



It is at present the universal practice for builders and vendors of new houses to furnish evidence of compliance with the conditions of the Planning Permission for the erection thereof. The normal evidence furnished is as follows:

- (1) Compliance with conditions requiring contributions is normally proved by furnishing copy letters from the planning Authority confirming compliance. In passing, it should be said that this is not always as simple as it might seem on a large estate with a variety of different Planning Permissions.
- (2) Compliance with the other conditions is proved by furnishing a Certificate from an Architect or Engineer, confirming that the Planning Permission (and usually also the Building Bye Laws Approval) relates to the house in question and that the house was completed in at least substantial compliance with the conditions thereof. The Law Society have agreed a form of Certificate with the Royal Institute of Architects and the Solicitors for the main Lending Institutions (Gazette - November 1978).

Many solicitors have enquired as to the correct requirements of a Purchaser's Solicitor or a Mortgagee's Solicitor dealing with the sale of a second-hand house built since 1st October 1964.

The Conveyancing Committee feel that it is unreasonable for Solicitors to insist now on being furnished with documentation which it was not the practice to furnish at the time. They have caused enquiries to be made as to when the practice of getting these Certificates of Compliance became general conveyancing practice and have been advised that it became so in 1970. The Committee accordingly advise members of the Society that in their opinion, the Solicitors should only insist on such Certificates on second-hand houses built since 1970.^{1 and 2}

In considering the matter, the Committee discussed the frequently stated belief that Solicitors need not concern themselves with any of these matters if the house had been built for over five years. The Committee were of the opinion that this theory does not have any basis in law.

CERTIFICATES OF COMPLIANCE WITH PLANNING PERMISSION

*Published in Law Society
Gazette, December 1979*

*1. This date was changed to
1st January 1975. See both
Practice Notes at page 7.14
hereof*

*2. See also Practice Note
published at page 7.32
hereof*



**PLANNING
PERMISSIONS**

**CERTIFICATES OF
COMPLIANCE**

It is, at present, the universal practice for builders and vendors of new houses to furnish evidence of compliance with the conditions of the Planning Permission for the erection thereof. The normal evidence furnished is as follows:

1. Compliance with conditions requiring financial contributions is normally proved by furnishing copy letters from the planning authority confirming compliance.
2. Compliance with most other conditions is proved by furnishing a Certificate from an Architect or Engineer confirming that the Planning Permission (and where appropriate also the Building Bye Laws Approval) relates to the house in question and that the house was completed in at least substantial compliance with the conditions thereof. The Law Society have agreed a form of Certificate with the Royal Institute of Architects and the Solicitors for the main lending institutions. The form of Certificate is published in the Gazette for November 1978.
3. There are certain other types of conditions that may require verification by letters from some Department in the Planning Authority, i.e. where the condition specifies that the Developer, before the commencement of any development, is to resubmit a design for revised layout of a particular area or to agree certain standards with the Engineering Department, etc. In such cases a letter from the appropriate Department or from the Planning Authority is the proper evidence confirming compliance.

The Conveyancing Committee of the Law Society issued a Practice Note recommending that it is unreasonable for Solicitors to insist now on being furnished with such documentation when it wasn't the practice to furnish this at the time. They caused enquiries to be made as to when the practice of getting these Certificates of Compliance became general practice and advised that it became so in 1970. They recommended, accordingly, that it was not reasonable for members to insist on such Certificates on houses built prior to 1970.^{1 and 2}

The Committee has considered these recommendations and confirm that the foregoing sets out what is, in its opinion, the proper and reasonable practice.

*Issued as a supplement to
Law Society Gazette,
June 1980. JC*

*1. This date was changed to 1st
January 1975. See both
Practice Notes at page 7.14
hereof*

*2. See also Practice Note at
page 7.32 hereof*



The Law Society's recommended form of Architects' Certificate was a suggested minimum form of certificate and requires to be adapted to the exact circumstances of the case.

In particular if a certificate is furnished relating to houses in a large development the standard form is not adequate. Some builders' solicitors argue that it is sufficient to certify that the house has been constructed in accordance with the provisions of the planning permission. The Committee disagrees. It may be implicit in such a certificate that all general conditions have been complied with but something as important as this should not be left to implication. In the Committee's view an Architect's Certificate for a house in a building estate should at the very minimum contain a paragraph on the line of the following:

"I also certify that the general conditions of the planning permissions relating to the estate of which this house forms part (including all conditions precedent) have been complied with in all material respects in so far as it is reasonably possible at this stage of the development".

This recommendation arose out of the celebrated case in the suburbs of Dublin where the necessary drainage arrangements had never been agreed. Purchasers' solicitors were being offered a Certificate of an Architect saying that the house had been built in accordance with the plans and specifications and ignoring the fact that one of the main general conditions as to drainage had not been complied with.

The qualification of a person to give a certificate of Compliance with planning permission raises many vexed questions. There is no system of registration of architects in Ireland so that a person with very inadequate training and experience can legitimately call himself an Architect. There are very great difficulties in many parts of the country where properly qualified Engineers or Architects are simply not available. Solicitors in these areas quite sensibly use their discretion and accept certificates from persons who have many years of experience and practice on their own account as "Architects" although they may not have any strict educational qualifications or be members of the various institutes whose members would automatically be considered qualified to issue such certificates. A member complained to the Committee that certain building companies in the Dublin area had been taking advantage of this lacuna by giving Purchasers' solicitors Certificates of Compliance signed by technicians who are not adequately qualified. In the cases he reported, the building company in question had on their staff properly qualified persons but he suggests it suited them to pass the responsibility to someone else if they could. The member went on to point out that very few such technicians would have the financial standing to back up a certificate if a loss arose.

ARCHITECTS' CERTIFICATES



ARCHITECTS' CERTIFICATES

(Contd.)

The Committee recognised that a person may be well justified in calling himself an Architect on the basis of experience alone but take the view that such experience must be lengthy and in most cases be gained while self employed in the field of architecture. The Committee recommends that sympathetic consideration be given to the acceptance of certificates from persons operating in those parts of the country where there is a shortage of qualified personnel. They feel, however, that such sympathetic consideration is not appropriate in cases of building estates. They recommend that in such cases Certificates of Compliance should only be accepted from persons who are properly qualified as Engineers or Architects or have many years' practical experience as such on their own account.

*Published in Law Society
Gazette, November 1980*

UPDATE: See also "Who Should Certify Compliance?" at page 7.53 hereof.

HOUSES HELD UNDER TRANSFER ORDERS

CONSENT TO EXTENSIONS

Difficulties have arisen in cases where extensions were carried out to houses held under a Local Authority Transfer Order where Planning Permission and Building Bye-law approval were not obtained for the extension.

While permission could be obtained for retention of the structure under the Planning Act it is not possible for the Local Authority to grant Building Bye-Law Approval retrospectively. The form of Transfer Order prohibits the person holding the property from the Local Authority from carrying out any extension or alteration to the structure without consent and the Local Authorities were reluctant to give a letter of consent in case it could be argued that this was a waiver of the breach of the Building Bye-Laws.

Following a meeting between Law Society Representatives and Officials of Dublin Corporation and Dublin County Council it has been agreed that the following will be included in any letter of consent issued in such circumstances:

"This letter of consent is given by the Corporation in its capacity as the Housing Authority under Transfer Order dated the day of 19 The extension the subject of this consent was erected in breach of the requirement to obtain Building Bye-Laws Approval under the Public Health Acts. It is not possible for the Corporation to give Building Bye-Laws Approval retrospectively under the Health Acts. The consent must not therefore be construed as a waiver of the breach of Building Bye Laws.

*Published in Law Society
Gazette, October 1981*



In 1987 the Law Society agreed with the Royal Institute of Architects of Ireland on a form of Certificate of Compliance with planning permission for use in speculative housing developments, where the Architect does not supervise the building on a regular basis. The text of this Certificate was published in the Gazette in November 1978. The Institute of Architects circulated the form of Certificate to their members.

In November 1980, arising out of certain difficulties in practice that arose in the Dublin area, the Joint Committee recommended a variation in this Certificate by the addition of a new paragraph.

Members of the Institute of Architects declined to issue Certificates containing the proposed new paragraph until the variation had been agreed by their own Council.

Discussion took place between representatives of the Joint Committee and representatives of the Architects. A revised form of Certificate has now been agreed with the Institute and the text of this is set out below.

The new paragraph is that printed in *italics*. The Joint Committee is satisfied that this Certificate is a reasonable one for a Solicitor for a purchaser or a Lending Institution to accept. The Committee became aware, in the course of their discussions with the Institute of Architects, that Architects were under the impression that their Certificates also certified compliance with conditions for payment of financial contributions or entering into bonds for security for satisfactory completion or cash deposits in lieu thereof. The Joint Committee's representatives were of the opinion that solicitors had, as a matter of practice, always sought verification from the Planning Authority in respect of conditions for financial contribution or security deposit, and that it was not reasonable to expect Architects to accept responsibility for such matters. Practitioners will note that the current Certificate specifically excludes responsibility for compliance with conditions for payment of financial contributions or the giving of security for satisfactory completion.

I am an Architect retained by:

And I certify that:

1. I visited the office of the planning Authority and there inspected the house plans, estate layout plan, specifications and other drawings and documents which were represented by the Planning Authority as those on foot of which the Permission/Approval mentioned at Paragraphs 2 & 3 hereunder were granted.
2. The Notification of Grant of Permission/Approval:
 Decision Order No. and Date:
 Register Reference No:
 Planning Control No:

**ARCHITECTS'
CERTIFICATES**



ARCHITECTS
CERTIFICATES

(Contd.)

Dated:
related to the erection of houses on inter alia sites (both inclusive) as detailed on the said estate layout plan.

3. The Building Bye-Laws Approval Notice:

Register No:

Order No:

Planning Control No:

relates to inter-alia sites on the said estate layout plan (both inclusive as detailed).

I further Certify that I have inspected the house that has been built on site and that, in my opinion, this house has been erected in substantial compliance with the Notification of Grant of Permission mentioned at Paragraph 2 above and the Building Bye-Laws Approval Notice mentioned at Paragraph 3 above and that the position of the house and site is in substantial compliance with the estate layout plan mentioned at Paragraph 1 above in so far as the estate has been completed.

I Also Certify that the general conditions on the Planning Permission relating to the estate of which this house forms part (excluding any conditions for payment of financial contributions or the giving of Security for satisfactory completion) have been substantially complied with in so far as is reasonably possible at this stage of the development.

I am of the opinion that if the house and site have not been built and/or laid out exactly in accordance with the Planning Permission and Bye Law Approval, the differences are unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through the above mentioned approvals.

It Should Be Noted that I did not supervise the erection of this house in the course of its construction. Thus the inspection was a superficial one only and could take no account of work covered up. The comparison of the site layout with the estate layout plan was visual only.

SIGNED



The Joint Committee of Building Societies' solicitors and the Law Society has issued the following Practice Note, which is intended to replace in its entirety the note which appeared as Practice Note (2) in the Recommendations of the Joint Committee issued as a supplement with the January-February Gazette 1982.

By virtue of Regulations made in 1964 under the Local Government Planning & Development Act 1963, an extension (of up to 120 square feet in the case of a single-storey, or of up to 180 square feet in the case of two-storey) added to the rere of a dwellinghouse which complied with the other criteria was "exempted development."

Under the Local Government (Planning & Development) Regulations, 1977 (S.I. No. 65 of 1977) which came into effect on 15th March 1977, the exempted area of an extension was extended to 18 square metres and the distinction in area between single and two-storey extensions was removed.

The 1977 Regulations also introduced as an exempted development the conversion of a garage (within the permitted area of 18 square metres) attached to the rere or to the side of a dwellinghouse.

Under the Local Government (Planning & Development) (Amendments) Regulations, 1981, which came into effect on 1st May 1981, the area of exemption for both an extension and a garage conversion was extended to 23 square metres.

A great many conveyancing transactions involve houses which have been extended or the garage converted and it frequently arises that an extension would not have been exempted development under the Regulations applicable at the time it was built (or, in the case of a garage, at the time of conversion) but, in fact, would be exempted development if carried out now.

The Committee has considered the position carefully and particularly the fact that it is the intention of the Minister for Environment that Planning Authorities should not be concerned with matters relating to extensions or conversions that come within the current guidelines.

The Committee accordingly recommends that solicitors for purchasers and mortgagees should not insist upon application being made for permission to retain the structure or conversion, provided an appropriate Certificate is furnished to verify that the extension would be exempted development under current regulations.

EXEMPTED DEVELOPMENTS



**EXEMPTED
DEVELOPMENTS**

(Contd.)

*Published in Law Society
Gazette, April 1983*

It is almost inevitable in such a case that no Building Bye Laws Approval would have been obtained (in areas where they are applicable). It is important to note that compliance with Building Bye Laws is a condition of the entitlement to the exemption and this should be carefully dealt with in any Architect's certificate.

UPDATE: See the Practice Note at page 7.15 hereof.

**BUILDING
BYE-LAWS
APPROVAL**

The Committee was asked for its opinion on the following query.

Planning Permission for a residential development included a condition that Building Bye-Laws Approval be obtained and the terms thereof complied with. The Building Bye-Laws Approval was furnished. The Certificate by the Estate Architect confirmed compliance with the Planning Permission and did not mention compliance with Building Bye-Laws Approval although the copy Building Bye-Laws Approval furnished was identified as being the appropriate one for the house in question.

The Committee is of the opinion that in cases where there is a specific condition in the Planning Permission that Building Bye-Laws Approval be obtained and complied with the Architect's Certificate of Compliance with the Planning Conditions covers compliance with the Building Bye-Laws Approval without specific reference to the aforesaid condition.

*Issued as a supplement to Law
Society Gazette, September
1983. JC*



A Wicklow practitioner has brought to the Society's notice a problem which could well affect practitioners in the conveyancing area under the Fire Services Act 1981.

In the particular case licensed premises were purchased at auction and the purchaser signed the conditions of sale immediately after the auction. When replies to requisitions on title were furnished the vendor's solicitor included a notice which the vendor had received - since the date of the auction - from the local authority under the Fire Services Act, 1981. The notice required several alterations and additions to be made to the premises in order to make them safer from a fire safety standpoint. The cost of implementing the alterations and additions was put at £5,000. The question immediately arose - who was to pay for the work?

In the particular case, no problem ensued because the purchaser intended carrying out extensive renovations which would meet the fire safety requirements but a purchaser operating on a tight budget with no intention of improving the premises might find himself in a difficult position if liability for carrying out the improvements were to fall upon him.

It would seem that the Fire Services Act 1981 has now become an additional object for pre-contract enquiries.

Such enquiries would seek information about any notice served on the vendor and would go on to ask if the vendor had reason to believe that the local authority was requiring or would require work to be done under the Fire Services Act, 1981. A notice under this Act does not come within the disclosure of notices provision in clause 17 of the Incorporated Law Society's current General Conditions of Sale - hence the need for the pre-contract enquiry.

FIRE SERVICES ACT 1981

UPDATE: Practitioners are also directed to the provisions of the new Contract of Sale in particular General Condition 36 and also to the provisions of the Building Control Act, 1990.

*Published in Law Society
Gazette, November 1985*



HOUSE EXTENSION

**FAILURE TO OBTAIN
BUILDING BYE LAWS
APPROVAL**

Solicitors are increasingly coming across cases where house extensions have been erected or a conversion of a garage has taken place which development would be exempted development under the Planning Acts, but the necessary Building Bye-Laws Approval was not obtained. The attitude of the Local Authority, quite correctly, is that they are unable to issue Building Bye-Laws Approval retrospectively as it involves approval of matters like foundations and other items which cannot later be inspected.

The Committee considers that a reasonable practice for a Solicitor for a Building Society is to accept a Declaration or a Certificate from a professionally qualified person on the general lines of the following:

“I of aged twenty-one years and upwards DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I have examined the extension constructed by at his house number
2. I am satisfied from the measurements of the said extension that it would have qualified as an exempt development defined by the Local Government (Planning & Development) Acts, 1963 to 1976 except for the failure to obtain Building Bye Laws Approval.
3. I am informed that Building Bye Law Approval was not obtained for the development. It is impractical to inspect the foundations or work covered up but subject thereto I have inspected the same in so far as I could reasonably do so and I am satisfied that the extension is built in substantial compliance with Building Bye Laws as at the date of construction.
4. I am qualified to make this Declaration by virtue of being
5. I make this solemn Declaration conscientiously believing the same to be true by virtue of The Statutory Declarations Act 1938 and for the satisfaction of the Purchaser of the said premises.

DECLARED by
this day of 19.....



A member has received the following communication from Dublin County Council.

Dear Sir,

I refer to your recent discussions with Ms. A.Mills, Executive Engineer regarding Condition No. 2 of Bye-Law Approval This condition is a standard condition included in all Bye-Laws issued by the Council. Compliance with it is not appropriate in the case of extensions to domestic property. In these cases the Fire Services Act has no application. You will note that Mr. Nolan of the Chief Fire Officers department has confirmed “that private dwellings were not covered by the Fire Services Act, 1981.”

I trust that the above clarifies any queries in relation to Condition 2 of Bye-Law Approval in question.

Yours faithfully

J. Carson
Principal Officer

**BYE-LAW
APPROVALS**



**COMPLIANCE
WITH PLANNING
CONDITIONS
WHEN ESTATE IN
CHARGE**

The Conveyancing Committee and the Joint Committee of the Law Society/Building Societies have been considering for some time the question of conveyancing practice in relation to evidence of compliance with conditions of Planning Permissions. A particular problem area is the sale of second hand houses where there is not evidence of compliance with financial or other conditions. It has been suggested that solicitors should not concern themselves about compliance with conditions where it was established that the roads and services had been taken in charge by the Planning Authority. The Committee have had discussions with representatives of the County and City Managers Associations and Dublin County Council and accordingly make the following recommendations:

1. Conveyancers dealing with the second or later purchase of residential houses where the roads and service are in charge of the Local Authority should not concern themselves with enquiries as to compliance with financial conditions in a Planning Permission unless they are on notice of some problem.
2. This recommendation applies only to houses forming part of a building estate and built at the same time as the main development. It does not apply to once-off houses or to infill development.
3. There have been instances where houses forming part of a building estate had been built without Planning Permission so this recommendation does not change the obligation on a purchaser's solicitor to see that there is, in fact, Planning Permission for the house and, where appropriate under other recommendations, to seek a certificate from an Architect or Engineer that the house has been built in accordance with the same.
4. The Committee wishes to draw the attention of practitioners to its long standing recommendation that it is unreasonable for solicitors to insist now on being furnished with documentation which it was not the practice to furnish at the time of a previous investigation of title. In particular, where payment of financial contributions and/or levies are being paid by instalments, solicitors should only be concerned with the payment of contributions up to the date of the first purchase of any house.

UPDATE: This practice note has been clarified by the practice note entitled "Compliance with Planning Conditions" published in the Law Society Gazette, July/August 2002 and at page 7.90 hereof.



Recently some Local Authorities have adopted a procedure of including in Planning Permissions for high density housing developments, a condition prohibiting the carrying out of Exempted Development without obtaining Planning Permission, for example some high density town house developments.

The attention of practitioners is drawn to article II (1) (a) (i) of the Exempted Development Regulations S.I. 65/1977 which provides that a development as described in the schedule to the Regulations shall not be an exempted development if it would contravene a condition attached to a Planning Permission. Accordingly, before a particular development can be certified as being an exempted development, regard should be had to any existing Planning Permission relating to the property.

PLANNING

PERMISSION

EXEMPTED

DEVELOPMENTS



**CERTIFICATES OF
COMPLIANCE WITH
PLANNING
PERMISSION
FROM WHAT DATE
MUST THEY BE
OBTAINED?**

In December 1979 the Conveyancing Committee recommended that solicitors should only insist on Certificates of Compliance with Planning Permission in relation to secondhand houses built since 1st January, 1970. The Committee has received many queries in connection with this matter and it seems clear that the practice of getting Certificates of Compliance with Planning Permission in relation to all new houses was not as widespread as the Committee was led to believe when it made its original recommendation. Representations have been made to the Committee that in view of the fact that the date chosen is almost 19 years ago, that some adjustment be made in the date and also that some steps should be taken to lobby for some statutory limit in relation to planning.

Having considered the matter very carefully the Committee has decided that:

1. It is now revising its recommendation to only insist on Certificates of Compliance with Planning Permission in relation to houses built since 1st January, 1975. Consequential changes to the Contract and to the Requisitions will be made at the next reprint. It is not intended that this date would be reviewed regularly. The Committee has chosen a date at which it is satisfied it either was or should have been universal practice in relation to the purchase of new houses to obtain Certificates of Compliance.
2. The Society made representations several years ago to the Department of the Environment seeking the imposition of some statutory limit in relation to planning breaches. It is also understood that the topic may be dealt with in a forthcoming Report by the Law Reform Commission.

