

Information Note
for Owners of new dwellings and extensions
who opt out of Statutory Certification
for building control purposes



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1. Introduction

- 1.1 This information note is published with reference to Article 9(5) of the Building Control Regulations 1997 to 2015. Article 9(5) enables an owner of a single dwelling, on single unit development, or an extension to a dwelling, to opt out of the requirement to obtain statutory certificates of compliance with building regulations in relation to the building concerned.
- 1.2 The purpose of this information note is to provide guidance which will assist the owner in understanding their statutory obligations (under the Building Control Act 1990) to ensure that the design and construction of their dwelling or extension complies with the requirements of the Second Schedule to the Building Regulations and to fulfil the necessary administrative and procedural requirements set out under the Building Control Regulations.
- 1.3 The content of this information note is general in nature and is intended to give a good overview of the arrangements in place for the control of building activity. Further information and advice in relation to specific queries can be obtained from the Building Control section in each local authority or by contacting the Architecture/Building Standards Section of the Department of the Environment, Community and Local Government by emailing Buildingstandards@environ.ie.

2. Overview of Building Control Framework

- 2.1 **Building Control Acts:** The Building Control Acts 1990 to 2014 sets out the statutory framework for the regulation and oversight of building activity based on:
 - clear legal requirements as set out in the Building Regulations;
 - detailed Technical Guidance Documents to outline how these requirements can be achieved in practice;
 - clear administrative procedures for demonstrating compliance in respect of an individual building or works as set out in Building Control Regulations
 - the responsibility for compliance resting first and foremost with building owners, developers/builders and designers; and
 - the responsibility for enforcing compliance with the building regulations resting with the 31 local building control authorities.

2.2 **Building Regulations:** The aim of the building regulations is to provide for the safety and welfare of people in and about buildings. The Building Regulations apply to the design and construction of a new building (including a dwelling) or an extension to an existing building. The minimum performance requirements that a building must achieve are set out in the Second Schedule to the Building Regulations. These requirements are set out in 12 parts (classified as Parts A to M) as follows: -

- Part A – Structure
- Part B - Fire Safety
- Part C - Site Preparation and Resistance to Moisture
- Part D - Materials and Workmanship
- Part E – Sound
- Part F – Ventilation
- Part G – Hygiene
- Part H - Drainage and Waste Water Disposal
- Part J - Heat Producing Appliances
- Part K - Stairways, Ladders, Ramps and Guards
- Part L - Conservation of Fuel and Energy
- Part M - Access and Use

- 2.3 **Technical Guidance Documents:** A Technical Guidance Document is published to accompany each part of the Building Regulations indicating how the requirements of that part can be achieved in practice. Following the approach outlined in a Technical Guidance Document is one way of ensuring that the building concerned complies with the requirements of the relevant part of the Building Regulations. Alternative approaches to compliance with the legal requirements can be adopted but the onus is on the owner/builder concerned to demonstrate that the alternative approach achieves an equivalent or better outcome than the approach outlined in the Technical Guidance Documents. Copies of the Technical Guidance Documents are available to view / download on the Department's website at <http://www.environ.ie/en/TGD/> under the heading "*Current Technical Guidance Documents and Supporting Documentation*" or, alternatively, hard copies may be purchased from Government Publications, 52 St. Stephen's Green, Dublin 2, D02 DR67 (Tel: 00 353 1 647 6834).
- 2.4 **Building Control Regulations:** In addition to the above, there are certain administrative and procedural requirements which must be fulfilled in order to demonstrate that individual buildings or works have complied with the minimum standards set out in the Building Regulations. These Regulations also set out the procedures for the registration on a statutory register of key building control activity thereby ensuring such information is a matter of public record. These requirements are set out under separate regulations, known as the Building Control Regulations, made under the Building Control Acts 1990 to 2014.
- 2.5 **Overview of Building Control Process for new single Dwellings / Domestic Extensions:** In the case of a new dwelling or an extension to a dwelling greater than 40 square metres, the building control regulatory process typically involves the following steps:
- (a) a **commencement notice** signed by owner is submitted to the local building control authority not less than 14 days and not more than 28 days prior to commencement of works, accompanied by-
 - (i) design and compliance documentation certified by a registered construction professional,
 - (ii) undertakings by the builder and the assigned certifier (a registered construction professional),
 - (iii) an inspection plan prepared by the assigned certifier,
 - (iv) the relevant fee of €30 per building.

