



ANALYSIS

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1991, No. 2

An Act to Control and Standardise Building Practice

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Building Controls and Standards Act 1991.
2. Act to Bind the Crown - This Act shall bind the Crown subject to any provision to the contrary.
3. Interpretation - In this Act unless the context requires otherwise -

"Board" means an Appeals Board constituted under this Act.

"Building" means any temporary or permanent building in the ordinary and natural meaning of that word and includes any temporary or permanent, movable or immovable structure fulfilling the same functional requirements as a building or associated with a building. Structures associated with a building include, but are not limited to:

- retaining walls exceeding a height of 1.5m;
- fences and free standing walls of 2m height or more;
- tanks of 1500 litres or more capacity and their supporting structures;

- grandstands;
- septic tanks and other such treatment facilities;
and
- earthwork.

"Building Controller" means the Building Controller appointed under this Act.

"Code" means the National Building Code established by this Act.

"Committee" means the Building Control Committee established by this Act.

"Department" means the Department of Works.

"Erection of a building" includes the re-erection of a building and the reconditioning of a building and the making of any alteration, repair, or addition to any building heretofore or hereafter erected, and the removal, either in whole or in part, of a building from any place in any Island to any place within such Island or any other Island or from one position to another position on the same lot of land, and "Erect" has a corresponding meaning.

Provided that maintenance work other than structural shall not be deemed repair.

"Minister" means the Minister in charge of Works.

"Owner" in relation to any land or interest therein includes an owner thereof, whether beneficially or as trustee, and his agent or attorney, and a mortgagee acting in exercise of power of sale; and also includes the Crown, the Public Trustee, and any person, local authority or board, or other body or authority, however designated, constituted, or appointed, having power to dispose of the land or interest therein by way of sale.

"Person" includes a company, a corporation and a body of persons whether incorporated or not, and a local or public authority.

4. The National Building Code - (1) There shall be a National Building Code to prescribe performance requirements with which buildings and their demolition must comply.

(2) The National Building Code shall apply to all buildings except those exempted under this Act.

(3) The Queen's Representative may by Order in Executive Council declare any code, including any international or other overseas code, to be the National Building Code for the purposes of this Act, and may in a like manner amend or revoke any such declaration.

5. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such regulations not inconsistent with this Act as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, it is hereby declared that regulations may be made under this section for all or any of the following purposes, namely:

- (a) to establish the National Building Code and to give approval to any amendments to the Code as recommended by the Committee;
- (b) to declare any Code, including any international or other overseas Code to be the National Building Code;
- (c) to prescribe procedures for the issuing, amendment, and cancellation of consents under this Act;
- (d) to provide for the exemption of particular buildings from any obligation to comply with any of the prescribed procedures;
- (e) to prescribe procedures for the issuing of determinations;
- (f) to prescribe the functions of the Committee;
- (g) to regulate the manner in which the Building Controller shall carry out his functions;
- (h) to regulate the procedure and the manner of reporting and the publication of reports of the Committee;
- (i) to provide the forms and building permits required for the purposes of this Act;
- (j) to prescribe the fees payable on applications for building permits;
- (k) to accept under specified terms and conditions, including the public declaration of any conflict of interests during their term, engineers, architects, and other such building professionals as approved certifiers, for a limited period of no more than two years at a time, for the verification of compliance with and the issue of certificates of such verification of specified provisions of the Code; and
- (l) to provide for such other matters as are contemplated by or are necessary or desirable for giving full effect to the provisions of this Act.

(3) All regulations made under this section shall be laid before Parliament within twenty-eight days after the making thereof, if Parliament is then in session, and if not, shall be laid before Parliament within twenty-eight days after the date of the next ensuing session.

6. Establishment of Building Controller - (1) There is hereby established for the purposes of this Act a Building Controller who shall be a public servant and shall be under the authority of the Department of Works.

(2) The Building Controller shall have charge of the Building Controller's Branch of the Department of Works with such establishment as shall be necessary for the proper execution of his functions.

