



FINGAL COUNTY COUNCIL

BUILT ENVIRONMENT DIVISION

BUILDING CONTROL REGULATIONS

FEE EXEMPTION POLICY

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1 BUILDING REGULATIONS 1997 FEES & EXEMPTIONS

1.1 INTRODUCTION

Article 22 of the Building Control Regulations 1997-2014 details a fee shall not be payable to a building control authority under these Regulations where the authority is of the opinion that the works or the building which are or is the subject of a notice or application is being made, by or on behalf of a voluntary organisation.

For the purpose of proper public administration and good accounting practices it is necessary to have a formal exemption fee policy. This report aims to outline that policy to be implemented by the Building Control Authority in the discharge of its duties. The application for fee exemption can be validated as part of the validation process by the Building Control authority.

1.2 LEGISLATION

Article 22- Extracts from the Building Control Regulations 1997 to 2014

“(1) Subject to sub-article (2), a fee shall not be payable to a building control authority under these Regulations where the authority is of the opinion that the works or the building which are or is the subject of the commencement notice, 7 day notice, application for a fire safety certificate, revised fire safety certificate, regularisation certificate, disability access certificate, revised disability access certificate or application for a dispensation or relaxation, as the case may be, are being carried out, or, in the case of a material change of use, is being made, by or on behalf of a voluntary organisation or a body standing approved of for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992 (No. 18 of 1992).

(2) Subsection (1) applies where a building control authority is of the opinion that—

(a) in the case of a voluntary organisation, the building concerned is—

(i) intended to be used for social, recreational, educational or religious purposes by inhabitants of a locality generally or by people of a particular group or religious denomination and is not to be used mainly for profit or gain,

(ii) intended to be used as a hostel, work-shop or other accommodation for disabled, poor or homeless persons and is not to be used mainly for profit or gain, or

(iii) is ancillary to (i) or (ii),

(b) in the case of a body standing approved of for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992 (No. 18 of 1992), the building control authority is of the opinion that the building concerned is -

(i) designed or intended to be used for the accommodation of poor or homeless persons or persons who would otherwise be likely to require housing accommodation provided by a housing authority, and is not to be used mainly for profit or gain, or

(ii) is ancillary to (i).

(3) A fee shall not be payable to a building control authority under these Regulations where the works or the building which are or is the subject of an application for a disability access certificate or a revised disability access certificate are being carried out, or, in the case of a material change of use, is being made, by or on behalf of a primary school, where the maximum number of mainstream teachers is or will be 4 or less.”

2 DEFINITIONS

2.1 HOW DO YOU DEFINE A VOLUNTARY ORGANISATION?

The term voluntary organisation is an undefined term within the meaning of the Regulations or the primary Building Control Acts 1990-2007 and ultimately the waiver of fees rests on the opinion of the building control authority that application (1) is being made by or on behalf of a voluntary organisation and (2) relates to a building covered by the terms of 22 (2) (a) (i) to (iii) above. Neither is there any statutory register of voluntary bodies.

The onus would be on the applicant to prove the organisation status as a voluntary organisation. What might satisfy a building control authority in this regard could be that the organisation's Articles /Memorandum of Association/Constitution and Annual Accounts would provide sufficient evidence as to its status. Clearly a voluntary body would not have paid Directors, would not be engaged in commercial activities, and would devote all funds raised to furthering the organisations aims. If an organisation has no employees it is clearly a voluntary body but opinions differ on whether a number of paid employees means the organisation can no longer be classified a voluntary body.

For example is a sports club with a licensed premises with paid employees a voluntary organisation?

It is considered that the intention in the Act for this exemption envisaged community halls, parish centres, local clubs, etc.

The other thing to watch is that many people will consider that a charitable organisation is automatically qualifies. The building control legislation did not use the word charitable organisation even though Revenue run a register for such bodies for tax purposes. There is no guarantee that a charitable organisation with a registered charitable number would in all cases be a voluntary organisation.

2.2 HOW DO YOU DEFINE AN APPROVED HOUSING BODY?

An approved housing body is one that is listed on the current "Register of Housing Bodies with Approved Status Under Section 6 of the Housing Act 1992". This is available on the website of the Department of Housing, Planning and Local Government <https://www.housing.gov.ie/housing/social-housing/voluntary-and-cooperative-housing/register-housing-bodies-approved-status>

2.3 CASE LAW

Exemptions. 157-(PLANNING AND DEVELOPMENT REGULATIONS 2001 – 2013)- [2013] IEHC 3, 15th January 2013-Voluntary Organisations

Cork Institute of Technology v. An Bord Pleanála & Anor [2013] IEHC 3, 15 January 2013

“... I find myself driven to the conclusion that the better view of Article 157(1) is that it was intended to dispense with the necessity for planning fees where the application for planning permission had been made for eleemosynary or charitable purposes by a body which was not *directly* part of the State apparatus. While it is true that the Institute’s work is substantially subvented from public funds and its activities are regulated by statute, the fact remains that the core of its work is charitable and eleemosynary in the classic sense of that term which the law has always recognised. Thus, the provision of education – not least in the field of science, technology and innovation – is of the first public importance. The work of the Institute opens this world to a new generation of young people and it would scarcely be an exaggeration to say that the future of the country is contingent on the education of that new generation. Accordingly, it is in that purposive sense – as mandated by s. 5(2)(a) of the 2005 Act – that it can be said that the Institute is a voluntary organisation within the meaning of Article 157(1) ...”

