

Research and Library Services



Northern Ireland Assembly

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THE BUILDING REGULATIONS (AMENDMENT) BILL (NORTHERN IRELAND) 2008

Research and Library Service

This paper provides some background to the Building Regulations (Amendment) Bill, which was presented to the Assembly on 22 October 2007. The Bill seeks to simplify the existing provisions of the primary legislation, and proposes a number of amendments to reflect the increasing importance of sustainability and environmental issues.

To facilitate Members' consideration of the Bill, the paper begins by examining the background to building regulations and summarises the current legislative position. The key provisions of the Bill are outlined, and any issues raised during the consultation exercises identified.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

SUMMARY OF KEY POINTS

On 22nd October 2007, the First and Deputy First Ministers presented the Building Regulations (Amendment) Bill to the Northern Ireland Assembly; it is scheduled to reach committee stage on 5 March 2008.

The Bill seeks to update the primary legislation in respect of building control; it proposes new powers and amended provisions to reflect the increasing importance of sustainability and environmental issues. It is also intended to simplify some of the existing regulatory and enforcement provisions.

The Department has carried out two public consultations; the first occurred between January and May 2004, and the second was undertaken from July to November 2005. Stakeholder workshops were also held, involving representatives of both district councils' Building Control function and of the construction industry in Northern Ireland.

The proposals contained in the Bill are similar to those that have already been implemented in England, Wales, Scotland and the Republic of Ireland. It has two key components:

- It is intended to refine the powers, duties and rights of the Department, district councils (which enforce the Regulations) and applicants.
- It is also concerned with extending the general principles of the principal Order to include the protection and enhancement of the environment and the promotion of sustainable development.

The key amendments proposed by the Bill are contained in Clauses 1-12 and are in respect of the following:

1. Building Regulations
2. Protected Buildings
3. Building Regulations Advisory Committee
4. Further provisions as to the making of building regulations
5. Guidance documents
6. Type-approvals
7. Power to require or carry out tests
8. Contravention notices
9. Registers of information
10. Civil Liability
11. False or misleading statements
12. Application of building regulations to the Crown

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1. Introduction

The Building Regulations (Amendment) Bill was presented to the Northern Ireland (NI) Assembly on 22 October 2007¹. The Bill seeks to update the primary legislation in respect of building control; it proposes new powers and amended provisions to reflect the increasing importance of sustainability and environmental issues. It is also intended to simplify some of the existing regulatory and enforcement provisions.

This paper provides some background to the Bill, including how building regulations developed locally, in the rest of the UK and the Republic of Ireland (ROI). The background to the Bill is then outlined, as are its key provisions and any issues that were raised during the consultation process.

2. Background

The Northern Ireland Building Regulations are legal requirements made by the Department of Finance and Personnel (DFP) and administered by the 26 District Councils. The Regulations seek to:

“..protect the health, safety, welfare & convenience of people in or about buildings and of others who may be affected by buildings or matters connected with buildings, and of furthering the conservation of fuel & power²”

2.1 The Development of Building Regulations in the UK & ROI

Scotland was the first country in the United Kingdom to adopt national building regulations. The Building (Scotland) Act in 1959 was adopted as a result of the recommendations of the Committee on Building Legislation in Scotland. The first set of Building Regulations was published in 1963 and implemented in 1964.³ Since 1959, there have been reviews of the regulations in 1970, 1971, 1983 and 1990. The Building (Scotland) Act was introduced in 1970, which made a number of amendments to the 1959 Act. Another review of the primary legislation in Scotland was recently undertaken, and the Building (Scotland) Act was passed by the Scottish Parliament and came into force in April 2005.⁴

In England and Wales, the Public Health Act of 1961 was the statutory instrument and the first regulations were published in 1965. They came into operation on the 1st February 1966 throughout England and Wales. The Building Act 1984 is the existing primary legislation under which the Building Regulations and other secondary legislation

¹ <http://www.northernireland.gov.uk/news-ofmdfm-221007-first-minister-and>

² DFP website

³ SPICE briefing “*Building (Scotland) Bill*”, 4 October 2002

⁴ SPICE briefing “*Building (Scotland) Bill*”, 4 October 2002

are made. The Building Regulations are made up of the Building Regulations 2000 and the Building (Approved Inspectors etc.) Regulations 2000 ⁵.

