
Licence to build:

A pathway to licensing
UK construction



FEDERATION OF
**MASTER
BUILDERS**

fmb.org.uk

Rye Tait
Consulting

Contents

Executive summary	3
1. Introduction	6
1.1 What's the problem?	6
1.2 What's the impact?	7
1.3 The basic idea	7
1.4 The benefits of licensing	8
1.5 The time is now	8
1.6 Occupational licensing in the UK	9
2. The current picture in construction	10
2.1 The regulatory environment	10
2.2 Competence schemes	11
2.3 Quality and consumer protection initiatives	11
3. International evidence	14
3.1 Overview	14
3.2 Case Study: Australia Capital Territory	16
3.3 Case Study: New Mexico	17
4. Appetite for construction licensing	18
4.1 Views of stakeholders	18
4.2 Views of small businesses	20
5. Proposal for construction licensing	24
5.1 Aims	24
5.2 Model	25
5.3 Detailed features	26
6. Anticipated challenges and solutions	34
7. Next steps	36
7.1 Obtaining Government and industry backing	36
7.2 Identifying Scheme Providers and developing standards	36
7.3 Assessing likely costs and revenue	37
7.4 Consultation and legislation	38
7.5 Staged implementation	38
7.6 Do you support licensing?	38

Executive summary

The UK construction industry still seeks a comprehensive solution to the problem of ensuring competence.

As things stand, many would argue that too few builders and contractors are subject to meaningful checks and balances. This is because, unlike the gas and electrical trades, anyone in the UK can set themselves up as a builder or tradesperson.

Within the domestic repair, maintenance and improvement (RM&I) market, the problem of rogue and incompetent builders is widespread, and persists despite a plethora of opt-in schemes intended to tackle it. These rogue and incompetent outfits put consumers and workers at risk and undercut professional and competent firms, placing downward pressure on standards and quality. The result is a continuing corrosion of the industry's image and the trust of its clients, and a relatively unregulated, un-professionalised underbelly of the industry in which a wide range of poor practices are allowed to continue.

Licensing the UK construction industry would provide a means of barring and removing from the industry those who are shown to be incompetent or who undermine standards as a matter of course. Licensing would provide a much higher level of assurance to consumers and improve quality and safety. The need to renew licences over time could also be used to promote upskilling and continued professional development. It would have the potential to drive a transformation in culture and professionalism across the industry.

The determination to grasp the issue of competence in construction has rarely been stronger. The quality mark idea arising from the Each Home Counts review, ongoing work to improve health and safety outcomes among smaller firms, as well as the Hackitt Review's call for the industry to develop an overarching framework to oversee competence in high rise residential buildings, are all parts of the same picture. This report argues that a licensing scheme would complement and strengthen all of this work, enabling the industry to formulate a comprehensive approach that embraces the entirety of the industry.

Learning lessons from home and abroad

Previous attempts to strengthen controls in the sector have tended to focus on voluntary and commercial registration schemes. These often result in duplication and create bureaucracy for firms and confusion for consumers. The Government-backed TrustMark model is a good example of a scheme that ensures registering firms are subject to vetting and inspections. However, like many other schemes, TrustMark is voluntary and, therefore, can never fully tackle the rogue traders who blight the domestic market.

A range of licensing schemes have existed for years in other parts of the world, with, for example, strong measures operating in several US States, in territories of Australia, and in some European nations such as Germany and Denmark. These schemes have important attributes that the UK could consider adopting; notably the use of enforcement powers and penalties designed to create a compliant culture with consumer protection at its heart.

Appetite for construction licensing

Stakeholders interviewed for this research are largely favourable to construction licensing. They view the main drivers as the need for quality and to improve the reputation and culture of the UK construction industry. A key message from several stakeholders is the need to identify the 'gap' that licensing would fill given the industry already works under the auspices of the Building Regulations and Construction Design and Management Regulations, and a wide range of voluntary competence schemes (see Section 2 of this report).

The gap, this research argues, is that existing registration schemes are voluntary and therefore are not comprehensive. Voluntary schemes do not go far enough to provide strong protection, especially in the domestic market. For larger contractors with complex supply chains, the gap can be defined as the need for a standardised, nationally consistent approach to ensuring high quality workmanship. Some stakeholders also feel that a licence would assist larger contractors in identifying and selecting high quality subcontractors.

A survey of the FMB's members also reveals strong favourability towards licensing.

77%

agree with the idea of licensing all UK construction firms.

76%

believe that licensing would improve quality and professionalism.

74%

believe licensing would remove rogue and incompetent outfits.

74%

agree that licensing should include self-employed tradespeople at the smallest end of the market.

The core proposal

The proposed model is for a licensing scheme governed and administered by a single authority, but integrated within existing structures to minimise duplication and the burden on industry.

A Government-backed 'quality mark' framework (a new voluntary scheme emerging from the 2016 Each Home Counts review) is already in development and would apply to the energy efficiency, retrofit and RM&I sectors of construction. This model is set to replace TrustMark and offers an already functioning administrative framework upon which a compulsory licensing scheme could be based. If implemented, the quality mark would include an overarching body and network of Scheme Providers which would set technical standards, and operate registration, monitoring and sanctioning protocols for firms that wish to bear the quality mark.

It therefore makes sense to integrate a licensing scheme with the quality mark to strengthen the shared will to transform the industry for the better. This report argues that we should extend its remit to the whole construction sector and make the entire system mandatory. Extending the scheme in this way would involve identifying and incorporating more Scheme Providers to cover the entirety of the construction industry footprint and put relevant technical standards in place.



Within this model:

- The remit of the licence should be UK-wide and apply to all types and sizes of construction work conducted by a contractor;
- The licence should apply to all legal entities of construction firm (incorporated and unincorporated, including sole traders) rather than individuals;
- Fee-setting should be tiered and proportionate to the size and risk level of the business;
- Once issued, a licence should remain valid – unless successfully challenged – for a period of at least three years;
- All construction firms should meet certain pre-requisites for the licence to be granted and renewed;
- Robust enforcement and a tiered programme of sanctions should be put in place that act as a strong deterrent against firms trading unlicensed; and
- A publicly accessible online database of licensed traders should be established for anyone to search for and find a licensed builder/ tradesperson.

More detail about each of these proposals can be found in Section 5.3.

Next steps

Obtaining Government and industry backing

As a first step, an industry-led Task Force or Working Group should be established to consider the draft proposals and develop a more detailed set of firm proposals for the Government to consider. This should involve working closely with the Each Home Counts team to consider the practicalities of integrating the licensing scheme with the proposed quality mark framework.

Identifying scheme providers and developing standards

The quality mark framework will already involve Scheme Providers operating in the energy efficiency and domestic sectors, but intensive industry engagement will be needed to identify more Scheme Providers to extend the proposed licence to cover all trades, including new build, and create a comprehensive scheme. Work will be needed to define and collate technical standards across all occupational areas.

Assessing likely costs and revenue

A full and detailed assessment will need to be undertaken of the likely capital and running costs of a licensing scheme to cover such things as staff, building and assets, start-up costs for the licensing body, all aspects of operations, as well as advertising and promotion.

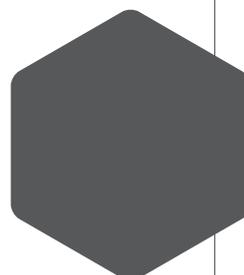
Consultation and legislation

With backing from a Government department, Task Force proposals should be turned into a Green Paper and subject to public consultation. Given a satisfactory outcome (including any modifications), a Construction Industry Licence Bill could then be proposed.

Staged implementation

Once approved, the new scheme should allow sufficient lead-in time (approximately two years) to form governance systems and enable businesses to prepare and ensure they can meet the pre-requisite requirements. The licence should be implemented on a phased basis to enable thorough piloting and testing, and with strong and effective marketing.

More detail about each of these next steps can be found in Section 7.



1 Introduction

Construction is often accused of lagging behind other industries, whether in terms of its uptake of new technologies or working practices.

Some of this criticism may be unfair, but one area in which construction certainly does fall behind other industries, and in which the UK lags behind other countries, is in ensuring fundamental competence and consumer protection. This report puts forward a comprehensive solution to the problem of competence – in the form of a mandatory licensing scheme – and sets out exactly how it could work.

1.1 What's the problem?

The UK construction industry continues to be shamed by widespread media reports of rogue and incompetent builders and the enormous damage they can inflict on unsuspecting clients. The 'cowboy' label can be applied widely – from essentially criminal outfits, to those who lack the skills and technical knowledge to adequately undertake the services they offer, or those who continually cut corners, safe in the knowledge they will be able to continue doing so. That numerous such outfits exist and continue to trade freely should not be acceptable. But they do, and they do so because of the fundamental fact that in the UK anyone can legally call themselves a builder and offer their services as such.

Most of these rogue and incompetent outfits operate in the domestic market (selling to individual home owners), because the lack of any preventative barriers and the nature of the market provide them the opportunity to do so. Private individuals, who are only ever construction clients on a limited number of occasions, face a large number of possible sellers of a relatively technical product. This leads to very high levels of information asymmetry. When things go wrong, the damage to finances, property and sometimes health can be significant.

Attempts to enforce consumer rights after building work has gone wrong, too often prove arduous, expensive and beyond the ability of many. A vast array of 'opt-in' type schemes, whether commercial or public interest-based, have failed to make any real in-roads into this problem. The many firms that see no benefit to 'opting-in' provide cover for the smaller but still significant numbers of rogue and incompetent outfits. Smaller commercial clients can find themselves in a similar position to domestic clients, a situation which is only checked by the ability of large clients and large contractors to demand and enforce certain competence requirements. Yet, competency frameworks proliferate and the industry continues to lack any comprehensive solution to this problem.

1.2 What's the impact?

The impact on individual home owners when things go wrong can be enormous, and the prevalence in the media of these instances has a major impact on consumer confidence in the industry. A recent FMB survey of home owners found one in three saying that they have been put off doing major home improvement work because of fears over hiring a 'dodgy builder'. This is an unhealthy situation for any industry to be in and suggests that demand for construction services may be being constrained by lack of suitable regulation. The ongoing prevalence of unprofessional outfits and those who are continually prepared to cut corners places continuous downward pressure on standards by undercutting professional and competent firms. It also perpetuates a culture of unprofessionalism that has knock-on effects across the industry and is reflected in the industry's poor public image.

