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BC(A)R Compliance - The Colander Effect

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BC(A)R Compliance

The Colander Effect

BC(A)R Aim

“The aim of BC(A)R is to ensure that **all** involved in the construction process and the regulatory system work effectively to achieve better building construction”

DECLG (2014)

Commencement Notices submitted since March 2014	Number
Commencement Notice With Compliance Documentation	24295
Commencement Notice Without Compliance Documentation	10290
Commencement Notice with Opt Out Declaration	15381
7 Day Notice	3929

Irish Construction Industry

- Accounts for 20.6% of all SME's
- 94.4% of all Construction Employment is within SME's

CSO (2016)

SME's within the Irish Construction Industry

- There are 51,506 construction enterprises in Ireland
- 48,622 are SME's
- 44,635 are micro-companies

CSO (2016)

BC(A)R Timeline

- 1st March 2014 – Building Control (Amendment) Regulations
- 1st September 2015 – Building Control (Amendment) (No2) Regulations

Where can Building Owner's opt out of Statutory Certification?

- Domestic Extensions < 40m²
- Renovations
- Domestic Extensions ≥ 40m²
- Single Unit Dwellings

Declaration of Intention to opt out of Statutory Certification

The Building Owner must ensure that they appoint a competent Builder as it is their responsibility to ensure that the constructed dwelling is in compliance with Building Regulations

It is not clear at this point, other than it being an aspirational requirement, how such competence can be ascertained due to the current un-regulation of the Industry

BC(A)R 2015 — Further Requirement

A new local authority inspection process was to be created in collaboration with the County and City Management Association to ensure that local authorities would achieve a 12-15% target for inspections

BCMS Database - Compliance Issues

Inspections by Building Control Authorities are either random or risk based having regard to the following:

- The use of the building
- The type of construction
- The level of experience of the design team
- The builder
- Past experience regarding compliance by the stakeholders involved in the project

Phelan, Mairead (2014) Lead PM BCMS, Fingal

BCMS Database - Compliance Issues

To date this has highlighted the following common compliance issues:

- Underfloor fill-panel fixings, pyrite - Part A, C, D
- Moisture ingress-radon, DPC - Part C
- Fire resistance-eaves, party walls, ducting - Part B
- Condensation and mould growth - Part F
- Frozen pipes, attic tank, stopcocks - Part G
- Septic tanks overload, flooding - Part H

BCMS Database - Compliance Issues

- Flues, location, size, burners - Part J
- Balcony detailing, stair rails – wrong height, glass - Part K
- Steps to entrances - Part M
- BER calculations do not exist, stud fixings, cavities clear of mortar - Part L
- Timber frame-fixings, vapour control, cavity barriers, fire stopping - Part B, F
- Sound transmission, flooring detail, insulation - Part E, L

BCMS Database Compliance Issues

A swift perusal highlights that the system in place to ensure compliance shows a manifestation of compliance issues in every section of the TGD's

Whilst it is satisfactory that these issues are being dealt with, it must be highlighted that only a minority of cases are inspected

BC(A)R — A 2-Tier Regulatory Structure?

The regulations require that you still obtain an undertaking from your builder that he will execute the works in accordance with the Building Regulations; as they have since 1992!

Opt-out reverts to a self-regulatory system based on Opinions on Compliance. This system was previously deemed not fit for purpose and replaced by BC(A)R

BC(A)R — A 2-Tier Regulatory Structure?

“And provided further that where a certificate of compliance on completion is not required because a valid declaration of intention to opt out of statutory certification has been registered by the building control authority, then in addition to the certificate or opinion required pursuant to this Condition 32(e)(ii), the Vendor shall furnish to the Purchaser a copy (or a certified copy if the declaration on the building control authority register is not accessible to the public) of such declaration together with evidence that such declaration has been registered by the building control authority”

Law Society of Ireland, Conditions of Sale 2019



Building Control – UK & NI

How it works...

UK & NI — Building Regulation Control

Building Regulation Control is at the leading edge of construction throughout UK and NI. It covers 100% of projects, 100% of the time

The following types of permission are needed throughout its jurisdiction:

- Planning Permission
- Building Regulation Permission

The basis for this system is that all proposed development should not only require planning permission but that adherence to Building Regulations is of equal importance for an assessment to be made as to the technical acceptability of the proposal

UK & NI

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Building Regulation Control

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Where does it
apply?

