings or works comply (subject to any relevant dispensation or relaxation already granted under *section 4* or *5* or to any appeal under *section 7* which has been allowed) with the requirements of building regulations;

(b) prescribing—

- (i) the form and content of certificates of compliance, applications for fire safety certificates, fire safety certificates, applications for certificates of approval and certificates of approval,
- (ii) the plans, documents and information to be submitted with certificates of compliance, applications for fire safety certificates, applications for certificates of approval and notices to which *subsection (2) (k)* relates, and
- (iii) the time within which such certificates, applications and notices are to be submitted;

(c) the designation of the persons or the classes of persons by whom certificates of compliance may be given, and the classes of buildings or works in respect of which such certificates may be given;

(d) the granting by a building control authority of fire safety certificates and certificates of approval with or without conditions, or the refusal of such certificates;

(e) requiring a building control authority, whenever it refuses a fire safety certificate or a

certificate of approval, to notify the applicant in writing of the reasons for such refusal;

- (f) the registration of certificates of compliance, and of such information as may be prescribed in relation to applications for fire safety certificates, fire safety certificates, applications for certificates of approval and certificates of approval and the making available of such information to such persons as may be prescribed;
- (g) prescribing the records to be kept, and the information to be provided to the Minister, by a building control authority;
- (h) the charging of fees for—
  - (i) the registration of certificates of compliance,
  - (ii) the submission of applications for fire safety certificates or certificates of approval,
  - (iii) the provision of copies of certificates or other documents or extracts therefrom,
  - (iv) the carrying out of inspections and tests and the testing of samples taken pursuant to *section 11*, and
  - (v) any other matter that the Minister considers appropriate;
- (i) the combining in one document of any two or more of the following, namely, any application, notice, certificate or other document provided for in this Act, or in any regulations made thereunder, and any application, notice or other document provided for in the Local Government (Planning and Development) Acts, 1963 to 1983, or in any regulations made under those Acts;
- (j) the exclusion from all, or any of, the provisions regarding the submission of certificates of compliance or applications for fire safety certificates or applications for certificates of approval, of such persons, bodies or buildings, or classes thereof as may be specified in the regulations;
- (k) requiring the giving of notice to building control authorities of the erection of such buildings, or classes of buildings, or the carrying out of such works, or classes of works, as may be specified in the regulations.

(3) Building control regulations may make different provisions in relation to different buildings, or classes of buildings, in relation to buildings or classes of buildings situated in different areas, or in relation to different provisions of building regulations.

(4) Where a certificate of compliance, or a notice to which *subsection (2) (k)* relates, is submitted to a building control authority, the building control authority shall not be under a duty to any person to—

- (a) ensure that the building or works to which the certificate or notice relates will, either during the course of the work or when completed, comply with the requirements of building regulations or be free from any defect,
- (b) ensure that the certificate complies with the requirements of this Act or of regulations or orders made under this Act, or
- (c) verify that the facts stated in the certificate are true and accurate.

(5) Where, within a period of two months beginning on the date of an application for a fire safety certificate or a certificate of approval, or within such extended period as may at any time be agreed in writing between the applicant and the building control authority, the building control



authority does not notify the applicant of the decision on the application, a decision by the building control authority to grant the fire safety certificate or the certificate of approval, as the case may be, shall be regarded as having been made on the last day of the period or such extended period, as the case may be.

(6) Where an application for a dispensation from or relaxation of any requirement of building regulations is made pursuant to *section 4*, or where an appeal under *section 7* has been made against a decision on such application, the building control authority may defer the making of a decision in relation to the granting or, as the case may be, the refusal of a fire safety certificate or certificate of approval, in respect of the building concerned for a period not exceeding two months after the decision on the application or, as the case may be, the appeal, has been made, and *subsection (5)* shall be construed accordingly.

### Appeals.

**7.**—(1) An applicant who is dissatisfied with the decision of a building control authority on an application pursuant to—

- (a) *section 4*, for a dispensation from, or relaxation of, any requirement of building regulations, or
- (b) *section 6 (2) (a) (ii)*, for a fire safety certificate, or
- (c) *section 6 (2) (a) (iii)*, for a certificate of approval,

may appeal to An Bord Pleanála.

(2) An Bord Pleanála, after consideration of an appeal under this section, shall either (as it thinks proper) refuse the appeal or allow the appeal subject, where it thinks fit, to the attachment, amendment or deletion of conditions.

