



Department for
Communities and
Local Government

To:

The Chief Executive

Unitary, Metropolitan, District and
London Borough Councils in England
County and County Borough
Councils in Wales

4 July 2013

The Town Clerk, City of London

The Clerk, Council of the Isles of Scilly

The Sub-Treasurer, Inner Temple

The Under Treasurer, Middle Temple

The Head of Building Control

Unitary Metropolitan, District and
London Borough Councils in
England
County and County Borough
Councils in Wales
City of London
Council of the Isles of Scilly

Approved Inspectors

cc: The Chief Executive:

County Councils in England
National Park Authorities in England &
Wales

The Chief Fire Officer: Fire and Rescue
Authorities in England and Wales

Dear Sir/Madam

**RED TAPE CHALLENGE: LOCAL AUTHORITIES CARRYING OUT BUILDING
CONTROL FUNCTIONS OUTSIDE THEIR BOUNDARIES**

I am writing to make you aware of the outcome of the Red Tape Challenge proposal that the Department consider ways that local authorities in England might carry out building control functions outside their boundaries.

The Building Act 1984 requires local authorities to carry out statutory building control functions within their geographical boundaries. The Act also makes provision for approved inspectors to carry out some building control.

The general power of competence provisions in section 1 of the Localism Act 2011 allow a local authority to do anything an individual can do unless expressly prohibited from doing so. If a local authority wishes to provide building control services outside its own area the Department considers that authorities in England may rely on the general power of competence to do so by becoming an approved inspector. The general power used for this purpose is subject to two restrictions in the Localism Act:

- i. A local authority must form a trading company (section 4(2) of the Localism Act)
- ii. A local authority trading company will not be able to act as an approved inspector within its authority's own local authority area (section 4(3) of the Localism Act).

Local authority companies acting as approved inspectors would be subject to the same duties and responsibilities as private sector approved inspectors as set out in Part 2 of the Building Act 1984 and the Building (Approved Inspectors etc.) Regulations 2010. This would include seeking approval from the Construction Industry Council, acquisition of an appropriate level of professional indemnity insurance and restrictions on a professional or financial interest in building work for which they are acting as an approved inspector.

Local authority companies acting as approved inspectors will not have the powers granted to local authorities under the Building Act or the Building Regulations 2010, in the same way as private sector approved inspectors do not have these powers. For example, they would not be able to undertake formal enforcement of the Building Regulations, approve or reject full plans applications, relax or dispense with requirements in the Building Regulations or regularise unauthorised work.

Concern has been expressed that some local authority companies providing building control services may seek to undercut competitors by expecting their local authority to subsidise any losses on their trading account. Local authority trading companies carrying out building control functions beyond their boundaries will therefore need to have particular regard to the effect of EU State Aid rules and the provisions of company law and competition law.

The general power of competence in the Localism Act does not apply to local authorities in Wales. The CIC, as the designated approval body of approved inspectors for England, can approve approved inspectors only to operate as building control bodies for buildings or building work in England.

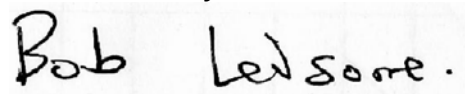
Local authorities contemplating taking advantage of this power in the Localism Act should seek their own advice before doing so.

Note: Nothing said above changes the current ability of local authorities to enter into partnership, joint working or sub-contractual agreements with other local authorities as they are able to do now and will continue to be able to do in future.

Enquiries

Enquiries on this Circular Letter should be addressed to Sandra Simoni (Tel: 0303 44 41781, E-mail: enquiries.br@communities.gsi.gov.uk).

Yours faithfully

A handwritten signature in black ink that reads "Bob Ledsome." The signature is written in a cursive, slightly informal style.

R J Ledsome

Deputy Director
Building Regulations and Standards Division