

Building Control (Amendment) Regulations 2014

# MBCA Guidance Document





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## 1. Introduction

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The purpose of the Building Control Regulations is to provide administrative processes to regulate the Building Regulations. The Building Control (Amendment) Regulations 2014 strengthen the current arrangements in place for the control of building activity by requiring greater accountability in relation to compliance with the Building Regulations in the form of statutory certification of design and construction, lodgement of compliance documentation, mandatory inspections during construction and validation and registration of certificates.

The new Regulations came into operation on 1 March 2014 and apply to any development where a Commencement Notice is filed after 1 March 2014. The Regulations apply to:

- A. the design and construction of a new dwelling
- B. any extension to a dwelling involving a floor area of more than 40m<sup>2</sup>
- C. any works where a fire safety certificate is required.

A and B above relate mainly to residential construction, however C extends to virtually any type of commercial building including some falling under the heading of Civil Engineering Construction, for example Wastewater Treatment Plants.

Up until 1st March 2015, interim arrangements existed under the Building Control (Amendment) (No. 2) Regulations 2014, S.I. 105 of 2014, which provided an exemption from the requirements of the new Regulations for buildings intended for use as places of first level, second level or third level education and buildings intended for use as hospitals or primary care centres, where planning permission was obtained before 1 March 2014, contract documents were signed before 1 November 2014, and a valid commencement notice was lodged with the building control authority no later than 1 March 2015. These have now expired.

## 2. Legislative Background

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The new Building Control (Amendment) Regulations were introduced by Statutory Instrument 9 of 2014, which revoke and replace S.I. 80 of 2013. The Regulations have the effect of amending existing legislation to strengthen existing provisions in relation to notifications, compliance and registration of buildings.

The Building Control (Amendment) Regulations 2014 introduce amendments to the Building Control Act 1990 (No. 3 of 1990) as amended by the Building Control Act 2007 (No. 21 of 2007); and the Building Control Regulations 1997 (S.I. No. 496 of 1997) as amended by the Building Control (Amendment) Regulations 2000 (S.I. No. 10 of 2000), the Building Control (Amendment) Regulations 2004 (S.I. No. 85 of 2004) and the Building Control (Amendment) Regulations 2009 (S.I. No. 351 of 2009).

The Building Control Regulations have existed since 1991 and regulate the following:

- Commencement Notices
- 7 Day Notices
- Fire Safety Certificates, revised Fire Safety Certificates and Regularisation Fire Safety Certificates
- Disability Access Certificates and revised Disability Access Certificates
- Maintenance of Registers
- Fees

It must be noted that the obligation to build in accordance with the Building Regulations has not changed, it is the certification process which has changed under the Building Control (Amendment) Regulations 2014.



### 3. Definitions

A number of new terms have been included in the legislation and are set out here for ease of reference. These definitions are those contained in the Code of Practice for Inspecting and Certifying Buildings and Works:

- a. "Act of 1990" means the Building Control Act 1990 (No. 3 of 1990) as amended by the Building Control Act 2007 (No. 21 of 2007);
- b. "Ancillary Certificates" means a certificate other than a statutory certificate of compliance as prescribed in the Building Control Regulations given by a competent person to confirm compliance of elements of the building, design or works with Building Regulations; and "Ancillary Certifier" means a person proposed to issue such a statement. (Note: a "person" also includes a company);
- c. "Assigned Certifier" means the competent, registered professional person so assigned, in accordance with the Building Control Regulations;
- d. "Builder" means a competent builder appointed, for purposes of the Building Control Regulations, by the building owner, to build and supervise the works;
- e. "Building Control Authority" means a Local Authority to which section 2 of the Building Control Act 1990 applies;
- f. "Building Control Regulations" means the Building Control Regulations 1997 to 2014 and any amendments thereto;
- g. "Building Owner" means the person who has commissioned or paid for the works and who has legal entitlement to have such works carried out on their behalf;
- h. "Building Regulations" means the Building Regulations 1997 to 2013 and any amendments thereto;
- i. "Certificate of Compliance" means a certificate of compliance provided for under section 6(2)(a)(i) of the Act of 1990;
- j. "Commencement Notice" means a notice referred to in section 6(2) (k) of the Act of 1990;
- k. "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;
- l. "Construction" includes the execution of works in connection with buildings and any act or operation necessary for, or related to the construction, extension, alteration, repair or renewal of a building; and "constructed" will be construed accordingly;
- m. "Design" includes the preparation of plans, particulars, drawings, specifications, calculations and other expressions of purpose according to which the Construction, extension, alteration, repair or renewal concerned is to be executed and "designed" will be construed accordingly;
- n. "Design Certifier" means the person who signs the Certificate of Compliance (Design);
- o. "Enforcement Notice" has the meaning assigned to it by section 8 of the Act of 1990 ;
- p. "Inspection Notification Framework" or "INF" has the meaning set down in section 7.3 of the Code of Practice;
- q. "Inspection Plan" has the meaning set down in section 7.1 of the Code of Practice;
- r. "the Minister" means the Minister for the Environment, Community and Local Government;
- s. "works" includes any act or operation in connection with the Construction, extension, alteration, repair or renewal of a building;