*Published in Law Society
Gazette, August 1989*

UPDATE: This Practice Note should be read in conjunction with the Practice Notes at page 7.14 (below) and page 7.32 hereof

**CERTIFICATES OF
COMPLIANCE**

A recommendation was published in the Gazette in December 1979 whereby the profession was advised that Architects' Certificates of Compliance with the Conditions in Planning Permissions and/or Bye Law Approvals should not normally be sought prior to 1970 and in the Gazette of August 1989 it was suggested that the date be changed to 1975. It has come to the attention of the Conveyancing Committee of the Law Society that a number of practitioners are unaware of the fact that this recommendation does not refer to the following:

- (a) Commercial or industrial properties.
- (b) Any alteration or extension to ANY premises since 1st October 1964 which would require Planning Permission and/or Bye Law Approval; and

It is not clear from General Condition 36 of the current edition of the Law Society Contract for Sale that this recommendation does not relate to commercial properties. The contract is currently under review and the condition will be suitably amended in the next edition.

*Published in Law Society
Gazette, May 1990*

UPDATE: See the Practice Note at page 7.32 hereof.



An Exempted Development is a development for which planning permission is not required.

The categories of exempted developments are defined in:

- a) Section 4 (1) of the 1963 Act and,
- b) In Planning Regulations made by the Minister for the Environment pursuant to section 4 (II) (VIII) of the 1963 Act. The current regulations made pursuant to this Section are:
 1. The Local Government (Planning & Development) Regulations 1977 S.I. No. 65 of 1977 - Third Schedule and Article II thereof.
 2. Local Government (Planning & Development) (Amendment) Regulations 1981 S.I. No. 154 of 1981.
 3. Local Government (Planning & Development) (Postal & Telecommunications) (Exempted Development) Regulations 1983 S.I. No. 403 of 1983.
 4. Local Government (Planning & Development) (Exempted Development & Amendment) Regulations 1984 S.I. No. 4348 of 1984.

A development occurring after 1/10/64 which is not an exempted development and for which planning permission has not been obtained is an unauthorised structure or use and it should be noted that although a development may be an exempted development and not require planning permission it may involve work that requires building bye-law approval pursuant to the provisions of the Public Health (Ireland) Act, 1878. It should also be noted that Article II (VIII) of the 1977 Regulations provides that any extensions, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use is not exempted.

The Conveyancing Committee has received a number of queries in relation to whether or not floor area exemption limits are cumulative. The following examples, it is hoped, will clarify the position.

1. In the case where a dwellinghouse has been extended and the extension is up to the exemption limit of 23 square metres and the extension has been erected without planning permission, then any subsequent extension will require planning permission.
2. Reference is made in the Regulations to the original floor area not being increased by more than 23 square metres. What is meant by the “original Floor Area” can cause confusion. The better argument appears to be that the “original floor area” is the original floor area of the house excluding any additions for which planning permission was or was not required.

Accordingly, if an extension which used up the 23 square metre allowance is erected

EXEMPTED DEVELOPMENTS



EXEMPTED DEVELOPMENTS

(Contd.)

*Published in Law Society
Gazette, June 1990*

- on foot of a planning permission, than the Exempted Development Regulations cannot be used to extend the extension beyond that size and any such further extension will require planning permission.
3. If a garage is converted into a habitable area, then the floor area of the garage is deducted from the floor area available for development under the Exempted Development Regulations.

LOCAL GOVERNMENT (MULTI-STOREY BUILDINGS) ACT, 1988

Under Section 2 (2) of the Act, the Local Authority is bound to serve notice on the owner of a multi-storey building which has been constructed before the commencement of the Act requiring the owner to furnish the Local Authority with a certificate in respect of the building in one of the forms appended to the Local Government (Multi-Storey Buildings) (Amendment) Regulations, 1990.

Under Section 4 (1) of the Act there is an obligation to furnish a certificate to the Local Authority in respect of a multi-storey building which has not been completed before the commencement of the Act and such certificate must be furnished before the building or any part of the building is occupied.

For some time after the passing of the Act (because the Local Authority had not had time to serve notices on owners) it was felt sufficient to merely obtain a certificate from a 'competent person' which could then be sent to the Local Authority once the Local Authority had served a notice pursuant to the Act.

However, it has come to the Committee's attention that a number of such certificates have not been accepted by the Local Authority and have not therefore been recorded on the Register which the Local Authority is bound to maintain under the Local Government (Multi-Storey Buildings) Regulations, 1988.

Solicitors acting for purchasers or tenants are therefore advised that in all cases they should not just receive a copy of the certificate furnished or to be furnished to the Local Authority but also some evidence from the Local Authority that it has accepted and recorded the certificate on the Register established under the Act.

*Published in Law Society
Gazette, October 1991*



The attention of practitioners is drawn to the provisions of Section 9 of this Act which provides that where compensation exceeding £100,000 has become payable "the Planning Authority shall prepare and retain a statement of that fact, specifying the refusal of permission or grant of permission subject to conditions, or the revocation or modification of permission, the land to which the claim for compensation relates and the amount of the compensation". It then goes on to provide that the planning authority shall enter these particulars on the register kept in pursuance of section 8 of the Principal Act and that every such entry shall be made within fourteen days beginning on the day of preparation of the statement.

Section 10 of the Act then provides that no person shall carry out any development to which this section applies on land in respect of which a statement stands registered, whether under S. 72 of the Principal Act or under Section 9, until such amount as is recoverable under the section in respect of compensation specified in a statement has been paid or secured to the satisfaction of the planning authority.

In the light of the foregoing sections practitioners are advised to raise the following requisition:

"Has a statement that compensation has become payable in respect of the property been registered under Section 9 of the Local Authority (Planning and Development) Act, 1990 in the planning register maintained by the planning authority resulting in the development of the property being prohibited under Section 10 of the 1990 Act?"

STATEMENT OF PAYMENT OF COMPENSATION

LOCAL GOVERNMENT (PLANNING & DEVELOPMENT) ACT, 1990



BUILDING CONTROL ACT AND BUILDING REGULATIONS

The Conveyancing Committee has been considering the implications for Solicitors of the above Act and Regulations thereunder the main provisions of which come into effect on 1st June and 1st August next.

The May Gazette includes an Article on the topic by Joan Fagan and John Furlong of William Fry Solicitors. Rory O'Donnell, who is a member of the Committee has also prepared a paper on the subject of the Building Regulations and the Committee has decided to circulate a copy of this which covers the main provisions of the Act and Regulations.

We are aware that Solicitors are anxious to know the Committee's views in relation to necessary changes in contracts and requisitions.

General Condition 36 of the Contract will required to be altered by adding in an additional warranty that all development to which the Building Regulations applied have been carried out in accordance with the terms of the Act and Regulations. The provisions about Building Bye-Laws will not be deleted yet because they will still apply where appropriate to buildings started up to the 1st June 1992 and all buildings which are built on foot of the transitional arrangements. In the Committee's opinion a substantial percentage of the new buildings which will be constructed over the next year or so in the Building Bye-Law areas, will be carried out on foot of the transitional arrangements which will apply for some years, and these developments will not have to comply with the Building Regulations. For example if a developer applies for a planning permission and building bye-laws approval on 30th May 1992 it may receive Bye-Laws Approval in say three months' time, Planning Permission in say six months' time and be entitled to build availing of the transitional arrangements for the life of that planning permission, without having to concern itself with the new Building Regulations.

Pending the revision of the printed contract this should be dealt with by Special Condition.

It seems to the Committee that the investigation of the position in relation to Fire Safety Certificates will be a matter which should be dealt with pre contract. Rory O'Donnell's suggested pre-contract requisition is as follows:

"Has there been in relation to the property any development (including change of use) to which the Building Control Act, 1990 and any Regulations made thereunder apply?

In respect of any such development furnish (where applicable) :

1. A copy of the commencement notice given.
2. A copy of the entire application for the Fire Safety Certificate;
3. A copy of the Fire Safety Certificate issued; and



4. A Certificate of Opinion by an Architect or a suitably qualified person confirming that the works or change of use to which the Building Regulations apply have been carried out in substantial compliance with the Building Regulations. ”

NOTE: The reason for asking for a copy of the Application is that the Regulations made under the Building Control Act do not oblige the Building Control Authority to retain for inspection copies of the Application and it is anticipated that problems will arise in future due to the inability of Architects and other professionals to get access to documentation upon which the Fire Safety Certificate was granted. Obviously a copy of the Application would not be essential if one received a satisfactory Certificate of Compliance.

The Committee has been advised that a new house costing £50,000 in Dublin would cost about £1,000 more to be built in compliance with the new standards. The regulations are unlikely to have any marked effect on the cost of construction of commercial or industrial buildings most of which have been built to an equal standard over the last five years or so.

A Sub-Committee of the Conveyancing Committee has commenced discussions with the representatives of the Royal Institute of Architects of Ireland over the form of Certificates of Opinion that Architects will give in relation to compliance with Building Regulations. It will obviously be some time before the issues arising and any form of certificate will be resolved but in the meantime the Committee's preliminary view is that solicitors will want Certificates of Opinion of substantial compliance with Building Regulations in relation to new structures and buildings which have been materially altered or undergone a change of use in accordance with the usual form. Architects are concerned about the strict liability involved under the Act and the liabilities they may incur by giving certificates. They are happy to certify that the design of a building complies with the Building Regulations when they have actually designed it. There are obvious difficulties where part of the relevant design was carried out by a Structural or Mechanical and Electrical Engineer. Should the Architects get certificates from these other professionals and include them in an overall certificate? Also if the building contains a lift the lift may be designed by the manufacturer. The greatest problem seems to be in relation to speculative developments. Normally the Architect designs the development and gets planning permission but then has no involvement at all until houses are finished when the architect would carry out a superficial inspection for the purposes of planning and bye laws certification. The responsibility to build in accordance with the design and the Building Regulations is on the Builders. Some Architects feel that they could not certify compliance with the construction phase under the Building Regulations unless they or the Building Control Authority monitored compliance with construction. The Conveyancing Committee will do what it can to address these issues and will have the profession notified as soon as anything meaningful is resolved.

BUILDING CONTROL ACT AND BUILDING REGULATIONS

(Contd.)



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(Contd.)

The Conveyancing Committee suggests that Solicitors should ensure that clients embarking on new building projects should get the whole issue of certification and the forms to be given sorted out at the time the Architects and other members of the design team are appointed.

ROD - 6.5.92

SUMMARY OF THE MAIN PROVISIONS OF THE BUILDING CONTROL ACT, 1990 FROM THE CONVEYANCING COMMITTEE OF THE INCORPORATED LAW SOCIETY OF IRELAND

By Rory O'Donnell

Introduction

The purpose of the new Building Regulations is to have a legally enforceable code of building practice which applies to the whole country. The existing codes of practice are Building Bye-Laws made under the Public Health Acts made a century ago and only applied in Dublin City and County, Cork, Limerick and a few other urban areas.

The Building Control Act 1990 sets out a new system to regulate building practice. The new framework provides the Minister for the Environment with the power to make building regulations. To date, there have been two statutory instruments which set out in great detail the new requirements. The Act imposes a duty on everyone to comply with these Regulations.

Commencement

1st June 1992: Date of commencement of Building Regulations (except for Fire Safety Certificates)

1st August 1992: Date of commencement of requirement to get Fire Safety Certificates.

Highlights

1. A statutory duty is imposed to comply with Building Regulations in relation to all new buildings, material alterations or extensions or changes of use from 1st June 1992 (save those for which building bye-law approval has been applied for and/or granted prior to 1st June 1992).
2. A statutory duty is imposed to get a fire certificate in relation to all new buildings (other than single dwellings - not flats), extensions or changes of use from 1st August 1992 (save those for which building bye-law approval has been applied for and/or granted prior to 1st June 1992).



3. No obligation is imposed on the new Building Control Authority to monitor buildings. They are given power to enter, inspect, take samples, demand to know the proposed use of a building and serve enforcement notices if buildings are being constructed in breach of the Building Regulations. Where an enforcement notice has been served, the owner may apply within fourteen days to the District Court to have the notice quashed or altered. Random inspections of building works are likely. The Building Control Authority can proceed by injunction in the High Court if there is a risk to health or safety.
4. An amnesty is given in relation to buildings completed prior to 13th December 1989 to which Building Bye-Laws applied. These buildings are deemed to have building bye-law approval (whether they actually comply with the Building Bye-Laws or not) unless the Building Control Authority serve on the owner a notice stating that the works constituted a danger to public health or safety within six months of the 1st of June, 1992. Buildings developed between the 13th December 1989 and the 1st June 1992 for which building bye-law approval was not obtained will not be easily saleable without a certificate of opinion from a competent architect or engineer that such building was built in substantial compliance with the Building Bye-Laws.
5. Enforcement notices cannot be issued by the Building Control Authority before a development commences or after five years from the completion of a building or a change of use.
6. No further building bye laws shall be made under the Public Health Act except in relation to roads and drainage outside the curtilage of the site. The new Building Regulations do not deal with drainage outside the curtilage of the site.
7. Solicitors will require certificates of opinion of substantial compliance with building regulations in relation to new structures, and buildings which have been materially altered or undergone a change of use as part of the ordinary conveyancing process.
8. The Act provides a range of severe penalties for breaches including fines of up to £10,000 and imprisonment of up to two years.
9. The Multi-Storey Buildings Act no longer applies to new buildings commenced after the 1st June 1992 under the new system. It still applies to multi-storey buildings commenced after 1st June 1992 which have obtained or applied for building bye-law approval.
10. Conveyancers acting for purchasers in relation to buildings other than single dwelling houses should clearly advise their client(s) to establish pre-contract that a Fire Safety Certificate was obtained in relation to the building. They will probably try to persuade vendors to furnish evidence to this effect.
11. The Building Regulations apply nationwide unlike the various Building Bye-Laws which applied to Dublin, Cork, Limerick and a few other urban areas.
12. Landlords will almost certainly impose an obligation in all new leases to provide that tenants will comply strictly with the Building Regulations in any work carried

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out on a leased property and to furnish the landlord with copies of:

- (a) all applications for Fire Safety Certificates;
 - (b) all Fire Safety Certificates issued, and;
 - (c) an architect's certificate of opinion that all such works have been carried out in substantial compliance with the plans lodged with the application for the Fire Safety Certificate as amended by any conditions imposed by the Building Control Authority and that the works comply with the Building Regulations.
13. Compliance with the Guidance Documents is prima facie evidence of compliance with the Building Regulations but the methods set out in the Guidance Documents are not to be taken as the only method of complying with them.
 14. There are special provisions about domestic attic conversions. These include a more sensible rule about the ceiling height and quite stringent conditions about fire safety.
 15. Section 21 of the Building Control Act provides that no civil action shall lie for breach of statutory duty. However, the Act imposes strict liability on designers and builders for which they may be liable in contract and/or tort.

What is effected by the Act?

The Building Regulations will apply to the following:

(a) *New buildings*

The new regulations apply to all buildings commenced after 1st June, 1992 except for those which are exempted.

(b) *Material alterations and extensions to existing buildings*

This sounds simple but in practice it will be complicated. Simply stated, a material alteration must be such that it effects either the structure or the fire safety of the building. An extension to an existing building must itself comply with the Building Regulations. If the extension adversely affects either the structure or the fire safety of the existing building then both the extension and the alteration(s) to the existing building must comply with the Building Regulations.

(c) *Material change of use of existing Building Regulations*

This means where any other building is converted to a dwelling or where a single dwelling is converted into more than one dwelling, or where buildings were changed to a use for which there are special provisions in the regulations.

This provision is intended to ensure that an existing building is not changed to a new use which would require a higher standard of safety. On change of use the building is looked at by comparison with a new building in relation to the following:

- (a) structure.
- (b) fire safety.
- (c) ventilation.
- (d) hygiene.



- (e) drainage.
 - (f) heat producing appliances.
 - (g) conservation of heat and energy.
- (d) *Refurbishment*
- The replacement of services, fittings and equipment as part of a refurbishment project must comply with the provisions of the Building Regulations. Where refurbishment work has implications regarding fire safety, a Fire Safety Certificate will be required.
- (e) *Fitting Out*
- The fitting out (including the installation of services, fittings and equipment) of new commercial or industrial buildings built to shell standards must comply with the Building Regulations and a Fire Safety Certificate must be obtained.

NOTE: There is provision in the Act and the Regulations for the granting of dispensations or relaxations from the requirements of the Regulations.

The effect on new buildings

The Regulations envisaged by the Building Control Act 1990 have been implemented to date by the following three Statutory Instruments namely, SI 304/91, SI 305/91 and SI 306/91.

Building Control Act, 1990 (Commencement Order, SI 304/1991)

This order provides for the commencement of the Act and the Building Regulations made pursuant to the Act.

The Building Control Regulations 1991 (SI 305/1991)

1. *The Scope of the Regulations*

These Regulations provide for notices to Building Control Authorities in relation to all developments, obligations to obtain Fire Safety Certificates, obligations on the local authority to consider and issue Fire Safety Certificates, refusal of Fire Safety Certificates and rights of appeal and the keeping of a register of applications. The regulations also provide the forms of application for a Fire Safety Certificate and the Fire Safety Certificate.

2. *Commencement Notices*

The regulations require that commencement notices are lodged with the Building Control Authority at least seven days and not more than twenty one days before any development to which the Act applies is to start. The notice requires the following information:-

- (a) the address of the building.
- (b) the description of the works.

BUILDING CONTROL ACT AND BUILDING REGULATIONS

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(Contd.)

- (c) the name and address of the owner and architect.
- (d) the name and address of the builder.
- (e) no drawings or specification are required to be lodged although the name and address of the person from whom such plans, documents and information as may be necessary to show that the building or work will comply with the requirements of the Building Regulations must be furnished.

There is no obligation on the local authority to maintain a register of commencement notices or to carry out inspections of building works.

NOTE: Where a building is started after 1st June 1992 which has obtained or lodged an application for building bye-law approval commencement notice does not have to be lodged with the Building Control Authority.

3. *Fire Safety Certificates*

Fire Safety Certificates are required before work starts on all building work to which part (B) of the regulations apply.

This means all buildings other than single dwellings. Applications for Fire Safety Certificates is made to the Building Control Authority. An application form accompanied by detailed drawings, specifications, and calculations in respect of certain fire related matters require to be submitted. An application which does not contain the full information will be treated as invalid.

The Building Control Authority has two months in which to issue a Fire Safety Certificate unless an extension of time is agreed in writing between the applicant and the Building Control Authority.

The Building Control Authority may issue a refusal or issue a certificate (with or without conditions). The decision of the Building Control Authority may be appealed to an Bord Pleanála, whether it is against refusal or condition(s) imposed by it. The information to be submitted with the Fire Safety Application Certificate is set out in the first schedule of SI 305. The information ranges from location maps of the site, complete plans and sections of the building, details of construction and services, specification of construction and material along with certain calculations relating to the fire safety of the building.

There is no obligation on the Building Control Authorities to follow up their Fire Safety Certificates with any inspection of the works either before or during construction.

Register of Fire Safety Certificates

The Building Control Authority is required to maintain a register in respect of applications and decisions made in respect of Fire Safety Certificates. The register is to contain the applicant, description of the work, the decision and the outcome of any appeal.

4. *Exemptions:*

Exemptions from the Building Regulations



- (a) Buildings commenced before 1st June, 1992.
- (b) Buildings commenced after 1st June 1992 for which an application for building bye-law approval was lodged and/or granted before the 1st June 1992.
- (c) Alterations to buildings which do not affect the structure or the fire safety aspects of the structure.
- (d) Buildings for mining, storing explosives and electricity generating stations.
- (e) A national monument, temporary dwelling or temporary office.
- (f) Detached garages, sheds, glass houses, hen houses, of less than 23 sq. metres and ancillary to a dwelling.
- (g) Farm buildings not exceeding 300 sq. metres.

Exemptions from having to lodge a commencement notice

- (a) Any of the items listed at the last paragraph.
- (b) Exempted development under the Planning Act, except where a fire safety certificate is required.
- (c) Building or material changes of use of buildings carried out by Building Control Authority in its own functional area.

Exemptions from having to apply for and obtain Fire Safety Certificates:

- (a) Building works (which have obtained or applied for building bye-law approval prior to 1st June 1992) commenced before 1st August 1992.
- (b) All of the works listed in the last two paragraphs.
- (c) Single dwellings (not flats).

Technical Guidance Documents (SI 306/91)

There are twelve technical guidance documents which set out the technical building requirements to be complied with in the construction of buildings.

The Guidance Documents refer to over three hundred codes of practice, standards or other technical references which set out the required technical standards.

Certificates of Compliance

There is power in the Act to make regulations providing for certificates of compliance but this matter has been left to the construction and the property sector to sort out for themselves.

Solicitors will be seeking to have compliance verified in the same manner as heretofore in relation to the Building Bye-Laws or planning.

Multi-storey buildings

The provisions of the Local Government (Multi-Storey Buildings) Act, 1988 cease to have

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effect on 1st June, 1992 except for cases coming within the transitional provisions of section 22 (2) of the Building Control Act, 1990. Multi-storey buildings which have applied for and/or received building bye-law approval started after 1st June, 1992 will require the usual certificate and must comply with the 1988 Act. In the event that only planning permission has been granted and that no application has been made or granted for building bye-law approval prior to 1st June 1992 the provisions of the Multi-Storey Buildings Act will not apply and the building must be erected in accordance with the Building Regulations. If work is commenced on multi-storey building post 1st June, 1992 and before 1st August, 1992 no Fire Safety Certificate is required under the Building Regulations.