One key symptom of this is the failure of health and safety practice among SMEs operating in the domestic market to improve in the way that it has among large firms working on major commercial and civil engineering projects. A blitz of small refurbishment sites by HSE inspectors in 2016 found 49% of sites fell below the standard required to comply with health and safety requirements. Routes to addressing this have so far proven inadequate, which only serves to put the many professional outfits which do take health and safety seriously at a further competitive disadvantage.

The unchecked, untested elements of the industry and the culture of unprofessionalism that pervades them also provides cover for the huge cash-in-hand economy that continues to operate. Experian estimated that the informal construction economy in 2012 was worth £9.76 billion, nearly half the size of the RM&I market. A cash-in-hand economy of this size cements the ability of rogue outfits to undercut others while depriving the Government of billions of pounds of revenue every year.

1.3 The basic idea

At the heart of this problem is how we can ensure and promote competence across the whole of the industry. It is difficult to see how this will ever be possible without some mechanism by which we can regulate entrance to and exit from the industry to ensure commitment to basic standards accepted by all.

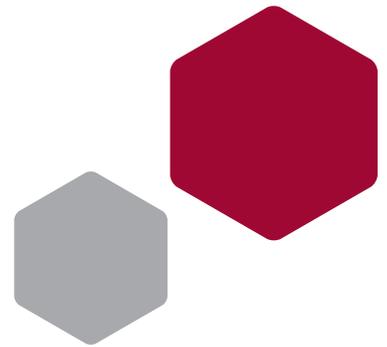
A comprehensive and mandatory licensing scheme would provide a framework through which to facilitate upskilling and promote understanding of, and adaptation to, technological and regulatory change. It would enable the removal of the worst elements, and over time serve as a mechanism to drive up standards across the board. The point of entry and the point of sanction would provide a means to bar from the industry those who are shown to fall below required standards. The point of licence renewal could also be used to promote upskilling in a way which drives professionalisation and leads to a step change in culture and productivity across the sector.

Experian estimated that the informal construction economy in 2012 was worth £9.76 billion.

A blitz of small refurbishment sites by HSE inspectors in 2016 found

49%

of sites fell below the standard required to comply with health and safety requirements.



1.4 The benefits of licensing

The introduction of a licensing scheme could have widespread benefits for the industry, for its clients, and for Government and regulators. The key benefits would be to:

1. Remove the scourge of incompetent and rogue builders from the industry

A licensing scheme which enforces a basic level of competence as an entry requirement will be a hurdle that should effectively exclude rogue traders and the grossly incompetent. It should be able to do so without acting as a barrier to the many more serious and professionally-minded builders and tradespeople who the industry wants to attract into its ranks. Effective policing and enforcement of the licensing scheme should then enable serial offenders to be removed from the industry.

2. Offer a much higher level of consumer protection

The removal from circulation of rogue and incompetent builders will greatly reduce the risks faced by consumers in the domestic market in particular. In addition, a licence should act as an easily understood signal – a bare legal minimum that all consumers would expect – and something which insurance providers would likely insist on for home insurance policies to remain valid. At the same time, it would provide a level playing field on which different firms, and services promoting consumer choice, would be free to compete and differentiate themselves.

3. Act as a mechanism to drive up quality, initiating an industry-wide culture change which drives professionalisation and improved productivity

Many believe that a licensing scheme is a necessary underpinning for the professionalisation of the industry. This in turn would drive a major change in culture which will serve to push up quality and productivity across the board. Entry criteria will ensure that all firms meet a fundamental standard of technical competence, and agree to abide by principles of professionalism and good customer service. Gaining and renewing the licence would also provide a means of insisting on, or at least encouraging, upskilling and professional development, including technical and regulatory understanding and management skills.

4. Help to improve health and safety compliance among smaller firms

A licensing scheme should serve to discourage entrance to the industry by those inclined to cut corners on quality and safety, and promote better management of health and safety risk. Licence renewal would also potentially provide a mechanism for ensuring builders remained up-to-date with health and safety regulations and were made aware of simple and proportionate means of implementing good practice. An effective sanctions element would allow the worst offenders to be permanently ejected from the industry.

5. Dramatically improve the image of the industry

All of the above factors should lead to a significant improvement in the image of the industry, with a licensing scheme serving to underpin much higher levels of confidence in the industry and its product. This should fundamentally revive the image of the industry, not just among its potential customers, but also making it a more attractive prospect for those choosing a career, which in turn could partly help to address the serious skills shortages the industry continues to experience.

1.5 The time is now

There is never going to be an easy time to introduce an industry licensing scheme; it is a very significant undertaking. However, it is clear that one is needed and now is the right time to grasp the nettle. Establishing, maintaining and enforcing competence is something the industry has struggled with for too long, without ever fully resolving.

The Each Home Counts Review into standards in the home energy efficiency market developed the idea of a new 'quality mark' framework, which will now go forward. It will build on the TrustMark model already in operation, and will also apply to the wider domestic (RM&I) markets. The quality mark is a welcome step forward, but so long as it remains as an opt-in scheme only, history suggests that its success will be limited.

At the same time, the Hackitt Review has called for the industry to develop an overarching framework to oversee the competence of all those working on high rise residential buildings. This makes sense for what is a fairly specialised subsector, which will now be subject to more stringent regulatory oversight. However, unless we build on these schemes and develop a broader framework able to reach across the whole industry, there is a real danger of an increasingly patchwork approach to competence, amid a profusion of different schemes, routes and accreditations. The case for a universal licensing scheme is a strong one and now is the right time to bite the bullet.





1.6 Occupational licensing in the UK

The UK has traditionally favoured a voluntary approach to achieving occupational accreditation, for example, through industry-imposed training standards. However, recent years have seen a steady increase in the number of occupations requiring a licence-to-practice. Since 2001, twelve have been subject to licensing for the first time, either from an existing system of certification (for example Social Services Managers, Psychologists and Nursery Nurses) or from being previously unregulated (for example Security Guards and Care Assistants).

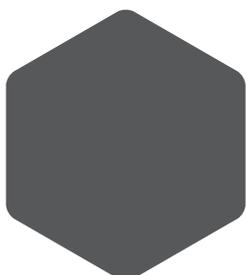
Research by Humphries and Koumenta (2015) assessed the effect of increased regulation on employment, wages and skills, as well as the quality of service delivered. The study focused on Nursery Workers (who became licensed under the Childcare Act, 2006) and Security Guards (who became licensed under the Private Security Act, 2001). A key driver behind regulating both occupations was that public perceptions were poor.

The study found that licensing appeared to have improved quality for both occupations. Skill levels were also found to have increased for Nursery Workers (although not for Security Guards – possibly indicative of the regulations not being sufficiently stringent).

The research concluded that there appears to be considerable heterogeneity in the effects of licensing occupations and that such effects are likely to be dependent on certain common factors - including the nature and height of the entry standards as well as how extensively they are monitored and applied.¹



Recent years have seen a steady increase in the number of occupations requiring a licence-to-practice.



¹ Humphries and Koumenta (2015) *The Effects of Occupational Licensing on Employment, Skills and Quality: A Case Study of Two Occupations in the UK*

2 The current picture in construction

Building Regulations set the minimum standards for design, construction and alterations to buildings.

A devolved policy area, the regulations are periodically reviewed and updated, with the latest version for England and Wales being the Building Regulations 2010, and the latest version for Scotland, the Building (Scotland) Regulations 2004.

2.1 The regulatory environment

The Northern Ireland Executive has responsibility for Building Regulations in Northern Ireland. An important consideration of the Building Regulations (including supporting documents) is that they are not legally binding in how the requirements should be met but provide guidance on working to the minimum requirements.

In England and Wales, Competent Person Schemes allow approved builders to self-certify that construction work complies with the Building Regulations without the need for work to be inspected by a local authority or another Approved Inspector. This can lead to lower prices for consumers as there are no building control fees to pay, and allows inspection resources to be prioritised towards other, non-registered, builders. A Competent Person must be registered with a scheme that has been approved by the Ministry of Housing, Communities and Local Government (MHCLG). There are currently 17 schemes in operation, such as FENSA (optional and covering replacement of windows, doors and roof lights), Stroma Certification (for commercial, third-party and PAT testing electrical) and the Gas Safe Register (mandatory and covering work related to gas installations). Individual schemes have their own application processes, rules and fees, including initial competence assessments and subsequent inspections in line with required standards.

Under the equivalent building standards system in Scotland, Approved Certifiers of Construction are recommended for electrical, drainage, heating or plumbing installations as they can self-certify that their work meets the Building Regulations. This means the work can be carried out without further scrutiny from local authority building standards verifiers. To be on this list, individuals must work for an Approved Body which is a member of such a scheme.

Following the horrific fire at Grenfell Tower in June 2017, Dame Judith Hackitt was commissioned to undertake an Independent Review of Building Regulations and Fire Safety. The Terms of Reference were primarily focused on creating a stronger regulatory framework for high-rise, multi-occupancy residential buildings. The Final Report (May 2018) has revealed serious failings in the regulatory system, namely ignorance, indifference, lack of clarity on roles and responsibilities, and inadequate regulatory oversight and enforcement tools. The report notes that "where enforcement is necessary, it is often not pursued", and "where it is pursued, the penalties are so small as to be an ineffective deterrent." As a consequence, there is "insufficient focus on delivering the best quality building possible."²

In addition to the Building Regulations, the Construction (Design and Management) Regulations 2015 (CDM 2015) require that contractors ensure any individual they employ or appoint to work on a construction site has the skills, knowledge, training and experience to carry out their work in a way that secures the health and safety of themselves and others. HSE guidance on implementing CDM 2015 states that "sole reliance should not be placed on industry certification cards or similar being presented to them [contractors] as evidence that a worker has the right qualities". The guidance makes clear that "nationally recognised qualifications (such as National Vocational Qualifications (NVQs) and Scottish Vocational Qualifications (SVQs)) can provide contractors with assurance that the holder has the skills, knowledge, training and experience to carry out the task(s) for which they are appointed".³

² Hackitt, J (2018) *Independent Review of Building Regulations and Fire Safety – Final Report*

³ *Build UK (2016) Training Standard*

2.2 Competence schemes

Established in 1995, the Construction Skills Certification Scheme (CSCS) is the leading skills certification scheme for the UK construction industry. Indeed, from January 2015, the Construction Leadership Council (CLC) agreed that the industry, including trade associations, contractors, clients, and Government should specify and promote card schemes carrying the CSCS logo with no equivalents accepted.