- (3) The Building Controller shall be responsible for:
- (a) issuing all permits for buildings in the Cook Islands;
 - (b) administering this Act, the Code, and any regulations promulgated under this Act; and
 - (c) advising the Minister as to the practicality and range of projected regulations and reporting on the operation of regulations in force from time to time.

7. Establishment of Building Control Committee - (1) The Minister shall appoint a Building Control Committee of not more than six members for the purposes of this Act, and to assist the Building Controller. The Building Controller shall be the Chairman. The members shall preferably be closely associated with the building industry.

(2) The term of office of members of the Committee, other than the Building Controller, shall be of such period, not exceeding two years, as the Minister may determine. Any member may be re-appointed and may be removed from office at any time by the Minister and may at any time resign his office in writing addressed to the Minister.

(3) The Minister may appoint one of the members to act as Chairman of the Committee at any meeting from which the Building Controller is absent.

8. Meetings of the Committee - (1) Meetings of the Committee shall be held at such times and in such places as the Committee or Chairman may from time to time determine.

(2) Save as may be provided by this Act or by regulations made thereunder, the Committee may regulate its procedure in such manner as it thinks fit.

9. Appointment of Sub-Committee - The Committee may from time to time, with the prior approval of the Minister, appoint competent persons, whether members of the Committee or not, to constitute a sub-committee or sub-committees of the Committee and may delegate to any such sub-committee or sub-committees any of its functions and duties.

10. Fees and travelling allowances - The members of the Committee or of any sub-committee shall be paid out of the Cook Islands Government Account such remuneration and travelling allowances as shall be fixed from time to time by the Government.

11. Functions of the Committee - (1) The principal function of the Committee shall be:

- (a) to examine applications received by the Building Controller for exemptions from specific provisions of the Code and to advise him on the disposal of such applications;
- (b) to review those provisions of the Code in the light of repeated requests from different Owners for the granting of exemption from such provisions and to advise the Minister on any suitable amendments to the Code;
- (c) to review the Code and the Regulations periodically and to advise the Minister of any appropriate amendment considered desirable; and
- (d) to consider any other matter which may be referred to the Committee by the Minister or considered by the Committee on its own motion.

12. Building Permit - (1) No person shall erect or commence to erect any building without first obtaining a building permit from the building Controller unless the building is exempted by regulation from the operation of this Act.

(2) No person shall cause or permit the commencement of the erection or the construction of any building for which a building permit is required if a building permit in that behalf has not first been obtained from the Building Controller.

(3) Any person desiring to erect a structure not being a building as defined may submit particulars to the Building Controller, who shall notify the applicant of any objection he may have to the proposal.

(4) Where structural calculations are required to determine the safety and stability of any proposed work the Building Controller may require the payment of a fee before issuing a building permit or a notice under subsection 3 herein.

13. Demolition - (1) The Building Controller may with the consent of the Minister in writing demolish any building or structure, or part thereof, which has been erected subsequent to the operation of this Act without a building permit having been issued in respect thereof and where a permit is required, provided that a notice shall first be given to the person responsible for the erection, contrary to, or otherwise not in accordance with the provisions of this Act or any regulation or specification made thereunder, that he shall make good or, if not possible, demolish such building or structure, or part thereof within delays specified in the notice.

(2) The work of demolition shall be carried out by any suitable agent appointed by the Building Controller.

(3) The Building Controller or the Minister shall, in addition to the power granted by this Act, have the same power to require the removal of any structure whether erected before or after this Act as if it were a building, if, in the opinion of the Building Controller or of the Minister, it constitutes a public danger.

(4) The cost of any demolition pursuant to this section and any expenses in connection therewith shall be a debt due to the Crown and recoverable accordingly from the person served with the notice pursuant to subsection (1) of this section.

14. Restoration of building to previous condition - (1) Every person is guilty of an offence against this Act who -

(a) having constructed, affixed, or provided, or caused to be constructed, affixed or provided, any building or any part of a building or work, or material of any description whatsoever, contrary to, or otherwise than in accordance with the provisions of this Act or regulations or specifications made thereunder; or

(b) having omitted to construct, affix or provide any such work, appliance, or material and who does not after notice in writing has been given to him by the Building Controller so to do, either -

(i) opens up, lays bare, pulls down, takes away, or removes such building or part of a building or work, appliance, or material, or causes the same to be pulled down, taken away, or removed, or alters or causes to be altered the same, so as to comply with this Act or any regulation or specification made thereunder; or

(ii) constructs, affixes, or provides such omitted work, or appliance or material.