(3) The Minister may, by regulations, specify—

- (a) the manner in which an appeal is to be made pursuant to this section,
- (b) the time within which such appeals may be made,
- (c) the charging of fees for making such appeals,
- (d) the procedure to be adopted on such appeals,
- (e) such incidental, supplementary, consequential and transitional provisions (including modification or application of any provision of this Act or of the Local Government (Planning and Development) Acts, 1963 to 1983) as appear to the Minister to be necessary for the purposes of this section.

### Enforcement notice.

**8.**—(1) Where —

- (a) the construction of any building or the carrying out of any works to which building regulations apply is commenced or has been completed or any material change takes place in the purposes for which any building is used, and
- (b) the building or works are not designed or have not been, or are not being, constructed or carried out in conformity with building regulations, and
- (c) the failure to comply with building regulations is not such a failure in relation to which the building control authority would be prepared to grant a dispensation or relaxation pursuant to this Act,

the building control authority may serve a notice (in this Act referred to as an enforcement notice) under this section.

(2) An enforcement notice shall not be served, in respect of the building or works concerned, after the expiration of the period of five years commencing on the date of—

- (a) the completion of the building or the works, or
- (b) the material change in the purposes for which the building is used.

(3) An enforcement notice may be served on—

- (a) the owner of the building or works concerned, or
- (b) any other person who carried out, or is carrying out, the works to which the notice applies.

(4) An enforcement notice, in particular and without prejudice to the other provisions of this section, may—

(a) require such steps as may be specified in the notice to be taken within such period as may be so specified for the purposes of ensuring compliance, subject to any dispensation or relaxation already granted under *section 4* or *5* or to any appeal under *section 7* which has been allowed, with building regulations and any such notice may require—

- (i) the removal, alteration or making safe of any structure, service, fitting or equipment, or
- (ii) the discontinuance of any works or the doing of any other thing as may be specified in the notice in relation to the building or works to which the notice relates;

(b) prohibit the use of a building, or a specified part of a building, for any purpose specified in the notice until specified precautions are taken to the satisfaction of the building control authority by the removing, altering or making safe of any structure, service, fitting or equipment or the discontinuance of any works or by the doing of any other thing in relation to such building or such specified part of a building that may be required by the notice.

(5) Subject to *subsection (6)*, an enforcement notice shall take effect at the expiration of such period (being a period of not less than fourteen days beginning on the date of the service of such notice) as may be specified therein.

(6) A person on whom an enforcement notice has been served pursuant to this section shall—

- (a) if he does not apply to the District Court pursuant to *section 9*, comply with the terms of the notice within the period specified therein,
- (b) if he applies to the District Court pursuant to *section 9*, and the notice is confirmed by the District Court either unconditionally or subject to modifications, alterations or additions, comply with the terms of the notice, or the notice as modified, altered or added to by the District Court, as the case may be, within the period specified in the notice, the period beginning on the date of the determination of the application to the District Court,
- (c) if he applies to the District Court pursuant to *section 9*, and withdraws such application, comply with the terms of the notice within the period specified in the notice, the period beginning on the date of the withdrawal of the application.

(7) Where a person fails to comply with the requirements of *subsection (6)*, the building control authority may enter into any building or works to which the enforcement notice relates, and may enter any land necessary for that purpose, and therein take any action or do anything required by the notice.

(8) Where a building control authority pursuant to *subsection (7)* enters into any building or works to which the enforcement notice relates and takes any action or does anything in relation thereto, the building control authority may, on satisfying the Court that the person on whom the enforcement notice was served is either the owner of the building or a person who carried out the works to which the enforcement notice relates, and that such person failed to comply with the requirements of *subsection (6)*, recover as a simple contract debt in a court of competent jurisdiction the costs of taking the action or doing such thing from the person on whom the notice was served.

### Application to District Court in relation to enforcement notice.

**9.**—(1) A person on whom an enforcement notice is served may, District Court in relation to within fourteen days of the service of the notice, apply to the District Court to annul, modify or alter the notice on all or any of the following grounds—

- (a) that the alleged failure to comply with the requirements of building regulations is not such as would warrant the service of an enforcement notice;
- (b) that compliance with the terms of the enforcement notice would occasion unreasonable expense;
- (c) that the time allowed by the building control authority for compliance with the notice is unreasonably short;
- (d) that the appellant is not the person on whom the notice should have been served;
- (e) that the design or the building complies with the requirements of the building regulations.

