

LABC Submission to the Building Safety Bill Pre-Legislative Scrutiny Committee

About LABC

Local Authority Building Control (LABC) is a not for profit company representing every local authority building control team in England and Wales. LABC was established in 2005 with assistance from the LGA. The LABC network comprises around 4,000 public service building control professionals who work on the whole range of regulated buildings, contribute to Safety at Sports Grounds and undertake public safety and protection functions including the 24-hour emergency supervision of dangerous structures. The LABC network represents around 70% of practising building control surveyors in England and Wales.

Membership of LABC is voluntary. Currently all local authorities in England and Wales are part of LABC, plus additional members from Scotland, Northern Ireland, the Channel Isles, and the Isle of Man.

LABC's main functions are:

- In-depth technical policy, technical competencies, and best practice.
- Externally accredited learning and qualifications.
- UKAS audited validation assessments, standards, and performance.
- Consultancy support for local authority teams going through local government transformation and shared working.
- Functions for managing Competent Person Scheme notifications.
- Commercial added value services including LABC Warranty.

A high proportion of LABC's time has been given to supporting MHCLG in the development of the Building Safety Programme. This has included being members of expert panels established in the immediate aftermath of Grenfell and as working group members supporting Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety. LABC is a member of the Joint Regulator's Group and other sub groups where we have introduced LABC expert surveyors to participate in the 'Early Adopters' policy design trials for the new regime and the Joint Inspection Teams for replacing unsafe cladding on occupied buildings. LABC contributes resources and expertise to maintaining protocols such as the recently published Building Regulation and Fire Safety Procedural Guidance which has established robust procedures for consultations between building control and the fire authorities.

For ease and where we have a view, we have provided specific answers to the committee's set questions:

1. How well does the Bill, as drafted, meet the Government's own policy intentions?

LABC welcomes the 'whole system' approach to building safety and we feel that the draft Bill meets the Government's own policy intentions. Having been part of this process as members of the JRG we have witnessed first-hand Dame Judith's recommendations being translated into the draft Bill. We feel that new primary legislation creates the systemic approach described in Dame Judith's Final Report and do not believe that reliance on updates to existing or secondary legislation would pull together the radical changes needed.

2. Does the draft Bill establish an appropriate scope for the new regulatory system?

We do consider that the Bill provides the opportunity to address other building safety issues and provision has been made to extend the scope of the new regime in the future.

LABC would like to see a forward plan to improve safety across all buildings with appropriate measures to counter the cultural 'race to the bottom' and 'gaming' that Dame Judith identified in her report. At the very least, in order to impact on the safety of a wider range of buildings without adding to the work of the BSR in the medium term, LABC believes that the 'gateway' principles still to be developed in secondary legislation should be extended to all buildings to which the Fire Safety Order applies. This would mean that construction and occupation could not continue, without appropriate notification from the regulator.

We understand the challenges relating to the volume of work and required resourcing should the scope be too wide during the first years of implementation. However, safety risks are not confined to large or tall buildings and as such we would hope that the scope is appropriately widened over time. Unfortunately, a by-product of the new regulatory structure is the creation of a two-tier system. There is no doubt that competition is already increasing in building control for work outside the scope of the new regime; as a result, we are very concerned that 'least intervention at the least price' will remain the culture for out of scope buildings.

3. Will the Bill provide for a robust – and realistic – system of accountability for those responsible for building safety? Are the sanctions on those who do not meet their responsibilities strong enough?

LABC is satisfied with the improved definition and identification of duties and responsibilities in the Bill. Similarly, we are satisfied that the sanctions and penalties are sufficient to focus attention and are proportionate. We welcome the additional powers and mechanisms such as the introduction of Authorised Officers (27), the addition of compliance and stop notices, together with the extension of time limits for prosecution for contravening the Building Regulations (42) from two years to ten years.

However, LABC believes that an unintended consequence of the strengthened powers of local authority building control, will be to push developers and contractors who prefer lighter touch regulation away from public service building control to the private sector on work where they can still choose their regulator.

4. Will the Bill provide strong mechanisms to ensure residents are listened to when they have concerns about their building's safety?

Mechanisms have been put in place to ensure that residents are listened to when they have concerns with building safety and there could be a place for local authorities to assist further in this space. However, we feel that providing a detailed record of strategy, design (plans), specifications, procurement and as built plans – plus all the supporting documents on products and certification – will further enable and empower residents.

6. Does the Bill improve the product testing regime in a way that will command the full confidence of the sector?

The building control profession, and indeed the whole construction industry, needs construction products that are impartially tested, accredited, and marketed in a way that is simple to understand. The industry needs product testing that is transparent, free from commercial gaming and can be relied upon. LABC is already working with officials and industry to develop proposals in this space and we welcome the proposal for a robust Constructions Products Regulator.