(2) Every notice under this section shall state the time within which the required operation is to be performed and may be renewed from time to time.

15. Application of fees, etcetera - All fees and other moneys paid under this Act shall be paid into the Cook Islands Government Account and all expenses incurred in respect of the administration of this Act and regulations thereunder shall be paid out of moneys to be from time to time appropriated by Parliament out of such account.

16. Officers of the Building Control Office, Delegation and Technical Assistants - (1) There may from time to time be appointed under the provisions of the Public Service Act 1975 and regulations in force thereunder a Secretary of the Committee and such other employees as may be necessary for the efficient carrying out of the functions of the Building Controller and the Committee under this Act.

(2) The Minister may on behalf of the Crown and in consultation with the Building Controller and the Committee, negotiate, under a contract of services, such professional and technical and other assistance as he may consider necessary to enable the Building Controller and the Committee to carry out its functions.

(3) The Building Controller may at any time and from time to time delegate to any officer or person employed in the branch of the Department of Works in his charge the execution and carrying out of any function or power conferred upon the Building Controller by this Act or any regulation under this Act and every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) The delegation of any function or power by the Building Controller shall not prevent the exercise of that power by the Building Controller or the delegation of the same function or power to another or other person or persons at the same time.

17. Offences - (1) Every person is guilty of an offence against this Act who, contrary to this Act or the Code or any regulation or specification made thereunder -

- (a) does or causes to be done or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided in this Act; or
 - (b) omits, or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Act, ought to be done by him at the time and in the manner provided; or
 - (c) does not refrain from doing anything which he is required to abstain from doing; or
 - (d) knowingly permits or suffers any condition of things to exist contrary to any provision of this Act or any regulations thereunder; or
 - (e) refuses or neglects to comply with any notice duly given to him under such provision; or
 - (f) obstructs or hinders any officer of the Building Control Office in the performance of any duty to be discharged by any such officer under or in the exercise of any power so conferred upon him.
- (2) Every person who commits an offence against this Act for which no specific penalty is provided shall be liable on Summary Conviction to a fine not exceeding two hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred dollars for every day on which the offence is continued.

18. Appeals procedure - (1) The Minister shall appoint an Appeals Board consisting of no more than three members. The members shall be independent of the Building Control Committee. The term of office of each member shall be for no more than three years. No member shall serve for more than two terms. If, in any particular case of appeal against any determination of the Building Controller, any member of the Board has any interest associated with the Owner who has appealed, such member shall publicly declare his interest and withdraw from hearing the appeal, in which case the appeal shall be heard by the remaining members, provided that at least two members of the Appeals Board remain to hear the appeal. In the event that less than two members remain, the Minister shall appoint additional members, as required, to hear the appeal. The appointment of such additional members shall terminate upon the conclusion of the appeal and the decision of the Board.

(2) All appeals against any determination of the Building Controller shall be lodged with the board within twenty-eight days of receiving the determination.

(3) The Board shall deal with all appeals expeditiously. It shall have the power to call evidence from any or all of the parties concerned.

(4) The decisions of the Board shall be binding on the building Controller and the Owner.

(5) The members of the Board shall be paid out of the Cook Islands Government Account such remuneration and travelling allowance as shall be fixed from time to time by the Government.

19. Citation and proof of Code - (1) In any Order in Executive Council made under this Act a Code may, without prejudice to any other mode of citation, be cited by the title or number given to it by the Queen's Representative in Executive Council.

(2) Without affecting any other method of proof, it is hereby declared that the production in any proceedings of a copy of a Code purporting to be issued by or under the authority of the Queen's Representative in Executive Council shall be sufficient evidence thereof in the absence of proof to the contrary.

20. Repeals - The Building Controls and Standards Act 1968 and the Building Ordinance 1948 are hereby repealed.

This Act is administered in the Ministry of Works