(2) Notice of an application pursuant to *subsection (1)* shall be served on the building control authority concerned and that authority shall be entitled to appear, be heard and adduce evidence at the hearing of the application.

(3) On the hearing of an application pursuant to this section, the court may, as it thinks proper—

- (a) confirm the enforcement notice, or
- (b) confirm the enforcement notice subject to such modifications, alterations or additions as the court thinks reasonable, or
- (c) annul the enforcement notice.

(4) The jurisdiction conferred on the District Court under this section shall be exercised by the Justice of that Court having jurisdiction in the area where the building or works concerned are situated.

### Service of enforcement notice.

**10.**—(1) Where an enforcement notice is authorised under this Act to be served on or given to a person, it shall be addressed to him and may be served on or given to him in some one of the following ways—

- (a) where it is addressed to him by name, by delivering it to him;
- (b) by leaving it at the address at which he ordinarily resides or, in a case where an

address for service has been furnished, at that address;

- ( c ) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides or, in a case where an address for service has been furnished, at that address;
- ( d ) where the address at which he ordinarily resides cannot be ascertained by reasonable inquiry and the enforcement notice is authorised to be given in respect of any particular building or works, by delivering it to some person over sixteen years of age residing or employed in such building or on such works or by affixing it in a conspicuous position on or near such building or works.

(2) Where an enforcement notice is authorised by this Act to be served on or given to the owner of a building or works or a person who carried out or is carrying out the works to which building regulations apply and the name of such person cannot be ascertained by reasonable inquiry, the notice may be addressed to "the owner",

"the occupier" or "the builder" (as the circumstances may require) without naming him.

(3) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1986, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) Where an enforcement notice is served on or given to a person pursuant to *subsection (1) (d)*, a copy of the notice shall, within two weeks thereafter, be published in at least one newspaper circulating in the area in which the person is last known to have resided.

(5) A person who, at any time during the period of three months after a notice is affixed pursuant to *subsection (1) (d)*, removes, damages or defaces the notice without lawful authority shall be guilty of an offence.

### Powers of inspection by authorised persons.

**11.**—(1) In this section "authorised person" means a person authorised for the purposes of this Act by a building control authority or by the Minister, or by An Bord Pleanála, as the case may be.

(2) Subject to *subsection (7)*, any authorised person shall be entitled to enter at all reasonable times into any land (subject to his producing, if so required, his authority in writing as such person) and thereon inspect for the purposes of this Act any building, and any plans or documents relating to such building.

(3) Any authorised person may—

( a ) inspect any building—

- (i) following its completion, or
- (ii) during its construction, alteration or extension, or
- (iii) during the installation therein of any fittings, services or equipment to which building regulations apply, or
- (iv) in respect of which any material change takes place in the purposes for which such building is used;

( b ) require to be informed by the owner or occupier of such a building, or by any person responsible for the construction of such a building, or by any of the aforementioned persons, to the extent that such persons have knowledge of the matters in question, as to the purpose for which the building, or any part thereof, has been, is being, or will

be, used, the number of persons who are, or will be, employed or accommodated therein or who resort or will resort thereto, the substance of which any such building or any part of such building is constructed, and the method of construction employed and as to any other matter which the authorised person considers to be relevant;

- (c) require the owner or occupier of the building, or any person responsible for the construction of the building, to provide such plans, documents and information as are necessary to establish whether the requirements of building regulations are being complied with in relation to the building;
- (d) be permitted to take such samples of the materials used in the carrying out of any construction work or take such other action in relation to such construction work as may be necessary to establish whether the requirements of building regulations are being complied with in relation to the building.

(4) An authorised person shall be entitled to be assisted by such persons, and to bring with him such equipment, as he considers necessary to enable him to exercise his powers under this section.

(5) Any person who—

- (a) refuses to allow an authorised person to enter any land or building or to take any person or equipment with him in the exercise of his powers under this section, or
- (b) obstructs or impedes an authorised person in the exercise of any of the powers conferred on him by this section, or
- (c) wilfully or recklessly gives, either to an authorised person or to a building control authority, information which is false or misleading in a material respect, or
- (d) fails to comply with any requirement of this section,

shall be guilty of an offence.

(6) Where an authorised person is prevented from exercising his power of entry into any land or building in the exercise of his powers under this section, the building control authority concerned may apply to the District Court for a warrant authorising such entry.

(7) Nothing in this section shall empower an authorised person to enter into, or to inspect any plans or documents relating to, any land or building which is—

- (a) a prison or place of detention, or
- (b) in the occupation of the Garda Síochána or the Defence Forces.