However, while CSCS cards provide evidence that the card holder has committed to training for the type of work they carry out, a CSCS card is not a legislative requirement. It is entirely up to the principal contractor or client to decide whether a worker must present their card to be allowed on site. As such, the scheme has limited coverage in the domestic RM&I sector.

In Northern Ireland, the Construction Employers' Federation operates the Construction Skills Register. This scheme aims to raise standards of health and safety; provide recognition of skills, experience and qualifications attained; and reduce risks and accidents in the industry. It does this by ensuring that all construction workers undertake health and safety training every four years. The system includes a card scheme which is affiliated to CSCS and is accepted as an equivalent to this scheme.

TrustMark's three cornerstones of quality for registered businesses include good trading practices, good customer service, and technical competence.

2.3 Quality and consumer protection initiatives

TrustMark

TrustMark is the only Government-endorsed scheme for trades in and around the home. It awards voluntarily registered firms with TrustMark accreditation after thorough vetting and on-site inspections to ensure the firm is raising industry standards. Its three cornerstones of quality for registered businesses include good trading practices, good customer service, and technical competence.

A non-profit organisation, TrustMark is licensed by the Department for Business, Energy and Industrial Strategy (BEIS) in accordance with Government-endorsed standards. It operates across England and Wales using a framework of 30 scheme operators working in the RM&I sector that inspect and approve businesses. These include trade associations, local Government trading standards teams, and independent scheme operators. TrustMark cannot take direct enforcement action in response to specific issues raised within complaints it receives. Instead it signposts consumers to approved scheme operators, or, a low-cost independent resolution service such as adjudication, mediation, arbitration or conciliation.

Arguably a limitation of TrustMark is that it primarily attracts trustworthy firms looking for a marketing edge, rather than directly addressing the problems caused by existing rogue traders who continue to operate outside the scheme.



Each Home Counts and the new 'quality mark'

The Each Home Counts Review emerged from an infrastructure challenge in the UK – specifically, the retrofit of housing stock to meet Government ambitions for fuel poverty and carbon reduction and the desire for everyone to live in warm, comfortable and energy-efficient homes. At the heart of the Review's findings was a recommendation to establish a quality mark that builds on other recognised consumer brands in the sector such as the Gas Safe Register and TrustMark⁴.

As an outcome from this Review, the Each Home Counts Implementation Board has developed a new quality mark framework to cover the energy efficiency, retrofit and RM&I sectors of construction. This focusses on improving consumer protection, growing consumer confidence and raising industry standards through a recognised and trusted brand. It would potentially absorb TrustMark as part of a rebooted voluntary registration scheme.

The proposals (if implemented) would see a national quality mark body (licensed by BEIS) overseeing a number of Scheme Providers that work across different parts of the sector. These would likely include the types of organisations currently affiliated with TrustMark, comprising trade associations, certification and inspection bodies.

These Scheme Providers would be responsible for ensuring that firms meet specific technical standards required for the types of work undertaken. In addition, and in order to become quality mark registered, each firm would be required to work within the stipulations of a new and overarching Code of Conduct and support the Consumer Charter. Customers of the scheme (home owners, housing associations, landlords, tenants and businesses) can then select products and services with confidence that they will be delivered by competent, qualified and skilled firms, to the correct standard and quality, and with adequate protections should things go wrong⁵.

⁴ Bonfield, Dr. Peter (2016) *Each Home Counts*

⁵ *Each Home Counts Implementation Scheme (2018) Quality Mark Framework Consultation Process*

Commercial schemes

Previous research has identified a wide range of online schemes operating in the private sector that do not tend to operate minimum competence and qualification requirements for builders and tradespeople that register with them.

These schemes tend to work in two ways:

- Websites that allow consumers to post details of the work they wish completed, following which they will be contacted by traders who are interested in providing a quote; and/or
- Online directories of traders who consumers can contact as they wish.

The services often gather and publish consumers' feedback about traders, such as via ratings and free-text comments. Very few of these websites provide information about any checks or vetting requirements that are placed on registered tradespeople. Some services offer additional features, such as an online forum to allow consumers to share experiences and pose questions to others; and 'expert' blogs covering topics such as how to choose a tradesperson. Some of these schemes run national advertising campaigns and TV commercials, with celebrity endorsement⁶.

The Consumer Rights Act 2015

The Consumer Rights Act 2015 set out to make UK consumer law easier to understand for businesses and consumers. There are new and clear rules for what should happen if a service is not provided with reasonable care and skill or as agreed. For example, the business that provided the service must bring it into line with what was agreed with the customer or, if this is not practical, must give some money back. Theoretically, disputes can now be sorted out more quickly and cheaply. Alternative Dispute Resolution (ADR), for example through an ombudsman, offers a quicker and cheaper way of resolving disputes than going through the courts. The changes are relevant to all consumers and every business which sells directly to them.

The National Trading Standards Board (NTSB)

The NTSB was launched in 2012 to improve the coordination and delivery of consumer protection across England and Wales. By joining up work undertaken by local authority trading standards teams in tackling rogue traders, the NTSB prioritises, funds and coordinates national and regional enforcement cases. It has teams overseeing a range of issues, from copycat websites to doorstep crime.

Strengthening consumer redress in the housing market

The Government is concerned that the current industry-led consumer code and warranty schemes are confusing for buyers of new build homes, in terms of the number of schemes, differences in practices, and gaps where consumers have no recourse to redress. For example, where consumers experience non-structural, snagging problems they can contact their warranty provider if the house builder fails to resolve them. However, some warranty providers may not deal with these issues, or take any action against the developer, in which case the consumer could find they have no alternative route to achieve redress.

The Government's 2018 consultation, *Strengthening consumer redress in the housing market*, has highlighted gaps in protection for new home buyers and has set out the case for more robust protections being needed, for example by creating a new ombudsman scheme for new home purchasers.

The Government is concerned that the current industry-led consumer code and warranty schemes are confusing for buyers of new build homes.

⁶ FMB (2015) *Master Builder Accreditation - Wales*



3 International evidence



There is an increased willingness of individuals in occupations to invest in their skills in return for higher wages.

In 2013, the former Department for Business, Innovation and Skills (BIS) commissioned Pye Tait Consulting to investigate international licensing schemes for domestic contractors and to identify the various constituent components of such systems.

The report included descriptions of arrangements operating in the nations, states and territories set out below:

3.1 Overview

- **Australia:** Including South Australia, ACT (Capital Territory), New South Wales and Queensland
- **Europe:** Including Germany, Denmark, and the Netherlands; and
- **USA:** Including the States of California, Florida, New Mexico, and Washington and New York City.

A range of formal licensing measures exist across several states and territories of America and Australia, respectively. These schemes have different attributes although all are backed up by enforcement powers and penalties designed to make it difficult for builders to risk acting improperly or undertaking work without a licence that underpins consumers' peace of mind. Requirements relating to qualifications and experience are a feature common to all but one of the licensing schemes identified and are understood to have the effect of increasing consumer confidence, as well as quality.

Eligibility requirements in the comparator nations and states variously comprise:

- Pre-existing trade-related education/ qualifications (i.e. already gained by the individual);
- Examinations or tests undertaken at or near the licensing centre and at the time of application (these can relate to trade and/or business operation, or business law); and/or
- Experience in the relevant trade over a stated period of time.

Schemes that might be considered among the 'toughest' in their regulation of the industry include both educational attainment in the trade in question, coupled with the achievement of an examination or supplementary qualification in business operation and/or business law.

The examination regime would appear to benefit all parties:

- Consumers are likely to regard the industry in a more favourable light and have greater confidence in the competence and ability of the tradespersons they employ;
- The tradesperson or contractor themselves becomes competent, and therefore confident, in performing his or her job and, because of consumer confidence, is more able to command higher wages; and
- For the operator of the licensing scheme, sustained revenues are derived from the administration of tests and licences and other income streams such as continuing education and examination fees.

Qualifications and experience requirements in the Australian and USA licensing models vary:

- In Australia, licensees are required to have obtained relevant trade qualifications, however the requirements currently vary by state or territory. All schemes require the individual to have a set number of years' experience to obtain a licence, although once again the requirements vary between state and territory.
- In the USA, licensing schemes do not always require competence/ trade examinations; some states instead require a business examination, some require both and others require none. Some schemes require proven experience while others do not. Where experience requirements do exist, they vary. Another requirement in some areas is the lodging of a financial bond.
- In European nations, the industry is largely self-regulating through the stringent qualifications systems. The German model relies on highly detailed training requirements and mandatory examination, through an apprenticeship, with the structure underpinned by law. In effect, the qualifications are demanding and act as a licence-to-practice.

Other examples:

- Bosnia Herzegovina – contractors must be licensed to carry out building and engineering activities. The necessary licences and permits must be obtained by the developer before work can start and include approvals from the local municipal authorities, such as an urban permit and a construction permit;
- Dubai – individuals need a 'contractor classification licence' which allows them to work as a contractor; and
- Ukraine – carrying out certain construction works (general construction and installation works, construction of infrastructure and transport objects) which are classified as works related to construction of objects with medium (II class) and essential consequences (III class) are subject to licensing.

The international licensing research conducted for BIS in 2013 found that despite little in the way of hard statistical evidence on the benefits of domestic builder licensing, those schemes do show identifiable strengths.

