

## **FAQ for Disability Access Certificate - Regularisation Cert - 7 Day Notice**

The following is a series of questions posed to the Department following the commencement of the Building Control (Amendment) Regulations 2009. The list will be supplemented as the implementation of the Regulations advances. If your query is not answered here, you may contact your local Building Control Officer (**List of Building Control Officers available on our website**) or contact [buildingstandards@environ.ie](mailto:buildingstandards@environ.ie)

### **Disability Access Certificate**

Q: What is a Disability Access Certificate?

A: A Disability Access Certificate is a certificate granted by a Building Control Authority which certifies compliance of the design of certain works (e.g. new buildings (except dwelling houses), some extensions to, and some material alterations to buildings (except dwelling houses) with the requirements of Part M of the Building Regulations.

Q: When is a DAC required?

A: A DAC is required in respect of the following works to buildings other than dwellings (but including apartment buildings), in so far as the Requirements of Part M apply and which commence or take place on or after 1 January 2010;

- (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, (see note below)

It should be noted in this context, that the Requirements of Part M 2000

- apply to all works in connection with a material alteration or an extension, without requiring any further work to the existing building<sup>1,2</sup>.

- do not apply to a material change of use, except where a material alteration or extension is associated with the material change of use, in which case refer to the previous point<sup>3</sup>.

<sup>1</sup> Article 11 of the Building Regulations 1997-2008 also stipulates the Regulations apply to every part of a buildings affected by the material alteration or extension but only to the extent of prohibiting any works which would cause a new or greater contravention, in such building.

<sup>2</sup> Part M does not apply to works in connection with extensions to and the material alterations of existing dwellings, provided that such works do not create a new dwelling.

<sup>3</sup> The Requirements of Part M 2010 due to commence on 1 January 2012 amended Article 13 to include the application of Part M to certain material changes of use. It also amended Article 11 of the Building Regulations to extend the definition of a Material Alteration to include Part M.

Q: Are there transitional arrangements for the introduction of the DAC?

A: The requirement for a DAC came into effect on 1<sup>st</sup> January 2010 for new buildings (other than dwellings houses) which commence on or after that date.

Q: I have planning permission, how is this affected?

A: Planning permission has no impact on the need for a DAC. If the works began on a building (other than dwellings houses) on or after January 1<sup>st</sup> 2010, then the DAC is required.

Q: Is a DAC required prior to submitting a commencement notice?

A: A person shall not carry out works in contravention of Part M of the Second Schedule to the Building Regulations 2000 or any conditions subject to which a DAC is granted (where a DAC is required).

To avoid potentially expensive remedial work, it would be considered good practice to apply for a DAC at the same time as a Fire Safety Certificate ((FSC) prior to submitting a commencement notice), therefore ensuring that the DAC and any conditions pertaining to it are set out prior to commencement of works.

However, a DAC may be applied for after commencement notice, but in no case shall a building be opened, operated or occupied or permitted to do so unless a DAC has been granted or pending determination of an appeals process.

A commencement notice must be submitted between 14-28 days in advance of work commencing.

Q: Can works commence on a relevant development prior to the granting of a DAC?

A: Technically, a DAC is not required in advance of commencement of work. However, a person shall not carry out works in contravention of Part M of the Second Schedule to the Building Regulations 2000 or any conditions subject to which a DAC is granted (where a DAC is required).

To avoid potentially expensive remedial work, it would be considered good practice to apply for a DAC at the same time as a FSC, therefore ensuring that the DAC and any conditions pertaining to it are set out prior to commencement of works.

Q: What does a 'new or greater contravention' of the Building Regulations mean?

A: Material alterations or Extensions should not give rise to any 'new or greater contravention' in the existing building. That is, a material alteration or an extension (vertical or lateral) to an existing building should not make the existing building any worse in relation to Building Regulations.

The following examples are given by way of clarification:

The erection of an extension to an existing building whereby the extension is to be served for access and escape purposes by an existing staircase within the existing building:

- If the existing staircase was adequate for the occupancy capacity of the existing building but inadequate for the extended building, this would constitute a 'new contravention' of Building Regulations.
- If the existing staircase was inadequate for the existing building and rendered more inadequate due to the additional occupancy of the extended building, this would constitute a 'greater contravention' of Building Regulations.

Note, therefore, that Building Regulations as they apply to works in connection with existing buildings being materially altered or extended, require solely that the 'status quo' be maintained in the existing building. Where an existing building contravenes Building Regulations, the material alteration or extension of such a building does not carry with it the requirement to make good such contravention, but merely that the contravention is not worsened, i.e. that no new or greater contravention arises. Building Regulations do not apply retrospectively to existing buildings where such buildings are being extended except to the extent that any new or greater contravention is not permitted.

Q: How long will a DAC take to process?

A: The timescale is up to 8 weeks under Section 6(5) of the Building Control Act, 1990, or longer if agreed between the applicant and the BCA.

Q: When should I apply for the DAC?

A: You should apply at the same time as applying for a FSC. The time scale for assessment of both applications is the same. This ensures you have all relevant information prior to construction.

Q: What If I have my FSC already but no DAC?

A: Apply for the DAC immediately/ as soon as possible. Paragraph 2(b) of Departmental Circular BC11/2009 lists what should be provided with the application. Further material may be requested by the Building Control Authority.

Q: If a proposed development has already been granted planning permission and a FSC prior to 01/01/10, but works have not commenced prior to that date, is a DAC required?

A: Yes.

Q: Is a DAC required for a material change of use of a building ?.

A: A DAC is required for certain works to which the Requirements of Part M apply. Refer to Article 20 D (1) of S.I. 351) Part M will apply to a material change of use of a building only when it includes a material alteration - in such cases Part M will apply to all works in connection with the material alteration and a DAC should be applied for.