7. Is it right that the new Building Safety Regulator be established under the Health and Safety Executive, and how should it be funded?

The HSE is respected by industry and instantly gains the attention of dutyholders when it intervenes. We believe this level of regulatory influence has been lost in building control due to de-regulation and the introduction of competition in the 80's which have directly affected industry thinking and culture. Without a complete 'U-turn' to remove competition completely from the regulation of construction and refurbishment of buildings, the only viable way forward is as proposed in the draft Bill and as such, LABC supports this provision to create the BSR together with the appointment of the HSE as the regulator.

Having worked closely with the HSE throughout the programme leading up to the publication of the draft Bill we have witnessed their uninhibited approach to regulation. The policy design trials currently underway to trial this new regime have clearly demonstrated the effectiveness of true regulators working together as part of a multi-disciplinary team.

The draft Bill details how the BSR can recover the cost of delivering their service (33) together with the reimbursement of local authorities and fire and rescue services providing support (58). Local authorities can only provide the appropriate resourcing to support the BSR where they are appropriately reimbursed and as such, we fully support the proposals.

Those commissioning work and developing sites should pay for regulation, and it should not be considered an extra inconvenient requirement to be minimised. Whilst it would be inappropriate to burden developers with disproportionately high charges, these will be on a not-for-profit, cost recovery only basis and amount to a very small percentage of the overall cost of building, refurbishing, or maintaining a higher-risk building. Regulatory involvement should start as early as possible in the project; our experience and research show that early regulatory intervention results in significant cost benefits in reducing wasted materials, unnecessary delays and in achieving higher performing and safer buildings.

The draft Bill also provides for local authorities to recover the cost of delivering services that they are currently unable to charge for. Again, we support the inclusion of this new ability to make charges and appreciate the ongoing engagement of both MHCLG and the HSE to develop an effective cost recovery model.

Whilst the focus of the new regulator will inevitably be on fire and structural stability, it will be important to ensure that the full suite of building regulation requirements such as energy, acoustics and inclusive design, which also have a major impact on health and wellbeing, seamlessly form part of the technical support provided to the BSR. Similarly, with the recent publication of the Planning for the Future white paper it will be important to ensure that different regulatory regimes are kept synchronised.

The more stringent regulatory regime to introduce greater accountability and statutory responsibility on dutyholders, removes the current ambiguity of who is responsible for regulatory compliance and is an area that is most welcome.

One of Dame Judith Hackitt's recommendations was that a duty holder should not be able to choose their own regulator, with the introduction of the BSR, that has now been achieved in respect of higher-risk buildings. It is only when regulators are uninhibited by competition that they can truly act as regulators and therefore we are disappointed that the opportunity has not been taken to remove duty holder choice across a wider section of the Built Environment. We do, however, recognise that there is the provision in the draft Bill (20) to modify the scope of Higher-Risk Building in the future.

Initial Notices (53 & 54)

In the spring of 2019, a number of approved inspectors were unable to secure insurance cover which resulted in thousands of live building projects being reverted to the control of local authorities and many, due to limitations with current regulations, continuing unregulated. This reversion process exposed numerous examples of non-compliance, including significant fire safety defects in higher risk buildings which made them fundamentally unsafe. It also exposed the lack of plans certificates, inspection records, fire and rescue consultation and final certificates. As such, LABC welcomes the proposals to change the Building Act (53 & 54) which will ease the continuing regulation of projects affected by any such problems in the future and the requirement under (s58Z1) for building control approvers to make available information which will address the current problems surrounding missing information/records faced by local authority building control and building owners.

Regulation of the Building Control Profession (44)

In February MHCLG convened the Future of Building Control Working Group made up of bodies involved in the building control profession; that group has worked collaboratively and very successfully to create proposals to transform the discipline. We look forward to continuing this work in the interests of creating a truly unified, consistent and accountable profession.

We appreciate the comprehensive approach that has been proposed for regulating the profession. Introducing the concept of the 'registered building inspector' is most welcome but rather than 'may register' different classes of building inspector (s58B (2)) we suggest this should be 'must register' different classes; we believe this is essential and the only way to ensure that the required cultural change and competency requirements cascade into all classes of building and not just those that are in scope of the new regime.

The draft Bill, alongside the explanatory notes also suggest that building control authorities and registered building control approvers ... *"Before each exercise of a restricted function ... must obtain and consider the advice of a registered building inspector (who may, but need not, be employed by the...)"* In order to ensure robust technical decision making both at application assessment and on site, we strongly recommend that all building control practitioners should be registered. Building control surveyors make decisions on a daily basis and must be able to demonstrate proven competence to make these decisions. Merely having access to a registered building inspector will give rise to complacency where decisions are ratified without appropriate attention and does not reflect the reality of the true day-to-day role of a building control professional.