These strengths can be summarised as:

- Improvement in quality derived from educational, experience and examination requirements, combined with 'tests' of propriety;
- Monitoring of standards by oversight bodies; and
- Imposition of disciplinary action to discourage infraction of licensing conditions thereby discouraging unscrupulous tradespeople from even considering such practices;
- Increased income for licensees (achieved through discouraging cowboys and the resulting consumer assurances of quality, stimulating the market);
- Increased willingness of individuals in occupations to invest in their skills in return for higher wages;
- Improved industry status in the eyes of consumers;
- Reduction in legal and administrative costs for dispute procedures;
- Reduced consumer stress and anxiety due to unscrupulous activity;
- A possible increase in market activity due to reduced consumer fear and greater confidence in dealing with tradespeople.



3.2 Case Study: Australian Capital Territory

The Government of the Australian Capital Territory (ACT) defines construction practitioners as “an individual, corporation or partnership who provides, has provided or proposes to provide a construction service”.

ACT operates a construction licensing scheme which is organised into a series of classes, as follows:

- Classes A, B and C cover general building work (i.e. non-specialist activities) with the main differentiator being the height of the building and the level of qualification needed in the relevant discipline. All three classes require documentary evidence of at least two years’ relevant building work experience;
- Class D covers non-structural basic building work, which requires licensed operators to have at least three years’ relevant experience; and
- A fifth class applies to owner occupied residential buildings, which allows owners to undertake additions and alternations to their sole occupancy unit. This excludes specialist building work such as demolition or swimming pool construction.

Licences are typically valid for up to four years and are issued to individuals, companies and partnerships. In the case of company licences, a nominee is responsible for all work performed by the company. Licence fees range from AUD 182 to AUD 482 (equivalent to around £100 to £275) depending on the class of licence, type(s) of construction work carried out and whether applications are made in person, by post or online. Qualifications, experience and professional development are not typically reassessed at the time of renewal, but licensees must maintain ongoing eligibility during the period of the licence.

Changes have recently been made to strengthen the scheme and boost consumer community confidence. In 2016, the Government engaged with industry and the community as part of the *Improving the ACT Building Regulatory System* reforms. Industry participants showed a preference for stronger professionalisation of the industry, which led to a new programme of tests being rolled out for new licence applicants⁸. For those that do not pass the test, the Government wants to send a clear signal to industry that their skills and knowledge need to be further developed.

Disciplinary orders act as a deterrent to individuals who might try to work around the scheme. They are varied and wide-ranging, including reprimands, written warnings, cancellation or suspension of a licence, and conditions imposed on the person’s licence. In some situations, de-merit points may be applied, which last for three years. If a licensee incurs 15 or more de-merit points in a construction occupation over a three-year period, a notice of licence suspension, disqualification or other disciplinary action will be issued.



Industry participants showed a preference for stronger professionalisation of the industry.

⁸ These tests will extend to a sample of renewal applicants from 2019.

3.3 Case Study: New Mexico

Virtually every aspect of commercial, residential and public works construction is regulated at state level in New Mexico. The New Mexico Regulation and Licensing Department (RLD) is responsible for reviewing plans, issuing permits, conducting inspections and dealing with consumer complaints. The scheme aims to protect consumers by regulating the industry through policies that promote business growth, safety, and general welfare of the public. This includes ensuring that all construction work is performed in a safe, competent, and professional manner.

Across many US states, legal cases, intense investigations, sting operations and widespread marketing efforts have led to a nationwide crackdown on unlicensed construction activity and have caused many unlicensed contractors to be fearful. In New Mexico in particular, a huge legal victory occurred when the Supreme Court ruled that contractors are no longer allowed to hire unlicensed subcontractors as employees working under their licence.

New Mexico issues four main classes of licence, each relating to specific types of work: General Building; Fixed Works; Building Specialities; and Asphalt, Bitumen and Concrete Construction. Within these four main classes there are, collectively, 81 sub-classifications. Home owners performing work themselves are exempt from licensing requirements, although they must obtain a Homeowners Permit. This only applies to general construction and does not cover electrical, mechanical, plumbing or gas work unless the home owner qualifies to do this by passing an exam. Additionally, the state issues a Handyman Certificate for certain types of casual, minor or inconsequential work.

Licences are renewable every three years and fees vary by classification, ranging from USD 150 to USD 300 (equivalent to around £115 to £225). When applying for a contractors' licence, the applicant's Qualifying Party (QP) must submit evidence of experience relevant to the licence classification being sought (two or four years), as well as passing a trade and business law exam with a minimum score of 75%.

Applicants must provide a complete licence application, a copy of a valid qualifying certificate (or exam score report) and a bond. For corporations, companies or partnerships, compensation insurance must be filed with the New Mexico Workers' Compensation Administration. Contracting without a licence in the State of New Mexico is against the law. Charges can result in a county jail sentence and/or a fine – dependent on the dollar value of the unlicensed work carried out.

Charges can result in a county jail sentence and/or a fine – dependent on the dollar value of the unlicensed work carried out.



4 Appetite for construction licensing

“The small end of the industry is pretty chaotic. Anyone can turn up in a van and declare themselves a contractor.”

Trade body

“A licence to practise with firm requirements covering safety, quality and training, will be genuinely meaningful.”

Trade union

“There are many disparate pieces of legislation and quasi-statutory schemes. These could be rationalised into one.”

Employer representative body

Most construction industry stakeholders interviewed for this research are favourable in principle to the idea of licensing.

They view the main driver as ‘quality’, which goes hand-in-hand with the reputation and culture of the construction industry. They also identify with the three broad drivers for a licensing scheme that were revealed through previous research on this topic for BIS (2013) and the Welsh Government (2014).

4.1 Views of stakeholders

- Ensuring a skilled and competent workforce;
- Managing health and safety effectively on construction projects; and
- Tackling rogue traders in the industry (including doorstep crime and use of aggressive sales practices).

The limited appetite and willingness of companies to train is seen as a major barrier to a skilled workforce. This is partly put down to the largely fragmented way in which the industry operates, i.e. from project to project, the short-term nature of contracts (meaning lack of the certainty necessary for long-term training plans) and the industry’s lack of proactivity in responding to change, such as adapting to new materials, technologies and using more advanced and efficient processes.

For stakeholders, a key question for a proposed licensing scheme to answer is what ‘gap’ it seeks to fill, given that the industry already works under the auspices of the Building Regulations and CDM Regulations, as well as competence schemes, certification schemes and a wide range of voluntary and commercial online registration schemes. The latter, it is argued, already go some way to making it easier for domestic clients to select a builder/tradesperson based on certain ‘trusted’ credentials such as address verification, qualifications held, presence of public liability insurance and reviews from other clients.

One stakeholder also mentioned that while such schemes are theoretically voluntary, there is an element of compulsion if a firm wants to stand the best chances of winning work.

However, with the exception of TrustMark, many of the voluntary builder registration schemes attracted criticism from stakeholders for creating a confusing marketplace rather than helping consumers know who to choose. One stakeholder referred to certain such schemes as little more than ‘marketing engines’ that do not always make clear to consumers if or how firms are vetted to join. Others noted that they lack muscle to take enforcement action where adverse consequences occur or where inspections have found building work or other installations to be sub-standard.

Stakeholders mentioned that some home owners may not have the time or desire to look into a potential contractor’s credentials in great detail – instead opting for recommendations from family or friends, or searching for reviews on a registration site. While on the one hand this can be helpful, it runs the risk of rogue traders getting smarter and finding ways to register on those commercial sites that require the least amount of checks. High-quality online reviews are also susceptible to fraud.

The 'gap', therefore, is not only that these registration schemes are voluntary (meaning those who do not wish to jump through the various hoops can trade regardless), but that they do not go far enough to provide strong protection, especially for more vulnerable property owners such as the elderly. Neither do they address the criminal end of the market where traders are prepared to forge 'accreditations' and lie about past work and successes.

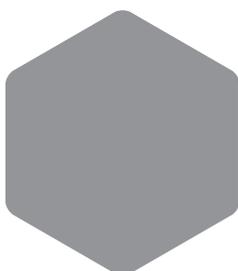
The problem of rogue trading is generally seen by stakeholders as most prevalent in the small-scale domestic market whereas, for larger projects and developments, it is argued that existing mechanisms already guard against this risk, such as through procurement processes, the use of CSCS cards and warranties etc. For these larger developments, the 'gap' can be defined as the need for a standardised, nationally consistent and risk-based approach to ensuring high quality workmanship. It is also felt that a licence would assist larger contractors in identifying and selecting high quality subcontractors.

It has to be remembered however that it is consumers' experience with domestic traders which largely shapes the public view of the whole construction sector.



"If we're to have an industry that delivers quality and safety on a consistent basis, there has to be a regime that ensures people at least follow the minimum standards and strive to do better."

Trade body



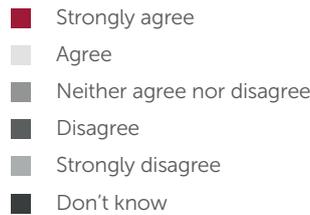
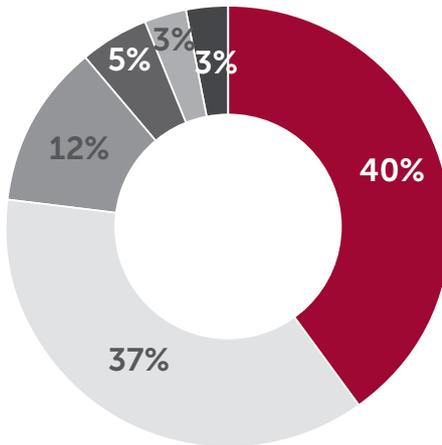
4.2 Views of small businesses

In April 2018, the FMB hosted an online survey of its members to gauge their appetite for licensing the UK construction industry, as well as the extent of favourability towards specific ideas on how licensing might work in practice. Responses were obtained from 487 firms.

