

Explanatory Memorandum

Specimen Certificates of Compliance with Building Regulations and Planning

The Law Society specimen certificates of compliance with building regulations and planning, Aug/Sep 2010 version, have been replaced following the introduction of the Building Control (Amendment) Regulations 2014, S. I. No. 9 of 2014, commonly referred to as BC(A)R. Those regulations introduced a new regime for compliance with building control and in particular provide that it is an offence to occupy or use a premises to which BC(A)R applies until such time as the required certificate of compliance on completion has been entered on the building control register maintained by the building control authority (the 'Register').

As reflected in the Law Society of Ireland Conditions of Sale 2017 edition, it is no longer required, as a matter of conveyancing practice where BC(A)R applies, that the purchaser be furnished with a separate certificate or opinion of compliance with building regulations. Appropriate evidence that the certificate of compliance on completion issued under BC(A)R has been entered on the Register is deemed sufficient evidence of compliance with building regulations.

The Conveyancing Committee had previously issued two specimen certificates of compliance with building control and planning, one described as full service and the other as part service. Part service was where the certificate was based on a visual inspection when the property was completed.

Under the new BC(A)R regime the statutory certificates furnished must be based on the certifier having made periodic inspections at appropriate times during the course of the construction period in accordance with a risk based inspection plan and satisfied himself as to compliance with building regulations on each inspection.

Where the BC(A)R statutory certification regime does not apply to works, because the owner availed of the opt out exemption or the works comprise an extension of less than 40 square metres, the committee is satisfied that part service is not appropriate in relation to certifying compliance with building regulations. The works should be certified by a certifier having made periodic inspections at appropriate times during the course of the construction period in accordance with a risk based inspection plan and satisfied himself as to compliance with building regulations on each inspection

The Conveyancing Committee of the Law Society has issued three specimen certificates, which are available in the precedents section of its website.

Specimen Certificate: Planning

The Aug/Sep 2010 edition of the specimen certificate of compliance with building regulations and planning has been replaced by a new January 2018 specimen certificate which deals only with planning and omits any reference to building control. Evidence of compliance with BC(A)R is by way of production of a copy (or if not publically available online, a certified copy) of the statutory certificate of compliance on completion, with evidence that that certificate has been entered on the Register.

Specimen Certificate for Cases which are exempt from BC(A)R

There are a number of situations where the BC(A)R statutory certification regime does not apply, such as where the works being carried out are less than 40 square metres. In such circumstances, it will still be necessary to obtain a certificate or opinion of compliance with the building regulations. This specimen certificate applies to those situations.

Most residential developments under 40 square metres will also be exempt from the requirement for planning permission (and the specimen certificate covers this situation). However, this is not always the case. For example, the current extension may be in addition to previous extensions such that in aggregate the house is being increased by more than 40 square metres. It may be that one of the conditions for exemption under class 1 of Part 1 Schedule 2 of the Planning and Development Regulations 2001, S. 1. 600 of 2001 (as amended) (the 'Planning Regulations') is not complied with, or that a condition of the planning permission on foot of which the house was built removed the exempt status, such that article 9(1)(a)(i) of the Planning Regulations applies.

There are many other examples.

Accordingly, as identified in the footnotes, this form of certificate can be adapted for use where the development is exempt from BC(A)R statutory certification by virtue of being under 40 square metres but does require planning permission, not being exempted development under the Planning Acts.

It can also be adapted for use in cases where the development is exempted from BC(A)R statutory certification for reasons other than being under 40 square metres.

Paragraph 6 of the specimen certificate refers to periodic inspections made during the course of construction and on completion in accordance with a risk based inspection plan.

Specimen Certificate for Opt Out Cases

The Building Control (No. 2) Regulations 2015 provide a means of opting out from the requirement for statutory certification under BC(A)R, principally for one off houses and house extensions. In order to avail of the opt out provisions, it is necessary to submit a declaration of intention to opt out of BC(A)R. That declaration must accompany the commencement notice served under the building control regulations. Once the Building Control Authority accepts the opt out declaration by entering it on the Register, the statutory certification procedure under BC(A)R does not apply. In such circumstances, a purchaser will require evidence of compliance with the building regulations, as no statutory certificate of compliance on completion will issue.

This specimen certificate is drafted for such circumstances.

In paragraph 7 the certificate confirms that the certifier has received an email from the Building Control Management System (referred to as BCMS) confirming that the opt out declaration has been accepted by the Building Control Authority.

Who can certify?

Part 3 of the Building Control Act 2007 requires that all persons using the title “architect” must be registered on the register maintained under that Act. Similar provisions apply to persons describing themselves as building surveyors (Part 5).

Under BC(A)R, the only persons recognised in the prescribed forms as eligible to act as assigned certifier and thus to complete the certificate of compliance on completion are architects, building surveyors and engineers included in the register maintained under section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969.

CONVEYANCING COMMITTEE