### 4. Process

Prior to the commencement of any project falling within the scope of the new Building Control (Amendment) Regulations 2014, a commencement notice or a 7 day notice must be filed. All notices and certificates are included in the schedules to the Regulations. The notice shall be accompanied by:

Such plans, calculations, specifications and particulars as are necessary to outline how the proposed works or building will comply with the requirements of the Second Schedule to the Building Regulations relevant to the works or building concerned, and including –

- General arrangement drawings including plans, sections and elevations;
- A schedule of such plans, calculations, specifications and particulars as are currently designed or as are to be prepared at a later date
- The completion of an online assessment, via the Building Control Management System, of the proposed approach to compliance with the requirements of the Second Schedule to the Building Regulations
- The preliminary Inspection Plan prepared by the Assigned Certifier

The following certificates and notices in the appropriate forms set out in the Second Schedule –

- A Certificate of Compliance (Design)
- A Notice of Assignment of Person to Inspect and Certify Works (Assigned Certifier)
- A Certificate of Compliance (Undertaking by Assigned Certifier)
- A Notice of Assignment of Builder
- A Certificate of Compliance (Undertaking by Builder)

A 7 day notice must also be accompanied by a valid application for a fire safety certificate and a 7 day notice statutory declaration, forms for this purpose are specified in the Third Schedule. 7 day notices are accompanied by a fee of €250 or €5.80 per square metre of floor, whichever is the greater, up to a maximum of €25,000.

Commencement notices must be received by the Building Control Authority not less than 14 days and not more than 28 days before the Builder wishes to commence work on site. The preferred method of lodgement of notices is via the Building Control Management System.



## 5. Documents at Tender Stage

All available documents relating to design should be provided to tenderers at tender stage, along with a preliminary inspection plan. A listing of those ancillary certificates required by the Assigned Certifier should also be provided. It is essential for these to be available in order for the tenderer to be in a position to accurately price the works.

It is important to note that ancillary certificates are designed to be relied upon by the Assigned Builder who is certifying the works, and as such only providers of large sub-contract packages or those involving an element of sub-contractor design should be required to provide certificates for the Assigned Certifier. Members should be aware that those certificates listed at tender stage become a contractual requirement and as such if certificates are requested which are inappropriate, these must be queried prior to tender submission.

## 6. Building Control Management System

The Building Control Management System (BCMS) was established in March 2014 and is recommended by Building Control (Amendment) regulations S.I. 9 of 2014 as the preferred means of electronic building control administration. This operates as a system of validation of receipt of the correct documentation rather than an inspection of the documentation. **Building Control Authorities may demand to inspect documents for up to seven years following registration.**

The BCMS allows property owners to nominate the Assigned Certifier and the Builder for the works online, with these appointments to be accepted online once the party is registered with the BCMS. Registration is a simple process which requires only an email address. The user is contacted via email to verify the email address, and can then register with and use the site.

The site is intended for use by property owners, builders, developers, architects and engineers for the electronic filing of commencement notices and accompanying documentation, as well as certificates of compliance on completion. All of these documents are available to complete online via the BCMS. The BCMS has indicated that the Certificate of Compliance on completion will be available for online submission in due course. The BCMS is now operational in all 31 Building Control Authorities.

When lodging a commencement/7 day notice, the minimum level of documentation required is as follows:

- Commencement notice with Part 6 Schedule of Documents attached (Plans, Calculations Specifications, Ancillary Certificates and Particulars)
- Notice of Assignment of Assigned Certifier
- Undertaking by Assigned Certifier
- Notice of Assignment of Builder
- Undertaking by Builder
- Inspection Notification Framework (with milestone inspections & indicative dates)

These are the documents necessary in order for a commencement notice to be validated, **as confirmed by BCMS and issued in guidance to all local authorities.** Once the notice has been validated, works must commence on site within 28 days of the lodgement date, or a new notice will be required.