Documentation

1. Building Control Act, 1990 (No.3 of 1990)
2. Building Control Act, 1990 (Commencement Order 1991) (SI No.304/1991)
3. Building Control Regulations, 1991(SI No.305/1991)
4. Building Regulations 1991 (SI No.306/1991)
5. Technical Guidance Documents (SI No.306/1991)



The Conveyancing Committee of the Law Society has for many years been urging on the Department of the Environment the need to put a limit on the times within which enforcement notices or warning notices under the Planning Act could be served. Particularly in relation to change of use, the absence of any time limit meant that solicitors for vendors and purchasers were obliged to pursue detailed enquiries as to the use to which particular properties have been put for the entire period from 1 October, 1964 to date. A recommendation that time limits be imposed was also made by the Law Reform Commission in its Report 'Land Law and Conveyancing Law (1) General Proposals' published in 1989.

The Conveyancing Committee is glad to report that its representations to the Department of the Environment were favourably received by the Department and following consultation with representatives of the Conveyancing Committee, time limits have now been introduced by the 1992 Planning Act. The provisions relating to the time limits are quite complicated and the Conveyancing Committee is much obliged to John Gore Grimes, for the preparation of the note on this matter which follows.

Summary of Time Limits

In relation to Enforcement Procedures Under Section 19 of the Local Government (Planning and Development) Act, 1992.

1. Section 31 of the 1963 Act provides that an Enforcement Notice under that section must be served by the Planning Authority:
 - a) within five years of such development being carried out where no Permission was granted;
 - b) within five years of the "appropriate date" in a case where there has been non-compliance with a condition in a Planning Permission. The "appropriate date" means:
 - i) either the date specified in the Grant of Planning Permission within which time the work must be carried out in order to achieve compliance with the condition, or;
 - ii) if there is no such date in the Grant of Planning Permission specifying a time limit for compliance with the Condition then within five years of the date for completion specified in a Notice (often referred to as a "latest date" Notice, which is not to be confused with an Enforcement Notice) served on the offending party by the Local Authority requiring compliance with the Condition.

Section 19 of the 1992 Act adds a new provision which provides that the "latest date" notice, as opposed to the Enforcement Notice, to be served by the Planning Authority seeking compliance with a Condition, must be served:

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- i) in the case where a Condition in a Planning Permission is not complied with - within the life of the Planning Permission which is normally five years from the date of grant (see section 2 of the 1982 Act) or such additional time as may be allowed under section 4 of the 1982 Act.
 - ii) if the Condition which is not complied with is contained in a Retention Permission - within a five year period from the date of issue of the Retention Permission.
2. Section 32 of the 1963 Act also contained its own five year time limit and time started to run after the "appropriate date". The "appropriate date" in that case is either the date specified in the Permission for Retention by which time the Condition must be complied with or, if there is no such date, an Enforcement Notice must be served within five years of the date specified in the "Latest Date" Notice served by the Planning Authority requiring compliance with the Condition. Section 19 of the 1992 Act provides that the "Latest Date" Notice requiring compliance with the Condition in the Retention Permission must be served within five years from the date on which the Retention Permission issued.
 3. In relation to both sections 31 and 32 of the 1963 Act, section 19 (1) (c) of the 1992 Act also provides that the time limit under sub section s. 19(1) has effect in relation to Conditions which have not been complied with before or after the commencement of the sub section namely 19 October 1992.
 4. Section 35 of the 1963 Act did not provide any time limit for the service of Enforcement Notices. However, under that section, because of the wording of the section, the Enforcement Notice could only be served on the person who has carried out or is carrying out the Development. Section 19 of the 1992 Act now provides that the Enforcement Notice under section 35 must be served within the lifetime of the Permission, that is to say within five years of the date of Grant of Permission or such greater period as may have been specified in the permission (see section 2 (3) of the 1982 Act) or such extended period as may be granted under section 4 of the 1982 Act.
 5. Before leaving the enforcement provisions of the 1963 Act reference should be made to prosecutions under section 24 (3). Prosecutions are in fact rarely instituted under this sub section, the planning authorities tending to rely either on Enforcement Notices served under the 1963 Act or Warning Notices served under the 1976 Act. Proceedings on indictment would of course be instituted by the Director of Public Prosecutions and it is believed that he would have a reluctance to institute proceedings by indictment after 5 years or more had elapsed at a time when no Enforcement Notice or Warning Notice could be served, unless the offence was a very serious one.
A summary prosecution could only be brought after 5 years under the provisions of



Section 9 of the 1982 Act (as amended by Section 20 of the 1992 Act) where the Judge is satisfied that the facts constituted a minor offence, the Director of Public Prosecutions consents and the defendant does not object to a summary trial. It is apprehended that the risk of prosecutions being instituted under section 24 (3) of the 1963 Act in the vast majority of cases must be extremely remote.

6. Section 26 of the 1976 Act prescribed no time limit within which a Warning Notice under that section may be served. There are three circumstances where the section 26 Warning Notice (as amended by section 19 of the 1992 Act) may be served namely;
- a) Where it appears that land is or is likely to be developed in contravention of section 24 of the 1963 Act.
 - b) Where it appears that any unauthorised use is being made or is likely to be made of land.
 - c) Where it appears that any tree or other feature (whether structural or natural) or any other thing, the preservation of which is required by a Condition subject to which a Permission for the development of any land was granted, may be removed or damaged.

Section 19, sub-section (4) (e) of the 1992 Act provides:

“A Warning Notice in relation to any unauthorised use of land shall not be served after the expiration of a period of five years beginning on the day on which such unauthorised use first commenced”.

Section 19 applies a time limit to paragraph (b) only of the above three circumstances in which a Warning Notice may be served. No time limit is provided in the circumstances envisaged by paragraph (a) above but it is clear that under paragraph (a) a Warning Notice cannot be served after the completion of the development. Also, there is no time limit provided for the service of a Warning Notice in circumstances envisaged by paragraph (c) above.

7. Section 27 of the 1976 Act has been re-written into section 19 of the 1992 Act by sub-section (4) (a) and there are subtle and effective changes. There are two circumstances in which a planning injunction may be sought under section 27 (as amended by section 19 of the 1992 Act) namely:

Sub-section 1

- (a) Where development of land being development for which permission is required under Part 4 of the Principal Act *has been carried out* or is being carried out without such permission: **OR**
- (b) An unauthorised use is being made of land.

The High Court or the Circuit Court may on the application of a Planning Authority or any other person, whether or not that person has an interest in the land, by Order require any person to do or not to do or to cease to do as the case may be anything that the Court considers necessary and specifies in the Order to ensure as appropriate:

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NEW TIME LIMITS

(Contd.)



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- (a) that the development or unauthorised use of land is not continued:
- (b) in so far as is practicable that the land is restored to its condition prior to the commencement of the development or unauthorised use.

Section 19 of the 1992 Act allows injunctions to be taken in the Circuit Court as well as the High Court. The Court is now empowered to make an Order to stop the development or the unauthorised use and, as far as practicable, to restore the land to its condition prior to the commencement of the development or unauthorised use. Under the provisions of the 1976 Act in section 27 sub section 1, the Court could merely prevent the continuation of a wrongful state of affairs but it did not have the jurisdiction to order the knocking down of unauthorised buildings or the carrying out of any other steps which it might think appropriate.

The new section 27 procedure under section 19 of the 1992 Act, permits an application for a planning injunction to be made *even though the development has been completed*.

Sub-section 2

Sub-section 2 of section 27 of the 1976 Act, as now amended by section 19 of the 1992 Act, allows for an application to be made for a planning injunction in cases where development is proceeding which is authorised by Permission granted under Part IV of the 1963 Act but which has not been or is not being carried out in conformity with the Permission because of non compliance with the requirements of a Condition attached to the Permission or for any other reason. Again, application can be made either to the High Court or to the Circuit Court.

Section 19 of the 1992 Act has effectively abolished the old distinction which existed between sub-section 1 cases and sub-section 2 cases under section 27 of the 1976 Act.

The time limits applying to section 27 may be summarised as follows:

- (A) application for injunction to the High Court or to the Circuit Court in relation to development carried out without Permission shall not be made once five years have passed from the date on which the development was substantially completed.
- (B) application for injunction to the High Court or to the Circuit Court in relation to an unauthorised use where no Planning Permission at all has been obtained for the change of use shall not be made after five years from the date when the use first commenced, no matter whether the use commenced on or before 1 January, 1994 (the date on which paragraph (g) of s.19 (4) comes into operation (Commencement order S.I. No. 221/1992)). The effect of this will be that the five year period will in some cases already have expired, but an application for an injunction can still be brought before 1 January, 1994.
- (C) application for injunction to the High Court or to the Circuit Court in relation to authorised development where there is non compliance with the Condition



cannot be made after the expiration of five years. The five year period starts to run at the end of the life of the Planning Permission that is to say, in a normal case, the five year period provided for under section 2 of the 1982 Act or such greater period as may have been prescribed or such extended period as may be allowed under sections 2 and 4 respectively of the 1982 Act. The effect of this will be that the five year period will in some cases already have expired, but an application for an injunction can still be brought before 1 January, 1994.

John Gore-Grimes

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(Contd.)



**PRIVATE
RESIDENTIAL
PROPERTY AND
CLAUSE 36 OF THE
CONTRACT FOR
SALE**

When preparing the 1988 Edition of the Contract for Sale, the Conveyancing Committee decided to change clause 36 by providing that where planning permission had been granted since January 1st, 1970 a certificate of compliance with planing permission was to be handed over on closing. When drafting this clause it had been intended to apply only to private residential property. In all other transactions special conditions should have been inserted in the contract but in practice this was rarely done.

When examining the contract the Conveyancing Committee decided that it would be preferable for the general conditions to provide that 1st October, 1964 would be the operative date in relation to all planning matters.

When the 1991 Edition of the standard Contract for Sale was produced a practice note was issued (June, 1991 Gazette) which recommended that special conditions should be utilised to implement the recommendations of the Conveyancing Committee or of other Law Society Committees.

The recommendation of the Conveyancing Committee is that where private residential property is a subject matter of a contract for sale it is reasonable for a vendor's solicitor to insert a special condition in the contract providing that no certificate of compliance with planning permission will be handed over in respect of the erection of, or alteration to, a private residential property where the work was completed prior to 31st December 1975 (the appropriate planning permission must be furnished).



Section 22 (7) of the Building Control Act 1990, contains a most helpful amnesty with regard to works executed prior to 13th December, 1989 in contravention of bye-laws.

Section 19 of the Local Government (Planning and Development) Act, 1992 introduced important alleviations in relation to enforcement procedures under the planning legislation. These are dealt with comprehensively in an article by John Gore-Grimes published at page 383 et seq of the Gazette for December, 1992 (Vol. 86 No. 10)¹.

A vendor, anxious to avail of the foregoing amnesty and/or alleviations or any extension thereof and to rely on same, should disclose the non-conforming matter in his Special Conditions (possibly detailing appropriate dates and other relevant data by way of Statutory Declaration) and provide (likewise by Special Condition) for any required consequential relaxation in, or departure from, the application of General Condition 36.

Failure to cover a non-confirming issue as suggested or in some other appropriate manner will mean that the full vigour of General Condition 36 will continue to operate with resultant exposure on foot of the warranties therein specified.

It should be mentioned that the latest (1991) edition of the Society's General Conditions of Sale was published prior to the coming into operation of the Building Control Act, 1990, and its attendant regulations, and same are, therefore, not referred to therein. Accordingly, any party desiring to provide for evidence of compliance with such regulations should cater for same by way of Special Condition.

THE LAW SOCIETY'S STANDARD GENERAL CONDITIONS OF SALE

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*1. Reproduced at page 7.27
hereof*



**PLANNING/
BUILDING
REGULATIONS**

**FORMS OF
CERTIFICATE OF
COMPLIANCE**

The Conveyancing Committee has been working for a considerable period on the preparation of new forms of Certificates of Compliance to replace the form of certificate of compliance with Planning and Building Bye-Laws originally published by the Law Society in the Gazette in November 1978.

Four new forms of certificate of compliance and a memorandum explaining their important features are attached.¹

The RIAI have published a set of five Architects Opinion on Compliance and the RIAI have very kindly agreed to send a full set of these five specimen forms to each firm of solicitors in the Country. With this Newsletter is a memorandum explaining their important features as far as the Law Society are concerned.

The Committee would prefer Solicitors to get certificates of compliance on the Law Society forms and Solicitors should try to negotiate that its forms will be used where possible.

It is suggested that Solicitors should insert the RIAI forms and the attached documentation in their copy of the Conveyancing Handbook. As soon as all the guidelines are issued the Committee will be revising Chapter 7 of the Handbook which deals with planning.

The Committee is aware that Solicitors have tended to exercise caution in relation to the qualifications of persons from whom they will accept certificates of compliance. The reason for this is obvious. If a Solicitor advises a client to accept a Certificate of compliance in relation to a development such as a house or a house extension from a person who is not adequately qualified and a problem arises the Solicitor will almost certainly be liable in negligence on the basis that he should not have accepted or recommended acceptance of the certificate from a person who was not adequately qualified.

When advising a client in a house purchase transaction regarding any material point such as whether a Certificate of Compliance relative to a house or extension is in an acceptable form or given by a person with an acceptable qualification Solicitors usually apply a three-fold test:

1. In the Solicitor's own opinion is the particular matter in order and in accordance with good conveyancing practice?;
2. Will it be acceptable under the rules or guidelines of the Bank or Building Society from whom the client is borrowing?; and,
3. Will it be acceptable to most other Solicitors if the property were to be put up for sale again in the near future?

If the answer to any of these questions is in the negative the Solicitor will normally advise

1. Two of these forms for Full Service and Part Service re Planning and Building Regulations can also be accessed by logging on to the Members' area of the Law Society website www.lawsociety.ie and clicking on Society Committees, Conveyancing, and Precedent Documentation.



his or her client not to accept the situation and to advise the client not to proceed with the transaction unless the particular difficulty is resolved. Solicitors apply somewhat similar tests in relation to commercial property but obviously the requirements are more variable and more stringent in relation to the same.

If a query arises over the qualification of a certifier the Solicitor should take care to make it clear that he or she is not making the decision but is advising the purchaser and that the final decision in the matter of whether to proceed with the purchase or not is the clients. Most purchasers, particularly those borrowing, will tend to be cautious and accept their Solicitor's advice but some will take a commercial judgment and proceed despite what the Solicitor perceives as a problem. Obviously if a client decides to proceed despite the Solicitor's concerns, it is good practice for the Solicitor to confirm the advice in writing. Solicitors should also bear in mind that while the Law Society will assist and advise its members in regard to best practice none of this can absolve the individual solicitor from his responsibility to the client. Each solicitor must look at each individual case on its own merits.

The Committee is carrying out a review of this whole area and will issue further guidelines when the practice in relation to the use of the various certificates has settled down. The Society intends to hold several seminars to explain the certificates and to assist practitioners in dealing with the complicated issues that arise in relation to this increasingly complex area.

The Conveyancing Committee is preparing draft requisitions pending revision of the printed forms and these will be issued as soon as possible.

LAW SOCIETY FORMS OF CERTIFICATE OF COMPLIANCE FOR CONVEYANCING

The Society has prepared four forms of certificate of compliance **which are set out at the end of this newsletter**. These are:-

1. A certificate of compliance with planning permission and building regulations, full service.
2. A certificate of compliance with planning permission and building regulations, part service.
3. A certificate of compliance with planning permission and building bye-laws, full service.
4. A certificate of compliance with planning permission and building bye-laws, part service.

Part Service means that the certifier designs the house, obtains planning permission

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**NOTICE OF
CHANGE OF ADDRESS**

The contact name and details for Arthur Dunne and Des Holmes of the Architects and Surveyors Institute should no longer be used. Practitioners should instead contact:-

*Mr. Kevin Sheridan,
45 Mount Anville Park,
Dublin 14.
Telephone No 01 607 0500
Fax No 01 607 0651
Mobile 'phone 087 222 3985
E-mail address
sheridankc@eircom.net*

*Published in Law Society
Gazette, November 2003*

therefor but does not make periodic inspections in the course of construction and gives a certificate based on one inspection when the house is practically completed.

Full Service means a case where the certifier designs the house, obtains planning permission therefor and makes periodic inspections while the building is being constructed.

Normally a certifier would give a full service in connection with larger developments and part service would only arise in connection with speculative developments.

These forms have been agreed with the following professional bodies and will be used when appropriate by their Architects and Building Surveyors. Enquiries regarding membership can be made to the contact points listed below where a register is kept.

1. The Irish Architects Society. It has its registered offices at 35 Fitzwilliam Place, Dublin 2. Phone Number (01)6688685. The Honourary Secretary is John C. O'Grady, 67 Grosvenor Road, Dublin 6. Phone Number (01)4979990 and (01)4979620. Fax Number (01)4976777.
2. The Incorporated Association of Architects and Surveyors, Irish Branch. It has its office at Hogan House, Hogan Place, Dublin 2. Phone Number (01)6613022, Fax (01)6613130.
3. The Architects and Surveyors Institute. ~~Its Secretary is Arthur Dunne who can be contacted at 7 Woodbine Park, Blackrock, County Dublin Phone Number (01)2694462. Its memberships officer's name is Des Holmes Phone number (01)2862369.~~
4. The Society of Chartered Surveyors, 5, Wilton Place, Dublin 2, Phone Number (01)676 5500, (01)6763276. The General Secretary is Tony Smyth.

The following points should be noted:-

1. There are notes at the end of each form are intended to assist those filling them in.
2. The forms are not sacrosanct and should be adapted to meet the circumstances of any particular case.
3. Compliance of the design with building regulations is just as important as compliance of the construction and, therefore the form of certificate of compliance based on the original agreed form of certificate of compliance originally published in 1978, which did not separate design and construction, would not be appropriate in relation to certification of compliance with building regulations.
4. The Building Control Act and the Regulations thereunder provide for a notice called a Commencement Notice to be given to the Building Control Authority by relevant parties. While Building Control Authorities keep a register for their own use neither the Act nor any of the Regulations give the public a right of access to it and after a lapse of time, there will be extreme difficulty and indeed it may often prove



impossible to establish whether a Commencement Notice was or was not served in relation to any particular development. It is clearly very important for the maintenance of good standards of building that Building Control Authorities monitor building standards. The service of Commencement Notices in every case will be an important ingredient in this process. The maintenance of such standards however and taking a tough line with persons who fail to serve Commencement Notices or breach the Act or Regulations is a matter for the Building Control Authorities. It hardly seems reasonable however that the failure to serve a Commencement Notice should make a particular property unsaleable. The effect of not serving the Commencement Notice in any case is that the person or persons carrying out the development commits an offence but this should not impact on a subsequent owner. In most cases, therefore, it seems reasonable for Solicitors for subsequent owners not to concern themselves unduly about whether a Commencement Notice was served or not. The Committee sees no point in insisting on the production of a copy of the Commencement Notice if such copy is not readily available.

5. The Building Control Act and the Regulations thereunder also impose an obligation on the relevant parties to apply for a Fire Safety Certificate in relation to all new structures other than single dwellings, (not being flats) and in relation to any material developments by way of extension alteration or change of use. The Building Control Regulations provide for an official register to be kept of all applications for Fire Safety Certificates and the decision in relation thereto and whether an appeal was made against the decision. This Register will be available to the public. It is clear that Fire Safety Certificates and their compliance are going to be of vital importance for Conveyancers. The tenor of the Act and the relevant Regulations obviously intend that that a Fire Safety Certificate would be obtained before the development commences. Indeed where a FSC is required in relation to the erection of any building or the material extension or alteration of any building it is an offence to start work without first getting the Fire Safety Certificate. It is already clear that this is not always going to happen, particularly in relation to fitting out buildings where retailers are in a hurry to get a shop open. The Fire Safety Certificate procedure is a paper exercise only. Plans, specification and various particulars are submitted and in due course the Building Control Authority, assuming the submissions are in order, issues the Fire Safety Certificate either subject to conditions or not which in effect says that provided that the development is carried out in accordance with the details submitted, and presumably any conditions thereof, that it complies with the Fire Section of the Building Regulations. Solicitors are already being asked to accept situations where the development is carried out first and the Fire Safety Certificate is obtained later. There does not seem to be any serious problem for a subsequent owner in accepting such a situation because any offence is committed by the party or parties obliged to

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- obtain the Fire Safety Certificate or carrying out the work. Solicitors should take care that the Certificate of Compliance they get deals fully with the situation. It would be particularly important to have clear confirmation in such a case that any conditions of a Fire Safety Certificate had been complied with.
6. The Committee has been advised that it would be almost impossible for an Architect or Engineer who was not involved in the design to certify compliance of a structure or works with the Building Regulations or with a Fire Safety Certificate. Even in the case of fitting out a building therefore it would be extremely unwise for a person to have such work commenced unless an appropriately qualified person whose certificate was likely to be accepted by conveyancers was involved in the design of the work and made sufficient inspections to be able to later issue a certificate of compliance.
 7. Most commercial and industrial buildings have Architects and Engineers involved in the design and making inspections while the building work is being carried out. Most largescale housebuilding is designed by an Architect or Engineer but is not inspected in the course of construction. The Architect or Engineer in due course gives a certificate of compliance based on a single visual inspection at completion. Most once-off houses do not have an Architect or Engineer involved and this and extensions and conversions to private houses is the sector where most problems are likely. Persons borrowing from a Building Society when building a new house are normally required to have an appropriately qualified person involved who will be able to certify that they designed and carried out inspections of the structure at certain stages of construction. It seems likely that there are going to be problems for some people who have houses built, converted or extended without professional guidance and indeed some houses are likely to be unsaleable as a result.
 8. In relation to Building Bye Laws, Solicitors should note the provisions of Section 22 (7) of the Building Control Act, 1990, where an amnesty is granted to work carried out prior to the 13th December 1989, and approval of such works under the Building Bye Laws is deemed to have been granted. Proceedings shall not be taken on the basis of non compliance with Building Bye Laws unless before 1st December 1992 the Local Authority served a notice on the owner stating the works constituted a danger to public health or safety.
 9. The Committee has agreed to monitor the operation of the forms of certificate with the Professional bodies mentioned above and to review them in the light of experience. The use of the two certificates referring to Building Bye-Laws will gradually disappear over the next five years.
 10. It has been decided not to advise Solicitors to ask for confirmation or verification of the existence and adequacy of certifiers Professional indemnity Insurance. The position in this respect will be kept under review.