Hogan J, *Cork Institute of Technology -v- An Bord Pleanála & Anor* 2013 [IEHC] 3, 15 January 2013

“Exemptions. 157-(PLANNING AND DEVELOPMENT REGULATIONS 2001 – 2013)

(1) *Where a planning application consists of or comprises development which, in the opinion of the planning authority, is development proposed to be carried out by or on behalf of a voluntary organisation, and which in the opinion of the planning authority—*

(a) is designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality, or by people of a particular group or religious denomination, and is not to be used mainly for profit or gain,

(b) is designed or intended to be used as a work-shop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain, or

(c) is ancillary to development referred to in paragraph (a) or (b), a fee shall not be payable when making any such application.

(2) *Where a planning application consists of or comprises the provision of houses, or development ancillary to such provision, which is proposed to be carried out by or on behalf of a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992 (No. 18 of 1992) and is not to be used mainly for profit or gain, a fee shall not be payable in respect of any such development.”*

APPENDIX A

BCMS FEE EXEMPTION EXTRACTS

1. Building Control Regulation fees

The following processes can require fees:

- Commencement Notice,
 - Application for a fire safety certificate, a revised fire safety certificate, a regularisation certificate, a disability access certificate, a revised disability access certificate or the submission of a 7 day notice.
 - Application/Relaxation for a Dispensation from Building regulations
 - Providing a copy of an entry into the register
 - Providing a copy of a fire safety certificate, a revised fire safety certificate, a regularisation certificate, a disability access certificate, a revised disability access certificate or a 7 day notice.
 - Providing a copy of a document which indicates that a dispensation or a relaxation has been granted.
 - Scanning and uploading documentation onto the BCMS.
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2. Request for a Fee Exemption

In order for the Building Control Authority to process a request for a fee exemption, certain details/proofs are required to justify that the organisation is either a voluntary organisation or an approved housing body.

The Request Form is located in Appendix B and it requires information on the reasons that the organisation is seeking a fee exemption. This Request form outlines the basic information required to allow the Building Control Authority to make an initial assessment and begin this process. However, the Building Control Authority may seek additional information/documentation in order to complete the assessment.

APPENDIX B

BCMS FEE EXEMPTION REQUEST FORM

FINGAL COUNTY COUNCIL BUILDING CONTROL DEPARTMENT

REQUEST FOR EXEMPTION OF FEES FROM BUILDING CONTROL MANAGEMENT SYSTEM

(Article 22 – Exemptions – Building Control Regulations 1997 to 2018)

I hereby seek an exemption from the following fees under the above article of the regulations on the basis as outlined below –

<i>Application or Notice Types or Certificates Fee Exemption</i>	Y	N	€amount of fee
<i>1. Commencement Notice,</i>			
<i>2. 7 Day Notice,</i>			
<i>3. Fire Safety Certificate,</i>			
<i>4. Revised Fire Safety Certificate,</i>			
<i>5. Regularisation Certificate,</i>			
<i>6. Disability Access Certificate,</i>			
<i>7. Reised Disability Access Certificate,</i>			
<i>8. Application or a Dispensation from Building regulations</i>			
<i>9. Relaxation of Building Regulations</i>			
<i>10. Material Change of Use</i>			

Reason for Claim of Fee Exemption:

- VOLUNTARY BODY - CI 22(2)(a) Y/N
 The Application is being made by or on behalf of a Voluntary Organisation.
Note Voluntary and Charitable are not the same thing, see below.

If Y complete the **two** headings below.

a. Confirm **both** of the following as proof of Voluntary Status:

1. Voluntary funding only

provide details _____

2. No paid directors

provide details _____

b. Outline **one** of the following uses of the building:

- CI 22 (2) (a) (i) - intended to be used for social, recreational, educational or religious purposes by inhabitants of a locality generally or by people of a particular group or religious denomination and is not to be used mainly for profit or gain

provide details _____

- CI 22 (2) (a) (ii) - intended to be used as a hostel, work-shop or other accommodation for disabled, poor or homeless persons and is not to be used mainly for profit or gain

Provide details _____

- APPROVED HOUSING BODY - CI 22(2)(b) Y/N

The Applicant is a body standing approved of for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992 (No. 18 of 1992).

If Y complete the **two** headings below.

- Provide proof of the above status

provide details _____

- Outline **one** of the following uses of the building

- CI 22 (2)(b)(i) - designed or intended to be used for the accommodation of poor or homeless persons or persons who would otherwise be likely to require housing accommodation provided by a housing authority, and is not to be used mainly for profit or gain

provide details _____

- CI 22(2)(b)(ii) – ancillary to CI 22(2)(b)(i)

provide details _____

I hereby confirm that I have read Article 22 of the Building Control Regulations 1997 to 2012, and comply fully with its provisions and as such request an exemption from fees for the application/notice as outlined above.

Signed: _____ Date: _____

Name (Block Letters): _____

Role or Title: _____

Premises Name: _____

Premises Address: _____

Use of Premises: _____

Validation

Delegated Person Name: _____

Local Authority Exemption Policy Ref No: _____

***This completed form should be attached to the Notice or Application being submitted.
A separate form should be completed in respect of each Notice or Application.***