It must be noted that for the time being, commencement notices/7 day notices and documentation may still be submitted to Building Control Authorities in written format, however these will need to be scanned and uploaded by the relevant building control authority which may result in delays to statutory deadlines. Also, an administrative charge will apply for processing such documents.

Members should be aware that Building Control Authorities are NOT automatically notified when documents are uploaded, and as such members should inform the Building Control Authority when information is uploaded to the BCMS. They should also check the system on a regular basis for any documentation uploaded by other parties. It is expected that automatic notification to all parties of any new uploaded documentation will be rolled out in the next upgrade of the BCMS.



## 7. Construction Products Regulation

The Construction Products Regulations came into force on 1st July 2013 and require that over 400+ Building Products must carry the CE Mark. The CE Mark is a declaration of performance of the product, with a correct CE Mark demonstrating the following information:

- Company Contact details
- Certified Bodies Issue Number
- The European Standard it has been checked against
- The product's designation (type of product)
- The product's performance criteria

Additional requirements are in place in relation to structural steel products, where fabricated structural steelwork must show evidence that the fabricator has 3rd Party certification for Factory Production Control Certificate (FPC) under IS EN 1090-1 & 2. These requirements came into force on 1st July 2014. In order for a steelwork contractor to demonstrate their right to CE Mark their products, they must provide the following three documents:

- Factory Production Control Certificate
- Welding Certificate
- Declaration of Performance

The Construction Products Regulation forms part of the Building Regulations 2007-2013 under the Building Regulations (Part D Amendment) Regulations 2013, which requires that works be carried out with proper materials and in a workmanlike manner. The definition of "proper materials" is set out as:

"... materials which are fit for the use for which they are intended and for the conditions in which they are to be used, and includes materials which:

- (a) bear a CE Marking in accordance with the provisions of the Construction Products Regulation;
- (b) comply with an appropriate harmonised standard or European Technical Assessment in accordance with the provisions of the Construction Products Regulation; or
- (c) comply with an appropriate Irish Standard or Irish Agrément Certificate or with an alternative national technical specification of any State which is a contracting party to the Agreement on the European Economic Area, which provides in use an equivalent level of safety and suitability."

Materials include products, fittings, items of equipment and backfilling for excavations. Materials should be of a suitable nature and quality in relation to their purposes and conditions of their use, should be adequately mixed or prepared, and should be applied, used or fixed so as to perform adequately the functions for which they are intended.

The Construction Products Regulation requires that construction products covered by a harmonised standard have a Declaration of Performance and CE Mark as outlined above. Where a construction product is not covered or not fully covered by a harmonised standard, a product can be CE Marked where a European Technical Assessment is obtained for the product on the basis of a European Assessment Document.

In Ireland, all EU standards are given the status of national standards. The NSAI has produced additional national guidance for some harmonised and non-harmonised EU Standards, which provide guidance on the appropriate minimum performance levels for specific intended uses of the products in Ireland. Where a construction product is covered by such guidance, compliance with the National Annex/Standard Recommendation in so far as it relates to the product may be used to demonstrate that the product, when incorporated into the construction works, is fit for the use for which it is intended. In the absence of such guidance, it is essential that the declared performance of a product is fit for the use for which it is intended.

## Construction Products Regulation (Continued)

The process of Agrément certification applies to products and processes not falling within the scope of existing standards, either because they are innovative or deviate from established norms. NSAI Agrément assesses, specifies testing, and where appropriate issues certificates confirming safety and fitness for purpose in accordance with the Irish Building Regulations. The NSAI may be consulted for advice in relation to equivalence with an Irish technical standard as referred to above.

With regards to Workmanship, to ensure a proper standard it is essential that persons are competent, possessing sufficient training, experience and knowledge appropriate to the nature of the work he or she is required to perform and having particular regard to the size and complexity of such works. BS8000 Workmanship on building sites gives guidance on basic workmanship, and Agrément Certificates issued by NSAI may specify workmanship for products covered by the certificates. Quality assurance schemes such as ISO9001, or reference to performance in use, may demonstrate workmanship requirements.

Assigned Builders may be required to demonstrate to the Assigned Certifier that the products they have used are in compliance with Part D of the Building Regulations.