Building Regulations in the Republic of Ireland have followed a similar path. The Town and Regional Planning Act of 1934 created local planning authorities. This was replaced by the Local Government (Planning and Development) Act of 1963, which included the power to create national building regulations. The more comprehensive Building Control Act 1990 established building control authorities. Building regulations were published under that Act and have since been revised periodically. On 21 April 2007, the President signed the Building Control Act of 2007. This Act, amongst other things, strengthened the enforcement powers of Local Building Control Authorities⁶.

2.2 The Development of Building Regulations in Northern Ireland

On the same day that England and Wales introduced building regulations, the 1st February 1966, a committee was established in NI to:

“..examine the existing law for the general regulation of building in Northern Ireland in light of recent changes in Scotland, England and Wales...”⁷”

The committee recommended that the existing control of building under local authority bye-laws and local Acts should be replaced by a new Building Act and regulations applying uniformly across NI. The Buildings Regulation (NI) Order 1972 was introduced, but was subsequently superseded by the Building Regulations (NI) Order 1978 and the Building Regulations (NI) Order 1979 (the 1979 Order). These pieces of legislation were made as Orders in Council as they were introduced during periods of direct rule in Northern Ireland.

DFP carried out a review of the Order in 1983-84, proposing to adopt similar changes to those being introduced to England and Wales at that time⁸. This occurred during a period of devolved government in NI and so was referred to the Environmental Committee of the NI Assembly. The Committee agreed to amending the Order and introduced the Planning and Building Regulations (Amendment) (Northern Ireland) Order 1990 (the 1990 Order).

⁵ These have been amended a number of times since 2000 – most recently on 7 April 2007, via The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.
www.planningportal.gov.uk

⁶ The Act also provided for registration of titles of certain building professions, (architect / quantity surveyor) and took account of the adopted EU Directive 2005/36/EC of 7 September 2005 on Mutual Recognition of Professional Qualifications.
<http://www.environ.ie/en/DevelopmentandHousing/BuildingStandards/>

⁷ *Review of the Building Regulations (Northern Ireland) Order 1979 – Initial Consultation*, DFP 2004

⁸ The changes were being introduced per The Building Act 1984

3. The Legislation at Present

The Building Regulations (NI) Order 1979 (hereafter referred to as the principal Order) (as amended by the 1990 Order)⁹:

- gives DFP the power to make regulations in consultation with an Advisory Committee and to issue supporting technical documentation
- sets out the enforcement powers of District Councils including requirements to submit plans for their approval, their right to issue contravention notices and powers of entry & inspection; and
- establishes an appeals mechanism and creates offences & associated penalties

The Building Regulations are the sub-ordinate legislation; these state the required standards when undertaking building work. Specifically, they are:

- The Building Regulations (NI) 2000 (amended 2005 & 2006)
These regulations set out detailed functional (or performance) requirements which buildings must attain, and apply to new build, structural alterations and buildings undergoing a material change of use. They do not apply retrospectively. They are split into a number of parts, for example Structure, Fire Safety; Conservation of Fuel & Power
- The Buildings (Prescribed Fees) Regulations (NI) 1997
These regulations set out the structure & rates of charges which District Councils may impose in relation to submissions for building regulations approvals.

The proposed Bill is concerned with amendments to the primary legislation; the 1979 Order¹⁰.

4. Building Regulations (Amendment) Bill

4.1 Background to the Bill

In June 2003, Ministerial approval was granted for a review of the Building Regulations (NI) Order 1979 (the 1979 Order) (as amended). The aim of the review was to account for changes in industry practices, bringing the legislation into line with the rest of Great Britain and the Republic of Ireland. The review was not concerned with the regulations made by the Department under the primary legislation¹¹.

⁹ DFP

¹⁰ The Bill does not relate to sub-ordinate legislation, i.e. the specific regulations.

¹¹ These are reviewed periodically, in line with the powers contained in the Order

The Department carried out two public consultations on a number of proposals; an initial consultation occurred between January and May 2004, which invited comments on the existing scope of the Building Regulations framework within NI. The second consultation was undertaken from July to November 2005; this took account of the responses received and set out firmer Departmental proposals. Approximately 450 consultees were invited to respond to each exercise, and information was placed in the press and online. The response rate to both consultations was about 10%.

