

Building a Safer Future Independent Review of Building Regulations and Fire Safety

The final report of the independent review of building regulations and fire safety “Building a Safer Future” makes 53 recommendations, many of which will have a positive impact on building processes, standards and safety.

Subject to clarification and consultation on the precise details and operating mechanisms, NHBC welcomes the implementation of recommendations covering the following areas:

- Competence of those working on Higher Risk Residential Buildings (HRRBs)
- Dutyholders and their responsibilities through the entire life of the building
- The Gateway Point system ensuring approval before start and increased scrutiny before occupation
- Information and its responsible transfer throughout the life of the building
- Register of duty holders and reporting of regular maintenance and assessment of safety systems.
- Residents’ responsibilities and involvement
- Technical guidance
- Increased control of products and testing
- International co-operation.

However, NHBC is firmly of the view that the formation of a Joint Competent Authority (JCA) in the form recommended in the report and the consequent exclusion of Approved Inspectors from HRRBs will not deliver the reports aims of safer buildings and could in fact be counterproductive.

NHBC concerns relate to:

- **The JCA would create a two-tier approach to fire safety** by having a ‘JCA approach’ for HRRBs, and another for all other buildings. This would create fragmentation across the 353 local authorities in England and further confuse dutyholder roles and responsibilities, failing to address Dame Judith’s important concerns around the need to reduce complexity.
- **The JCA would be both the regulatory body and the service delivery body**, enabling the Local Authority building control service to regulate itself. The proposed system lacks independence and is counter to regulatory models applied to all other sectors (e.g. the FCA regulates the financial services industry but does not also provide its own financial services/products to consumers)
- **Local Authorities do not have the resources, competencies or independence required** to deliver safe buildings. LAs have only self-determined competency requirements, they are unregulated, unlicensed and not subject to audit. The LABC is a local authority company, funded by subscription and income from commercial partners. Its board has no external representation and its primary purpose is to market the building control services for Local Authorities. It is a not a regulatory body and does not have the ability to require any Local Authority to follow its advice.

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- **Excluding Approved Inspectors from regulatory oversight for HRRBs**, would eliminate real competition and restrict the capacity in the market, ignoring the greater breadth of experience, expertise and choice that the private sector has provided. This is a detrimental step threatening the progress and improvements made to the building control system since the 1980s

In order to address these concerns NHBC is suggesting two alternative frameworks which we would encourage Government to consider.

1. A single Regulatory System as the most effective way to improve safety (NHBC's preferred option)
2. A hybrid system combining Hackitt Review recommendations with a single regulatory system.

NHBC believes that these options, in conjunction with the majority of recommendations in the report, would contribute significantly to improving the design, construction and on-going fire safety of HRRBs.

In speaking with government officials, NHBC was asked to consider what additional measures could be added to the recommendations to achieve the reports' aim of delivering safer buildings. We have reflected on this in detail and have presented an alternative requiring the use of verifiers to be made mandatory on all HRRBs. However, we do not believe that this additional measure would deliver the key aims of the report as robustly as our suggested options could.

NHBC Alternative Frameworks

Option 1 - Development of a single regulatory system as the most effective way to improve safety (NHBC's preferred option)

Safer buildings can only be achieved by having a fully regulated building control sector with a single overarching licencing body to create consistency across the Building Control industry. This would address the concerns over differences in competence and competition by setting one set of standards and regulations. To achieve this, the current regulatory system must be simplified rather than adding a further layer of bureaucracy through the JCA in its suggested form.

This option builds on these recommendations but adds additional protection for buildings in use through the Joint Competent Authority taking on the role of the overarching body for HRRBs during the occupation phase.

Independent enforcement body

Formal enforcement of Building Regulations should be removed from local authority building control and placed with a wholly independent body. The independent body should have the strengthened sanctions and penalties suggested in the final report and would step in to act when proactive

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measures by the Building Control Body (BCB) have failed to secure compliance with the functional requirements of the building regulations.

Separating the enforcement function for all building regulation contraventions away from Local Authority Building Control and placing it with an independent body would remove the competitive conflict of interest detailed in the report. It would also address the inability of a Local Authority to take enforcement action against itself.

Single regulatory regime for all BCBs

A single regulatory regime for both public and private sector would provide the public and government with confidence that the building control system is fit for purpose.

A single system would ensure that all BCBs are –

- Regulated
- Licenced
- Required to demonstrate appropriate levels of competency
- Monitored and audited
- Insured
- Subject to robust controls and sanctions

Approved Inspectors are already required to meet these requirements via statute. LAs have only self-determined competency requirements and they are un-regulated. The LABC is a local authority company, funded by subscription and income from commercial partners. Its board has no external representation and its primary purpose is to market the building control services Local Authorities. It is not a regulatory body and does not have the ability to require any Local Authority to follow its advice. Independence of the building control function should be ensured by the extension of the principles of Regulation 9 of The Building (Approved inspector etc.) Regulations 2010 to apply to all BCBs. Regulation 9 restricts Approved Inspectors from acting in a building control capacity on any project where it has any form of financial interest or conflict of interest. There is no similar restriction in the case of Local Authority Building Control departments.

Restricted Licences for BCBs to operate

Restricting licences for BCBs on HRRBs to those that have the competency would increase public confidence in the building control system, meaning that in order to work on the highest risk buildings a BCB would need to demonstrate that it has the right competences to do so.