Where a sub-contractor is providing materials which are considered by the Assigned Certifier to be sub-contractor designed, it will suffice for the material to have a Declaration of Performance and CE Mark which covers the entirety of the product, along with the builder's certificate confirming that such material has been installed in compliance with the Building Regulations, which satisfies the workmanship element.

## 8. Professional Indemnity Insurance

Guidance was provided to contracting authorities on the question of Professional Indemnity Insurance under Guidance Note 1.1.1 Building Control (Amendment) Regulations 2014, Procurement Implications for Contracting Authorities. Section 3.2 of this Guidance Note refers to PI Insurance for Works Contractors and acknowledges that most contractors tendering in the mid and lower contract value bands, as well as most specialist works contractors, do not currently have PII cover. As such the Guidance Note recommends that contracting authorities should only seek PII cover from main contractors where they might reasonably expect such cover to be generally available i.e. on main contracts with a value in excess of €20m.

This Guidance note anticipated that PII cover that is appropriate to all construction companies would become more widely available and that it would be reasonable to seek PII from all main contractors for contract notices published after 1st January 2015, however it does not appear that this requirement has been implemented as of yet.



## 9. Completion of a Building (Definition of Practical / Substantial Completion)

No building can be used, occupied or sold until the mandatory Certificate of Compliance on Completion is registered by the Building Control Authority. Once the works are completed, the Assigned Builder and Assigned Certifier must complete the Certificate of Compliance on Completion (Article 20F) and lodge this with the Building Control Authority via the BCMS.

The minimum documents required to be lodged with the Certificate of Compliance on Completion are as follows:

- Certificate of Compliance on Completion (Part A completed by Assigned Builder; Part B completed by Assigned Certifier)
- Annex listing compliance documents (table of Plans, Calculations, Specifications, Ancillary Certificates and Particulars used for the purpose of construction and demonstrating compliance with the requirements of the Second Schedule to the Building Regulations and showing, in particular how the completed building or works differ from the design submitted to the Building Control Authority prior to construction). These documents are to be listed out and available on request
- Inspection Notification Framework as carried out

These are the documents necessary in order for a building to be registered, **as confirmed by BCMS**. Other documents should not be sought at validation stage unless there is a particular reason.

In completing Part A of the Certificate of Compliance on Completion, the Builder is certifying that the building or works as completed have been constructed in accordance with the design documents provided prior to construction and any subsequent documents certified and submitted to the Building Control Authority, and that in reliance on such documents the works are in compliance with the requirements of the Second Schedule to the Building Regulations insofar as they apply to the Building Works concerned. Effectively, the Builder is certifying that the works as designed have been constructed in accordance with the Building Regulations. This applies to all parts of the Works which relate to the relevant Commencement/7 day notice. **As such, the Assigned Builder is entitled to request documentation from designers for any post-tender design in order to ensure the design is compliant, as they are required to sign off on compliance.**

In many cases, Assigned Builders who are required to sign a Certificate of Compliance on Completion will rely on the services and works undertaken by sub-contractors and specialist sub-contractors. In these situations, it is appropriate that an Assigned Builder can rely on the certification to be provided by his ancillary sub-contractors and specialist contractors and sub-sub-contractors in respect of works for which they have been engaged. It should be recognised that ancillary certificates for sub-contractors are not required by the Building Regulations and are designed for the Builder, not the Assigned Certifier, to rely upon.

### • Ancillary Certificates

A suite of ancillary certificates has been developed for use in conjunction with the main certificates required under the Building Control (Amendment) Regulations 2014. These ancillary certificates are accompanied by a Practice Note agreed by all the organisations representing industry and professional sectors including the Construction Industry Federation, Royal Institute of Architects of Ireland, Association of Consulting Engineers of Ireland, Engineers Ireland and the Society of Chartered Surveyors Ireland. Where design work only is undertaken by a party appointed by a Contractor/Builder, and that party does not subsequently undertake the related construction work, then that party would sign one of the certificates prepared by the Professional Bodies. The CIF ancillary certificates are to be used by sub-contractors and sub-sub-contractors who undertake construction and supervision work and related design elements for that work.