- (b) the building control authority then has 7 days to determine the validity or otherwise of the commencement notice received; once validated key particulars of the commencement notice and compliance documentation is referenced on the **public register** of building control activity;
- (c) works for which a commencement notice is validated may then commence within the 14 - 28 day notice period;
- (d) on completion of works, a **Statutory Certificate of Compliance on Completion**, accompanied by relevant compliance documentation and the inspection plan as implemented, is lodged with the building control authority. This Statutory Certificate incorporates certification from the Builder and from the Assigned Certifier;
- (e) the building control authority has 21 days to determine the validity or otherwise of the Statutory Certificate
- (f) valid Statutory Certificates of Compliance on Completion are referenced on the public register of building control activity.

The above description is summary in nature. More detailed information can be obtained by reading the Building Control Regulations 1997 to 2015 or the Code of Practice for Inspecting and Certifying Buildings and Works which is available on the Department's website by clicking on the following weblink:

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

2.6 Alternative Process – Opt Out of Statutory Certification: The most recent amendment to the Building Control Regulations 1997 to 2015 provides owners of new single dwellings, on a single development unit, and domestic extensions with an alternative process to that outlined above. This alternative process is explained in more detail as Section 3 below. The key difference involves the facility to opt out of the requirement to obtain statutory certificates reliant on the services of a registered construction professional.

2.7 Compliance & Enforcement: The Building Control Acts 1990 to 2014 vest the powers of enforcing building control requirements and, where necessary, prosecuting offenders, in each of the 31 local authorities which acts as the building control authority in its own administrative area. Authorised officers of each local building control authority have strong powers under the Acts to:

- scrutinise proposals and inspect works in progress;
- serve enforcement notices on owners and builders for non-compliance;

- institute proceedings for breaches of any requirements outlined in the Acts, or any regulations made thereunder;
- seek High Court injunctions if non-compliance poses considerable and serious danger to the public.

The onus is on the owner/builder concerned to demonstrate compliance with the Building Regulations when required to do so by the relevant local building control authority. Failure to do so is an offence under the Acts which may if successfully prosecuted in court lead to a fine and/or a term of imprisonment.

Remediation of defects is a matter between the parties concerned i.e. the owner, the builder and their insurers, if any. If a satisfactory resolution cannot be achieved through dialogue and negotiation the option of seeking civil legal remedy may be considered. In such situations, the statutory requirements (as outlined under Parts A to M of the Second Schedule to the Building Regulations, and further defined and explained in the accompanying Technical Guidance Documents) provide the basis by which the owner/builder, their technical consultants and the courts can determine whether a building is fit for purpose or not.

- 2.8 **Building Control Management System:** An online system known as the Building Control Management System or BCMS has been set up to facilitate the electronic administration of building control matters. The BCMS can be accessed by clicking on the following weblink:

<https://www.localgov.ie/en/link-type/bcms>

Owners, builders and construction professionals use the BCMS to upload building control forms (Commencement Notices, Declaration of Intention to Opt out of Statutory Certification, Notice of Assignment of Builder, etc.) and compliance documentation (General Arrangement Drawings, Schedule of Compliance Documentation, etc.). The online assessment of the proposed approach to compliance with the Building Regulations is also done through the BCMS. All time-bound statutory processes (such as the validation of the commencement notice) are handled by the local building control authority via the BCMS.

It is advisable that you register yourself as a user on the BCMS in good time in advance of the submission of your commencement notices. Your local building control authority (contact details available below) will assist you with setting yourself up as a user. If you are engaging the services of a builder or a construction professional, these agents may of course assist you by coordinating administration with building control on your behalf.

Where owners cannot upload commencement notices and documentation on the BCMS, written submissions will be accepted. The building control authority will arrange for scanning and uploading of documentation for an administrative charge. The statutory deadlines relating to such notices may also be delayed by up to seven days.

3. Declaration of Intention to Opt Out of Statutory Certification

- 3.1 The Building Control Regulations 1997 to 2015 were recently revised to allow the owners of a single dwelling, on a single development unit, or a proposed domestic extension, to opt out of the general requirement to have the dwelling/extension designed, inspected and certified by a registered construction professional.