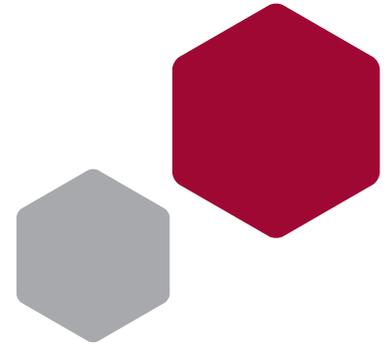
Firstly, members were asked the extent to which they agree or disagree with the idea of introducing a licensing scheme for all construction firms. More than three quarters (77%) agree, including 40% who strongly agree (Figure 1). The results are similar across the devolved nations and by size (turnover) of business.

More than 70% of respondents agree that a licensing scheme would lead to better quality and professionalism; removal of rogue and incompetent outfits; offer better protection to consumers; and help to improve the image of the construction industry (Figure 2). Each respondent identified with an average of five of the listed benefits.

Figure 1: Extent of agreement with the idea of licensing all construction firms



Base: 486 respondents

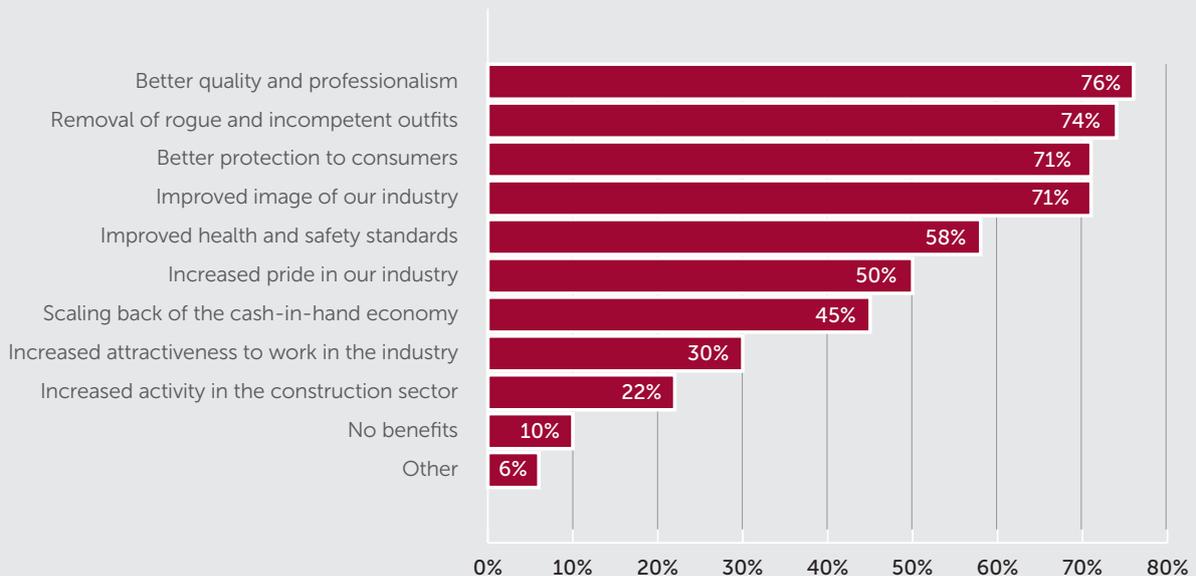


More than

70%

of respondents agree that a licensing scheme would lead to better quality and professionalism.

Figure 2: Potential benefits of a licensing scheme



Base: 429 respondents

Among the smallest firms (turnover below £250,000), the top answer is “removal of rogue and incompetent outfits from the industry” – mentioned by 67% of businesses. Among larger businesses (turnover above £250,000) the top answer is better “quality and professionalism across the industry” – mentioned by more than 80% of respondents. Results are similar across the nations of the UK.

Surveyed members emphasise that licensing would help to tackle those firms who undercut them by taking cash-in-hand payments, using sub-standard materials, potentially lacking proper insurance, and avoiding other necessary overheads such as mandatory pension contributions. Members also report being called out to fix poor workmanship undertaken by these outfits. They argue strongly that a licence would offer a range of benefits – firstly by creating a level playing field in the competition for work, and secondly by evidencing a shared commitment to competence and health and safety standards. They also feel that licensing would help to boost customers’ confidence and trust in the professionalism of builders.

Some members argue that there is no reason why the construction industry should not align itself with the regulatory requirements covering gas and electrical work. Furthermore, respondents who have worked overseas believe that the licensing schemes they have experienced in other countries, such as Australia and New Zealand, work very well.

Among the minority of FMB members disagreeing with the licensing proposal, the main perceived barriers are the administrative and cost burdens, especially for smaller firms, including sole traders and start-ups.

Among members sitting on the fence, the question is raised as to who would ‘police’ the licensing scheme and how enforcement would work in practice. Others see the introduction of a licence as a moot point given that builders who hold competence and reputation in high regard already tend to be registered with a trade body or voluntary scheme. Several very experienced builders with lengthy experience but no formal qualifications question how they will meet any pre-requisite qualification criteria.

A range of potential characteristics of a licensing scheme are set out in Table 1. The majority of surveyed FMB members agree that all of these should be incorporated into any future scheme – especially that licensing should include publicly-accessible database of licensed firms (89% agree); that there should be escalating sanctions for those found to be consistently in breach of requirements (85% agree); and that there should be clear entry criteria (84% agree).

84%
of FMB members surveyed agree that there should be a clear entry criteria incorporated into the scheme.

Table 1: Extent of agreement with proposed characteristics of a licensing scheme

	Base	Agree	Disagree	Don't know
A publicly-accessible database of all licensed firms	411	89%	6%	5%
Escalating sanctions for those found to be consistently in breach of requirements	415	85%	8%	7%
Clear entry criteria to include financial checks, a code of conduct and site inspections involving checks for competence and regulatory compliance	417	84%	9%	7%
Applicable to all construction firms	414	83%	9%	8%
Holding a licence should be a legal requirement to undertake construction work	418	81%	12%	7%
The licence should be operated by a public-interest company similar to how TrustMark operates	413	68%	14%	18%
The scheme should be self-funding though the application of an annual fee set at a reasonably low level	414	65%	19%	17%

Almost three quarters of surveyed FMB members (74%) believe that licensing should include 'self-employed tradespeople' – Figure 3⁹. Firms with more than £1 million turnover are most favourable to this idea (82% saying 'yes') compared with firms with less than £250,000 turnover (65%). Favourability is slightly stronger in Wales (84%) compared with England and Scotland (both 74%).

Industry stakeholders and FMB members argue strongly that including self-employed tradespeople within the scheme is essential to its integrity, i.e. that the requisite standards of quality associated with attaining a licence must be applicable to everyone in the construction industry. Moreover, they argue that self-employed tradespeople are the 'backbone' of the industry and their compliance is vital to mitigating the risk of rogue trading in the domestic market. With respect to larger contractors which deploy the services of self-employed tradespeople, including them in the scheme would ensure that these individuals take responsibility, and are liable for, the work they have undertaken.

Of the minority of FMB members against the idea of licensing self-employed traders, the main concern is the perceived stifling effect of 'red tape', the risk of devaluing other voluntary schemes of which firms are already paid members, as well as difficulties policing such a large number of businesses.

The majority of surveyed FMB members (61%) favour a tiered fee structure based on the size of the firm, as opposed to a single flat fee (Figure 4). The pattern is similar by nation and size of firm.

Figure 3: Whether licensing should include self-employed tradespeople

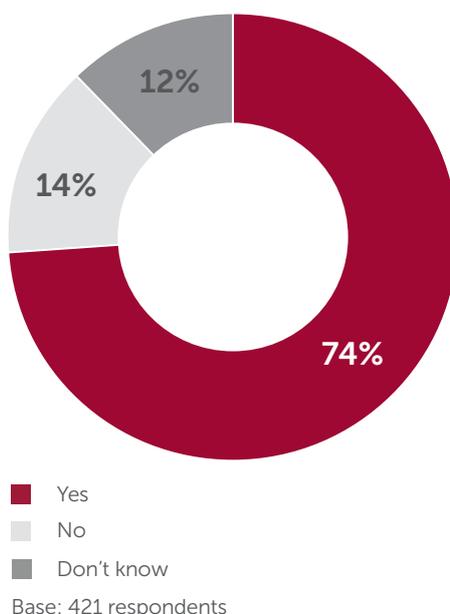
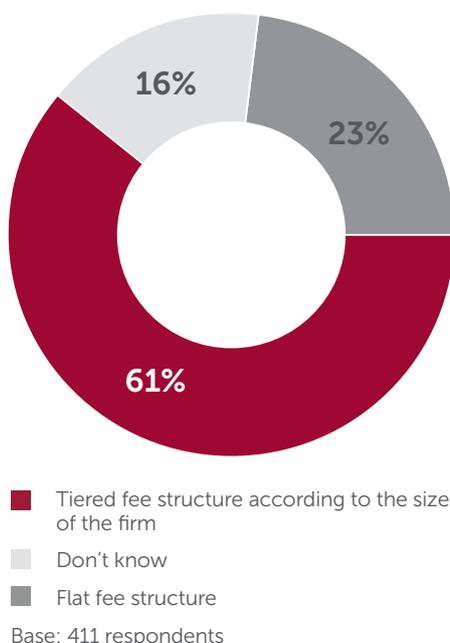


Figure 4: Whether licensing should incorporate a flat or tiered fee structure



Firms favouring a tiered approach made the point that it would not be fair to impose the same licence fee on smaller and lower risk businesses. It is therefore suggested that a tiered approach to fee-setting is established. Suggestions include the fee being linked to the number of employees in the business or calculated as a percentage of turnover or profit. Clearly, any approach which requires more information from the company – wages, turnover, profit – will be more expensive to manage and more bureaucratic for those companies.

When asked what they would consider a reasonable fee for a licence, survey respondents provided a mix of absolute numbers, ballpark figures and suggested ranges. The average and most common suggestions fall around the £150-200 mark, with the lowest being nil and the highest being more than £1,000. Some felt unable to respond to this question without being able to see firm proposals and a clearer picture of the intended benefits.