CONVEYANCING PURPOSES¹

Most Architects in Ireland are members of the Royal Institute of Architects of Ireland. This institute has offices at 8 Merrion Square, Dublin 2, Phone Number (01)6761703. Its General Secretary is John Graby.

The RIAI has recently published five² forms of Architects opinion on compliance. These are:

Form 1. ARCHITECT'S OPINION ON COMPLIANCE WITH BUILDING REGULATIONS

This is a form for use where a professional Architectural service has been provided at the design and construction stage of the relevant building or works.

Form 2. ARCHITECT'S OPINION ON COMPLIANCE WITH BUILDING REGULATIONS

This is a form for use for Buildings or works in connection with which a design only service has been provided and where a fire safety certificate is not required.

Form 3. ARCHITECT'S OPINION ON EXEMPTION FROM BUILDING REGULATIONS

This form is for use for Buildings or works exempt from any need for compliance with building regulations.

Form 4. ARCHITECT'S OPINION ON COMPLIANCE WITH PLANNING PERMISSION AND OR EXEMPTION FROM PLANNING CONTROL

Form 5. ARCHITECT'S OPINION ON COMPLIANCE WITH PLANNING PERMISSION AND/OR BYE-LAW APPROVAL

The following points should be noted regarding these certificates:-

1. Copies can be obtained at a cost of £3 each from the RIAI.
2. The RIAI forms refer at the commencement to its member being a registered member of the RIAI this being a Qualification listed in directive 384/85/EEC (The Architects Directive). The Society feels that this is completely unnecessary and should not be included in certificates by Irish Architects in relation to domestic developments.
3. Form 4 of the RIAI forms deals only with compliance with planning and/or exemption from Planning control. The Society feels that this is a good idea and will probably adopt a similar practice when it revises its own forms.
4. All five forms have attached advice notes as to their completion. In the Society's opinion both the certificates and the advice notes are quite complicated and not very user friendly. Solicitors should check that any certificate they are asked to accept has been completed prima facie in accordance with the advice note. This is not to say that the advice notes should be followed slavishly merely that they should only be

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1. Specimen RIAI forms are set out in the Appendix to this handbook with the kind permission of the RIAI

2. A sixth form - FORM 1A (APARTMENTS) - was later published by the RIAI in March 1997 and a seventh form - FORM 1B (Apartments) was published in 2001



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departed from for good reason. The Society would have preferred the certificates to be given on the certifiers notepaper as is envisaged in the Society's own forms. Also details such as the Architects membership number and the membership stamp are not something that the Society feels are necessary but if Solicitors are accepting an RIAI form of certificate it is probably better to get these details completed. The former will facilitate checking an Architects qualifications. The Society has never recommended that Solicitors advise clients to accept certificates of opinion based solely on the membership of any Institute and has not changed its view in this respect.

5. The original form of Architects certificate of compliance was drafted jointly by the Law Society and the RIAI and was published as an agreed form. The five new forms were prepared by the RIAI. A sub-committee of the Conveyancing Committee agreed on behalf of the Society to recommend that Solicitors accept these forms in appropriate cases. This recommendation relates to the March, 1993 issue of the forms and subsequent forms. Earlier editions contained some printing errors.
6. Form 3; Architects Opinion on Exemption from Building Regulation deals with different situations where relevant buildings or works are exempted from the Buildings Regulations for one reason or another. One of the alternative suggested wordings reads:

“I am advised by the Employer that the Relevant Building or Works were commenced prior to 1st June 1992 and based on this information I am of the opinion that the Relevant Building or Works is exempt form any need for compliance with the Building Regulations.”

The information given to the architect is of course heresay and any solicitor would seek corroboration of the facts from someone who was actually aware of his own knowledge that the work had in fact so commenced. This would normally be confirmed by statutory declaration.



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CERTIFICATE OF COMPLIANCE

I, CERTIFY as follows:-

1. I am an having qualified as such at in the year and I am a Member of The
 2. I have been in independent private practice on my own account since the year or thereabouts
- OR
- I am a Partner in (or a Member of) the above named Firm of in independent private practice.
3. I am the /my said Firm are the retained by to design and make periodic inspection during the course of construction of (insert precise description of buildings or works) known as situate at in the of such building or works being hereinafter referred to as “the Relevant Works”.
 4. The Plans and other particulars on foot of which there were granted or issued the Permission/Approval and the Fire Safety Certificate mentioned respectively in paragraphs 5 and 6 hereunder were prepared by me / by my said Firm.
 5. The Grant of Permission/Approval - Decision Order No. dated the day of , 19 Planning Reference No. - relates to the Relevant Works.
 6. The Fire Safety Certificate (Reference No.) dated the day of , 19 also relates to the Relevant Works.
 7. The Relevant Works and the services thereof have been designed in substantial conformity with the Building Regulations made pursuant to the Building Control Act, 1990.
 8. Commencement Notice of the intention to undertake the Relevant Works was duly given on the day of in accordance with the Building Control Regulations, 1991 and such Notice contained or was accompanied by the information and particulars prescribed by the said Regulations.
 9. I made periodic inspections of the Relevant Works during the construction thereof



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AND in my opinion the construction of the same complies substantially with the Grant of Permission/Approval mentioned in Paragraph 5 hereof and substantially with all the said Building Regulations applicable thereto.

10. No Planning Permission other than that referred to at paragraph 5 aforesaid is pertinent to the Relevant Works.
11. I consulted with the Fire Authority and ascertained its requirements in relation to the Relevant Works AND in my opinion the said requirements have been complied with in the erection thereof.
12. The conditions of the Permission/Approval referred to at paragraph 5 relating to the Estate of which the Relevant Works form part have been substantially complied with in so far as is reasonably possible at this stage of the development of such Estate BUT this paragraph is not to be taken as extending to conditions for the payment of financial contributions or the giving of security for satisfactory completion compliance with which is not within my competence to certify.
13. In the event that the Relevant Works and the site works pertaining thereto have not been built and/or laid out exactly in accordance with the said Permission/Approval any disparity is unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through such Permission/Approval.
14. TAKE NOTE that this Certificate is issued solely with a view to providing evidence for title purposes of the compliance of the Relevant Works with the requirements of Planning Legislation and of the Building Control Act, 1990 and the Regulations thereunder. Except insofar as it relates to compliance with the said requirements and Regulations it is not a report or survey on the physical condition or on the structure of the Relevant Works NOR does it warrant, represent or take into account any of the following matters:-
 - (a) the accuracy of dimensions in general save where arising out of the conditions of the Permission/Approval or the Building Regulations aforesaid
 - (b) the following conditions, compliance with which cannot be established:
 Planning Reference No: Conditions
 - Planning Reference No: Conditions
 - (c) matters in respect of private rights or obligations
 - (d) matters of financial contribution and bonds
 - (e) development of the Relevant Works which may occur after the date of issue of this Certificate.

Dated the day of 19

Signed



NOTES: The original of the foregoing Certificate should be furnished on the Certifier's headed notepaper.

The following advices (referenced to the correspondingly numbered paragraphs above) are for the guidance of the Certifier, and should not be incorporated in or added to the Certificate, of which they do not form part.

5. Insert here details of all Grants of Permission which are pertinent to the Relevant Works. (If there is more than one such Permission or if there is an Approval on foot of an Outline Permission, appropriate adjustments should be made throughout the Certificate).

OR

If the subject matter is exempted development as defined by the Local Government (Planning and Development) Acts, 1963 to 1992, so indicate and state why.

6. Insert here details of all pertinent Fire Safety Certificates

OR

If there was no requirement for the obtaining of a Fire Safety Certificate, so indicate and state why.

- 7/9. Where elements of design, inspection or construction involve others, it may be appropriate to refer to, and attach, Certificates from such others, and to indicate the measure of reliance placed on same.

8. Insert here details of all Commencement Notices

OR

If no Commencement Notice was required to be given, so indicate and state why.

11. This Paragraph should be included where there is a requirement in the Grant of Permission/Approval to consult with the Fire Authority or the Fire Officer.

12. Include this paragraph where the Relevant Works form part of an Estate.

13. Ensure that the Relevant Works accord with the planning unit which is the subject of the Permission/Approval.

14. The list of non-warranted items may be expanded to include structural calculations where there is available a separate Certificate/Report covering same from an Independent Structural Engineer.

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SPECIMEN CERTIFICATE

CERTIFICATE OF COMPLIANCE

- I, certify AS FOLLOWS:
1. I am an having qualified as such at in the year AND I am a member of The
 2. I have been in independent private practice on my own since the year or thereabouts
OR
I am a Partner in (or a Member of) the above named Firm of in independent private practice.
 3. I am the /my said Firm are the retained by to design the (insert precise description of building or works) situate at in the of such building or works being hereinafter referred to as “the Relevant Works”.
 4. The Plans and other particulars on foot of which there was granted the Permission /Approval mentioned in paragraph 5 hereunder were prepared by me/by my said Firm.
OR
I visited the office of the Planning Authority and there inspected the house plans, estate layout plan, specifications and other drawings and documents which were represented by the Planning Authority as those on foot of which the Permission/Approval mentioned at Paragraph 5 hereunder was granted.
 5. The Grant of Permission - Decision Order No. dated the day of , 19 Planning Reference No. relates to the Relevant Works.
 6. The Relevant Works and the services thereof were designed by me/my said Firm in substantial conformity with the Building Regulations made pursuant to the Building Control Act, 1990.
 7. Commencement Notice of the intention to undertake the Relevant Works was duly given on the day of in accordance with the Building Control Regulations, 1991 and such Notice contained or was accompanied by the information and particulars prescribed by the said Regulations.



8. I have inspected the Relevant Works AND in my opinion the construction thereof complies substantially with the Permission/Approval mentioned in paragraph 5 hereof.
9. The position of the Relevant Works and of the site thereof is in substantial compliance with the estate layout presented to the Planning Authority in so far as the estate has been completed.
10. No Planning Permission other than that referred to at paragraph 5 aforesaid is pertinent to the Relevant Works.
11. The conditions of the Permission/Approval referred to at paragraph 5 relating to the Estate of which the Relevant Works form part have been substantially complied with in so far as is reasonably possible at this stage of the development of such Estate BUT this paragraph is not to be taken as extending to conditions for the payment of financial contributions or the giving of security for satisfactory completion compliance with which is not within my competence to certify.
12. In the event that the Relevant Works and the site works pertaining thereto have not been built and/or laid out exactly in accordance with the said Permission/Approval any disparity is unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through such Permission/Approval.
13. I did not supervise the construction of the Relevant Works and my inspection thereof, which was made on the day of 19 was visual only. This inspection did not entail the opening up of works, which had been fully / substantially completed on said date. To the extent that such inspection allowed, and not taking into account matters which were inaccessible to me, I am of the opinion that the Relevant Works have been constructed in substantial compliance with the Building Regulations aforesaid.
14. TAKE NOTE that this certificate is issued solely with a view to providing evidence for title purposes of the compliance of the Relevant Works with the requirements of Planning Legislation and of the Building Control Act, 1990 and the Regulations thereunder. Except insofar as it relates to compliance with the said requirements and Regulations it is not a report or survey on the physical condition or on the structure of the Relevant Works NOR does it warrant, represent or take into account any of the following matters:-
 - (a) the accuracy of dimensions in general save where arising out of the conditions of the Permission/Approval or the Building Regulations aforesaid
 - (b) the following conditions, compliance with which cannot be established:
 Planning Reference No: Conditions
 - Planning Reference No: Conditions
 - (c) matters in respect of private rights or obligations
 - (d) matters of financial contribution and bonds

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- (e) development of the Relevant Works which may occur after the date of the said inspection.

Dated the day of 19

Signed

NOTES: The original of the foregoing Certificate should be furnished on the Certifier's headed notepaper.

The following advices (referenced to the correspondingly numbered paragraphs above) are for the guidance of the Certifier, and should not be incorporated in or added to the Certificate, of which they do not form part.

- 4. If the subject matter is exempted development as defined by the Local Government (Planning and Development) Acts, 1963 to 1992, so indicate and state why.

(Delete Paragraph 5/renumber subsequent Paragraphs).

- 5. Insert here details of all Grants of Permission which are pertinent to the Relevant Works. (If there is more than one such Permission or if there is an Approval on foot of an Outline Permission, appropriate adjustments should be made, throughout the Certificate).

- 6/13. Where elements of design, inspection or construction involve others, it may be appropriate to refer to, and attach, Certificates from such others, and to indicate the measure of reliance placed on same.

- 7. Insert here details of all Commencement Notices.

OR

If no Commencement Notice was required to be given, so indicate and state why.

- 11. Include this Paragraph where the Relevant Works form part of an Estate.
- 12. Ensure that the Relevant Works accord with the planning unit, which is the subject of the Permission/Approval.
- 14. The list of non-warranted items may be expanded to include structural calculations where there is available a separate Certificate/Report covering same from an Independent Structural Engineer.



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SPECIMEN CERTIFICATE

CERTIFICATE OF COMPLIANCE

I, CERTIFY as follows:

1. I am an having qualified as such at in the year AND I am a member of The
 2. I have been in independent private practice on my own account since the year or thereabouts
- OR
- I am a Partner in (or a Member of) the above named Firm of in independent private practice.
3. I am the /my said Firm are the retained by to design and make periodic inspection during the course of construction of (insert precise description of building or works) known as situate at in the of such building or works being hereinafter referred to as “the Relevant Works”.
 4. The Plans and other particulars on foot of which there were granted or issued the Permission/Approval and the Notice of Approval mentioned respectively in paragraphs 5 and 6 hereunder were prepared by me/by my said Firm.
 5. The Grant of Permission/Approval - Decision Order No. dated the day of 19 Planning Reference No. relates to the Relevant Works.
 6. The Notice of Approval under the Building Bye-Laws, which Notice is dated the day of 19 and was issued under Reference Number also relates to the Relevant Works.
 7. The Relevant Works and the services thereof have been designed in substantial conformity with the relevant Building Bye-Laws for the time being in force.
 8. I made periodic inspections of the Relevant Works during the construction thereof AND in my opinion the construction of the same complies substantially with the Permission/Approval mentioned in Paragraph 5 hereof and substantially with all the said Building Bye-Laws applicable thereto.
 9. No Planning Permission other than that referred to at Paragraph 5 aforesaid is



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- pertinent to the Relevant Works.
10. I consulted with the Fire Authority and ascertained requirements in relation to the Relevant Works AND in my opinion the said requirements have been complied with in the erection thereof.
 11. The conditions of the Permission/Approval referred to at Paragraph 5 relating to the Estate of which the Relevant Works form part have been substantially complied with in so far as is reasonably possible at this stage of the development of such Estate BUT this paragraph is not to be taken as extending to conditions for the payment of financial contributions or the giving of security for satisfactory completion compliance with which is not within my competence to certify.
 12. In the event that the Relevant Works and the site works pertaining thereto have not been built and/or laid out exactly in accordance with the said Permission/Approval any disparity is unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through such Permission/Approval.
 13. TAKE NOTE that this Certificate is issued solely with a view to providing evidence for title purposes of the compliance of the Relevant Works with the requirements of Planning Legislation and of the Building Bye Laws. Except insofar as it relates to compliance with the said requirements it is not a report or survey on the physical condition or on the structure of the Relevant Works NOR does it warrant, represent or take into account any of the following matters:-
 - (a) the accuracy of dimensions in general save where arising out of the conditions of the Permission/Approval or the Building Bye-Laws aforesaid
 - (b) the following conditions, compliance with which cannot be established:
 Planning Reference No: Conditions
 - Planning Reference No: Conditions
 - (c) matters in respect of private rights or obligations
 - (d) matters of financial contribution and bonds
 - (e) development of the Relevant Works which may occur after the date of issue of this Certificate

Dated the day of 19

Signed

NOTES: The original of the foregoing Certificate should be furnished on the Certifier's headed notepaper.

The following advices (referenced to the correspondingly numbered paragraphs above) are for the guidance of the Certifier, and should not be incorporated in or added to the Certificate, of which they do not form part.



- 4/5. If the subject matter is exempted development as defined by the Local Government (Planning and Development) Acts, 1963 to 1992, so indicate and state why. Further, so far as relevant, adjust the word of Paragraph 4 to cover the plans and particulars prepared for Bye-Law purposes.
5. Insert here details of all Grants of Permission which are pertinent to the Relevant Works. (If there is more than one such Permission or if there is an Approval on foot of an Outline Permission, appropriate adjustments should be made, throughout the Certificate).
6. Insert here details of all pertinent Notices of Approval. (If there is more than one, appropriate adjustments should be made throughout the certificate)
OR
If there was no requirement to obtain Building Bye-Law Approval, so indicate and state why.
- 7/8. Where elements of design, inspection or construction involve others, it may be appropriate to refer to, and attach, Certificates from such others, and to indicate the measure of reliance placed on same.
10. This Paragraph should be included where there is a requirement in the Grant of Permission/Approval to consult with the Fire Authority or the Fire Officer.
11. Include this Paragraph where the Relevant Works form part of an Estate.
12. Ensure that the Relevant Works accord with the planning unit, which is the subject of the Permission/Approval.
13. The list of non-warranted items may be expanded to include structural calculations where there is available a separate Certificate/Report covering same from an Independent Structural Engineer.

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CERTIFICATE OF COMPLIANCE

- I, CERTIFY as follows:
1. I am an having qualified as such at in the year AND I am a member of The
 2. I have been in independent private practice on my own account since the year or thereabouts
- OR
- I am a Partner in (or a Member of) the above named Firm of in independent private practice.
3. I am the /my said Firm are the retained by to design the (insert precise description of building or works) situate at in the of such building or works being hereinafter referred to as “the Relevant Works”.
 4. (a) The Plans and other particulars on foot of which there was granted the Permission/Approval mentioned in Paragraph 5 (a) hereunder were prepared by me/by my said Firm.
(b) The Relevant Works and the services thereof were designed by me/my said Firm in substantial conformity with the relevant Building Bye-Laws for the time being in force
- OR
- I visited the office of the Planning Authority and there inspected the house plans, estate layout plan, specifications and other drawings and documents which were represented by the Planning Authority as those on foot of which:
- (i) was granted the Permission/Approval mentioned at Paragraph 5 (a) hereof
AND
 - (ii) was issued the Notice of Approval referred to at Paragraph 5 (b) hereof.
5. (a) The Grant of Permission - Decision Order No. dated the day of 19 Planning Reference No relates to the Relevant Works
(b) The Notice of Approval under the Building Bye Laws which Notice is dated the day of 19 and was issued under Reference Number relates to the Relevant works.



6. I have inspected the Relevant Works and in my opinion the construction thereof complies substantially with the Permission/Approval mentioned in Paragraph 5 (a) hereof.
7. The position of the Relevant Works and of the site thereof is in substantial compliance with the estate layout presented to the Planning Authority in so far as the estate has been completed.
8. No Planning Permission other than that referred to at Paragraph 5 (a) aforesaid is pertinent to the Relevant Works.
9. The conditions of the Permission/Approval referred to at Paragraph 5 (a) relating to the Estate of which the Relevant Works form part have been substantially complied with in so far as is reasonably possible at this stage of the development of such Estate BUT this paragraph is not to be taken as extending to conditions for the payment of financial contributions or the giving of security for satisfactory completion compliance with which is not within my competence to certify.
10. In the event that the Relevant Works and the site works pertaining thereto have not been built and/or laid out exactly in accordance with the said Permission/Approval any disparity is unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through such Permission/Approval.
11. I did not supervise the construction of the Relevant Works and my inspection thereof, which was made on the day of 19 was visual only. This inspection did not entail the opening up of works, which had been fully/substantially completed on said date. To the extent that such inspection allowed, and not taking into account matters which were inaccessible to me, I am of the opinion that the Relevant Works have been constructed in substantial compliance with the relevant Building Bye-Laws as stipulated for in the Notice of Approval mentioned in Paragraph 5 (b) hereof.
12. TAKE NOTE that this Certificate is issued solely with a view to providing evidence for title purposes of the compliance of the Relevant Works with the requirements of Planning Legislation and of the Building Bye-Laws. Except insofar as it relates to compliance with the said requirements it is not a report or survey on the physical condition or on the structure of the Relevant Works NOR does it warrant, represent or take into account any of the following matters:-
 - (a) the accuracy of dimensions in general save where arising out of the conditions of the Permission/Approval or out of the Building Bye-Laws aforesaid.
 - (b) the following conditions, compliance with which cannot be established:
 Planning Reference No: Conditions
 - Planning Reference No: Conditions
 - (c) matters in respect of private rights or obligations

**PLANNING/
BUILDING
REGULATIONS**

**FORMS OF
CERTIFICATE OF
COMPLIANCE**

(Contd.)