- Installing roof lights
- Making windows or doors wider or taller
- Installation of additional radiators to existing heating systems
- Any new electrical installation
- Taking out a loadbearing wall
- Creating a new or en-suite bathroom or cloakroom
- Replacement of roof coverings on pitched and flat roofs
- Sub-dividing a house into flats
- Converting flats back into a house
- All garage conversions
- All attic conversions
- All extensions no matter how small
- All new buildings except agricultural buildings

How Building Regulation Permission can be achieved

Building Regulation Permission can be achieved via the following routes:

- Building Regulation Application Process
- Building Notice Application

Procedure - Building Regulations Application

A Building Regulations application involves submitting a form, fee and full plans showing all construction elements and the project details that will ensure it meets the building regulations

The Local Authority will check the plans, consult appropriate agencies such as drainage, water, sewerage, etcetera, and return a decision within five weeks. Any one of the following responses may be received:

- Request for further information or detail change
- Conditional approval
- Full approval

Procedure — Building Notice

A Building Notice allows for building work to be executed without the submission of detailed plans. It is an alternative to the Full Plans procedure. It is generally used when the type of building work is straight forward, and the persons responsible for the execution are conversant with the requirements of the regulations

This type of notice must be made 48 hours prior to such works taking place. This allows certain types of minor works to get underway with inspections happening as the works progress

Procedure — Building Notice

It is important that this process is used for permitted works only as works that do not meet the regulations will have to be altered. Extremely non-compliant works will have to be razed to the ground and re-built

It is less common to take this route as compliance, in the absence of detailed construction drawings, becomes the sole responsibility of the Building Owner

Inspection Procedure

Both Building Regulations Application and Building Notices require periodical inspection of the works by Building Inspectors. The works must be inspected and signed off at the following (non-exhaustive) stages:

- Commencement
- Excavation for foundations
- Damp proof course laid
- Prior to pouring floor slab
- Drains laid and visible for checking layout and construction
- Drains backfilled and ready for testing for water tightness
- Structural timbers
- First Fix/Insulation
- Occupation, normally only relevant when part of a building is finished, for example a flat
- Completion of the project

Inspection Procedure

Notice requirements for statutory inspections are reasonable. The range from 1 day for foundation inspections to 5 days for an occupation inspection

Contravention of Building Regulations

Contravention of Building Regulations can be categorised as:

- Failure to deposit plans before commencing building works
- Failure by the builder to give the required notice at specified stages of the work
- Failure to comply with the requirements of the Regulations in carrying out building work on site

Contravention of Building Regulations

Where the building work does not comply with the Regulations, the Council is empowered to serve a Building Regulations Contravention Notice. The Notice will specify the contravention and the period of time - usually 28 days - within which work must be made good, altered or removed

On receipt of a Contravention Notice there are four options:

Contravention of Building Regulations

- Compliance with the Notice - this will involve making good or removing the defective work
- Challenging the Notice - this will involve obtaining a report from a suitably qualified person setting out reasons why the Notice should not have been served. The report is submitted to the Council; if the Council refuses to accept it there is a right of appeal to the DCLG

Contravention of Building Regulations

- Appealing to the DCLG - this is a direct appeal against the service of the Notice
- Applying for Relaxation of the Regulations which had been contravened by application to the Council in the first instance; if the Council refuses the application there is a right of appeal to the DCLG

Completion Certificate

Qualifying projects will receive a completion certificate within 8 weeks of completion of the building work as long as it complies with Building Regulations

Promoted Essential Functions of UK & NI Building Control

- Encourage innovation to produce energy efficient and sustainable buildings
- Educate and inform building professionals, contractors and trades people
- Defend vulnerable communities and householders
- Drive out rogue traders
- Safeguard the investments of individuals and companies
- Enhance access for disabled, sick, young and old people
- Protect the community from dangerous structures

Cost of Certification

The following tables detail Building Control Charges from the London Borough of Richmond on Thames