### 21 Day Notice Procedure

When the Certificate of Compliance on Completion is received by the Building Control Authority, it has 21 days to issue any queries or request further information. The building can be registered at any time within the 21 day period, and if no queries are issued within that 21 day period, the building is deemed to have been registered by default. If the Building Control Authority requires a revised Certificate or further documentation to be lodged the Building Control Authority may, within 7 days of the date of submission of such a revised certificate or documentation, seek additional clarification in relation to same. Where additional clarification is not sought by the Building Control Authority within this 7 day period, the Building Control Authority will include details of the Certificate of Completion on the statutory register.

## Completion of a Building (Continued)

### Nominated Date Procedure

The Assigned Certifier may avail of a prior notification procedure whereby a date, referred to as the “nominated date” on which it is intended to enter a valid Certificate of Compliance on Completion is notified to the Building Control Authority. Where this procedure is used, the plans, calculations, specifications and particulars as well as the Inspection Plan must be submitted to the Building Control Authority on a date not more than 5 weeks and not less than 3 weeks prior to the nominated date, at which point the Building Control Authority shall begin to consider the validity of a prospective Certificate of Compliance on Completion. If all of this information is considered to be sufficient, the Building Control Authority will register the Building on the nominated date once a valid Certificate of Compliance on Completion has been received the day before the nominated date.

Once the building has been registered, it can then be occupied, used or sold.

Under the Public Works Contract for Building Works Designed by the Employer, the definition of substantial completion was extended following the introduction of the Building Control (Amendment) Regulations 2014 to stipulate that in order for substantial completion of the works to be achieved, the details in the Certificate of Compliance on Completion of the Works or a part thereof must have been included on the Register maintained under Part IV of the Building Control Regulations.

The Agreement and Schedule of Conditions of Building Contract issued by the Royal Institute of the Architects of Ireland in agreement with the Construction Industry Federation and the Society of Chartered Surveyors, used for private sector building works, gives the following definition of Practical Completion:

- “Practical Completion” means that the Works have been carried to such a stage that they can be taken over and used by the Employer for their intended purpose and that any items of work or supply then outstanding or any defects then patent are of a trivial nature only and are such that their completion or rectification does not interfere with or interrupt such use.

As such given that the Works must be able to be used by the Employer, it would appear that registration of the Building is a pre-requisite for Practical Completion to be achieved for private sector works.

## 10. Application of Building Control Regulations for single dwellings houses and extensions

On 31st July 2015 Mr. Paudie Coffey T.D., Minister of State at the Department of the Environment, Community and Local Government and Minister Alan Kelly T.D. announced arrangements that will ease the application of the Building Control (Amendment) Regulations 2014 for single dwellings and for domestic extensions.

It was decided to make new amendment regulations in respect of single dwellings and domestic extensions following a review of the Building Control (Amendment) Regulations 2014 after twelve months of operation. The new amendment regulations will remove the mandatory requirement for statutory certificates of compliance in respect of a new dwelling on a single unit development or a domestic extension. An owner, which includes a self-builder, of these types of project will be allowed to opt out of the requirement for statutory certification and permitted to demonstrate their compliance with the general obligation to build in accordance with the minimum requirements of the building regulations by alternative means.

The Department of the Environment, Community and Local Government has indicated that additional guidance, including a Sample Preliminary Inspection Plan, is to be published to assist with this process and that a new fit-for-purpose local authority inspection process will be developed to ensure that building standards do not slip in respect of these types of builds. It will also be engaging with The County and City Management Association to ensure inspection capability is developed and resourced over time with definitive targets and timelines for delivery, to ensure progressive improvement by local authorities in all sectors.

# APPENDIX A

## Useful web addresses

1. S.I. 9 of 2014 - Building Control (Amendment) Regulations 2014:  
<http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0009.pdf>

2. Code of Practice for Inspecting and Certifying Buildings and Works – Building Control Regulations 2014 – February 2014:  
<http://www.environ.ie/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownload,38154,en.pdf>

3. Part D Building Regulations 2013 – Technical Guidance Document Materials and Workmanship:  
<http://www.environ.ie/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownload,33647,en.pdf>

4. Guidance Note 1.1.1 – Building Control (Amendment) Regulations 2014 – Procurement Implications for Contracting Authorities – March 2014:  
[http://constructionprocurement.gov.ie/wp-content/uploads/GN\\_1.1.1.pdf](http://constructionprocurement.gov.ie/wp-content/uploads/GN_1.1.1.pdf)