**PLANNING/
BUILDING
REGULATIONS**

**FORMS OF
CERTIFICATE OF
COMPLIANCE**

(Contd.)

- (d) matters of financial contribution and bonds
- (e) development of the Relevant Works which may occur after the date of the said inspection

Dated the day of 19

Signed

NOTES: The original of the foregoing Certificate should be furnished on the Certifier's headed notepaper. The following advices (referenced to the correspondingly numbered paragraphs above) are for the guidance of the Certifier, and should not be incorporated in or added to the Certificate, of which they do not form part.

- 4. If the subject matter is exempted development as defined by the Local Government (Planning and Development) Acts, 1963 to 1992, so indicate and state why, and make consequential adjustment in Paragraphs.
- 5. (a) Insert here details of all Grants of Permission which are pertinent to the Relevant Works. (If there is more than one such Permission or if there is an Approval on foot of an Outline Permission, appropriate adjustments should be made, throughout the Certificate).
- (b) Insert here details of all pertinent Notices of Approval.

OR

If there was no requirement to obtain Building Bye Law Approval, so indicate and state why.

- 4(b) Where elements of design, inspection or construction involve others, it & 11. may be appropriate to refer to, and attach, Certificates from such others, and to indicate the measure of reliance placed on same.
- 9. Include this Paragraph where the Relevant Works form part of an Estate.
- 10. Ensure that the Relevant Works accord with the planning unit, which is the subject of the Permission/Approval.
- 12. The list of non-warranted items may be expanded to include structural calculations where there is available a separate Report covering same from an Independent Structural Engineer.

UPDATE:

- 1. See also Practice Notice at page 7.61 hereof
- 2. See also Practice Notice at page 7.62 hereof



The Conveyancing Committee has investigated the guidelines to be adopted by solicitors in advising clients on the qualification of persons offering Certificates of Compliance with planning permission and, where appropriate, building bye-laws and building regulations.

The Committee is satisfied that the current practice is to accept Certificates of Compliance from chartered or civil engineers, persons with a degree in architecture, or persons (calling themselves architects or engineers) in professional practice on their own account either solely or in partnership for a period of at least ten years.

The Committee has recently decided that it is reasonable for solicitors to accept Certificates of Compliance from qualified building surveyors. This is a professional qualification at degree level.

The Committee has also considered whether Certificates of Compliance should continue in the old form of a “certificate” or whether they should accept “Certificates of Opinion” as to substantial compliance, which some of the main architectural bodies feel is more appropriate. Having obtained the opinion of Senior Counsel the Committee has decided that the nomenclature is not materially significant and that it is reasonable for solicitors to accept either “Certificates” or “Certificates of Opinion”.

The EC Directive 85/384/EEC (Council Directive of 10th of June 1985) which is sometimes hereunder referred to as “The Architects’ Directive” deals with the mutual recognition of diplomas, certificates and qualifications in architecture. It is important to understand that this Directive was not intended to regulate the practice of architecture in Member States, but rather to facilitate the free movement of architects between them. The Irish qualifications recognised in the Directive are set out below.

The Minister for the Environment, Mr. Smith, was asked in the Dail on 6th of April 1993 when he intended to establish a review system for architects whose work had traditionally been accepted in this country, but who were not covered by the EC Architect’s Directive; what form the review would take; and whether he would ensure that such architects would be admitted to the list of architects being prepared by him.

The Minister said in reply:

“A proposal has been submitted to the EC Commission to amend the Architects Directive in order to bring under its protection persons whose established right to practice, and consequently their right to the protection of the Directive, was overlooked when the Directive was being negotiated. The proposed amendment would allow for the issue of a certificate by the Minister for the Environment that

WHO SHOULD CERTIFY COMPLIANCE?



WHO SHOULD CERTIFY COMPLIANCE?

(Contd.)

the person concerned had over a period of at least five years immediately prior to the date of coming into force of the Directive pursued architectural activities, the nature and importance of which in the opinion of the Minister gave that person an established right to pursue those activities. The number of persons involved would be relatively small”.

“Pending amendment of the Directive, and in order to protect their position in the meantime, a list will now be prepared of those persons who would have the requisite experience to qualify for certification under the proposed amendment. To this end, I have already decided that persons with the requisite length of experience who, on the date of coming into force of the Directive, were members of the Irish Architects Society or were corporate architect members of the Irish Branch of the Architects and Surveyors Institute or of the Irish Branch of the Incorporated Association of Architects and Surveyors would, by virtue of such membership, have been included in the Directive had their position not been overlooked and that these would, accordingly, qualify for certification. The claims of others to have the necessary experience to qualify for certification under the amended Directive will be reviewed on an individual basis. Details of the review procedure have not yet been finalised”.

The following is the text of the proposed Amendment to the Architects Directive:

To add the following additional qualification to Article 11 (f) of the Directive.

“a certificate issued by the competent authorities to the effect that a person, who, on the date of entry into force of this Directive, had, over a period of at least five years immediately prior to that date, pursued architectural activities the nature and importance of which in the opinion of the competent authorities give that person an established right to pursue those activities”.

The Committee understands that the Department of the Environment is preparing a list of those persons who would qualify for protection under the Directive, should the amendment be accepted. In the meantime, the Department has advised financial institutions and local authorities that architects whose work has traditionally been accepted should not be prevented from continuing to practice by any form of discriminatory action. The Department has given similar advice to the Law Society and this seems reasonable to the Committee.

The qualifications recognised in Ireland by the Architects' Directive are a Degree of Bachelor of Architecture awarded by the National University of Ireland (B. Arch.) (NUI), the Diploma of Degree standard in Architecture awarded by the College of Technology, Bolton Street, Dublin (Dipl. Arch.), the Certificate of Associateship of the Royal Institute



of Architects of Ireland (ARIAI) and the Certificate of Membership of the Royal Institute of the Architects of Ireland (MRIA).

It has been suggested by various professional bodies that Solicitors be advised automatically to accept certificates from their members on the sole basis of such membership. Some of these bodies have student members and technician members, and the Committee feels that relying solely on membership can only lead to confusion. This suggestion was accordingly rejected.

In future the Committee feels that it is reasonable for solicitors to accept Certificates of Compliance or Certificates of Opinion from:-

- (a) Persons with a degree or a diploma of degree standard in Architecture.
- (b) Persons who have been in practice as Architects on their own account for ten years. This would include persons certified by or included on a list prepared by the Minister for the Environment as persons who in the Minister's opinion are appropriately qualified as described supra.
- (c) Chartered Engineers.
- (d) Persons with a degree in Civil Engineering.
- (e) Persons who have been in practice on their own account as Engineers in the construction industry for ten years.
- (f) Qualified Building Surveyors.
- (g) Persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the Architects' Directive.

The Committee has consistently advised solicitors to exercise caution in relation to the qualifications of persons from whom they will recommend acceptance of Certificates of Compliance. The reason for this is obvious. The Committee takes the view that if a solicitor advises a client to accept a Certificate of Compliance in relation to a development (such as a house or a house extension) from a person who is not adequately qualified, and a problem arises, the solicitor will almost certainly be sued for negligence on the basis that he or she should not have accepted the Certificate from a person who was not adequately qualified.

When advising a client in a house purchase transaction regarding any material point such as whether a Certificate of Compliance relative to a house or extension is in an acceptable form, or is given by a person with an acceptable qualification, solicitors usually apply a three-fold test:

1. In the solicitor's own opinion, is the particular matter in order and in accordance with good conveyancing practice?
2. Will it be acceptable under the rules or guidelines of the Bank of Building Society from whom the client is borrowing? and,

WHO SHOULD CERTIFY COMPLIANCE?

(Contd.)

**WHO SHOULD
CERTIFY
COMPLIANCE?**

(Contd.)

3. Will it be acceptable to most other solicitors if the property were to be put up for sale again in the near future?

If the answer to any of these questions is in the negative the solicitor will normally advise his or her client not to accept the situation and advise the client not to proceed with the transaction unless the difficulty is resolved.

If a query arises over the qualification of a person giving a Certificate the solicitor should take care to make it clear that he or she is not making the decision but is advising the purchaser, and that the final decision as to whether or not to proceed with the purchase is the client's responsibility. Most purchasers, particularly those borrowing, will tend to be cautious and accept their solicitor's advice, but some will take a commercial judgment and proceed despite what the solicitor perceives as a problem. Obviously if a client decides to proceed despite the solicitor's concerns, it is good practice for the solicitor to confirm the advice in writing. Solicitors should also bear in mind that while the Law Society will assist and advise its members in regard to best practice, none of this can absolve the individual solicitor from his or her responsibility to the client. Each solicitor must look at each individual case on its own merits.

The Committee recognises that there may be exceptional cases involving persons practicing as architects whose competence is recognised in their own locality and whose certificates may be generally acceptable in that locality, even though their qualifications or experience fail to meet one or some of the criteria mentioned above. Having said that, solicitors are cautioned that in a resale it may be difficult to persuade potential purchasers to accept any departure from the foregoing guidelines.

26th October 1994

r.o.d.



REQUISITIONS IN RESPECT OF THE BUILDING CONTROL ACT

BUILDING CONTROL

In this part of the Requisitions ('the Regulations' means the Building Control Act, 1990, the Building Control Regulations 1991 and the Building Regulations 1991 and any extension, amendment, modification or re-enactment thereof and any other regulations order or instrument made under The Building Control Act, 1990 and for the time being in force).

1. Is the property, or any part thereof affected by any of the provisions of the Regulations?
2. If it is claimed that the Property is not affected by the Regulations please state why. Evidence by way of a Statutory Declaration of a competent person may be required to verify the reply.
- 3.1 Confirm that a Commencement Notice was given to the Building Control Authority in respect of the Property, and furnish a copy of the same.
- 3.2 If the Property is affected by the Regulations please furnish now a Certificate of Compliance by a competent person confirming that all necessary requirements of the Regulations have been met.
- 4.1 In particular, if the Property is such that a Fire Safety Certificate is one of the requirements of the Regulations, a copy of the Fire Safety Certificate should be attached to and referred to in the Certificate of Compliance which should confirm that the works to the Property have been carried out in accordance with the drawing and other particulars on foot of which the Fire Safety Certificate was obtained and with any conditions of the Fire Safety Certificate.
- 4.2 If a Fire Safety Certificate was required in respect of the Property please confirm that no appeal was made by the applicant for such certificate against any of the conditions imposed by the Building Control Authority in such Fire Safety Certificate.
5. Has any Enforcement Notice under Section 8 of the Building Control Act been served?
If so, furnish a copy of the Notice, compliance with which must be evidenced by a Certificate of Compliance made by a competent person.
6. If any application has been made to the District Court under Section 9 of the Building Control Act, please furnish details of the result of such application.
7. Has any application been made to the High Court under Section 12 of the Building Control Act? If so, please furnish a copy of any Order made by the Court and evidence of compliance with such order by a Certificate of a competent person.

Multi-Storey Buildings

1. (a) Is the property or any part of it a multi-storey building, or connected to a

PRE-CONTRACT REQUISITIONS AND REQUISITIONS ON TITLE

BUILDING CONTROL ACT 1990, BUILDING CONTROL REGULATIONS 1991, & BUILDING REGULATIONS 1991



**PRE-CONTRACT
REQUISITIONS AND
REQUISITIONS ON
TITLE**

**BUILDING CONTROL
ACT 1990,
BUILDING CONTROL
REGULATIONS 1991,
& BUILDING
REGULATIONS 1991**

(Contd.)

multi-storey building, within the meaning of the Local Government (Multi-Storey Buildings) Act 1988 or

- (b) Does it form part of a development on which there is a multi-storey building with which it shares a common management company?

If so, is the building one whose construction was governed by the Regulations (as defined under the heading "Building Control")? If so, then Requisitions 3.1 to 6 inclusive under such heading must be answered.

If not, then (follow the text from the printed requisitions).

PRE-CONTRACT REQUISITIONS AND NOTES THEREON

BUILDING CONTROL

In this part of the Requisitions ("the Regulations" means the Building Control Act, 1990, the Building Control Regulations 1991 and the Building Regulations 1991 and any extension, amendment, modification or re-enactment thereof and any other regulations order or instrument made thereunder and for the time being in force.)

1. Is the Property, or any part thereof affected by any of the provisions of the Regulations?
2. If it is claimed that the Property is not affected by the Regulations please state why. Evidence by way of a Statutory Declaration of a competent person may be required to verify the reply.
- 3.1 If the Property is affected by the Regulations please furnish a Certificate of Compliance by a competent person confirming that all necessary requirements of the Regulations have been met.
- 3.2 Confirm that a Commencement Notice was given to the Building Control Authority in respect of the Property, and furnish a copy of the same. (See NOTE 1).
- 4.1 In particular, if the Property is such that a Fire Safety Certificate is one of the requirements of the Regulations, a copy of the Fire Safety Certificate should be attached to and referred to in the Certificate of Compliance which should confirm that the works to the Property have been carried out in accordance with the drawing and other particulars on foot of which the Fire Safety Certificate was obtained and with any conditions of the Fire Safety Certificate.
- 4.2 If a Fire Safety Certificate was required in respect of the Property please confirm that no appeal was made by the applicant for such certificate against any of the conditions imposed by the Building Control Authority in such Fire Safety Certificate.
- 4.3 If the Property was developed under the Regulations and if a Fire Safety Certificate or Certificates was required please furnish a copy of the application or applications for the Fire Safety Certificate(s) and all drawings and other particulars on foot of which such Certificate(s) issued.



If the Property forms part of a development which is one such as a block of apartments where the reversion will be transferred to a management company, upon the sale of the last apartment, it will be sufficient to confirm that the application(s), drawings and other particulars as aforesaid have been made available to the management company and will be handed over to it upon the conveyance of the common areas and reversion to it. (See NOTE 2.)

5. Has any Enforcement Notice under Section 8 of the Building Control Act been served?
If so, furnish a copy of the Notice, compliance with which must be evidenced by a Certificate of Compliance made by a competent person.
6. If any application has been made to the District Court under Section 9 of the Building Control Act, please furnish details of the result of such application.
7. Has any application been made to the High Court under section 12 of the Building Control Act? If so, please furnish a copy of any Order made by the Court and evidence of any necessary compliance with such order by a Certificate of a competent person.

Multi-Storey Buildings

- 1 (a) Is the property or any part of it a multi-storey building, or connected to a multi-storey building, within the meaning of the Local Government (Multi-Storey Buildings) Act 1988 or
- (b) Does it form part of a development on which there is a multi-storey building with which it shares a common management company?
If so, was the building one whose construction was governed by the Regulations (as defined under the heading "Building Control")? If so, then Requisition 3.1 to 6 inclusive under such heading must be answered.
If not, then (follow the text from the printed requisitions).

NOTE 1

While Building Control Authorities keep a register for their own use the regulations do not give the public a right of access to it and after a lapse of time it may prove difficult and perhaps impossible to establish whether a Commencement Notice was or was not served in relation to a particular development. It is clearly very important for the maintenance of good standards of building that Building Control Authorities monitor building standards. The purpose of the Commencement Notice is to put them on notice that a development is commencing so that they can monitor a development in such a manner as they see fit. There are two points that arise in relation to a development if no Commencement Notice was served.

- (a) The first is whether there is any downside for a subsequent owner from a conveyancing point of view. Carrying out a development without serving a

PRE-CONTRACT REQUISITIONS AND REQUISITIONS ON TITLE

BUILDING CONTROL ACT 1990, BUILDING CONTROL REGULATIONS 1991, & BUILDING REGULATIONS 1991

(Contd.)



**PRE-CONTRACT
REQUISITIONS AND
REQUISITIONS ON
TITLE**

**BUILDING CONTROL
ACT 1990,
BUILDING CONTROL
REGULATIONS 1991,
& BUILDING
REGULATIONS 1991**

(Contd.)

Commencement Notice is an offence and leaves the parties involved liable to prosecution. It will not impact otherwise on a subsequent owner. Solicitors should ask if a Commencement Notice was served and for a copy thereof. We do not feel that Solicitors should insist on a copy if it is not readily available. The Conveyancing Committee has already decided that solicitors for subsequent owners should not concern themselves unduly about whether a Commencement Notice was served or not or whether a copy of the Commencement Notice is available or not.

- (b) The second point which arises from the non service of a Commencement Notice is that it may have been a deliberate omission. In most cases it will turn out to be a mere oversight and in some of those cases the Building Control Authority will have carried out the usual foundation inspections by arrangement with the contractor. There may be cases however, where a contractor or developer wants to carry out work and due to something about the manner in which it is proposed to carry it out, does not wish to have the Building Control Authority know about it and be in a position to see what is done and accordingly, does not serve a Commencement Notice. This scenario is unlikely to arise if there is an architect or structural engineer involved in the development and if it arises at all is more likely to happen where a builder is operating without the assistance of professionals.

What if anything can a solicitor do? In any case where you establish that a Commencement Notice has not been served the circumstances should be investigated. If it seems to have been a genuine oversight and this is confirmed by a reputable professional or if building control was aware of the development and carried out inspections no further action should arise. If there is any reason for disquiet as to whether the omission to serve a Commencement Notice was deliberate or not you should recommend to your client to seek the advice of an architect or structural engineer to consider whether any further surveys are necessary and possibly in an extreme case, to review the decision to proceed with the purchase at all.

NOTE 2

While conveyancing practice is to seek a certificate from a competent person of compliance with a Fire Safety Certificate it will be important also for a property owner to be able to know what precise work was the subject of the Fire Safety Certificate. This is not a conveyancing point and is really a commercial matter for the property owner.

In situations where the property being purchased is an apartment there should be no need for the individual apartment owners to have a copy of the application so long as the management company has it.



The same would normally apply to commercial developments such as a shopping centre. Ordinarily, in relation to shopping centres there would be one significant difference which is that a developer will normally get a Fire Safety Certificate in relation to the centre as a whole and in particular its common areas. The individual purchasers or lessees would normally take a shop unit in its unfinished state (called shell finish) and would have to apply for and get a Fire Safety Certificate for the fit out of same.

PRE-CONTRACT REQUISITIONS AND REQUISITIONS ON TITLE

(Contd.)

*Published in The Law
Society News, November
1994*

1. The five forms¹ of Opinion of Compliance published by the RIAI are agreed with the Law Society for use in appropriate circumstances. A sixth form of Opinion on Compliance for apartments is in the course of preparation².
2. The RIAI and the Law Society agree that it would be desirable to have only one set of standard Forms of Opinion or Certificate and both will co-operate with the objective of producing such a set of Forms and getting them agreed with all appropriate parties. The RIAI will agree to its forms becoming the basis for such an agreed set.
3. The Law Society will advise its members to try and clarify at the commencement of a transaction what form of Certificate of Opinion on Compliance will be forthcoming. The Law Society agrees that in dealing with RIAI members it will advise its members to accept the appropriate RIAI form. RIAI members may occasionally be asked to sign the forms of Certificate of Opinion on Compliance published by the Law Society but the Law Society agrees that solicitors should not press RIAI members to sign the Law Society forms. Occasionally the RIAI forms will not meet the particular circumstances of a case and may have to be adapted. Care should be taken by RIAI members to make sure that any altered form is acceptable to their Professional Indemnity Insurers.
4. The RIAI and the Law Society have agreed to the publication of a factual statement of qualifications for membership of the RIAI, the Irish Architects Society, the Incorporated Association of Architects and Surveyors, and the Architects and Surveyors Institute. The Law Society will contact these bodies with a view to seeing if there is a consensus in favour of agreeing such a statement. When this has been done the Law Society and the RIAI will review the position.

LAW SOCIETY/ RIAI - AGREED STATEMENT

PLANNING PERMISSION - OPINIONS ON COMPLIANCE

*Published in Law Society
Gazette, March 1995*

1. Specimen RIAI forms are set out in the Appendix to this Handbook with the kind permission of the RIAI

2. This sixth form - FORM 1A (APARTMENTS) - was later published in March 1997 and a seventh form - FORM 1B (Apartments) was published in 2001



**ARCHITECTS'
CERTIFICATES OF
OPINION ON
COMPLIANCE:
RELIANCE ON
CONFIRMATIONS
FROM OTHER
PROFESSIONALS**

The Royal Institute of Architects of Ireland (RIAI) Form 1 is an architect's Opinion on Compliance with Building Regulations for use where a professional architectural service has been provided at the design and construction stage of the relevant building works.

This form envisages the architect giving an overall certification of compliance, but relying very much on having got confirmations from other professionals such as structural engineers, fire engineers, mechanical and electrical engineers etc. in relation to the elements of the relevant building or works which those persons designed. The Opinion relies solely on these confirmations in respect of such elements.