Research of like material, which is readily available online, shows that these rates are consistent across the UK & NI

Works exceeding £100,000 require fees to be individually determined. Commercial works attract like rates

Project Type	Full Plans Fee ex VAT	Inspection Fee ex VAT	Building Notice Fee ex VAT
Extension < 40m2	£240.83	£364.17	£605.83
Extension > 40m2 and < 60m2	£291.67	£436.67	£750.00
Attic Conversions < 40m2	£233.33	£352.50	£595.00
Attic Conversions > 40m2 and < 60m2	£282.50	£422.50	£714.17
Single Unit Dwelling	£290.00	£433.33	£895.83
2-5 Dwellings - Extra Over per Unit	£111.67	£168.33	£300.00
Works Value < £5000	£95.83	£141.67	£300.00
Works Value - £30,000 - £40,000	£257.50	£388.33	£664.17
Works Value - £60,000 - £70,000	£382.50	£573.33	£958.33
Works Value - £90,000 - £100,000	£498.33	£745.83	£1,251.67

UK & NI

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Building Regulation Control

Building Regulation Permission can be obtained from the following:

- Local Authority Building Control Services
- Approved Inspectors

CICAIR — Construction Industry Council Approved Inspectors Register

Approved Inspectors must prove that they are qualified and suitably experienced before they can apply to be licensed by the Construction Industry Council, CIC. This typically means that they hold the following:

- Membership of the RICS or equivalent
- Hold 5 years post qualification experience
- Have suitable insurance and complaints procedures in place
- Undertake continuous training of staff
- Sign up to performance standards

Approved Inspectors

Should be the preferred choice as they allow for the fact that the building regulations have been cast in a functional form rather than being prescriptive

In plain English this means that there are many different ways that you can show compliance, not just by following the Approved Documents

Approved Inspector's are more flexible in interpretation of the regulations as they are aware of these alternative routes

Approved Inspectors - Competencies

Competencies are assessed in the following areas:

- Legislation and Law
- Structural Design
- Fire Safety
- Construction Technology and Sustainability
- Building Services and Environmental Engineering

Approved Inspectors - Competencies

Applicants must prove to the CIC that they or individuals within their organisation are suitably qualified to a pre-defined level by filling out an Approved Inspector Knowledge Based Matrix

Approved Inspectors - Competencies

Expected competencies are assessed as follows:

- **Comprehensive** - sufficient knowledge of the subject to make most decisions without specialist assistance
- **Understanding** - sufficient knowledge of the complexities involved in order to control the work of others
- **Appreciation** - general background knowledge of the subject but requires the specialist input of others when tackling the work
- **Awareness** - superficial knowledge of the subject

Approved Inspectors - Competencies

Such a matrix forces prospective Approved Inspector's to critically evaluate their own strengths and weaknesses

The realisation of a knowledge based weakness forms the backbone of a successful company as it creates a scenario where experts are engaged periodically, as and when required

What's the Cost?

Applicants must pay a non-refundable fee of £5000.00 plus VAT when lodging their application. If successful they are then liable for the following ongoing costs:

- £1000.00 plus VAT yearly subscription fee or 0.9% of turnover, whichever is greater
- £2000.00 plus VAT audit fee
- AI's are subject to 2 audits within their first 5 years of operation with subsequent audits within each 5 year approval period

Conclusion

- Opting out of Statutory Certification in certain circumstances is not acceptable. Consumers should be protected where possible. A two-tiered regulatory system is not fit for purpose
- Required inspection rates of 15% do little to allay consumer sentiment. Compliance issues identified within these inspection rates should sound an alarm for all responsible for certification

Conclusion

- A system of Building Regulation Permission should be provided by the Local Authority Building Control Section
- A system of Inspection should be introduced that inspects 100% of projects 100% of the time
- Blanket inspections by suitably qualified professionals serve to create a transfer of knowledge that filters its way through to the General Operative on the ground

Conclusion

Knowledge Transfer

+

Correct Application

=

Better Built Environment

Final Thought...

“As with all regulatory situations, success.....will hinge on the eagerness, willingness and capacity of all engaged in the construction industry to make the system work. The watchword is cooperation; not conflict”

John Stephenson (2006)