The Department also ran stakeholder workshops for representatives of both district councils' Building Control function and of the construction industry in Northern Ireland. Officials also met the Northern Ireland Building Regulations Advisory Committee (NIBRAC), District Council building Control Officers and industry representatives in late August / early September 2007 to consider further refinements to the proposed amendments¹².

4.2 The Content of the Bill

The proposals contained in the Bill are similar to those that have already been implemented in England, Wales, Scotland and the Republic of Ireland¹³. It has two key components:

- It is intended to refine the powers, duties and rights of the Department, district councils (which enforce the Regulations) and applicants.
- It is also concerned with extending the general principles of the principal Order to include the protection and enhancement of the environment and the promotion of sustainable development.

The Bill consists of 17 clauses and 1 Schedule, which follow the order of the Articles as they appear in the principal Order. The key amendments are contained in Clauses 1-12 and are as follows¹⁴:

Clause 1: Building Regulations

- The principal Order is amended to define “low or zero carbon system” and “other greenhouse gases”.¹⁵
- Schedule 1 to the principal Order is amended to enable building regulations made by the Department to regulate energy performance of buildings. This includes the use of reused or recycled materials, the proportion of energy used from a particular source and the sustainable use of water.¹⁶

Clause 2: Protected Buildings

- The principal Order is amended to define, and create a new provision for, protected buildings¹⁷.

¹² DFP website

¹³ www.niassembly.gov.uk/finance/2007/mandate/moe/071107_build.htm

¹⁴ This list is not exhaustive, it highlights the key provisions of the Bill.

¹⁵ Draft Building Regulations (Amendment) Bill 2007, Pg 1

¹⁶ Ibid, Pg 2

¹⁷ Ibid, Pg 2

- “Protected Buildings” are defined as listed buildings and buildings situated in conservation areas within the meaning of the Planning (NI) Order 1991.
- The amendment requires district councils to consider the preservation of the character of protected buildings, when carrying out functions under building regulations.

Clause 3: Building Regulations Advisory Committee

- The principal order is amended to adjust the process for appointing members to the Building Regulations Advisory Committee¹⁸.
- To reflect the recommendation of the Office of the Commissioner of Public Appointments for Northern Ireland’s Code of Practice that nominations to public bodies should come from suitable individuals who meet the application criteria, “bodies” is substituted for “persons” in the following paragraph:

“Members of the Advisory Committee shall be appointed by the Department after consultation with such bodies as appear to it to be representative of the interests concerned”¹⁹.

Clause 4: Further provisions as to the making of building regulations

- The deemed-to-satisfy provision is removed and replaced by a guidance-based system; “document” is replaced by “guidance” in the following sentence:
“...building regulations may...be framed to any extent by reference to a document published...”²⁰
- The scope of building regulations is extended to include the protection and enhancement of the environment and the promotion of sustainable development.

Clause 5: Guidance documents

- The Bill proposes a new provision enabling the Department to prepare and publish guidance relating to the requirements of building regulations²¹.

Clause 6: Type-approvals

- District councils are to be given the power to type-approve non-site specific building matters after consulting with prescribed bodies. If a district council does not approve any particular type of building matter as complying with particular requirements of building regulations, the applicant may appeal to the Department²².

Clause 7: Power to require or carry out tests

- The Department is given the power to prescribe the types of tests which a district council may, or be required to, carry out to ensure that building regulations are not being contravened²³.

Clause 8: Contravention notices

¹⁸ Ibid, Pg 2

¹⁹ Building Regulations (NI) Order 1979 (as amended), Pg 4

²⁰ Building Regulations (NI) Order 1979 (as amended), Pg 4

²¹ Draft Building Regulations (Amendment) Bill 2007, Pg 3

²² Ibid, Pg 4

²³ Ibid, Pg 5

- District councils will not be allowed to issue contravention notices after a time (not exceeding 12 months after works are completed) to be prescribed by building regulations²⁴.