We fully support the registration of building control approvers (currently approved inspectors). This registration should encompass independently accredited, third party technical audits including a technical analysis of decision making to ensure that compliant buildings are being delivered in accordance with the requirements of the Building Regulations.

Similarly, we strongly believe that local authorities should be subject to similar auditing to standards that are set by the Regulator across both public and private sector building control and to that end, local authorities should be required to be compulsorily affiliated within LABC.

CICAIR is currently designated by the Secretary of State to register and provide oversight of approved inspectors. LABC recommends that immediate action is taken to strengthen the audit process of CICAIR to include the requirement for external independent technical auditing in advance of the Bill being enacted to improve current performance and standards.

In (44) the proposed s58X of the Building Act provides that the regulator can delegate the registration of building control approvers. We would suggest that any delegation of this responsibility is only given to an organisation that has detailed knowledge of building control and the legislation and procedures involved. This must be a publicly accountable body and not a 'for profit' organisation that may seek to financially exploit local authorities and building control approvers without genuinely delivering improvement, performance and standards across the profession. Accordingly, LABC believes that this function must remain under the direct influence of the BSR and not be designated away from the BSRs ultimate control.

LABC Delivery of Independently Accredited Qualifications, Audits and Competency Validation

Over the past 4 years, LABC has implemented a robust UKAS audited ISO standards framework for local authority building control teams. It sets the standards and performance required of local authority building control in the delivery of the building control function and other statutory functions such as safety at sports grounds assessments, control of demolition and emergency dangerous structures call out. All apart from 29 authorities in England and Wales have voluntarily signed up to the quality management system and are independently audited by the LABC Standards Team and UKAS accredited Alcumus ISOQAR.

LABC has developed an award-winning range of accredited learning and qualifications for building control professionals. These OFQUAL accredited courses cater for new entrants into building control at level 3, through levels 4, 5 and a levy funded level 6 Honours Degree in Building Control surveying, run in association with the University of Wolverhampton and accredited by CIOB, CABE and RICS. Our qualifications also allow entry from other disciplines and provide learning pathways for mid-career surveyors. We have recently opened our qualifications up to private sector building control.

Part of Dame Judith's Final Report recommended those working in the construction industry should prove their competence. In 2018 LABC took on Dame Judith's challenge to prove the competency of building control professionals. Working with the Institution of Fire Engineers, LABC developed a competency validation assessment for Building Regulation Fire Safety in Higher Risk Buildings. To date we have 550 accredited surveyors. This scheme of validation will be extended to cover all levels of building control professional as referred to in s58B (2) and is open to both public and private sector building control professionals.

To ensure there is a truly robust and impartial validation of building control professionals' competence we are now developing this scheme under UKAS and ISO/IEC 17024 (conformity assessment for bodies operating the certification of persons). We are very pleased that Professor Luke Bisby of Edinburgh University; Graham Watts CIC Chief Executive and David Snowball Ex-Acting Chief Executive of HSE will form part of the impartiality committee that will provide independent scrutiny of the LABC scheme.

Whilst we have made great advancements in auditing, validating and assessing the performance, standards and competence of public service building control and currently all local authorities in England and Wales are members of LABC, that membership is voluntary and we are unable to compel local authorities to perform and have little leverage should we find failures. One of Dame Judith's recommendations was for local authorities to be compelled to be members of LABC. We believe that mandatory membership of LABC for local authority building control teams is the best way for the Building Safety Regulator to ensure the competence, standards and performance of local authority teams and will simply be a continuation of what we already do. As described above, LABCs processes of learning, performance and competency validation are all externally, independently, and impartially

audited and as such are not subject to any real or perceived conflict of interest. Therefore, we would appeal to the Committee to consider recommending that LABC is formally mandated to local authority building control teams to ensure these processes become mandatory and in turn increase public confidence. Should it be deemed appropriate, we could also include private sector building control with our performance and standards framework, working directly on behalf of the BSR as its delivery partner for registration of all building control professionals and bodies.

In closing we would like to thank Dame Judith Hackitt, Chandru Dissanayeke and his team of civil servants together with Peter Baker and his team at the HSE. Without exception all have worked tirelessly with tremendous dedication to develop the draft Bill. They have employed exceptional leadership and project management skills, engaged, and importantly listened to key stakeholders at the appropriate time. This continues to be a huge project but is one that LABC fully supports; we look forward to assisting where possible to deliver the new regime and ultimately build a safer future.

Thank you for considering this submission, I would be pleased to expand on any part when I attend your Committee to provide oral evidence.

Lorna Stimpson
LABC Chief Executive