The Conveyancing Committee has received many queries as to whether solicitors should get copies of these confirmations and whether it is essential that the confirmations are in writing. Many of the confirmations such as those used by the structural engineers and mechanical and electrical engineers are on a standard form prepared by the Association of Consulting Engineers of Ireland. These contain certain important limitations. It is not possible for a purchaser's solicitor to advise their client properly without sight of these confirmations, particularly if there are extra exclusions or limitations to be considered.

The Committee is aware that certain architects and solicitors are refusing to furnish copies of the confirmations in the mistaken belief that this is the correct practice.

The Committee is unanimously of the view that it is in the interests of both the architects, the engineers who furnish the confirmations and of the solicitors that copies of the confirmations be obtained, kept with the Opinion and furnished to purchaser's solicitor.

Apartment developments

The content and format of an architect's Opinion on Compliance of an apartment dwelling with Building Regulations (where a full professional service has not been provided) has been agreed following prolonged discussions between representatives of the RIAI and the Law Society. The outcome of these discussions has been embodied in RIAI Form 1A (March 1997 issue) which is already in circulation. This, like RIAI Form 1 (above) relies on confirmations from other disciplines and providers, and it is vital that all such confirmations be furnished and retained with the Form 1A, the above recommendations being at last equally applicable thereto as to Form 1.

The RIAI has confirmed that it agrees with the foregoing advices.



The Conveyancing Committee receives queries as to the need for a Certificate of Compliance with a permission to retain a structure, particularly when there are no conditions in the grant of permission to retain. Practitioners assume that the planning authority inspects the structure being retained before granting permission and that a permission to retain therefore is granted for the structure as it exists.

In fact, planning authorities deal with planning applications, including applications to retain an existing structure, on the basis of drawings and specifications submitted with the application. The planners rarely, if ever, inspect a structure.

In the circumstances, the Committee takes the view that it is reasonable for a solicitor for a purchaser to ask for confirmation by way of a letter of Opinion by a suitably qualified person that the drawings submitted for the retention application correctly show the actual structure for which permission to retain has been applied for.

If there are conditions in the grant of permission to retain, the certifier should go on to deal with these in the usual way.

No Certificate of Compliance should be required where the permission relates only to the retention of a (changed) use.

RETENTION PERMISSION

CERTIFICATE OF COMPLIANCE NEEDED?



SAFETY FILES

The Regulations on foot of which Safety Files must be prepared and kept are the Safety, Health and Welfare at Work (Construction) Regulations 1995 ('the Regulations') which came into effect on 1 March 1996. The Regulations were made on foot of the Safety Health and Welfare at Work Act, 1989 ('the Act'). The words Contractor, Client, Project Supervisor, and Safety File are defined in the Regulations and are intended to have the same meaning in these guidelines where used with capital letters. It should be borne in mind that 'Construction Work' under the Regulations means nearly everything you could think of in relation to a building – conversion, fitting-out, repair, commissioning, upkeep, redecoration etc. 'Structure' is equally widely defined.

These guidelines ignore any possible direct operation of the relevant EU Directive and concentrate solely on the Regulations as introduced in Ireland. There are subtle differences between the 1992 Directive and the Regulations which may give rise to legal argument in the future, but while a commentary on this might be very interesting it is not really appropriate for this document.

A Client who commences a Project after 1 March 1996 is required by the Regulations to appoint a Project Supervisor for the design stage and a Project Supervisor for the construction stage. There is a duty to appoint a competent person as Project Supervisor. Where more than one contractor is engaged in a Project, the Project Supervisor (construction stage) must have a Safety File prepared and on completion of the project must give this to the Client. The Client must keep the Safety File available for inspection by any person who may need information in this Safety File for the purpose of that person complying with duties imposed on them under the relevant statutory provisions. This includes the Act and/or Regulations on Health and Safety made under the Act or the European Communities Act, 1972. The obligation to keep the Safety File is open ended and is not just to keep it for a particular period.

The Safety File is a reference document and must contain relevant health and safety information to be taken into account during any subsequent construction work following completion of the Project. The Safety File is akin to a safety maintenance manual. The intention is that the Client would be given the Safety File on completion of the Project and would arrange to carefully 'keep' it and would transfer the original Safety File to any future purchaser of the completed Project. It is envisaged that the Safety File would be updated as a building is altered but of course the work on the building (such as a fit-out or an extension) may itself be a Project and a new Safety File may have to be prepared for it. It may be thought that any new Safety File which involves the alteration of a building should be retained by the same person who is 'keeping' the Safety File for the original construction of the building. The Regulations do not deal with this. If the new Project is a 'fit-out' and is carried out by a tenant, the owner of a building will be obliged by the Regulations to 'keep' the Safety File prepared in connection



with the construction of the building while the tenant will be obliged by the Regulations to 'keep' the Safety File prepared in connection with the fit-out of the same building.

The Client can give the Safety File in respect of a Project to a successor in title whereby the successor is statutorily obliged to 'keep' the Safety File available in the same way as the Client was. Giving the Safety File to a successor in title discharges a client from the obligation to 'keep' the Safety File available. The Client is not obliged to give the Safety File to a successor in title. That may be what was intended but the Regulations do not require this. Neither it seems is a successor in title obliged to accept delivery of the Safety File. We would expect purchasers to insist on getting the Safety File because it will be an asset which will make it easier to alter the building or its services, and will facilitate the purchaser in fulfilling its duties under the relevant statutory provisions.

There is of course an indirect 'encouragement' to a Client to hand over the Safety File to a successor in title. The Client is obliged to 'keep' the Safety File available forever whereas if it is given to the successor in title the obligation to 'keep' the Safety File is discharged. It remains to be seen how effective this will be where the person charged with 'keeping' the Safety File is a company which has got into financial difficulties and the Safety File cannot be found when the building is being sold.

Sanctions

Where the Act or the Regulations impose a requirement on any person (whether an individual or a body corporate), failure to comply with that requirement leaves the person open to prosecution by the Health and Safety Authority.

A person convicted on foot of a summary prosecution in the District Court can be fined up to £1,500. On indictment there is no limit to the fine and there is power to impose imprisonment of up to two years in certain circumstances.

Section 48(19) of the Act states that where an offence by a Corporate Body 'is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of the director, manager, secretary or other similar officer ... he (or she) as well as the Body Corporate shall be guilty of that offence'.

The Act obliges all employers to identify the hazards and assess the risks to safety and health in the workplace as part of a Safety Statement which they are obliged to prepare. Section 12 of the Act also requires that the Directors' Report under section 158 of the Companies Act, 1963 must contain an evaluation of the extent to which the policy in a Safety Statement has been fulfilled during the period of time covered by the Report. The detailed provisions included in the Regulations under the Act clarifies the obligation on the directors, and

SAFETY FILES

(Contd.)

**SAFETY FILES**

(Contd.)

directors should note that, apart from criminal prosecution for non-compliance with the Act or Regulations, there is also the possibility of disqualification under the Companies Act, 1990 for breaches of health and safety laws. A director has been disqualified under similar UK legislation.

In our opinion, developers and builders who neglect to prepare and keep a Safety File for a Project are unlikely to receive sympathetic treatment by the courts.

A typical Safety File will contain:

1. The most recent revisions of construction drawings of the structure or structures
2. Specification detailing methods of construction
3. Specification detailing fire safety features
4. As built drawings showing services in the structure or structures including wiring, plumbing, gas etc
5. As built drawings of the layout of services outside the structures including wiring, plumbing, gas etc
6. Any information available on materials used which are known to be hazardous
7. Instructions for routine maintenance especially where it may require particular safety measures
8. Maintenance manuals for all plant and equipment installed
9. Names and addresses of suppliers of plant and equipment installed
10. Names and addresses of contractors or suppliers of various important elements in structures (such as windows, balconies, handrails, fire alarm etc).

Solicitors should bear in mind that a typical Safety File for a substantial office building may be large enough to fill a large suitcase and may present certain logistical problems if the Safety File is being handed over on the closing of a sale. It is important however that solicitors ensure that the handover of the Safety File is dealt with correctly and that the handover is documented.

The arrangements envisaged by the Regulations are fine in relation to a self-contained commercial property such as an office block or factory building and in relation to those developments the Regulations are working quite satisfactorily. This is the first attempt to set out guidelines for practitioners.

New commercial buildings

A solicitor acting in connection with a new commercial building should:

1. Check if the Regulations apply
2. If they do, should make sure that a Safety File is going to be available to be handed over to the purchaser



3. Try to arrange to have the Safety File handed over by the 'Client' to the purchaser on the completion of the purchase. Make sure that a documentary record is made of the fact that the Safety File was handed over so as to be able to establish this as a fact should it ever become an issue; advise the purchaser as to the obligations to keep the Safety File available and to ensure that it is updated to reflect all relevant alterations to the building. A specimen document to record the handover is set out in the appendix. This document envisages a handover from the Project Supervisor (construction stage) to the Client and then on to a purchaser at one meeting. The handover may take place on separate occasions and the specimen can be easily adapted to meet the particular circumstances. Some solicitors may prefer to deal with each handover separately
4. If the entire building is being leased include provisions in the lease obliging the lessee to:
 - a) provide updates for the Safety File in relation to all relevant alterations to the building – including fit-outs
 - b) provide a duplicate copy of a Safety File in respect of any work which is itself a Project carried out to the building by the lessee in respect of which the lessee is obliged to keep the Safety File
 - c) hand over any copy Safety File given to the lessee by the owner together with any updates to the same and any original Safety File in respect of any Project carried out to the building by the lessee to a successor in title – ie, on a surrender, assignment or forfeiture of the lessee's interest in the lease

A solicitor acting for a lessee may seek to amend the lease to oblige the lessor to make the Safety File available when required. It can do no harm to include this provision but this is not really necessary as a lessor is obliged by the Regulations to make the Safety File available to anyone who needs information from it. A lessor may deliver the Safety File to a lessee on the granting of a lease although it is felt that most owners will not do this because of the risk of it not being available when the owner needs it in connection with a sale. For example, if the lessee is a company and goes into liquidation it may be difficult for an owner to get anyone to take an interest in delivering back the Safety File. If, however, a lessor does deliver the Safety File to a lessee it would seem reasonable to provide in the lease, or in a separate undertaking for safe custody, an obligation on the lessee to update the Safety File to reflect all relevant alterations to the building, to 'keep' it safe and to make it available to the lessor on any change of ownership so that the lessor can hand it over to a successor in title thereby discharging the obligation to 'keep' the Safety File. It should also oblige the lessee to make the Safety File available to any other person entitled to information from the file for the purpose of complying with duties imposed under the Regulations. It is unlikely that a lessee would be prepared to keep a lessor indemnified against any failure to do any of this. Also it should be borne in mind that delegating the task to the

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lessee (on the basis that it may perhaps be the logical person to look after the Safety File) does not remove the obligation from the person charged with the responsibility for the time being to 'keep' the Safety File.

5. Where a number of leases are being made (for example in the case of a shopping centre) it will probably be impractical to give a copy of the Safety File to each lessee and the suggested provisions to be included in the leases will require to be altered accordingly.

A solicitor acting for a vendor of a new building should immediately check whether the vendor wishes to deliver the Safety File to the purchaser and if so that he will be able to deal with any of the above requirements which are relevant and should provide in the contract that the purchaser will accept delivery of the Safety File.

New apartment block

The usual contract providing for the sale of the freehold of the entire development and the common areas when the last apartment is sold should include a provision that a Safety File will be handed over to the management company on completion of the sale. It should go on to impose an obligation on the management company to accept delivery of the Safety File. At contract stage solicitors for purchasers should ask for confirmation that a Safety File is being kept and will be handed over to the management company in due course. The location of the Safety File at the date of completion is not important because during the course of construction it would normally be kept in a site office which will usually disappear when the building work is finished. Solicitors should however insist on being told who the Client is and where the Safety File will be kept by the Client until it is handed over to the management company. The Client will normally be the developer.

New housing

In our opinion it is clear that the development of one hundred houses is one 'Project' within the meaning of the Regulations. It has been argued that a development can comprise a number of different 'Projects'. We agree that this may be possible in some situations but we do not accept that it could relate to each house in a housing development.

Take for example a typical house building project. A house builder we will call Surebild Limited is involved in the development of a site by building 100 houses thereon and selling the same. In our opinion, the Project is the overall development – that is, the building of 100 houses and their infrastructure. The Client is Surebild Limited and the Project Supervisor it is obliged to appoint will prepare the Safety File and give it to Surebild Limited which is obliged by the Regulations to 'keep' the Safety File available. A typical housing project (of 100 houses) would include the following:

1. The house plots which will be individually conveyed to house purchasers
2. Roads, footpaths, grass margins
3. Public open space.



The public open space is often just dedicated to the public with the freehold remaining with the developer. The roads, footpaths, kerbs and grass margins are 'taken in charge' by the local authority and the freehold interest often remains in the developer also. There is therefore no 'successor in title' of the entire Project.

We can see no basis on which a purchaser of one house of the 100 houses forming part of the Project is entitled to a copy of the Safety File nor is Surebild Limited obliged to give it to a house purchaser. A house purchaser should clearly be entitled to see the file that Surebild Limited is obliged to keep provided that they 'need information' from the Safety File.

How can Surebild Limited discharge its liability to 'keep' the Safety File by giving it to someone else? Clearly if it gave every house purchaser a copy of the entire file and also gave a copy to the local authority as successor in title to the roads, footpaths, grass margins and open spaces it should be regarded as having discharged its obligations. This may not be practical. It certainly should be considered, because the obligation to 'keep' a proper Safety File and have it available for inspection is quite unattractive to a developer (and perhaps also to the other parties concerned) on a long-term basis.

From a common-sense point of view one could argue that a house purchaser should get a 'mini-safety file' containing a copy of all the relevant information regarding his own house and so much of the roads and common areas as may be used for providing relevant services to the house. This is in effect what is suggested by the Health and Safety Authority in their guidance notes dated October 1996 (page 48). However, this almost certainly does not discharge Surebild Limited from its obligation to 'keep' the Safety File. There is little point in going to the trouble of giving these mini-files to house purchasers unless it is going to remove the obligation from Surebild Limited to 'keep the Safety File' as well. It could be argued that if a mini file is given to purchasers it will save the Client having to produce the Safety File for that person when they want to alter the house. However, it is just as likely that the purchaser will have lost the mini-file by the time it is needed and the fact that a developer who is a Client could demonstrate that he had given all the necessary information to the purchaser already would not discharge the obligation to keep the original Safety File, and make it available to any purchaser or subsequent owner of a house who needs information from it.

In our opinion the Regulations need to be changed to enable a housebuilder to discharge itself from its obligations to 'keep' the Safety File if it gives each house purchaser anything a house purchaser should reasonably require to know regarding the house they purchased which should contain and gives the local authority such details as it should reasonably require to know regarding the roads, footpaths, open spaces etc such as 'as built' drawings of the layout of services or suchlike.

SAFETY FILES

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**SAFETY FILES**

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For the moment solicitors acting for house purchasers should try to establish at contract stage that they will be given on closing a letter confirming who the 'Client' is and where the Safety File will be kept and may be inspected. A letter confirming this should be obtained on closing.

What will happen if the Safety File is lost?

A Safety File is obviously a useful document which the owner of a building will try to keep safely and which a purchaser would like to get. However, it is inevitable that from time to time Safety Files will be lost or not kept up to date. A building should not be unsaleable just because its Safety File is not available, or is deficient. A person who purchases a building in respect of which the Safety File is not forthcoming is not liable to any sanction. A Safety File not being available will result in more care and extra cost having to be taken or incurred in altering the building. There is no obligation on the purchaser to do their best to replace the Safety File although that may be a good idea if it is at all possible. If a Safety File is fully or partly destroyed solicitors should try to record what happened and this record should be placed with the deeds for future reference. The preparation of a Safety Statement may be more difficult in the absence of a Safety File.

What should solicitors advise purchasers in relation to Safety Files?

Solicitors should advise purchasers to get the Safety File in relation to a building checked as part of their pre-contract 'due diligence'. The best person to examine the Safety File on behalf of the purchaser would be whoever is going to survey the building for him. The surveyor would need to be briefed with the planning history of the building so as to see if there are any obvious omissions from the Safety File, and the survey should extend to the areas of safety, health and welfare. Solicitors should leave the examination of Safety Files to persons who have the necessary training.

Should solicitors for purchasers seek certificates of compliance in relation to Safety Files as they do in relation to planning?

We do not recommend that solicitors should seek 'certificates of compliance' to confirm that Safety Files contain everything they should contain and/or that it has been updated to have regard to all alterations made to the building or its services.

Should the Law Society General Conditions of Sale be altered to provide a warranty by the vendor as to compliance with the Regulations?

We do not recommend that the General Conditions of Sale should include a warranty that the Safety File or Safety Files are complete.



Appendix

(Specimen memorandum to record handover of Safety File)

Block:

Re: Safety File.

This memorandum is dated the day of 19

Parties:

1. AB of [.....] (hereinafter called “the Project Supervisor (Construction Stage)”)
2. LIMITED having its registered office at(hereinafter called “CD”)
3. EF of [.....] (hereinafter called “the Purchaser”)

WHEREAS:

1. The Regulations on foot of which Safety Files must be prepared and kept are the Safety, Health and Welfare at Work (Construction) Regulations 1995 (the Regulations) which came into effect on the 6th March 1996. The Regulations were made on foot of the Safety Health and Welfare at Work Act 1989. The words Client, Project, Project Supervisor (Construction Stage), and Safety File are defined in the Regulations and are intended to have the same meaning in this memorandum where prefixed with capital letters.
2. CD is in the course of carrying out a development which includes the erection of an office building with ancillary facilities (the Project) on the site known as Block (the Property).
3. CD is the Client within the meaning of the Regulations and appointed AB to be the Project Supervisor (Construction Stage) on foot of its duty under the Regulations.
4. The Project Supervisor (Construction Stage) in accordance with his duties under the Regulations prepared a Safety File appropriate to the characteristics of the Project containing relevant health & safety information to be taken into account during any subsequent construction work following completion of the Project and made adjustments to the Safety File where required to take account of the progress of the work and any changes which occurred and the Project having been completed wishes to deliver the Safety File to CD as the Client as required by the Regulations which Safety File comprises the documents detailed in the Schedule (The Safety File).
5. CD has agreed to dispose of its interest in the Property involved in the Project and wishes to deliver The Safety File for the Project to the Purchaser so that the Purchaser will be able to keep The Safety File available in accordance with its duties under the Regulations.

SAFETY FILES

(Contd.)



SAFETY FILES

(Contd.)

NOW IT IS WITNESSED BY THIS MEMORANDUM:

1. That immediately prior to the execution hereof the Project Supervisor (Construction State) delivered The Safety File for the Project to CD (the receipt whereof CD hereby acknowledges).
2. That immediately after receiving possession of The Safety File CD procured the delivery of The Safety File for the Project to the Purchaser, (the receipt whereof the Purchaser hereby acknowledges).

SCHEDULE

(SET OUT CONTENTS OF THE SAFETY FILE HERE)

IN WITNESS whereof the parties hereto have hereunto set their hands or affixed their seals the day and year first above written.

SIGNED by the PROJECT SUPERVISOR (CONSTRUCTION STAGE) in the presence of:

PRESENT when the Common Seal of CD was affixed hereto:

PRESENT when the Common Seal of THE PURCHASER was affixed hereto:

**Relevant legislation:-**

The Building Control Act 1990 (No. 3 of 1990)

The Building Control Regulations 1997 (S.I. No. 496 of 1997)

The Building Regulations 1997 (S.I. No. 497 of 1997)

The Building Control Act 1990 and the regulations made under it (“the regulations”) constitute a system for regulating building works and lay down minimum standards for design, construction, workmanship, materials etc. Different standards apply depending on the use of the building.

New Building Regulations and Building Control Regulations were published in 1997. They are the Building Control Regulations, 1997 and the Building Regulations, 1997. These regulations consolidate, with amendments, the earlier regulations made in 1991 and as amended 1994. They came into force on the 1st of July 1998.

The regulations are divided into twelve sections:-

- A STRUCTURE
- B FIRE SAFETY
- C SITE PREPARATION AND RESISTANCE TO MOISTURE
- D MATERIALS AND WORKMANSHIP
- E SOUND
- F VENTILATION
- G HYGIENE
- H DRAINAGE AND WASTE WATER DISPOSAL
- J HEAT PRODUCING APPLIANCES
- K STAIRWAYS, LADDERS, RAMPS AND GUARDS
- L CONSERVATION OF FUEL AND ENERGY
- M ACCESS FOR DISABLED PEOPLE

The Department of the Environment has issued Technical Guidance Documents in relation to each section. It is not obligatory to follow the Technical Guidance Documents but doing so constitutes prima facie evidence of compliance with the regulations. (Building Regulations, 1997 - Article 7)

The regulations themselves are expressed in extremely general terms with generous use of phrases such as “adequate” and “reasonable” so that they leave considerable room for interpretation.

Under the 1991 and 1994 Regulations, the main provisions came into force on 1st June 1992. From that date all works for the erection of buildings or the alteration or extension

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CONTROL**



BUILDING CONTROL

(Contd.)

of existing buildings were required to comply with the regulations unless the works were covered by any of the exemptions specified below. The provisions of the 1997 Regulations came into operation on the 1st day of July 1998. There is a transitional period which applies in relations to works commenced or a material change of use taking place after the 1st of July 1998. If a fire safety certificate issues under the Building Control Regulations, 1991 & 1994 then that fire safety certificate remains valid in respect of works commenced or a material change which takes place before 31st of December 2002.