### Order of High Court in relation to buildings and works.

**12.—**(1) Where the construction of any building or works to which building regulations apply is, or has been, commenced or completed or any material change takes place in the purposes for which a building is used and the building control authority concerned considers that, arising from such construction or change of use—

- (a) there is a risk to the health or safety of persons who may be in or about the building or works, or of persons affected by such building or works, and
- (b) such risk is so serious that either specified measures should be taken immediately to reduce or eliminate the risk or that the use of the building or works concerned should be restricted or prohibited until specified measures have been taken to reduce or eliminate the risk,

the building control authority concerned may apply to the High Court 5 for an order requiring the

removal, alteration or making safe of any structure, service, fitting or equipment, or the discontinuance of any works or restricting or prohibiting the use of the building until the removal, alteration, or making safe of any structures, services, fittings or equipment or the discontinuance of any works, as the case may be, has been effected.

(2) The application for an order under this section shall be by motion, and when such an application is made, the High Court may make such interim or interlocutory order as it considers appropriate.

(3) Any order made by the High Court under this section shall have effect notwithstanding the terms of any permission given under any other enactment for the use of the building or works or any part of either of them to which the relevant application under this section relates.

#### Power to prohibit the use of certain materials etc.

**13.**—(1) The Minister may by order prohibit the use of such materials or classes of materials, or such form of construction or such type of equipment, fittings or services in relation to such class or classes of buildings or to such class or classes of works may be specified in the order, if he is satisfied that such use would be a danger to public health or safety or that such use would contravene any provision of building regulations.

(2) The Minister may by order amend or revoke an order under this section including an order made under this subsection.

#### Building Regulations Advisory Body.

**14.**—(1) The Minister may by order appoint a body which shall be known, and is in this Act referred to, as the Building Regulations Advisory Body.

(2) The Building Regulations Advisory Body—

(a) shall advise the Minister on matters relating to building 2 regulations, and

(b) may provide such advisory services for or on behalf of the Minister,

as the Minister may, from time to time, specify.

(3) The Building Regulations Advisory Body shall consist of so many persons appointed by the Minister for such period as he thinks fit, and any person so appointed shall hold office for such period as the Minister may specify.

(4) The Minister may from time to time nominate one member of the Building Regulations Advisory Body to act as its Chairman.

(5) The Minister may at any time remove any member (including the Chairman) of the Building Regulations Advisory Body from office.

(6) The Minister may by order amend or revoke an order made under this section including an order made under this subsection.

#### Authenticity of documents.

**15.**—(1) A document purporting to be a copy of an entry in a register or to be a copy of a document lodged with a building control authority and which is certified by an officer of the building control authority concerned to be a correct copy of the entry or the document, as the case may be, shall be *prima facie* evidence of the entry or the document of which it purports to be a copy and it shall not be necessary to prove the signature of such officer or that he was in fact such officer.

(2) Evidence of an entry in a register may be given by the production of a copy of such entry, certified in accordance with the provisions of *subsection (1)*, and it shall not be necessary to produce

the register itself.

### Offences.

**16.**—Any person who contravenes (by act or omission) any requirement of this Act or of any order, regulation or notice under this Act shall be guilty of an offence.

### Penalties.

**17.**—(1) A person guilty of an offence under this Act (other than an offence to which *subsection (2)* applies) shall be liable on summary conviction to a fine not exceeding £800 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment and, if the offence is continued on after conviction, such person shall be guilty of a further offence and shall be liable on summary conviction to a fine not exceeding £150 in respect of each day on which the offence is continued.

(2) A person guilty of an offence by reason of a contravention of *section 3 (5)* or *8 (6)* or of an offence in contravention of building control regulations which is declared by such regulations to be an offence to which this subsection applies, shall be liable —

(a) on summary conviction to a fine not exceeding £800, or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment and, if the offence is carried on after conviction, such person shall be guilty of a further offence and shall be liable on summary conviction to a fine not exceeding £150 per day in respect of each day on which the offence is continued, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding two years or to both the fine and the imprisonment.

(3) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence to which *subsection (2)* relates as if, in lieu of the penalties provided for in subsection (3) of the said section, there were specified therein the penalties provided for in subsection (2) (a), and the reference in *subsection (2) (a)* of the said section 13 to the penalties provided for in the said subsection (3) shall be construed and have effect accordingly.

