

LC ADVICE NOTE (October 2015)

Building Control (Amendment) Regulations 2014 - S.I. 9 of 2014 and SI. Referred to informally as BC(A)Rs.

This is an advice note only and it is not intended to be a formal Guidance Note.

Readers are referred to the DOEHLG website:

<http://www.environ.ie/en/DevelopmentHousing/BuildingStandards/>

and the websites of the member bodies of the LC for more detailed guidance and *Practice Notes*.

BC(A)Rs Introduce additional Building Control provisions. These additional provisions apply to:

- The design and construction of a new dwelling.
- An extension to a dwelling involving a total floor area of more than 40m²
- Works to which Part III of the BUILDING CONTROL REGULATIONS, 1997 to 2014 apply (i.e.; developments which require a Fire Safety Certificate).

BC(A)Rs Introduced the Building Control Management System (BCMS) and its website <https://www.localgov.ie/en/BCMS> which facilitates the electronic administration of building control matters by building control authorities as the preferred means of building control administration.

BC(A)Rs came into operation on the 1st March 2014 for applicable projects where the Commencement Notice is submitted on or after that date .

SI No. 105 of 2014 applies to a limited range of public and privately owned buildings intended for use as first, second or third level places of education, hospitals or primary care centres. It was a transitional arrangement with few practical applications now.

SI No. 365 of 2015 commenced operation on the 1st September 2015.

The Explanatory Note to these Regulations says that they amend the Building Control Regulations (the “Principal Regulations”) following a review by Government of the operation of the procedures introduced under S.I. No. 9 of 2014 during its first 12 months in operation.

They provide clarification that an owner intending to build a dwelling for their own use may take on the role of builder for building control purposes and sign the statutory forms which must be signed by the builder.

They are revised to give the owner of works involving the construction of a new single dwelling, on a single unit development, or of a domestic extension, the facility to opt out of the requirement to obtain statutory certificates of compliance signed by a registered construction professional.

An eligible Owner who opts out of the statutory certification process as outlined above is

required, prior to the commencement of works, to submit a **Commencement Notice** accompanied by:

- a *Declaration of Intention to Opt Out of Statutory Certification* in the regulatory format published,
- such plans, calculations, specifications and particulars as are necessary to outline how the proposed dwelling or domestic extension will comply with the relevant technical requirements of the Building Regulations; typically; general arrangement drawings; a schedule of compliance documents, as designed or to be prepared at a later date; the online BCMS assessment of the proposed approach to compliance; a Notice of Assignment of Builder and fee of €30.

The effect of these changes is that the statutory forms of certification signed by builders and registered construction professionals are not mandatory on such qualifying projects.

For the avoidance of doubt, SI 365 of 2015 does not provide any relaxation to any Owners from the requirements to comply with the technical requirements of the Building Regulations.

The Principal Regulations are also amended to remove the general exemption from building control regulations for works undertaken by a Local Authority within its own functional area.

It is recommended that parties considering availing of the “opt out” relaxations in SI 365 of 2015 should become familiar with the Regulations - and the *Code of Practice for Inspecting and Certifying Buildings and Works* issued by Department of Environment, Community and Local Government.

Link:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownload,38154,en.pdf>

BC(A)Rs require compliance measures in the design and construction of applicable works up to and including final completion and entry on the BCMS Register (other than for works where the Owner has “opted out” in accordance with the provisions of SI 365 of 2015).

There are new titles, roles and responsibilities throughout the process.

1. **Building Owner** (ultimately responsible for compliance with the Regulations and appointment of competent personnel).
2. **Assigned Certifier (AC)** – A competent person who is assigned by the building owner to inspect and certify the building or works concerned, as set out in Part B of the Certificate of Compliance on Completion. The AC may or may not be a member of the Design Team. The emerging practice is that the AC is a member of the Design Team.
3. **Building Designer.** (referred to by some in common usage as Design Certifier (DC)) A competent person who has been commissioned by the building owner to design, in conjunction with others, the building or works described above and to certify such design, as set out in the statutory Design Certificate. A Building Designer can serve as Assigned Certifier.

4. **Builder** – The Builder should carry out the works in accordance with the plans and specifications of the professional design team, their specialists and sub-consultants as necessary and have regard to these in accordance with the requirements of the Building Regulations.
5. **Ancillary Certifiers** – may be designers, contractors, sub-contractors, suppliers, manufacturers, etc.
6. **Building Control Authorities.**

Who can act as Design Certifier and Assigned Certifier and sign the relevant Statutory Certificates?