Several made the point that the fee should cover the administrative costs of running the scheme and must not be a profit-making initiative since that could undermine the altruistic principles behind a licensing scheme. Several argued that an annual fee would be overly burdensome and that there should be a period of two or more years between renewals. Other suggestions include a staged implementation period consisting of an initial free or discounted licence prior to full fees taking effect.

⁹ The term 'self-employed tradespeople' was used loosely in the survey to refer to unincorporated businesses, including micro businesses, sole traders and partnerships.

Industry stakeholders and FMB members argue strongly that including self-employed tradespeople within the scheme is essential to its integrity, i.e. that the requisite standards of quality associated with attaining a licence, must be applicable to everyone in the construction industry.

5 Proposal for construction licensing

As strong as the case is, it is not sufficient simply to set out the case for 'some kind' of licensing scheme.

Given the vast range of options for how such a scheme could work, and examples of different models from other countries, it is important to be specific about how such a scheme could and should operate in the UK in order to be most effective and fit most easily within existing industry structures.

This chapter sets out the aims, model, and key features of what a UK construction licensing scheme could look like in practise.

5.1 Aims

Firstly, tackling occupational competence is a matter that a wide range of bodies in the construction sector, such as the Construction Industry Training Board (CITB), various trade federations and awarding organisations are continually addressing through the CSCS scheme, development of new employer-led apprenticeships standards and the Government's proposed new Technical (T) level qualifications.

Secondly, ensuring health and safety is already an extremely serious focus for the industry. Indeed, the findings from the Hackitt Review point to the importance of improving the current regulatory framework to ensure that a tragedy like Grenfell Tower never happens again.

Both of these issues primarily relate to the legitimate workforce who would be encompassed in any licensing scheme by default. The third key issue is that of untrained, unqualified rogue traders who, by definition, operate outside this competence and health and safety framework. Curtailing opportunities for rogue trading will effectively address all three issues by preventing untrained, unsafe people from trying to undertake building work.

Taking all of these considerations into account, a new construction licensing scheme should be established to:

1. Provide a clear and nationally consistent route for construction firms and individuals to enter and maintain their right to trade;

2. Ensure the UK construction industry delivers work to consistently high quality;
3. Protect the safety of the public and individuals working in the construction industry;
4. Instil trust among clients and members of the public in the integrity of firms contracted to carry out construction work;
5. Drive out rogue traders from the construction industry and reduce the amount of harm caused to vulnerable members of society;
6. Provide a level playing field for legitimate businesses to compete fairly;
7. Strengthen the construction industry's health and safety record; and
8. Help to improve the construction industry's image and reputation by creating a culture where competence and quality is the norm.

A small number of stakeholders felt that a licensing scheme per se would be contrary to the tide of deregulation in the UK over recent years, for example through simplified planning approval processes. However, this arguably ignores the fact such a scheme could have a streamlining and clarifying effect where there are many complex arrangements already in place.

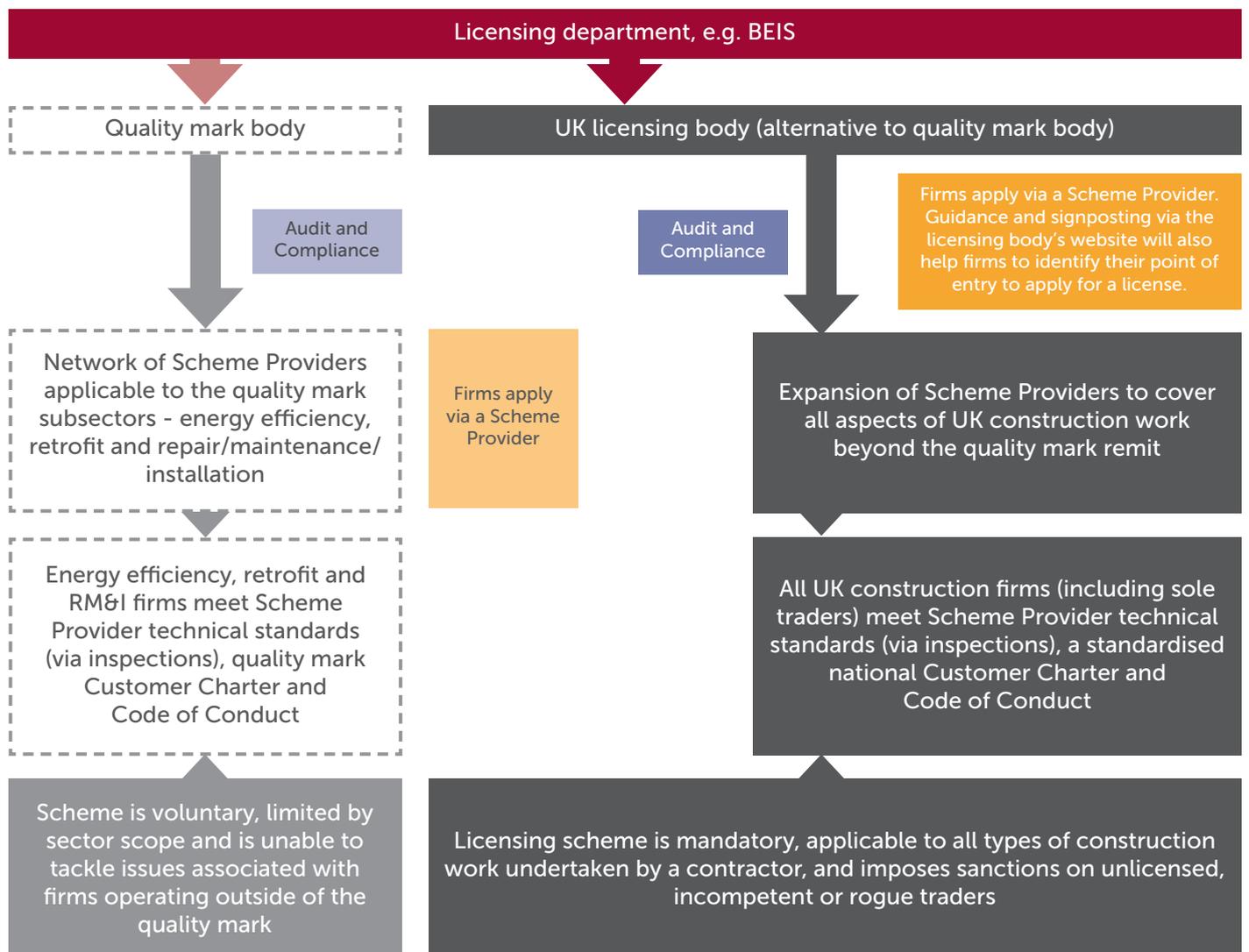
5.2 Model

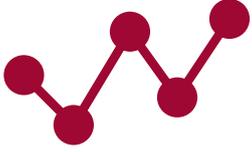
The proposed model for a UK construction licensing scheme is shown in Figure 5, below.

It illustrates how the scheme could operate as a wider and mandatory alternative to the (currently proposed) quality mark that is being developed out of the Each Home Counts Review. The licensing scheme would take forward work already undertaken to develop the quality mark, to maximise structures and efficiencies, as well as expand and strengthen its remit.

Further details about how the licensing scheme would work are set out in Section 5.3.

Figure 5: Proposed model for a UK construction licensing scheme





It makes perfect sense to integrate a licensing scheme with the quality mark to strengthen the shared will to transform the industry for the better.

5.3 Detailed features

1. The scheme should be governed and administered by a single authority, but integrated within existing structures to minimise duplication and the burden on industry.

There are three possible models for a licensing scheme:

- A. A single overarching UK body with responsibility for all aspects of the scheme;
- B. Use of existing local structures, for example local authorities; or
- C. A 'hub and spokes' model, with a central governing, policy-setting and administrative central hub, supported by other bodies to carry out operational duties.

Stakeholders are overwhelmingly against the idea of a wholly locally administered licensing scheme, which is viewed as potentially resource prohibitive given the cuts that local authorities have had to endure. They also point out that a local approach could lead to inconsistencies of service, additional complex bureaucracy and greater expense, especially when dealing with firms that operate across more than one local authority area.

Based on an assessment of all available evidence, model C would appear to be the most suitable way forward. As discussed in section 2.3, the development of a new (voluntary) quality mark initiative based on the existing TrustMark model is already underway with the Government's backing. However, as currently proposed, the voluntary nature of this scheme means that it risks adding to an already saturated market.

However, the quality mark offers an already functioning administrative framework upon which a licensing scheme could be based. Once implemented, the quality mark will have in place an overarching body and a network of Scheme Providers. These Scheme Providers will set technical standards for their member organisations and operate registration, monitoring and sanctioning protocols for firms that wish to bear the quality mark.

It therefore makes sense to integrate a licensing scheme with the quality mark to strengthen the shared will to transform the industry for the better; extend its remit to the whole construction sector and make the entire scheme mandatory. Extending the scheme in this way would need to involve identifying and incorporating more Scheme Providers to cover the entirety of the construction industry footprint and with relevant technical standards in place.

The quality mark body could effectively become an overarching licensing body and a centralised information hub could be created via its website so that firms can find all the information they need about the licence and how to apply. TrustMark already works effectively by enabling businesses to sign up through a relevant Scheme Provider and it would therefore make sense to replicate this model for the licence. Each Scheme Provider could therefore adopt a construction licence application process that is standardised as far as reasonably possible.

The licensing body could act as a first point of contact for any queries and its website should offer clear guidance and signposting to help firms find the right Scheme Providers through which they could apply for a licence.

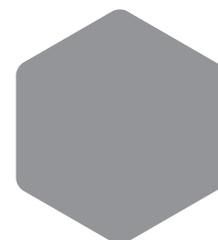
This type of integrated approach would ensure that extensive collaborative work that has already been undertaken to develop the quality mark framework (coordinated by the Each Home Counts Implementation Team) is expanded, rather than developing a licensing scheme from scratch. It would minimise duplication, increase operational efficiency, and avoid adding to a crowded market of voluntary schemes. It would also negate the issue of implementing a licence as a separate work stream that would, by its very nature, risk undermining the quality mark.