(4) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person (or any person acting on his behalf) being a director, manager or secretary of such body, that person or the person so acting, as the case may be, shall also be guilty of the offence.

(5) Summary proceedings for an offence to which *subsection (1)* applies may be brought and prosecuted by the building control authority for the functional area in which the offence is alleged to have been committed.

(6) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within twelve months after the date of the discovery of the offence but not later than five years after the date of the completion of any building or works in respect of which the offence is alleged to have been committed.

(7) Any person who is convicted of an offence under this Act may, at the discretion of the court, be disqualified from signing and submitting certificates of compliance with building regulations for a period—

(a) not exceeding two years from the date of conviction, if the offence is an offence to which *subsection (1)* or *(2) (a)* applies, or

(b) not exceeding ten years from the date of conviction, if the offence is an offence to



which *subsection (2) ( b )* applies,

and, accordingly, a building control authority shall not accept, certificates for registration which are signed by a person while so disqualified.

### Orders and regulations.

**18.**—(1) The Minister may make regulations for the purposes of this Act.

(2) Every order made under *section 13* and every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next twenty-one days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### Expenses of Minister.

**19.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

### Expenses of building control authorities.

**20.**—(1) The expenses of the council of the county of Dublin as a building control authority shall be charged on the county exclusive of the borough of Dún Laoghaire.

(2) The expenses, as a building control authority, of any other county in which there is a borough or urban district, the corporation or council of which is for the time being a building control authority, shall be charged on the county concerned exclusive of any such borough or urban district.

### Limitation on civil proceedings.

**21.**—A person shall not be entitled to bring any civil proceedings pursuant to this Act by reason only of the contravention of any provision of this Act, or of any order or regulation made thereunder.

### Transitional.

**22.**—(1) No further bye-laws shall be made under section 41 of the Public Health (Ireland) Act, 1878 (other than under paragraph (1) of that section), section 23 of the Public Health Acts (Amendment) Act, 1890 (other than under the last paragraph of subsection (1) of that section), and section 33 of the Dublin Corporation Act, 1890, relating to any matter which is the subject matter of this Act.

(2) Any bye-law to which *subsection (1)* relates and which is in force on the operative day shall continue to apply in relation to —

( a ) any plans which, in accordance with such bye-laws, were deposited before the operative day,

( b ) any works carried out in accordance with plans which were so deposited whether such works were carried out in accordance with those plans, with or without a departure or deviation from those plans,

( c ) any works carried out and completed before the operative day.

(3) Save as is provided for in *subsection (2)*, any bye-law to which *subsection (1)* relates shall, as regards a particular area, cease to have effect on the operative day to the extent that it relates to the subject matter of this Act.

(4) In this Act "the operative day" means, in relation to any area, the day on which building



regulations first come into operation in that area.

(5) For any reference to bye-laws under section 41 of the Public Health (Ireland) Act, 1878 with respect to any matters set out in that section (other than paragraph (1) thereof), or to bye-laws under subsection (1) of section 23 of the Public Health Acts (Amendment) Act, 1890 (other than the first paragraph thereof), or to bye-laws under subsection (4) of the said section 23, which occurs in any Act or in any instrument having effect under any Act, there shall be substituted, save where the context otherwise requires, a reference to building regulations.

(6) *Subsection (5)* shall not be construed as excluding from any enactment any reference to bye-laws made under section 41 of the Public Health (Ireland) Act, 1878, which were in force before the commencement of this Act or which are continued in force under this section.

(7) Where any works to which bye-laws applied (being bye-laws to which *subsection (1)* relates) were carried out prior to the 13th day of December, 1989, and any requirement of the bye-laws concerned, or any statutory requirement relating to such bye-laws, was not complied with, proceedings or any other act shall not be taken on the basis of such non-compliance, and approval to the carrying out of the works shall be deemed to have been granted, unless the building control authority serve on the owner of the works or other person concerned, within six months of the operative day, a notice stating that the works constitute a danger to public health or safety.

(8) The provisions of *subsections (4) to (8) of section 8, section 9 and section 10* shall apply to a notice served under *subsection (7)*.

(9) Bye-laws made by a sanitary authority pursuant to section 46 (4) of the Factories Act, 1955, shall cease to apply in so far as they contain any provision inconsistent with the requirements of building regulations.

### Multi-storey buildings.

**23.**—(1) Section 4 of the Local Government (Multi-storey Buildings) Act, 1988, shall cease to apply to multi-storey buildings the construction of which is commenced on or after the operative day.