Those on the registers below who are competent in relation to the work involved.

- (a) An Architect on the register maintained by the RIAI,
- (b) A Chartered Engineer on the Register maintained by Engineers Ireland,
- (c) A Building Surveyor on the register maintained by SCSl.

“Competent Person”: a person is deemed to be a competent person where, having regard to the task he or she is required to perform and taking account of the size and/or complexity of the building or works, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken: (as defined in the Code of Practice for Inspecting and Certifying Buildings and Works).

Documents

The Certificates referred to under Items 1 to 5 and 7 and 8 below are Statutory Certificates which cannot be altered.

1. ***Certificate of Compliance (Design) completed by DC.***
2. ***Notice of Assignment of an AC completed by Owner***
3. ***Notice of Assignment of a Builder completed by Owner***
4. ***Certificate of Undertaking signed by AC.***
5. ***Certificate of Undertaking signed by Builder.***
6. ***Preliminary Inspection Plan (PIP), the Inspection Notification Framework (INF) and the Completed Inspection Plan prepared by the AC.***
7. ***Building Commencement Notice:*** The Commencement Notice is submitted by uploading it to the BCMS website and designating the relevant Building Control Authority on behalf of the Owner. Responsibility for its submission, under BC(A)Rs rests with the Owner and the form must be signed by the Owner. The submission

must be accompanied by the statutory certificates 1 to 5 above and the PIP.

8. **Certificate of Compliance on Completion** to be completed by the Builder (Part A) and by AC (Part B) certifying in the prescribed form that the finished works comply with the Regulations including all necessary changed or superseded design documents - and details of the Inspection Plan as implemented.

9. **Ancillary Certificates.** Ancillary (Both Design and Inspection Certificates) Certificates have been developed and agreed between the RIAI, ACEI, Engineers Ireland, and SCSi, to be used by Consultants, Specialist and Unregistered Consultants. Specialist and Unregistered Consultants are consultants who are not entered on any of the registers referred to in BC(A)Rs.

- Ancillary Certificates have been developed by the CIF and agreed by the RIAI, ACEI, Engineers Ireland and SCSi, to be used by Contractors, Sub-Contractors, Specialist Contractors and Sub-Sub-Contractors.

Validation and Registration of Certificate(s) of Compliance on Completion.

It is unlawful to open, occupy or use a building which has not been entered on the Register. Phased completions are provided for.

Two alternative procedures are available for the submission of the Certificate of Compliance on Completion:

Standard Procedure: Upon *Completion*, the AC submits the form specified for that purpose accompanied by such table of plans, calculations, specifications and particulars as are necessary to outline how the completed works or building differ from the design submitted with the Commencement Notice.

Should the Authority fail to validate or reject the Certificate within 21 days, the Certificate will be placed on the Register automatically. If the Certificate is regarded as not being valid by the Building Control Authority, it may reject the Certificate or require the AC to submit a revised certificate or additional documentation necessary to achieve validation.

Nominated Date Procedure The required documentation demonstrating compliance and the Inspection Plan can be submitted to a Building Control Authority on a date falling not more than 5 weeks and not less than 3 weeks prior to a nominated date on which a valid Certificate of Compliance on Completion is intended to be submitted for entry on the Register by the AC.

The Building Control Authority shall at that point begin to consider the submission so that the Authority is in a position to include the details of the relevant Certificate of Compliance on Completion on the Register on the nominated date - provided that a valid Certificate of Compliance on Completion is received by the Building Control Authority on a date not later than the date preceding the nominated date. (Text in Regulation 20F (8)).

Note 1: BC(A)RS provide that the Principal Regulations (1997 - 2009) are amended by substituting for the Title of Part IIIA the following: “Part IIIA — 7 Day Notice, Certificates of Compliance, Revised Fire Safety Certificate, Regularisation Certificate, Statutory Declaration and 7 Day Notice Statutory Declaration”.

(There have also been changes to Part IIIC, Part IV, Part V, the Second and Third Schedules, and a new Sixth Schedule).

These are complex provisions requiring specialised advice if being considered and they are outside of the scope of this advice note.

Note 2. Documentation held on file by a Building Control Authority relevant to works or a building included on the statutory register will be accessible to any person who subsequently acquires an interest in the building concerned. (See text in third last paragraph of the Explanatory Note to the Regulations).

Note 3. Records relating to particulars included on the register may be accessed in accordance with the Freedom of Information Acts 1997 and 2003. The register may be maintained electronically subject to the Data Protection Acts 1998 and 2003.