Scheme Providers would be subject to an audit and compliance regime to ensure they are held accountable. This regime already operates successfully as part of the TrustMark model, thereby providing continuity. Furthermore, this approach has been built into the quality mark proposals which anticipate a robust and documented audit process with clear corrective actions and timescales where necessary. Scheme Providers would be obliged to co-operate with the licensing body under the terms and conditions to which they sign up as part of the scheme. Should a Scheme Provider fail to comply with any suggested corrective actions, the Scheme Provider may be suspended or removed.

2. The remit of the licence should be UK-wide.

If the licensing scheme were only adopted in certain nations of the UK, this could become confusing for industry and complex to administer. Firstly, there is the question of whether the licence applies to where the business is based or where the work takes place. Many firms inevitably work on both sides of a national border and certain individual projects (for example civils work) may also involve 'cross-border' operations from time to time.

A UK-wide scheme is the only way to mitigate these issues and guard against the perception that one nation makes it 'harder' to do business than another.



“If the licence was introduced in England and Wales and not in Scotland, consumers might get confused... we would be keen to see a UK-wide licence.”

Consumer organisation, Scotland



More than 90% of the UK construction sector is made up of businesses with fewer than 10 staff.

3. The licence should apply to all types and sizes of construction work conducted by a contractor on a paid-for basis.

When considering the types of construction work that should be classified as 'licensable activities', it will be important to eliminate any potential 'grey areas'.

It is proposed that the licence covers any construction work undertaken by a contractor on a paid-for basis. This would exclude DIY activities that a home owner may want to undertake themselves or ask a family member or friend to do, which would be at their own risk. Consideration would also need to be given to low-risk activities and how they are dealt with in relation to the licence, for example paid-for handyman services that might include simple tasks such as changing washers on a tap or nailing up picture frames in a home or office.

Definitions of licensable construction activity would need to be developed to ensure clarity. These should draw on existing frameworks and definitions such as those used in the Construction (Design and Management) Regulations.

Implementing a minimum 'value of work' threshold for construction work to be licensable would be too complex to administer. This is because a contractor might carry out different types and sizes of project and a firm could try to evade the scheme, for example by splitting work into smaller elements, each of which falls below the threshold. In addition, the setting of values ignores the fact that even low value work could be life-threatening or lead to significant additional problems beyond the original work itself.

4. The licence should apply to all legal entities of construction firm (incorporated and unincorporated, including sole traders) rather than individuals.

Most stakeholders and FMB members consulted for this research are favourable to all legal entities of construction firm being brought under the umbrella of a licence. Some questions were raised as to whether it would be necessary, desirable or effective to apply the licence to the smallest firms, taking into account the proposed cost and administrative burden on these firms and on the scheme itself. However, more than 90% of the UK construction sector is made up of businesses with fewer than 10 staff, therefore excluding the smallest operations would arguably undermine the scheme and fail to tackle the key issue of rogue trading which is prevalent among micro businesses working in the domestic market.

The task of licensing and monitoring/enforcing the activities of individuals (i.e. any direct employees of a firm other than a sole trader) would inevitably prove resource prohibitive.

5. Once issued, a licence should remain valid for a period of at least three years.

Stakeholders made the point that a single year of validity would place too great an administrative burden on the scheme, as well as on individual firms, and is arguably unnecessary.

A validity period of at least three years, but no more than five years, would therefore be preferable, subject of course to any removal of the licence due to misdeeds.

6. Fee-setting should be tiered and proportionate to the size and risk level of the business.

Fees should be payable by each business upon registration and renewal of the licence. Fee setting could potentially be based on one or more of the following criteria:

- Number of direct employees;
- Financial turnover; and/or
- Type of construction activities carried out (i.e. higher risk activities might require more involved or specialist inspections).

Fee bandings linked to the number of direct employees would be the most straightforward approach whereas linking fees to financial turnover would be more complex to administer and prove.

A suggested fee range would extend from £150 (for the smallest firms), to no more than £1,000 for the largest. In addition to the licence fee, additional fees will inevitably need to be charged by Scheme Providers to cover the costs of inspections and assessments. These are likely to vary by Scheme Provider depending on the type of work undertaken by the business and the amount of time involved in each inspection or assessment.

More on fees and the potential costs associated with running a licensing scheme are explored in Section 6 and Section 7.3.



“I’d expect anyone who’s licensed to be physically assessed. We rely on assessors to confirm that members are capable of doing the things they’ve told us about. A virtual check of competence would not be enough.”

Scheme Operator within TrustMark

7. All firms and directly employed individuals involved in construction work should meet certain pre-requisites in order for the licence to be granted and renewed.

Pre-qualification should be undertaken by Scheme Providers, which follows a similar and successful format followed by existing Scheme Providers as part of the TrustMark model. How these duties are divided up will require more detailed consideration, specifically around:

- Maximising efficiency and security of digital data sharing, i.e. the national body should have access to and be able to track data that moves through the scheme;
- Minimising application processing timescales and potential bottlenecks; and
- Ensuring national consistency in application processing.

Stakeholders interviewed for the research were not always able to comment on the precise requirements that should be imposed, therefore the proposals below also draw on previous scoping research and quality mark proposals:

Initial registration checks:

- Receipt of a completed application and relevant fee;
- Identification documents of business owners/directors (e.g. passport or driving licence);
- A fixed business address;
- Evidence of financial security or minimum level of assets;
- Adequate insurances in place;
- Passing a test or online course to confirm adequate knowledge and appreciation of construction health and safety matters;

- Business checks (for example credit checks, public record and director checks, undischarged bankruptcies or relevant and outstanding County Court Judgements) particularly to minimise the risk of phoenixing¹⁰; and
- Inspection of on-going or recently completed work by a suitably qualified and competent inspector, to confirm compliance with the technical requirements and standards of the relevant Scheme Provider.

There is widespread support among interviewed stakeholders for recognition of 'Grandfather rights' within the overall scheme, i.e. where certain traders lack formal qualifications but have extensive experience to bring to their trade.

Renewal checks:

- Adequate insurances in place;
- Additional inspection of work around the renewal period to confirm that the firm continues to meet the relevant technical standards and questioning of staff to ensure the firm is working in accordance with the Customer Charter and Code of Conduct;
- Evidence of commitment to training and/or Continuing Professional Development (CPD) to be defined in terms of acceptable forms, minimum hours per year, and how this should be recorded; and
- Satisfactory references or customer feedback from completed work.

To be robust, the scheme must involve periodic inspections, for example annual, biennial or every three years, but the greater the frequency the higher the potential cost. Alternatively, the inspection frequency could be dependent on risk level, such as results from previous inspections or other information received such as a complaint.



¹⁰ Phoenixing describes the practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent. For a scheme that licenses firms rather than individuals, it will be important to ensure that individuals responsible for serious failings that lead to a licence being withdrawn, are not able to start a new construction business.

8. Robust enforcement and a tiered scheme of sanctions should be put in place to act as a strong deterrent against firms trading unlicensed.

Stakeholders interviewed for the research favour enforcement measures being put in place to tackle contractors operating outside the licensing scheme. These would need to be strong enough to act as a deterrent, reactive to issues arising from inspections, consumer complaints or whistleblowing, and be able to give clients and members of the public confidence in the robustness of the scheme and trust in the contractors they choose to use.

A tiered programme of enforcement could include:

- Light sanctions, such as fines and penalty points for minor offences;
- Severe fines for major offences – perhaps in line with the sort of sanctions levied against those in breach of General Data Protection Legislation (GDPR);
- Expulsion from the scheme for repeated or major offences (lasting for at least five years to carry weight with consumers); and
- A programme of education and re-training (with costs borne by offending traders) to enable unsatisfactory builders to understand how mistakes were made, the potential consequences, and what they must do subsequently.

Fines or sanctions would not be imposed on clients, including home owners.

The licensing scheme could potentially work in partnership with local Trading Standards to monitor and gather evidence on consumer complaints. Depending on the volume and nature of complaints received, minor penalties or restrictions could be imposed on the firm based on the balance of probability that infractions have occurred. If those terms are then found to have been breached, then more severe sanctions could be imposed. This type of partnership approach could have resource implications for Trading Standards, therefore it needs to be considered as to whether some extra funding could be channelled through the licensing scheme.

Enforcement actions could significantly impact businesses and the livelihood of their owners/directors, so it would be important that selected measures are fair and proportionate. If the licence applies to the firm rather than the individual (as proposed), then reasonable judgment would need to be exercised where, for example, a large company with an otherwise clean record and strong reputation is let down by the actions of a single operative. In such cases, consideration should be given to the severity of the offence and whether the firm failed to take reasonable steps that could have prevented it from happening. It would therefore only be fair to treat each case on its own merits and the overarching licensing body would need to have a role in making decisions on the nature and severity of sanctions imposed.

A complaints and appeals process should also be put in place (operated by the overarching licensing body) using a method that is fair to the firm subject to sanctions.

9. A publicly-accessible online database of licensed traders should be established.

Consumers must be able to freely access an online database of licensed contractors, kept fully and constantly up-to-date and supported by a telephone enquiry service.

Such a database would also act as a preventative measure against sanctioned firms who attempt to undermine the enforcement process, for example by starting a new company or continuing to display a licence badge on vans and stationery with the intention of misleading future customers.

Consumers should be told to always check the database, or alternatively make a telephone enquiry to the licensing organisation to check that a trader is licensed.

“It will be important that the level of fine or other sanctions imposed for not obtaining a licence are strong enough to discourage firms from taking the risk and operating outside the scheme.”

Employer representative body

Summary of key scheme features

1. The scheme should be governed and administered by a single authority, but integrated within existing structures.
2. The remit of the licence should be UK-wide.
3. The licence should apply to all types and sizes of construction work conducted on a paid-for basis.
4. The licence should apply to all legal entities of construction firm (including sole traders) but not individuals.
5. Once issued, a licence should remain valid for a period of three to five years.
6. Fee-setting should be tiered and proportionate to the size and risk level of a business.
7. All firms involved in construction work should meet certain pre-requisites in order for the licence to be granted and renewed.
8. Robust enforcement and tiered sanctions should be put in place to act as a strong deterrent against trading unlicensed.
9. A publicly-accessible online database of licensed traders should be established.