Q: Does an application for a DAC have to show compliance with the proposal for a revised Part M, which was the subject of a public consultation process in 2009?

A: No. The DAC will certify compliance with the requirements of the current Part – Part M 2000 . Draft Part M 2009 proposals have not yet been finalised. However, additional information may be required for DAC applications when future revisions of part M become operative.

Q: Which of these scenarios require a DAC?

Yes New buildings, including apartment blocks

No Dwelling houses

Yes Material alteration to a day care centre, apartment block, hotel, hostel, guest building, institutional building, place of assembly, shopping centre

Yes material alteration to a shop, office or industrial building where additional floor area is provided within existing building or building is being subdivided into a number of units for separate occupancy.

Yes Extension to an existing building other than a dwelling house of greater than 25m<sup>2</sup>

No Existing building was damaged/burnt and is being repaired.

No A material change of use, by itself - see above

Yes A material change of use involving a material alteration associated with the change of use.

Q: Will there be a 7 day Notice or a Regularisation Certificate in respect of the DAC?

A: There is no need for a 7 day notice in respect of a DAC, as a DAC is not required prior to commencement - see above.

There is no need for a regularisation certificate as DAC only applies to works commencing from Jan 1 2010 and not retrospectively. A DAC must be acquired prior to opening, operating or occupying a building to which works required a DAC. A DAC can be applied for this purpose.

A Regularisation Certificate applies to existing buildings which were Commenced or completed without a FSC, where required.

Q: Where the design of a building or work on a building is changed (eg: unforeseen site conditions demand layout changes), what is expected?

A: A revised DAC is required where significant revision is made to the design or works or a material alteration to or a material change of use of a building in respect of which a DAC has been granted by a BCA. You may apply to the Building Control Authority for the revised certificate.

Q: Why are schools, bar the smallest, not exempt from DAC fees?

A: The Regulations provide for an exemption from fees for primary schools only with 4 mainstream teachers or less, as requested by the Department of Education and Science.

Q: What is the fee for a DAC?

A: The fee is €800 per building.

Q: Is there a sq.m application fee for a DAC?

A: There is no sq.m application fee for a DAC.

Q: Can agents sign the DAC application form on behalf of the applicant?

A: Yes, if they are authorised to do so by the building owner.

Q: The form for a revised DAC requires working drawings. Working drawings are only progressed where work has commenced

A: The need for a revised DAC is not limited to works which have not commenced. It applies where significant revision is made to the design of the building or works already commenced.

Q: If a DAC has not been sought for a building where it is required or where an appeal has been lodged with An Bord Pleanála in respect of a decision by a building control authority on a DAC application, what is the position?

A: A building cannot be opened, operated or occupied or permitted to be opened, operated or occupied without the necessary DAC or where an appeal has been lodged, pending the determination of the appeal.

### **Regularisation Cert FAQ**

Q: What is a regularisation certificate?

A: A certificate granted by a building control authority in respect of works on non-domestic buildings and apartments blocks which were commenced or completed without the necessary Fire Safety Certificate (FSC). The certificate may be granted with or without conditions or refused.

Q: What options has the building owner where the application is refused or granted subject to conditions?

A: There is provision for an appeal to An Bord Pleanála in such cases. The appeal must be lodged within 1 month of the date of the decision on the application –see Part VI of the Building Control Regulations.

Q: Is there a fee for a regularisation certificate?

A: The fee is €500 which is four times the fee for a FSC, or €11.60 per square metre of floor area, whichever is greater. This may vary depending on the works - please see the Fifth Schedule of the Building Control Regulations.

Q: A period of 4 months is set down to comply with conditions which may be inserted by the building control authority in a regularisation cert. This is not sufficient time and is there a mechanism to extend it?

A: There is no mechanism to extend. It is an offence to commence work on a building without a FSC (where required) and the regularisation cert is a chance to be in compliance with the fire safety certification regime. If the works are not carried out within the 4- month period, the certificate will not have effect.

Q: Note 2 requires a “certified” set of drawings. Who can ‘certify’ drawings.

A: It is expected that drawings will be certified by a person qualified to do so as a building professional- this would be expected to be the professional who completed the drawings.

Q: Will the building owner or a person so authorised sign the statutory declaration in respect of works for which a regularisation cert is sought?

A: This is a matter between the building owner and the builder/professional engaged by the building owner.

Q: Can a solicitor sign a statutory declaration as a Commissioner of Oaths?

A: Yes, when s/he is also a Commissioner of Oaths. However, a solicitor shall not exercise these powers in any proceedings in which he is solicitor to any of the parties or in which he has an interest.

### **7 Day Notice FAQ**

Q: What is a 7 day notice?

A: It is a ‘fast track’ notification of commencement of work prior to the granting of a FSC.

Q: What is the fee for a 7 day notice?

A: The standard fee is €250 or €5.80 per square metre of floor, whichever is the greater. This is double the amount for a standard FSC application. The fee may vary

depending on the work proposed and the fees are listed in the Fifth Schedule of the Building Control Regulations.

Q: Do I need to apply for a FSC as well and do I have to pay a fee for both?

A: Yes, the 7 Day notice must be accompanied by a valid FSC application and a statutory declaration in respect of the work proposed, but only the fee for the 7 day notice applies. You do not have to submit separate fees for both the Notice and the FSC.

Q: Can you apply for a 7 day notice if you have already applied for a Fire Safety Certificate?

A: Yes, if you have made a valid application for a FSC you may submit a 7 day notice provided you submit the reference number of the original application, the revised fee and all the required documentation as listed in Article 20A of the Regulations. You should liaise with your local building control authority.