The differences between the statutory certification process and the alternative process now available to owners of single dwellings and domestic extensions is summarised in the following table:-

Table 1 - Comparison of requirements relating to Statutory Certification of Compliance for Building Control purposes and the Alternative Process for Owners who opt out of Statutory Certification

| Statutory Certification of compliance for Building Control purposes | Alternative Process for Owners Opting Out of requirements for Statutory Certification |
|--|--|
| Commencement Notice | Commencement Notice |
| — | Declaration of Intention to Opt Out of Statutory Certification |
| Compliance Documentation (plans, calculations, specifications, etc.) which include (i) general arrangement drawings, (ii) a schedule of compliance documents as currently designed or to be prepared at a later date, (iii) online assessment on the BCMS, (iv) Preliminary Inspection Plan prepared by the Assigned Certifier | Compliance Documentation (plans, calculations, specifications, etc.) and to include (i) general arrangement drawings, (ii) a schedule of compliance documents as currently designed or to be prepared at a later date, (iii) online assessment on the BCMS |
| Design Cert signed by a registered construction professional | — |
| Notice of assignment of Assigned Certifier. | — |
| Undertaking by Assigned Certifier | — |
| Notice of Assignment of Builder | Notice of Assignment of Builder |
| Undertaking by Builder | — |
| Completion Cert signed by builder (Part A) and by registered construction professional (Part B) and accompanied by up-to-date schedule of compliance documents and the inspection plan as implemented. | — |

- 3.2 A homeowner who wishes to avail of this facility must sign a form of **“Declaration of Intention to Opt Out of Statutory Certification”** which may be obtained online via the BCMS or from the local building control authority. This form must accompany the documents submitted to the building control authority when notifying them that works are about to commence which will include the following:-
- (a) a Commencement Notice and the relevant fee of €30 per building;
 - (b) a Declaration of Intention to opt out of Statutory Certification, signed by the building owner;
 - (c) such plans, calculations, specifications and particulars as are necessary to outline how the proposed dwelling house or domestic extension will comply with the relevant requirements of the Second Schedule to the Building Regulations; These will typically include -
 - (i) general arrangement drawings,
 - (ii) a schedule of compliance documents, as designed or to be prepared at a later date,
 - (iii) the BCMS assessment of the proposed approach to compliance, normally completed online,
 - (d) a Notice of Assignment of Builder, signed by the owner.
- 3.3 The submission of the Commencement Notice, accompanied by the other documentation outlined above, is a statutory requirement and is important for the following reasons:-
- (a) the local Building Control Authority is alerted to the intention to commence building works and is therefore in a position to -
 - (i) satisfy itself as to the validity or otherwise of the proposed works
 - (ii) assess which projects should be subject to risk-based inspections as typically undertaken on at least 12-15% of validly commenced building units, in line with its statutory function of monitoring building activity in general within its geographic area . Inspection by local building control authorities remains a prospect for homeowners, irrespective of whether or not a homeowner opts out of the statutory certification provisions.

- (b) The documents are referenced on the public register of building activity maintained by local authorities as a matter of public record where they are available to any person who subsequently acquires an interest in the property concerned.
- 3.4 A Commencement Notice must be submitted to the local building control authority at least 14 days and not more than 28 days prior to the proposed commencement of works. The notice is normally validated by the authority within 7 days of receipt and works must then commence within the 14 - 28 day notice period. If the works do not start within 28 days of the date of lodgment of the Commencement Notice, the notice is no longer valid. A fresh Commencement Notice taking account of the statutory timelines outlined above must be lodged. Failure to submit a Commencement Notice is an offence which cannot be corrected at a later date.
- 3.5 **Homeowners should weigh up carefully the implications of a decision to opt out of the statutory certification process.** The cost associated with engaging the services of a registered construction professional for design, inspection and certification purposes is likely to be a key consideration. It is worth bearing in mind that a reasonable investment in the design, inspection and certification of works will pay dividends in terms of delivering a quality, compliant building.

Homeowners should be aware of the Sample Preliminary Inspection Plan which is published on the Department's website that outlines the typical hourly service required from construction professionals. Fees charged by professionals may vary.

Homeowners should appraise themselves of any potential cost or other implications that may arise as a result of choosing to opt out of the statutory certification process. Prior to deciding on whether or not to avail of the opt out option, it is recommended that a homeowner should consult with their solicitor.