The regulations apply to a change of use of a building from a single dwelling to multi residential use. They also apply where a change of use occurs which, if the building had been originally designed for the new use would require a higher standard of performance to comply with the regulations than the existing use (a “material change of use”).

EXEMPTIONS

The principal exemptions from the requirement to comply with the regulations are:-

- (a) Works commenced before 1st June 1992.
- (b) Alterations to buildings which do not affect the structural or fire safety aspects of the building.
- (c) Detached domestic garages with a floor area not exceeding 25 square metres and a height of not more than 3 metres, or in the case of a pitched roof, 4 metres.
- (d) Single storied detached buildings ancillary to a dwelling which is detached from any other building, with a floor area not exceeding 25 square metres, a height of not more than 3 metres or in the case of a pitched roof, 4 metres, and used exclusively for recreational or storage purposes or the keeping of plants, birds or animals for domestic purposes as opposed to use for trade or business or human habitation.
- (e) Single storey extensions to existing dwellings ancillary to a dwelling and consisting of a conservatory, porch, carport or covered area with a floor area not exceeding 25 square metres (or 2 square metres in the case of a porch) and a height less than 3 metres, or if a pitched roof, 4 metres.
- (f) Certain temporary structures.
- (g) Certain farm buildings.

COMMENCEMENT NOTICES

Not less than 14, and not more than 28 days notice in writing of the commencement of works, or the making of a material change of use must be given to the building control authority (“the Authority”). The 1991 and 1994 regulations provided for service of not less than 7, and not more than 21 days.

The 1997 Regulations provide a specific form on which a commencement notice must be served. The notice must contain the following information:-



1. The address of the building and its use or intended use.
2. A description of the proposed works or change of use.
3. The name and address of
 - (a) The building owner,
 - (b) The Designer,
 - (c) The Builder,
 - (d) The person from whom notification of the pouring of foundations and of the covering up of any drainage system can be obtained,
 - (e) Persons from whom such plans, documents and any other information, as are necessary to show that the building or works will, if built in accordance with the design, comply with the requirements of the Building Regulations, may be obtained.

Also a fee must now accompany the commencement notice form and this is set out in the Fifth Schedule. It is usually £25.00.

On receipt of the commencement notice, the building control authority is now required to follow the specified procedure. The authority must stamp the notice with the date of receipt. Where the authority considers that the commencement notice has not been completed correctly, they may within seven days of receipt of the notice, inform the person giving the commencement notice that the notice is invalid and is unacceptable and require a revised notice to be submitted with an additional fee, where necessary.

A COMMENCEMENT NOTICE is not required in respect of:-

1. Works exempt from the requirement to comply with the regulations.
2. The provision of services fittings and equipment to a building not involving a material alteration.
3. Exempt development under the Planning Acts except where a fire safety certificate is required.
4. Material alterations consisting solely of minor work in a shop, office or industrial building not requiring a fire safety certificate.
5. Works, or a building as regards which a material change of use takes place, by a building control authority in its functional area.
6. Works, or a building as regards which a material change of use takes place, in connection with Garda stations and other such connected building, courthouses, barracks and related buildings of the Defence Force and certain Government buildings.
7. Works or material changes of use of buildings which have taken place for reasons of national security.

**BUILDING
CONTROL**

(Contd.)



BUILDING CONTROL

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A "material alteration" is an alteration where the works, or any part of the work, carried out by itself would be subject to a requirement of the regulations concerning structure or fire safety.

"minor works" means works consisting of the installation, alteration, or removal of a fixture or fitting, or works of a decorative nature.

"shop" is defined as including a building used for retail or wholesale trade or business (including retail sales by auction, self-selection and over-the-counter wholesale trading, the business of lending books or periodicals for gain and the business of a barber or hairdresser) and premises to which the public is invited to deliver or to collect goods in connection with their hire, repair or other treatment, or where they themselves may carry out such repairs or other treatments.

"office" is defined as including premises used for the purpose of administrative or clerical work (including writing, book keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication, handling money (including banking and building society work) or telephone system operation).

"industrial building" is defined as including a factory or other premises used for manufacturing, altering, repairing, cleaning, washing, breaking-up, adapting or processing any article, generating power or slaughtering livestock.

These definitions differ from those in the exempt development regulations.

FIRE SAFETY CERTIFICATES:

A Fire Safety Certificate is required for:-

- (a) works in connection with the design and construction of a new building;
- (b) works in connection with the material alteration of
 - (i) a day centre,
 - (ii) a building containing a flat,
 - (iii) a hotel, hostel or guest building,
 - (iv) an institutional building,
 - (v) a place of assembly, or
 - (vi) a shopping centre, but excluding works to such buildings, consisting solely of minor works;
- (c) works in connection with the material alteration in a shop, office or industrial building where
 - (i) additional floor space is being provided within the existing building, or
 - (ii) the building is being subdivided into a number of units for separate occupancy;



- (d) works in connection with the extension of a building by more than 25 square metres;
 - (e) a building as regards which a material change of use takes place;
- to which the requirements of Part B of the second schedule to the Building Regulations (i.e. Fire Safety issues) apply.

A “day centre” means a building used for the provision of treatment or care to persons where such persons do not stay overnight and includes a day care centre, a pre-school, a creche, and a day nursery.

A “guest building” means a building (other than a hotel or hostel) providing overnight guest accommodation for reward, and includes a guesthouse.

An “institutional building” includes a hospital, nursing home, home for old people or for children, school or other similar establishment used as living accommodation or for the treatment, maintenance of persons suffering from illness or mental or physical disability or handicap, where such persons sleep on the premises.

A “place of assembly” includes (i) a theatre, public library, hall or other building of public resort used for social or recreational purposes, (ii) a non-residential school or other educational establishment, (iii) a place of public worship, (iv) a public house, restaurant or similar premises used for the sale to members of the public of food or drink for consumption on the premises, but no building shall be treated as a place of assembly solely because it is a building to which members of the public are occasionally admitted.

“Shopping centre” includes a building which comprises a number of individually occupied premises to which common access is provided principally for the benefit of shoppers.

The definition of “flat” refers to separate and self-contained premises constructed or adapted for residential use and forming part of a building from some other part of which it is divided horizontally. Duplex apartments are clearly flats under this definition.

The application for a fire safety certificate must be in the prescribed form set out in the Third Schedule of the 1997 Regulations and be accompanied by a detailed plan identifying and describing the works or building to which the application relates which will enable the authority to determine whether the works or building complies with the requirements of Part B of the Second Schedule to the Building Regulations. The required fee must also accompany the form. The fee is calculated by reference to the size of the area affected by the works or change of use and is set out in the Fifth Schedule. The procedure which must be followed by the authority on receipt of a Fire Safety Certificate application mirrors the procedure set out in relation to commencement notices. Any application which does not

BUILDING CONTROL

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BUILDING CONTROL

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contain the necessary information is invalid. The authority may require the applicant to submit a revised plan if necessary. The certificate is issued by the Authority.

The authority has two months within which to issue the certificate, with or without conditions, or to refuse it. If it fails to issue a decision within that time a default procedure, akin to that applicable to a planning application, applies, whereby the certificate must automatically issue to the applicant.

There is a procedure whereby the applicant can appeal to An Bord Pleanála against the decision of the Authority, either in part or in its entirety.

It is an offence to carry out works or make a material change of use without first obtaining a fire safety certificate.

A FIRE SAFETY CERTIFICATE is not required in respect of:-

1. Works exempt from the requirement to comply with the regulations.
2. Works commenced or a material change of use made before 1st August 1992.
3. The provision of services, fittings and equipment to a building not involving a material alteration.
4. A building, or works in connection with a building, used as a dwelling other than a flat.
5. A single storey building used as a domestic garage or works in connection therewith.
6. A single storey building, or works in connection with a building, ancillary to a dwelling which is used exclusively for recreational or storage purposes or the keeping of plants, birds or animals for domestic purposes and is not used for the purposes of any trade or business or for human habitation.
7. Certain single storey buildings used solely for agriculture and works in connection therewith.
8. Works in connection with a material alteration, consisting solely of minor works, of a day centre, a building containing a flat, a hotel, hostel or guestbuilding, an institutional building, place of assembly or shopping centre.
9. Works in connection with a material alteration in a shop office or industrial building unless additional floor space is being provided within an existing building or the building is being subdivided into a number of units for separate occupancy.
10. Works carried out to a building in compliance with a notice served under Section 20 of the Fire Services Act 1981.

The definition of "agriculture" is identical to that contained in the Local Government (Planning & Development) Act 1963.



THE REGISTER

Under the 1991 Regulations, the building control authority were required to maintain a register of all applications for Fire Safety Certificates with details of the decision of the authority or of the Board of appeals.

Now the 1997 Regulations require the authority to keep a register of not just any valid application for a fire safety certificate, but also any valid applications for a dispensation or relaxation, a commencement notice (including details of the name and address of the applicant, the date of receipt of the application, and brief details of the works or building forming the subject of the application) and an enforcement notice and any decision made by the District Court in respect of an enforcement notice.

ALTERATION OR EXTENSION OF EXISTING BUILDINGS

The regulations apply to all material alterations (not being repair or renewal) or extensions of existing buildings, in that all works done must comply with the regulations. In addition, the alteration or extension cannot result in a new or greater contravention of the regulations in relation to the building itself.

SERVICES FITTINGS AND EQUIPMENT

The regulations apply to all works in connection with the provision of services fittings and equipment (whether new or by way of replacement) which are subject to the requirements of the Hygiene, Drainage and Waste Water Disposal, and the Heat Producing Appliances regulations. There is no requirement to serve a Commencement Notice or obtain a Fire Safety Certificate for such works unless the works involve a material alteration.

DISPENSATIONS / RELAXATIONS

One can apply to the Authority for dispensations or relaxations of building regulations. If no decision is made by the Authority within two months, the dispensation or relaxation is deemed to have been granted. The 1997 Regulations provide a form which must be completed and sent to the authority when applying for a dispensation or a relaxation. Under the old regulations, it was not mandatory to use the prescribed form.

There is an appeal procedure if an applicant is dissatisfied with the Authority's decision, the appeal again lying to An Bord Pleanala.

The Minister for the Environment also has power to dispense with, or relax, any regulations in respect of any particular class of building operation, works or materials, subject to such conditions as he deems appropriate.

BUILDING CONTROL

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BUILDING CONTROL

(Contd.)

LIABILITY, PENALTIES AND ENFORCEMENT

Failure to comply with any requirement of the Building Control Act or the regulations is an offence. Fines of up to £10,000.00, and/or a term of imprisonment not exceeding two years can be imposed for failure to comply with the regulations, or failure to comply with an enforcement notice. If the offence is committed by a company with the consent or connivance of, or is attributable to any neglect on the part of any director, manager or secretary of that company, that person shall also be guilty of the offence.

Enforcement notices may be served by the Authority on the owner of the building or any other person involved in the works. It can set out the works required to ensure compliance with the regulations, and may prohibit the use of a building or part of it until these works are done.

The Authority has power to enter a building and carry out the remedial works if the enforcement notice is not complied with, and can recover the cost from the owner or the person who carried out works in breach of the regulations, as a simple contract debt.

The Authority also has power to enter buildings to inspect them and any plans or documents relating to the works, and to take samples of materials being used.

There is a limitation period of five years from completion of the works or change of use, after which no enforcement notice can be served.

The Act also provides for a procedure similar to the “Planning Injunction” under Section 27 of the 1976 Planning Act (as amended by the 1992 Planning Act), whereby the Authority can seek a High Court Order requiring alterations, the making safe of any structure, the discontinuance of works or prohibiting the use of the building where the Authority considers that there is a substantial risk to health or safety. There is no time limit on this action.

BUILDING BYE-LAWS

The Building Control Act 1990 replaces building bye-laws made under S.41 of the Public Health (Ireland) Act 1878, Section 23 of the Public Health Act (Amendment) Act 1890 and Section 33 of the Dublin Corporation Act 1890. Bye Laws had been made in the following areas:-

- Bray U.D.C.
- Dublin Corporation
- Dublin County Council
- Dun Laoghaire Corporation



Cork Corporation
Galway Corporation
Limerick Corporation
Naas UDC

In areas where Local Authorities had made building bye laws, it was necessary to obtain a building bye laws approval before carrying out structural works or other works involving drainage, sewerage disposal and the like. Such an approval could not be obtained retrospectively. Therefore technically the absence of a building bye laws approval was a defect which could not be cured other than by demolishing the structure. Accordingly in such a situation it became established practice to accept the certificate of an architect confirming that the works complied with the building bye laws as at the date the works were carried out, and that in the opinion of the architect, bye laws approval would have been granted if it has been applied for.

However, Section 22 (7) of the Building Control Act 1990 provides that all works carried out prior to 13th December 1989 are deemed to comply with building bye-laws unless a notice was served by the Authority before 1st December 1992 stating that the works constituted a danger to public health or safety.

Building bye-laws remain relevant in relation to works carried out between 13th December 1989 and 1st June 1992, and works carried out pursuant to building bye-law approvals applied for prior to 1st June 1992.

MULTI-STOREY BUILDINGS:

The Local Government (Multi-Storey) Act 1988 does not apply to buildings commenced after 1st June 1992 save where built on a foot of a building bye laws approval applied for on or before that date.

The 1988 Act does still apply to multi-storey buildings constructed between 1st January 1950 and 1st June 1992.

FIRE SERVICES ACT 1981

The Fire Services Act is unaffected by the Building Control Act and all of the enforcement powers of the fire officer under the Fire Services Act remain.

August 1998 ¹.

BUILDING CONTROL

(Contd.)

1. See page 7.26 hereof.



**SAFETY FILES
AND ONCE-OFF
HOUSES**

The Conveyancing Committee would like to thank Rory O'Donnell and Breda Sweeney of O'Donnell Sweeney, Solicitors, for the following practice note which has been approved by the committee.

The object of this practice note is to consider who is 'the Client' (if there is one at all) within the meaning of the Health and Safety Regulations where an individual buys a site for a house for himself and arranges to get a building contractor to build a house as a residence for himself or herself. The following definitions are important in considering this.

'Client' means any person engaged in trade, business or other undertaking who commissions or procures the carrying out of a project for the purpose of such trade, business or undertaking. 'Contractor' means a contractor or an employer whose employees undertake or carry out construction work or any person who carries out construction work for a fixed or other sum and who supplies the materials and labour (whether his own labour or that of another) to carry out such work or supplies the labour only. 'Project' means any development which includes or is intended to include construction work.

The definition of construction work is quite long and it is not necessary to set it out in full. It includes construction, alteration, conversion, fitting out, renovation, repair, upkeep and redecoration. In other words, everything you could possibly think of in relation to a building.

It is clear that the definition of contractor includes both a main contractor and a sub-contractor. To illustrate the point best, we would like to give a series of examples:

1. A development company is developing a business park. It engages architects, engineers and so on to prepare drawings and obtain planning permission for its development. It then employs an independent building contractor to construct the building in accordance with the approved drawings. In that case, the development company is the Client who has the responsibility to appoint the Project Supervisor for the design stage and the Project Supervisor for the construction stage. The Project Supervisor for the construction stage in appropriate cases has the obligation to prepare the safety file. In such a case, the independent building contractor is the Contractor.
2. A house-building company buys a site on which to build 100 houses. It retains an architect, an engineer and obtains planning permission. It then proceeds to build houses. Typically, it would have a foreman and a small staff, and most of the work would be done by specialist sub-contractors. In this case, the house-building company is the Client and it is also a Contractor. Each sub-contractor would also be a Contractor.
3. A company buys a site to expand its builders' providers business. It appoints an



architect and engineer to procure planning permission for the building it wants and then puts the building contract out to tender, and in due course enters into a building contract with an independent builder. In that case, the company carrying out the builders' providers business is the Client and the building contractor is the Contractor.

4. An individual or company buys sites, gets planning permission for a house and builds the house. Say, for example, that it buys a two-acre site for the purposes of sale. The individual/company gets an architect/engineer to design a house and obtain planning permission. The individual or company who buys the site is the Client and the company who carries out the building of the house is the Contractor.

5. An individual buys a site upon which to erect a house for his own use as a residence. He gets an architect and engineer to arrange for the preparation of drawings and to obtain planning permission. He puts the job out to tender and an independent building contractor tenders for the job and proceeds to build the house on behalf of the individual.

The question is: who in this scenario is the Client? Clearly, the individual is not the Client. The building contractor is clearly a Contractor within the meaning of the regulations but the question is: is he also the Client? He is clearly a person engaged in trade business or other undertaking who carries out a project for the purposes of such trade, business or undertaking. However, the definition is a person engaged in trade, business or other undertaking who commissions a project for the purposes etc or who procures the carrying out of a project for the purposes etc.

The Oxford Dictionary defines 'commission' as follows:

1. Authority committed or entrusted to any one specially delegated authority to act in some specified capacity, to carry out an investigation or negotiation, perform judicial functions, take chargeable office and so on.
2. The action of committing or giving in charge the entrusting of (authority etc to any one).
3. A charge or matter entrusted to any one to perform: in order to execute objective work.
4. Authority given to acts of agent or factor for another in the context of business or trade; system of trading in which a dealer acts as agent for another, generally receiving a percentage as its remuneration.
5. To furnish with a commission or legal warrant to empower by a commission.
6. To give a commission or order to (a person) for a particular piece of work: chiefly used of the orders given to artists.
7. To send on a mission, despatch.

SAFETY FILES AND ONCE-OFF HOUSES

(Contd.)



SAFETY FILES AND ONCE-OFF HOUSES

(Contd.)

It seems clear that the word ‘commission’ means the act of getting someone else to do something. When the expression ‘procures the carrying out’ is examined, it is self-evident that this also means getting someone else to do something.

It seems, therefore, that the use of the word ‘commissions’ or the words ‘procures the carrying out’ excludes the application of the definition to a person *actually carrying out the work* (save in a case such as that outlined in example 2 above, where the person carrying out the work is also the owner of the land). It is arguable, however, in the theoretical event that a contractor bought a site and had sufficient capacity within its own organisation to carry out the construction work (so that no sub-contractor or any other third party whatsoever was necessary) whether the contractor would come within the definition of ‘the Client’.

The distinguishing factor between these two scenarios is the engagement of sub-contractors. In the latter, no-one has been procured or commissioned to carry out a project. It would seem, however, that the engagement of sub-contractors does not of itself bring one within the definition of ‘the Client’. There seems to be a difference between engaging a contractor for the purposes of the ‘Project’ (as in example 1 above) and a main contractor engaging sub-contractors who carry out construction work and/or supply labour and so on. In the latter case, the sub-contractors have not been appointed for the purposes of carrying out the project (which is the broader picture). However, this rationale does not in our opinion taint the conclusion reached in example 2 above. In such a case, the project is being ‘commissioned’.

The obligation to appoint the Safety Supervisors is imposed on the Client. If there is no Client in connection with a particular project, it seems that there would be no person fixed with the obligation to make the appointments of the Safety Supervisors, and consequently no person is obliged to prepare a safety file.

The Regulations also clearly intend that the Client will be the owner of the land on which the project is carried out. We say this because the Safety Supervisor (Construction Stage) is obliged in appropriate cases to prepare a safety file and give it to the Client. The Client is then fixed with the obligation to keep the safety file so that it will be available for persons who need to inspect it. The only way in which the Client can relieve himself or herself from this obligation is under Regulation 3(6) which reads: ‘It shall be sufficient compliance with paragraph (5) by a client who disposes of his or her interest in the property involved in the project if he or she delivers the safety file for that property to the person who acquires such interest in that property and such person shall keep available such safety file in accordance with paragraph (5)’.



It seems, therefore, that it is implicit that the Client must also be the owner of the land (or perhaps entitled to control the ownership thereof).

The building of houses like this is a very common feature in rural Ireland and this matter of interpretation is going to become the focus of much attention. In conclusion, it is clear that in some cases where 'once-off' houses are being built that there is no Client and therefore no obligation on any person to prepare a safety file. In such cases, solicitors dealing with conveying the house should not concern themselves with the matter of a safety file.

SAFETY FILES AND ONCE-OFF HOUSES

(Contd.)

*Published in Law Society
Gazette, November 1999*

The Law Society published a practice note about the need for certificates of compliance relating to retention permissions in the November 1997 issue of the Gazette. This practice note was intended to apply only to private houses. The committee takes the view that it is reasonable for a solicitor for a purchaser to ask for confirmation by way of letter of opinion by a suitably qualified person that the drawings submitted for the retention application correctly showed the actual structure for which permission to retain was applied for. If there are conditions to the grant of permission to retain, the certifier should go on to deal with these in the usual way.

No certificate of compliance should be required where the permission related only to the retention of a (changed) use, where no conditions were attached.

The committee was asked to consider whether it was reasonable to accept a title in a case where permission to retain an extension to a dwellinghouse was obtained more than ten years ago and no certificate of compliance is available.

The committee takes the view that, in light of the provisions of the 1992 Act, it is reasonable for the solicitor not to require a certificate of compliance in such a case unless there is an evident problem.