5. Ancillary Certificates & Practice Note:  
[http://www.engineersireland.ie/EngineersIreland/media/SiteMedia/communications/building-regs/AncillaryCertificatesComplete\\_November2014.pdf](http://www.engineersireland.ie/EngineersIreland/media/SiteMedia/communications/building-regs/AncillaryCertificatesComplete_November2014.pdf)

6. Frequently Asked Questions:  
<https://www.localgov.ie/en/link-type/bcms>

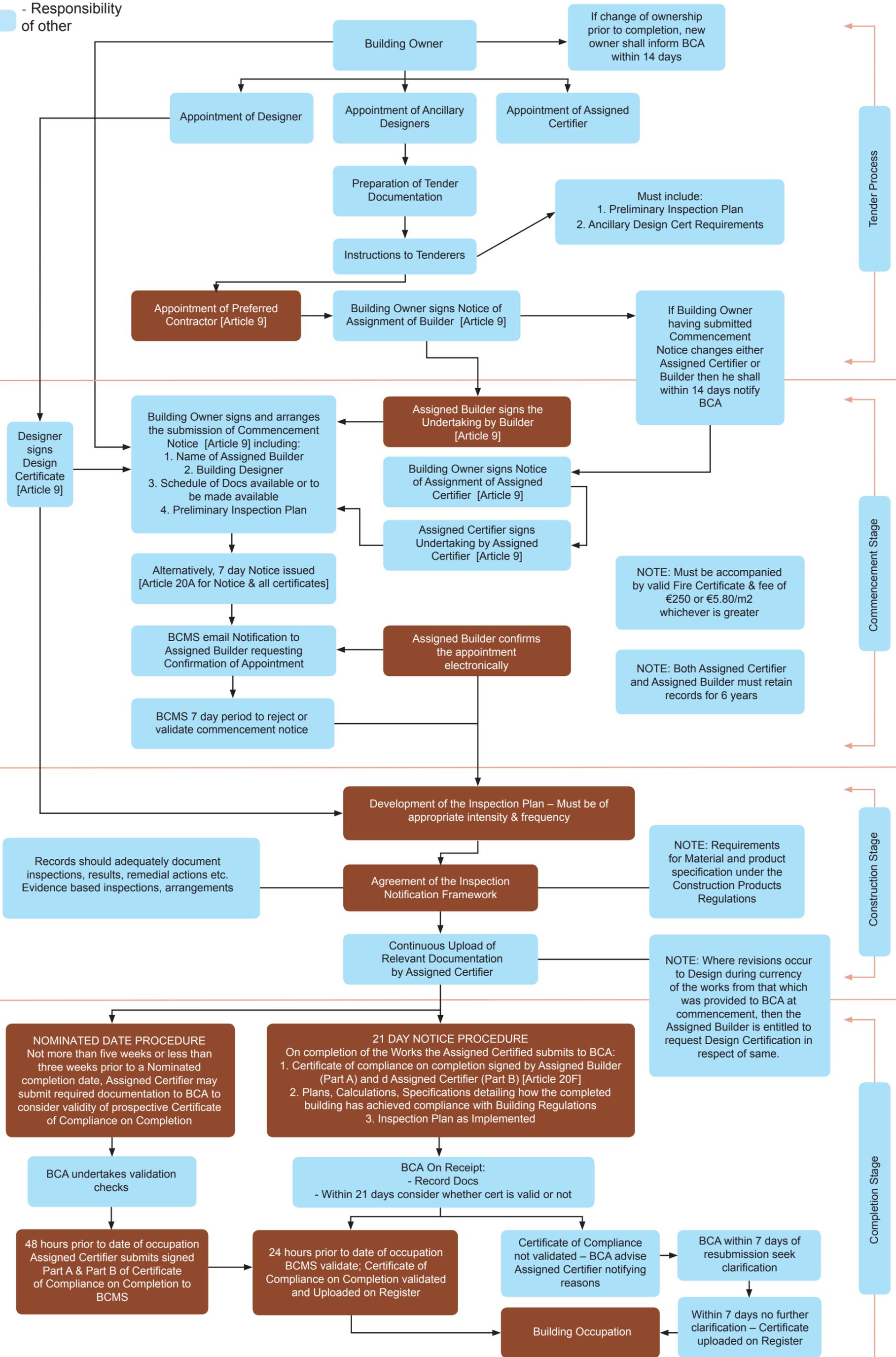
7. Building Control Management System:  
<https://www.localgov.ie/en/BCMS>



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# APPENDIX B - Flowchart of process

- Responsibility of builder
- Responsibility of other





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