4. Further general advice in relation to the Building Owner's role

- 4.1 **Statutory Obligation:** Irrespective of whether the homeowner decides to comply with the statutory certification requirements or to follow the alternative process now provided for in the regulations, they must continue to meet their obligation under the Building Control Act 1990 to 2014 to ensure that the design and construction of the building concerned complies with the relevant requirements of the Building Regulations.
- 4.2 **Role of Building Owner:** In this regard the owner should ensure that:-
 - (a) the owner is competent for any tasks they undertake on their own behalf;

- (b) any persons engaged by the owner to perform any element of the design or the construction of the dwelling or extension concerned is competent to carry out such task(s); it is good practice to seek certificates confirming that the tasks concerned have been undertaken in compliance with the requirements of the Building Regulations;
- (c) ensure that adequate resources are provided so that the design and construction is successfully achieved in a manner which meets the requirements of the Second Schedule to the Building Regulations at a minimum;
- (d) all statutory requirements for building control purposes (commencement notices, assignment of builder and, where relevant, certifiers, lodgement of compliance documents, etc.) are submitted to the local building control authority as required, and, where changes of notified assigned persons occur, new forms of assignment are promptly submitted to the authority;
- (e) maintain records.

4.3 Reliance on Competent Persons: Clearly, reliance on competence is central to the success of any building project. A competent person may generally be regarded as a person who possesses sufficient training, experience, and knowledge to enable them to undertake the project tasks they are required to perform having regard to the nature of the project and its scale and complexity. Competence can be verified, for instance, by reference to involvement on previous similar projects. One way of choosing a competent builder or sub-contractor is to select a person included on the Construction Industry Register Ireland (CIRI). Further details may be found on www.ciri.ie.

4.4 Self-build and Direct Labour Approaches: In some cases the owner may wish to undertake the building work themselves or to use direct labour. Self-build and direct labour approaches continue to be possible under the Building Control Regulations. In such situations the statutory obligations of the owner and the builder are effectively fused in the one person. It is important to satisfy yourself in such situations that you fully understand your personal liability in relation to the project concerned and your duty of care to others who may be affected by your actions and decisions now and at a future date. If in any doubt in this regard, it is advisable to seek the advice of your solicitor before commencing any works.

4.5 Insurances: Homeowners who commission works should generally satisfy themselves as to the adequacy of the insurances held by contractors or professionals they may wish to consider engaging. There are various types of insurances that are provided in the construction industry. Apart from general insurances such as employer's liability and public liability insurances there are other insurances including professional indemnity insurance, latent defects insurance and insurance products for self-builders. Often the level and scope of insurance cover held by other parties to a construction project will have a

bearing on the willingness or otherwise of other industry practitioners to become involved. Further guidance on insurance matters is beyond the scope of this information note but it is a matter that an owner planning a new dwelling or a domestic extension should consider.

- 4.6 Other Regulatory Processes (Planning, Workplace Safety, ect.):** Homeowners should also be aware that the regulation of building activity is not confined to the Building Control Acts and regulations made thereunder. An information leaflet on planning matters entitled “Planning Leaflet 4 – Building a house – The planning issues” is available on the Department’s website and can be accessed by clicking on the following weblink:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownload,1585,en.pdf>

The Health and Safety Authority’s “Guide for Homeowners – Getting Construction Work Done Safely” available on its website (www.hsa.ie)

General advice and assistance on public service matters, including housing matters and consumer rights, is also available through the Citizen’s Information Board (www.citizensinformation.ie).

- 4.7 Queries and further advice:** Any queries in relation to this information leaflet or building control matters in general should be directed to the Architecture/Building Standards Section of the Department of the Environment, Community and Local Government by emailing buildingstandards@environ.ie or by contacting your local building control authority. Contact details for the local building control authority in each county and city council are available on the Department’s website and can be accessed by clicking on the following weblink:

<http://www.environ.ie/en/DevelopmentHousing/BuildingStandards/Publications/Documents/FileDownload,1665,en.doc>

Remember if you are in doubt about how any aspect of the Building Regulations or the Building Control Regulations affects your proposed new dwelling or domestic extension it is always advisable to seek clarification at the earliest opportunity.