Clause 9: Registers of information

- A new requirement for district councils to keep registers of information is added; the format and content of the information may be prescribed by the Department.²⁵

Clause 10: Civil Liability

- The article relating to Civil Liability is omitted, since it has never been activated and the Department has never received representation requesting this²⁶.

Clause 11: False or misleading statements

- This makes it a criminal offence to knowingly or recklessly submit an application which contains false or misleading information²⁷.

Clause 12: Application of building regulations to the Crown

- Article 20 applies to the application of building regulations to the Crown and has not been commenced. It is intended that it will be, and it has been amended to require Crown buildings to comply with the substantive requirements of building regulations. “Crown building” is also redefined –previously a building “in which there is a crown interest”, it is now a building “occupied by the Crown”²⁸.

4.3 Consultation Outcome

This section outlines a number of the consultation responses to relevant policy proposals outlined in the second exercise²⁹. Although these comments were made prior to the publication of the Bill, they are still relevant to its contents:

Extension of Building Regulation principles to sustainability and environmental issues

The vast majority of consultees (35 out of 38) were in favour of extending the principles of Building Regulations to include issues of sustainability and the environment. (Relates to what has become **Clause 1**):

“This is a logical progression for building regulations...Experience has shown the industry only reacts when the playing field is raised for all and that can only be through statute”

However, some argued for the inclusion of other factors:

²⁴ Ibid, Pg 5

²⁵ Ibid, Pg 5

²⁶ Refers to Article 20, Ibid, Pg 6

²⁷ Ibid, Pg 6

²⁸ Ibid, Pg 6

²⁹ The consultation included policy proposals which have not been pursued and are thus not included in the Bill – any responses relating to these proposals are not included.

“Analysis of 2nd Public Consultation on new Building Regulations Bill, DFP,

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“...should also include enhancement of the built environment (i.e. new proposals and alterations) to facilitate people with disabilities”

Change to NIBRAC appointment process

Nine consultees (out of 35) disapproved of this proposal (now **Clause 3**). Three of the critics suggested that:

“NIBRAC should be so constituted that the various professional technical, trade etc bodies are represented. Self-nomination may well result in a NIBRAC body that is not representative of the broader building industry”

However, the Department’s response to this argued that members were appointed to NIBRAC to bring their own experience and expertise to the committee, rather than to represent particular bodies, and that self-nomination would not prevent this.

Move from “deemed-to-satisfy” to guidance based system

The rationale behind this proposal (now **Clause 4**) was the fact that the existing system means that if the deemed-to-satisfy route is followed, building regulation approval is guaranteed. The power of building control officers is also restricted in that they cannot demand anything over and above this system. However, under a guidance system, building control can request more of a builder to satisfy various requirements. The guidance system is in place in the rest of the British Isles and the Republic of Ireland³⁰.

Most consultees (35 out of 36) agreed with this proposal:

“Will promote greater harmonisation with other EU countries and will allow greater flexibility in material selection as technologies develop”

However, one comment suggested that this could be problematic in certain contexts:

“In the school building environment, deemed to satisfy sometimes is the only standard that can be achieved when upgrading part of an older building. Financial constraints and user disruption sometimes prevents higher standards being achieved within existing buildings”

Power to require tests

Almost all consultees (35 out of 37) approved of this proposal (now **Clause 7**), however it was suggested that it was:

“Vitaly important that a list of tests (is) detailed”

Contravention Notices

The original proposal in respect of contravention notices was that no changes would be made, however, 22 out of 35 consultees disagreed with this, resulting in the inclusion of **Clause 8**. It was at the request of stakeholder groups that the period was changed to 12 months.

³⁰ www.niassembly.gov.uk/finance/2007mandate/moe/071107_build.htm

Application of regulations to Crown

Only 1 of 35 consultees disagreed with this proposed amendment (**Clause 12**), stating that it should be looked at on a:

“Case-by-case basis. May cause unnecessary burden on the district council staff resources”

4.4 Key Stakeholders

The stakeholder workshop conducted by the Department as part of the 2nd consultation exercise included individuals from the following organizations:

- Royal Society of Ulster Architects
- Royal Institute of Chartered Surveyors
- Chartered Institute of Architectural Technologists
- Chartered Institute of Building

Other relevant groups include:

- NIBRAC
- Building Control Northern Ireland: the umbrella group for building control in NI