Overarching body for occupied HRRBs

There is a clearly identified need to have an overarching body to oversee the ongoing control and registration of occupied HRRBs. This is possibly the most dangerous part of a building's life where

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changes made to the building or lack of maintenance can result in the designed-in safety features of the HRRB being compromised. We would suggest that this role should be fulfilled by a body similar in constitution to that of the proposed JCA.

Ongoing control of designated buildings presently rests with the Fire and Rescue Service via the Regulatory Reform (Fire Safety) Order 2005. The review calls for additional controls such as a register of all HRRBs as well as dutyholders and on-going enforcement where dutyholders do not fulfil their obligations. Adding the expertise and resources of the Local Authority and HSE in terms of existing buildings to those of the Fire and Rescue Service would further strengthen the ongoing control of occupied buildings.

In order for an effective handover at Gateway Point 3, the overarching body could undertake a joint final inspection with the BCB and review the pre-occupation Fire Risk Assessment. Satisfactory completion of this combined with the Final Certificate from the BCB would enable occupation of the building.

Key benefits of Option 1 include:

- Independent enforcement function removes conflict of interest
- Same regulatory regime for all BCBs ensures consistency and promotes confidence in the building control system
- Restrictive licence gives confidence in competency, resources and capability to undertake type of work
- Consistency of national providers retained
- Removes potential duplication and dual track system for HRRBs and other buildings
- Retains capacity in the building control system
- Safer buildings throughout their life cycle
- Retains the competitive benefits recognised in the report.

Option 2 - Hybrid system combining Hackitt Review recommendations with a single regulatory system

NHBCs second option aligns itself with Dame Judith's vision of removing the choice of regulator by requiring all BCBs to become licensed as AIs, leading to a single class of BCB. The JCA would become the enforcement body and the overarching body for HRRBs in use. The JCA could also record the progress of projects via collection of information in respect of progress through the gateway points.

Joint Competent Authority

The JCA would be formed as suggested in the final report, as a national overarching body with the HSE as the main convenor and delivered locally by Local Authorities and Fire and Rescue Services. The building regulation enforcement function would be retained by the Local Authority but in order to

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maintain independence and probity their ability to do building control should be removed. In addition the JCA would take on the new enforcement powers for buildings in use.

The JCA would act as the Gateway Point keeper and would be able to accept a BCBs undertaking at each of the Gateway points that the duty holder has achieved their obligations in relation to the safety of the building.

As in Option 1 the JCA would act as the overarching body in respect of occupied buildings.

Approved Inspectors

Approved Inspectors would become the single class of BCB and would continue to be licensed and regulated under the existing framework via CICAIR, achieving the review's recommendation of removing choice of regulator.

As with Option 1, licences for Approved Inspectors should be restricted according to building type so that in order to work on the highest risk buildings an Approved Inspector would need to demonstrate that it has the correct competences and resources to do so.

The BCB would be responsible for providing the JCA with an undertaking at each Gateway Point that the duty holder has fulfilled their obligations along with a suitable package of information demonstrating this.

If enforcement action became necessary, the responsibility would rest with the JCA for it to undertake the relevant action without the conflict and fear of losing future work.

Handover of the building to the control of the JCA prior to occupation would be achieved in the same way as proposed under Option 1.

Local Authority Building Control

Local Authorities could elect to apply to CICAIR to become licensed as an Approved Inspector via powers granted to them under the Localism Act 2011. This would enable them to provide a building control service as a private sector AI outside of their area and this could include HRRBs depending on their licence restrictions.

Key benefits of Option 2 include:

- Independent enforcement function removes conflict of interest
- Consistency of national providers retained
- Removes potential duplication and dual track system for HRRBs and other buildings
- Retains capacity in the building control system
- Minimal cost implications for buildings in construction
- Safer buildings throughout their lifespan

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Option 3 - Hackitt Full implementation option

We have previously expressed concern that the report has in places failed to grasp the complexity of the issues at stake, and in the view of NHBC some recommendations if implemented would reduce the fire safety of buildings and increase risks for residents.

NHBC was also asked to consider what additional measures could be added to the recommendations to achieve the reports' aim of delivering safer buildings.

We have considered this possibility in detail and if government were minded to fully implement all the recommendations contained in the Report despite all of the above reservations we would strongly suggest that the use of Approved Inspectors as verifiers on HRRBs be made mandatory to provide an independent view and upfront assistance to the duty holder from the early stages of a project through to occupation.

In this capacity Approved Inspectors would be able to work with dutyholders to ensure compliance and provide the JCA with the confidence that all possible measures have been taken to achieve the functional requirements of the regulations. The Approved Inspector would work with the client to provide the JCA with the necessary certification and evidence at each Gateway Point to enable the JCA to allow passage through to the next stage following a suitable consultation process. This would limit the impact on the newly named Local Authority Building Standards (LABS) resources during the design and construction phase allowing the resources to be directed to the more time consuming and complicated occupation phase.

However we do not believe that this option would deliver the key aims of the report in the same way as the first two options.

Key concerns with Option 3 include:

- Duplication and extra layer of bureaucracy for HRRBs
- Delays in handover between Approved Inspector/JCA
- Increased costs to builders of JCA/Approved Inspector/LABS
- Potential for conflict at Gateway Points increased
- Capacity of JCA to pick up this option and ongoing control of HRRBs
- Insurance implications for JCA
- Legal liability of JCA
- Lack of independence of regulator on LA buildings
- Lack of independence of regulator as approver of products - LABS Registered Details
- Enforcement still in the hands of regulator