When acting for a vendor in such a case, a solicitor preparing a contract should put in a special condition putting the purchaser on notice of the position and providing that no requisition or objection shall be made due to the lack of certificate. In that way, before signing a contract, a purchaser has an opportunity of getting advice in the matter and, if necessary, to get advice from an experienced architect or engineer.

RETENTION PERMISSION – DWELLINGHOUSES

CERTIFICATE OF COMPLIANCE?

*Published in Law Society
Gazette, May 2000*



**RETENTION OF
BUILDING BYE-LAW
RECORDS: DUBLIN
CORPORATION**

*Published in Law Society
Gazette, May 2001*

The Conveyancing Committee has been notified by Dublin Corporation that all building bye-law records including decision documents prior to 1975 are no longer available. The Corporation has also advised that records of decision documents since 1975 are available but there are no drawings attached as it was not the policy of the Corporation to retain drawings except for a short period after the granting of a bye-law approval.

**WARNING :
IEI / ACEI
CERTIFICATE OF
COMPLIANCE**

The Conveyancing Committee agreed with the Institution of Engineers of Ireland and with the Association of Consulting Engineers of Ireland on the format of a Certificate of Compliance with Building Regulations for completion by a structural / civil chartered engineer in cases where a lead architect is appointed to the project. This format of certificate was published in the recent update to the Conveyancing Handbook in Appendix 8 at pages A8.1 to A8.5 (Form BR SE 9101).

A prominent warning was published in the handbook on the front page of the specimen certificate of compliance to the effect that this form was intended for use by a consulting engineer only in a situation where a lead architect has also been appointed to the project. Despite this warning it has come to the attention of the Conveyancing Committee that Form BR SE 9101 is being offered by some vendors in relation to projects where no architect has been involved, as the sole evidence of compliance with both planning and building regulations. The form has not been designed to meet this type of situation and under normal circumstances should not be used or accepted in connection therewith. The committee confirms that Form BR SE 9101 relates only to compliance with building regulations and that a further certificate of compliance with planning should always be obtained from the lead architect appointed to the project.

It is suggested that, in projects where the consulting engineer leads the project, one or other of the specimen forms of certificate of compliance at pages 7.41 – 7.52 of the Conveyancing Handbook be utilised with appropriate adaptations.

*Published in Law Society
Gazette, November, 2001*



A number of Local Authorities are imposing conditions in planning permissions requiring the applicant to secure sight lines at the entrance to a house site from the public road.

The following is an example of a condition imposed by a Planning Authority as a general condition.

"Prior to commencement of development, vision lines of 68 metres shall be provided in each direction, at a point 3.05 metres back from the road edge at location of vehicular entrance. Said vision lines should be based on eye object height equal to 1.06 metres over height of 1.06 metres. Documentary evidence of consent for location of vision lines over third party lands shall be submitted to the planning authority for written agreement prior to commencement of development."

Clearly planning authorities are entitled to take into account the need for traffic exiting a site to have an acceptable view of traffic approaching and the need for that traffic approaching to have an adequate opportunity of seeing a car which might exit into its path.

The Committee has seen a number of different conditions. It has also been informed that in some cases applicants anticipating the requirement have offered to provide the necessary sight lines in the application so that there was nothing on the face of the planning permission to alert anyone of the requirement.

In at least one case the applicant had offered to reduce the height of a hedge (with the permission of a neighbour who owned the land in question) and no thought seemed to have been given to what was to happen when the hedge grew again. In another case the applicant (again with the permission of a neighbour) confirmed that an arrangement had been made with a neighbour to provide an appropriate sight line. In that case the neighbour did not really understand what was required of him and the Planning Authority in question did not clarify the position. It is not satisfactory that Planning Authorities in some cases do not deal with the long-term implications.

It seems clear that conditions like this are going to cause problems for architects and engineers who may be asked to certify compliance. They will also clearly cause problems for solicitors. Solicitors who are advising clients in relation to the purchase of a property subject to such a condition will have to advise their client very carefully, particularly if the condition is not going to be properly dealt with. In such circumstances solicitors should point out that they are likely to have a problem in certifying title and that there is a clear risk that there will be problems on re-selling. The Committee advises that such advice should be confirmed in writing. In addition when acting for a client purchasing a site with

CONDITIONS IN PLANNING PERMISSIONS RE SIGHT LINES

NEW PROBLEM FOR CONVEYANCERS



**CONDITIONS IN
PLANNING
PERMISSIONS
RE SIGHT LINES**

**NEW PROBLEM FOR
CONVEYANCERS**

(Contd.)

the benefit of a planning permission it is yet another reason to advise clients to have the position regarding the planning permission checked out by a competent person. The Committee doubt that it is wise for solicitors to brief an architect or engineer on behalf of their client in such situations but recognises that from time to time solicitors will find that they have to do this. The Committee feels that such briefing should be in general terms rather than trying to anticipate all the issues that could arise., However the issue of sight lines, and other easements could be addressed by asking the surveyor to review whether the house, its access and any facilities such as a septic tank or percolation area or water supply can be provided without passing over or acquiring rights over land in the ownership of any third party.

The practical problem is that an applicant who already owns a site and who has received a Grant of Planning Permission subject to such a condition might not realise the full implications of such a condition and might have the house half built before realising that there may be a problem. Compliance with the condition may be impossible because it would require the applicant to acquire land perhaps from both adjoining owners to provide the necessary lines of sight. Arguably the planning authority should not grant permission until the applicant satisfies it that the applicant has such legal rights or perhaps ownership necessary to enable it to comply with any such condition. Planning Authorities already do this routinely in relation to easements for drainage if a site cannot be drained without a grant of easements over property in the ownership of third parties.

Solicitors faced with such a situation should give the following advice. The best solution is for the client to buy the necessary land so as to put himself in a position of being able to comply with the planning condition and to provide a sight line in a permanent way. If this is not possible or practicable the client should acquire a grant of easements which will enable him to comply properly with the condition. Any grant of easements should be registered on the title of the grantor. If none of this is possible solicitors should advise clients that they will have to qualify their certificate of title in a manner which may not be acceptable to a lender and that the property may not be re-saleable without the problem being regularised. The Law Agent of one of the main lenders for housing has indicated that a qualification of a Certificate of Title would not be acceptable if it indicated that a condition about the provision of sight lines in a Planning Permission had not been complied with. The Committee suspects other lenders will take a similar position. Informal arrangements or letters from friendly neighbours are simply not sufficient.

The purpose of this note is to alert solicitors to the need for care in relation to these matters. The Conveyancing Committee intends to make representations to all relevant authorities to try to have a more consistent and reasonable practice applied.



The Conveyancing Committee would like to inform the profession that it has recently agreed the format of a new RIAI form of Certificate of Opinion on Compliance for certifying compliance of an apartment where the architect has been involved in providing a professional architectural service at the design and construction stage of the apartment block. [This is Form 1B (Apartments).]

The existing RIAI form of Certificate of Opinion on Compliance for apartments (Form 1A), only applies where a professional architectural service has been provided in the design but a site inspection service has not been provided in the construction of the apartment block and where the architect has not administered the Building Contract for the construction of the apartment block.

NEW RIAI FORM 1B (APARTMENTS)

**COMPLIANCE
WITH PLANNING
CONDITIONS**

In the light of an increasing number of queries relating to compliance with planning conditions generally, the Conveyancing Committee has decided to make the following recommendations:-

1. Conveyancers dealing with second or later purchases of residential houses, where there is a certificate from the local authority that the roads and services are in their charge, should not concern themselves with enquiries as to compliance with bonding and financial conditions in a planning permission.
2. Where in a residential housing estate there is a requirement under the planning permission for the provision of a bond or for the payment of financial contributions and/or levies by instalments, and where the estate has not been taken in charge (or there is no evidence available that it has), conveyancers should only be concerned with the provision of the bond or with the payment of contributions up to the date of the first purchase of the subject house.
3. The foregoing recommendations only apply to dwellings forming part of a building estate and built at the same time as the main development. They do not apply to once off houses or to infill development.
4. If the solicitor for a purchaser is on notice of a particular difficulty regarding the taking in charge of roads and services by the local authority, then he/she should advise his/her clients and consider qualifying his/her certificate of title. The matter should be raised as a pre-contract enquiry, and the client advised before contracts are exchanged, so that a decision can be reached as to whether or not to proceed.

The provisions of Section 180 of the Planning & Development Act, 2000, which require the local authority to take roads and services in charge in certain circumstances, may assist in resolving the difficulty.

5. The foregoing recommendations do not change the obligation on a purchaser's solicitor to seek evidence that there is, in fact, planning permission for the house, and, where appropriate under other recommendations, to seek a certificate/opinion from an architect or engineer that the house has been built in accordance therewith and in accordance with the regulations in force under the Building Control Act, 1990.
6. Where a condition in any planning permission states "Before any development commences the applicant shall submit to the local authority proof/evidence of compliance with ..." conveyancers need not obtain written proof or confirmation



from the local authority where there is in existence a certificate or opinion from a suitably qualified architect or engineer confirming compliance with all conditions attaching to said planning permission/building regulations.

- 7 The committee wishes to draw the attention of practitioners to its longstanding recommendation that it is unreasonable for solicitors to insist now on being furnished with documentation which it was not the practice to furnish at the time of a previous investigation of title.

Note: The foregoing note is produced in substitution for that which was published in the April 1987 Gazette (and which appears at page 7.12 of the Conveyancing Handbook).

COMPLIANCE WITH PLANNING CONDITIONS

(Contd.)

*Published in Law Society
Gazette, July / August 2002*

It has been drawn to the attention of the Conveyancing Committee that in a number of instances, developers, in the course of building houses, have been making variations in reliance on the exempted development regulations. Such variations can involve the addition of extensions or conservatories, conversion of attic space, or revision of internal layout (with or without alterations to or additions of windows).

A planning permission must be implemented in its entirety, or not at all. The implementation of the planning permission entails the construction of the dwelling house in accordance with the plans lodged and on foot of which the planning permission issued.

Where a developer seeks to carry out alterations or to add extensions or conservatories in reliance on the exempted development regulations, he will first need to ensure that the house is fully complete in accordance with the planning permission and plans on foot of which the planning permission issued, and that only then the extension or additional work is carried out.

Solicitors acting for purchasers where such extensions or alterations are carried out after the house has been built, should get an architect's opinion of compliance in the usual form and a further opinion confirming that the extension or works comprise exempted development and are in accordance with the Building Control Act and Regulations.

NEW HOUSES AND EXEMPTED DEVELOPMENT

*Published in Law Society
Gazette, December 2002*



**WITHERING
PERMISSIONS:
PLANNING AND
DEVELOPMENT
(AMENDMENT)
ACT, 2002**

Planning Permissions which would have withered (i.e. ceased "to have effect") under S96 (15) of the Planning and Development Act, 2000 (a "Withering Permission") will now have the normal life of a planning permission (usually five years) by reason of the 2002 Planning Act. However, there is a price to be paid.

A Withering Permission is one granted for residential development on foot of an application for permission lodged after 25 August 1999 and before the planning authority incorporated its housing strategy into its development plan. Under the 2000 Act the permission withered on 31 December 2002 or two years from the date of the permission, whichever be the later.

Dwellings built on foot of a permission which would have withered but for the 2002 Act will be subject to a levy of 1% of the sale price if equal to or in excess of EUR270,000.00, or 0.5% of the sale price if less than that amount.

There are provisions in the 2002 Act to prevent this levy being passed on to a purchaser. The levy will not apply to any planning permission for four or less dwellings or for housing on land of 0.1 hectares or less. Nor will it apply to dwellings the external walls of which are completed within two years from the date of the permission, or by 31 December 2002, whichever be the later (the "Exemptions").

Practitioners should note that when acting in the purchase of a dwelling erected on foot of a permission which would have withered but for the 2002 Act, and which does not come within the Exemptions, they will require a receipt from the planning authority confirming payment of the levy in respect of that dwelling prior to or on completion of the purchase.



The following enquiries should be raised pre-contract, as part of a prospective purchaser's pre-contract investigations, where there is a prospect that there is a sensitive habitat in the area, or that an environmental protection is in place. They are not appropriate for residential property in the middle of urban areas, and would rarely be necessary in the case of other residential properties, unless a significant land holding is involved.

Where replies in the affirmative are received then further and more detailed enquiries should be made.

Habitats Directive and related environmental legislation

1. Is any part of the property designated as a natural heritage area, special area of conservation or special protection area?
2. If not, is the vendor aware of any proposal for any such designation affecting the property?
3. Has any order been made, notice served or agreement entered into under the Wildlife Acts 1976 and 2000 affecting any part of the property?

PRE-CONTRACT ENQUIRIES REGARDING PROTECTED HABITATS



**PLANNING
CONDITION
REQUIRING
RESIDENCE OR
EMPLOYMENT
OF APPLICANT IN
PLANNING
AUTHORITY AREA**

A planning condition in the following terms has been brought to the attention of the Conveyancing Committee:-

- "5. (a) Houses to be restricted to persons who have been resident in County Wicklow for at least one year and/or those currently in full-time employment in County Wicklow or other such class of persons that the planning authority may agree to in writing.
- (b) Confirmation from a solicitor or other suitable qualified professional with indemnity insurance that the dwellings have been sold in accordance with this condition shall be submitted to the planning authority upon the sale of the dwellings.

REASON: To ensure that the dwellings are suitably restricted to meet local growth needs as opposed to regional needs, to ensure the development meets with the requirements of the Strategic Planning Guidelines and the County Development Plan with respect to development in the hinterland areas, in the interest of proper planning and sustainable development."

The committee unanimously agreed that it is not acceptable that solicitors would be asked to certify matters in relation to the residence or place of work of their clients. These are matters on which the clients/applicants for permission can easily satisfy the local authority directly by way of completing their own certificate or statutory declaration.

The planning condition brought to the attention of the committee was accompanied by a draft certificate which was to be typed on a purchaser's solicitor's headed notepaper. This certificate is addressed openly "To whom it concerns" and is required to confirm, inter alia, that the solicitor currently holds professional indemnity insurance, that the purchasers purchase with full knowledge of the provisions of the planning permission and the limitations imposed by conditions 5(a) and (b) thereof, that the solicitor certifies that house number X in the development has been sold in compliance with the provisions of conditions 5(a) of the relevant planning permission by virtue of the fact that the purchasers/one of them have/had been resident in the county for at least one year and/or the purchasers/one of them currently are/is in fulltime employment in the county. The certificate is to be signed by the solicitor for the purchasers and dated. There is no requirement that the matters referred to in the certificate should be co-signed or endorsed by the purchasers. The certificate is not stated to be based on information supplied by the purchasers.

The committee noted the format of the certificate required by the local authority and in



particular noted that there is no provision for the purchasers themselves to certify relevant matters to the local authority. Rather the local authority seeks to hold purchasers' solicitors liable for the veracity of the statements contained in the certificate. The committee said it could only speculate as to what the reasons are for the requirement that a solicitor has professional indemnity insurance, but it seemed to the committee that the most obvious reason would be that the local authority intends to sue solicitors on foot of their certificates should the need arise.

The committee was unanimously of the view that solicitors should not complete these certificates under any circumstances.

Purchasers' solicitors faced with requests to complete these certificates should

1. Advise their clients/purchasers to write to the local authority applying for a waiver or a variation of this condition in the planning,
2. Give the clients a copy of this practice note for enclosure with their application for waiver/variation,
3. Advise the clients/purchasers to offer their own certificates and/or statutory declarations to verify the facts required by the local authority.

In addition, the committee would recommend to the Bar Associations in counties which regularly include conditions of this type in their planning permissions, to engage with the planning authorities in those counties with a view to having planning conditions of this nature either removed from planning permissions or varied so as to require the appropriate certification from the clients/purchasers and not from their solicitors. The committee is prepared to assist any affected Bar Associations with such meetings with local planning authorities.

**PLANNING
CONDITION
REQUIRING
RESIDENCE OR
EMPLOYMENT
OF APPLICANT IN
PLANNING
AUTHORITY AREA**

(Contd.)



**SIGHT LINES:
NEW PROBLEMS FOR
PROPERTY OWNERS
AND THEIR
CONVEYANCERS**

Conditions in Planning Permissions re Sight Lines

A number of local authorities are imposing conditions in planning permissions requiring the applicant to secure sight lines at the entrance to a house site from the public road.

The following is an example of a condition imposed by a planning authority as a general condition.

Prior to commencement of development, vision lines of 68 metres shall be provided in each direction, at a point 3.05 metres back from the road edge at location of vehicular entrance. Said vision lines should be based on eye object height equal to 1.06 metres over height of 1.06 metres. Documentary evidence of consent for location of vision lines over third party lands shall be submitted to the planning authority for written agreement prior to commencement of development.

Clearly planning authorities are entitled to take into account the need for traffic exiting a site to have an acceptable view of traffic approaching and the need for that traffic approaching to have an adequate opportunity of seeing a car which might exit into its path.

The committee has seen a number of different conditions. It has also been informed that in some cases applicants anticipating the requirement have offered to provide the necessary sight lines in the application so that there was nothing on the face of the planning permission to alert anyone of the requirement.

In at least one case the applicant had offered to reduce the height of a hedge (with the permission of a neighbour who owned the land on which the hedge in question was located) and no thought seemed to have been given to what was to happen when the hedge grew again. In another case the applicant (again with the permission of a neighbour) confirmed that an arrangement had been made with a neighbour to provide an appropriate sight line. In that the case the neighbour did not really understand what was required of him and the planning authority in question did not clarify the position.

It is not satisfactory that planning authorities in some cases do not deal with the long- term implications.

It seems clear that conditions like this are going to cause problems for architects and engineers who may be asked to certify compliance. They will also clearly cause problems for people who buy sites subject to such conditions. Solicitors who are advising clients in relation to the purchase of a property subject to such a condition will have to advise their



clients very carefully, particularly if the condition is not going to be properly dealt with. In such circumstances solicitors should point out that they are likely to have a problem in certifying title and that there is a clear risk that there will be problems on re-selling. The committee advises that such advice should be confirmed in writing.

In addition when acting for a client purchasing a site with the benefit of a planning permission it is yet another reason to advise the client to have the position regarding the planning permission checked out by a competent person.

The committee doubts that it is wise for solicitors themselves to brief an architect or engineer on behalf of their client in such situations but recognises that from time to time solicitors will find that they have to do this. The committee feels that such briefing should be in general terms rather than trying to anticipate all the issues that could arise. However, the issue of sight lines and other easements could be addressed by asking the surveyor to review whether the house, its access and any facilities such as a septic tank or percolation area or water supply, can be provided without passing over or acquiring rights over land in the ownership of any third party.

The practical problem is that an applicant who already owns a site and who has received a grant of planning permission subject to such a condition might not realise the full implications of such a condition and might have the house half built before realising that there may be a problem. Compliance with the condition may be impossible because it would require the applicant to acquire land perhaps from both adjoining owners to provide the necessary lines of sight.

The current situation is creating problems for property owners and their solicitors and in some cases properties will not be saleable without the problem being regularised.

In the opinion of the Conveyancing Committee the planning authority should not grant permission until the applicant satisfies it that the applicant has such legal rights or perhaps ownership necessary to enable it to comply with any such condition. Planning authorities already do this routinely in some areas in relation to easements for drainage if a site cannot be drained without a grant of easements over property in the ownership of third parties.

Alternatively, the planning authority should ask applicants to submit with a planning application (or seek further information formally of anyone who does not comply), confirmation of the position in relation to sight lines, and then elect to grant permission (other things being equal) if the sight lines are adequate and refuse them if they are not. Informal arrangements or letters from friendly neighbours are simply not acceptable.

**SIGHT LINES:
NEW PROBLEMS
FOR PROPERTY
OWNERS AND THEIR
CONVEYANCERS**

(Contd.)



**EVIDENCE OF
COMPLIANCE WITH
PLANNING
CONDITIONS RE
SOCIAL/
AFFORDABLE
HOUSING**

Queries have arisen as to whether independent evidence, in addition to an architect's opinion on compliance in the usual form, is required to vouch compliance with a condition in a planning permission imposing a social / affordable housing requirement pursuant to Part V of the Planning and Development Act 2000 (as amended).

Where the architect is prepared to furnish an architect's opinion on compliance in the usual form, being either the form recommended for use by the Conveyancing Committee or the approved form as used by members of the RIAI (which forms address conditions attaching to the relevant planning permissions), then there is no necessity to require production of independent evidence with such a condition. There is no basis for distinguishing such a condition from the other conditions attaching to the planning permission.

However, if the architect is not prepared to certify compliance with the social/affordable housing condition, and qualifies his opinion or certificate of compliance to exclude that condition, then the purchaser's solicitor will require independent evidence of compliance, preferably by way of a letter from the planning authority.



Practitioners should note that it is open to RIAI members to use the pre-printed forms of opinions on compliance published by the RIAI or the online version of those forms downloaded from the RIAI website. The downloaded on-line versions must contain endorsements as follows:-

- on the front page after '...by registered RIAI members only', '**and it is warranted by the signatory that the standard text of this digital document is unaltered**'.
- on the last page at the signature after 'Registered Member of the Royal Institute of the Architects of Ireland', '**who warrants that the standard text of this digital document is unaltered**'.

Certifying architects must sign their original signatures on the downloaded forms and apply a current membership stamp in the same way as for the pre-printed forms.

RIAI 'ON-LINE' OPINIONS ON COMPLIANCE