(2) Notwithstanding *subsection (1)*, section 4 of the Local Government (Multi - Storey Buildings) Act, 1988, shall continue to have effect in relation to any multi-storey building to which *section 22 (2)* applies.

(3) For the purposes of this section, "multi-storey building" has the meaning assigned to it by section 1 of the Local Government (Multi-Storey Buildings) Act, 1988.

### Repeals.

**24.**—(1) Every provision of the Local Government (Planning and Development) Act, 1963 (as amended by the Local Government (Planning and Development) Act, 1976) specified in *column (1)* of *Part I* of the *Second Schedule* to this Act is hereby repealed to the extent specified in *column (2)* of that Part of that Schedule.

(2) Every provision of the Local Government (Planning and Development) Act, 1976 specified in *column (1)* of *Part II* of the *Second Schedule* to this Act is hereby repealed to the extent specified in *column (2)* of that Part of that Schedule.

### Short title.

**25.**—(1) This Act may be cited as the Building Control Act, 1990.

(2) This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or by reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

Section 3.

FIRST SCHEDULE

MATTERS FOR WHICH BUILDING REGULATIONS MAY PRESCRIBE STANDARDS

1. Preparation of sites.
2. Suitability, durability, classification, use and testing of materials and components (including surface finishes) used in buildings.
3. Structural strength and stability of buildings including—
  - ( a ) precautions against overloading, impact and explosion,
  - ( b ) measures to safeguard adjacent buildings and services,
  - ( c ) underpinning.
4. Resistance to moisture and decay.
5. Fire precautions including—
  - ( a ) resistance of the structure to the outbreak and spread of fire,
  - ( b ) means of escape in the event of fire and measures to ensure that such means can be effectively and safely used at all times,
  - ( c ) services, fittings and equipment designed to facilitate fire fighting, to mitigate the effects of fire, for the early detection of fire and to provide warning in the event of fire.
6. Prevention of danger and obstruction to persons in and about buildings.
7. Measures affecting the emission of smoke, gases, fumes, grit or dust or other noxious or offensive substances.
8. Measures to prevent infestation.
9. Measures affecting the transmission of heat.
10. Measures affecting the transmission of sound.
11. Storage, treatment and removal of waste.
12. Accommodation for specific purposes or in connection with buildings, and the dimensions of rooms, components and other spaces within buildings.
13. Ventilation and daylighting (including the provision of open space therefor).
14. Means of access to and egress from buildings and parts of buildings.
15. Water services and fittings and fixed equipment associated therewith.
16. Drainage (including waste disposal units).
17. Services, installations and ancillary equipment, including—
  - ( a ) installations (including appliances, storage tanks, heat exchangers, ducts and fans) utilising solid fuel, oil, gas, electricity or any other fuel or power for the purpose of, or in connection with, providing heat or ventilation or producing hot water,
  - ( b ) electrical wiring installations,
  - ( c ) lifts, escalators, hoists, conveyors and moving footways,
  - ( d ) plant providing air under pressure.
18. Heating, artificial lighting, mechanical ventilation, air conditioning and the provision of power outlets.

Section 24.

SECOND SCHEDULE

PART I

Repeals of Local Government (Planning and Development) Act, 1963 (as amended by the Local Government (Planning and Development) Act, 1976).

Provision (1)	Extent of Repeal (2)
1 (2) (b)	The whole paragraph.
2 (1)	The definition of "building regulations".
18	The whole section.
82 (1)	The words "in relation to appeals to the Minister under section 88 of this Act or".
82 (2) (a)	The whole paragraph.
82 (2) (b)	The words "any such oral hearing or".
82 (3) (a)	The words "other than an appeal to the Minister under section 88 of this Act,".
82 (3) (b)	The words "an appeal to the Minister under section 88 of this Act or".
82 (3A) (c)	The whole paragraph.
82 (9)	The words "except where the context otherwise requires," and the words "an appeal to the Minister under section 88 of this Act or".
86	The whole section.
87	The whole section.
88	The whole section.
91	The whole section.
92 (5)	The whole subsection.
Fifth Schedule	The whole schedule.

PART II

Repeals of Local Government (Planning and Development) Act, 1976.

Provision (1)	Extent of Repeal (2)
14 (9)	The words ", other than section 18 thereof,".
42 (d)	The whole paragraph.
42 (e)	The whole paragraph.
42 (f)	The whole paragraph.