Fee-setting should be tiered and proportionate to size and risk level of a business.



6 Anticipated challenges and solutions

“It may not always be necessary to increase prices as businesses will not be competing with cowboys, so higher profit margins might cover licensing costs due to less competition and increased business.”

Trade union

Licensing the UK construction industry is a bold and ambitious vision. It is not without challenges.

Achieving culture change in the industry

Licensing the UK construction industry would require a significant culture change and might meet with opposition from industry if the benefits to legitimate and law-abiding traders are not clear. However, the amount of media attention given to rogue trading in recent years, coupled with evidence of fatal and near-fatal consequences resulting from poor practices, make some form of action a vital step to protect consumers and the reputation and status of the construction sector.

Changing existing patterns of consumer behaviour and eroding the black market

There is scepticism among some stakeholders interviewed for this research about whether a licensing scheme would succeed in changing ingrained patterns of consumer behaviour and whether it would reduce demand for cheaper solutions and non-licensed work. Linked to this was some limited concern that there will always be firms who seek to work around the scheme where consumers want a cheaper job, which would effectively widen the chasm between licensed and unlicensed trading.

In response to these issues it is important that the licensing scheme works from the bottom up, i.e. protecting the interests of consumers. Strong investment in a single, clear brand identity, with an effective marketing and public relations campaign, will be vital to the take-home message that use of unlicensed tradespeople is not only illegal, but potentially dangerous, considered socially unacceptable, and associated with poor quality work and a false economy. A good existing example is the Gas Safe (formerly 'CORGI') brand associated with safe and legal gas appliance work which has succeeded in tapping into the public consciousness.

Funding and resources needed to set up and operate the scheme

Implementing and running a new licensing scheme will be cost and time heavy in terms of capital funding and on-going administrative costs. If the licence is to be UK-wide and cover all types and sizes of construction firm, significant resources will be needed to review new and renewal applications, validate supporting evidence where applicable (including sufficient checks to ensure that relevant standards have been achieved), as well as undertake enforcement.

Firstly, most stakeholders advocate a self-sustaining fee-based licensing scheme. Several questioned whether Government would be in a position to put up funding, although others feel that support from the public purse as part of the start-up process would be a likely requirement.

Secondly, the 2016 Each Home Counts Review (which underpinned the on-going development of the new quality mark scheme) advocated that the 'service organisation' responsible for overseeing all activities in the quality mark framework, should be "appropriately and sensitively funded by industry". Fees collected from licensed businesses would therefore need to cover the day-to-day running and development costs of the scheme.

In terms of other resources need to run the scheme, the Each Home Counts Implementation Board has already worked with a range of organisations to develop the quality mark framework and it is recommended that these structures are built upon and expanded to form the licensing scheme. Capitalising on the quality mark framework, structures and organisations would maximise efficiencies and ensure robust reliance on a range of Scheme Providers who are experts in their respective fields.

Keeping on top of changes to construction businesses

There could be difficulties for a governing body to keep on top of a mandatory licensing scheme in a sector where there is a high business start-up and failure rate. This could be overcome by any licensing scheme making it a mandatory requirement (supported by stringent fines) for firms to report changes to their business status within an agreed period of time, for example 28 days, thereby enabling the central licence database to be amended.

Costs of the scheme being passed on to consumers

A fee-based scheme that places a levy on all construction firms means that some will inevitably choose to pass these costs on to their customers and there is a chance this could be exploited through over-inflated pricing. However, firms in all industry sectors are already subject to a range of costs (from bank fees to the Apprenticeship Levy, and from corporation tax to fuel bills), therefore this should not be seen as a prohibitive barrier. Furthermore, and as one stakeholder pointed out, it is arguably not a bad thing that clients and consumers should be expected to pay fairly for the work they ask to be undertaken.

Of key importance will be creating a self-sustaining and non-profit making scheme where fees are proportionate to the size of the business and the associated risk level. The costs imposed on firms are therefore justified by the benefits this will bring, i.e. a more competent, safe and trusted industry.

Even at an annual fee of £1,000 (the very top end of proposed fees) the cost to a small company might be less than 0.5% of turnover – an amount that could not be used to justify significant price rises.

Policing the scheme effectively

Robust policing would be needed to ensure that standards are consistently maintained. This could be difficult and expensive to achieve given the sheer number of firms and prevalence of sole traders and micro businesses. Any instances of licensed firms being found to be liable for serious injuries or fatalities due to negligence, could seriously undermine the scheme.

Inspections of firms by Scheme Providers would help to mitigate this risk, and inspectors' own competence would need to be assured through an audit/compliance process operated by the licensing body.

The threat of strong sanctions would also act as a significant deterrent, especially if firms are struck off and not allowed to trade, at least for a fixed period of time. Business checks undertaken at the time of registration/renewal will also help to deter companies from setting up under a new name after being stripped of their licence.

Meeting the costs of policing will rely on stringent fines and immediate sanctions.

Managing the burden on businesses

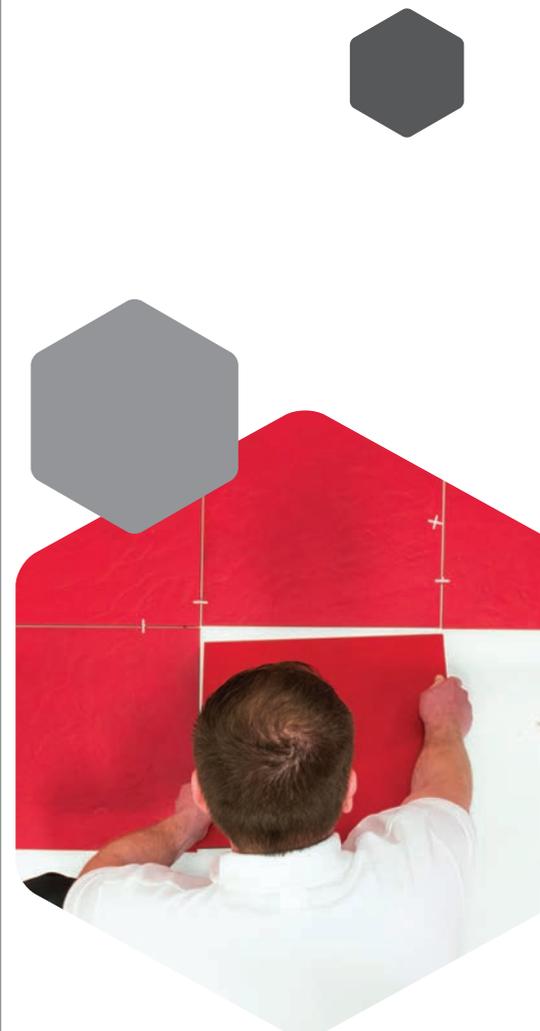
Some industry stakeholders and FMB members raised concerns about the potential cost and administrative burden associated with obtaining a licence and meeting on-going requirements to maintain it. It is felt that this burden would be felt most strongly among start-ups and risk deterring some from setting up at all.

These challenges could be overcome by using a tiered approach to licence fee setting and inspections that takes into account the size of the business and/or the type of work being carried out (general or specialist).

Operating the scheme on a non-profit basis will help to ensure buy-in from industry to its values and mitigate the risk of it being perceived as a 'cash cow'.

Implications for suppliers of construction products and raw materials

It would be unduly burdensome to require suppliers and retailers of construction products and raw materials (such as builders' merchants) to have to check that the firms and individuals they supply to are covered by a licence. Moreover, suppliers should be protected against any enforcement taken against a construction firm where the issues in hand do not relate in any way to the quality and effectiveness of the products and materials as supplied.



7 Next steps

¹¹ Most likely to be the Department for Business, Energy and Industrial Strategy (BEIS) or the Ministry for Housing, Communities and Local Government (MHCLG)

This chapter sets out the next steps to fleshing out the licensing proposals in conjunction with industry experts, and pursuing a pathway to legislation and implementation.

7.1 Obtaining Government and industry backing

At the time of writing, licensing the UK construction industry is not on the UK Government's policy agenda. Backing from Government and industry will therefore be essential so the proposals gain traction and can move forward.

The first step should therefore be to establish an industry-led Task Force or Working Group (either coordinated by Government or from within the construction industry) with a remit to:

- Build momentum for construction licensing and help to gain buy-in from industry;
- Consider these proposals in more detail and develop a more detailed set of firm proposals for a Government department¹¹ to consider taking forward for consultation and to inform future policy; and
- Work closely with the Each Home Counts team to consider the opportunities, challenges and practicalities of integrating the licensing scheme with the proposed quality mark framework.

7.2 Identifying Scheme Providers and developing standards

The quality mark framework will provide a basis for identifying Scheme Providers operating within the energy efficiency, retrofit and repair, maintenance and improvement (RM&I) sectors. Given the breadth of the construction industry, more Scheme Providers will need to be identified through discussions with existing sector/trade bodies to cover the total industry footprint. These organisations will need to assume responsibility for operational aspects of the scheme such as setting trade-specific technical standards, approving licences/renewals, and undertaking inspections to ensure firms are compliant.

Work will need to be undertaken to define or collate technical standards across all occupational areas.

7.3 Assessing likely costs and revenue

A full and detailed assessment will need to be undertaken of the likely capital and running costs of a licensing scheme.

Based on research undertaken by the former Department for Education and Skills (DfES) into the economic implications of occupational licensing¹², this would need to cover such things as:

- Staff;
- Building and assets;
- Start-up costs for the licensing body (allowing for start-up inefficiency);
- All aspects of operations (including records maintenance and inspections); and
- Advertising and promotion.

The DfES research explored the magnitude of costs for licensing organisations. The schemes examined were found to be self-financing and the report suggested that the costs of licences should be indicative of the costs of running the scheme. At the time, the CORGI (now GasSafe) registration scheme was found to cost roughly £11 million a year to run. Based on approximately 95,000 operatives registered at the time, this equated to a cost per registered operative of approximately £113.

Data on the total number of UK construction firms (Table 2) provides a starting point for estimating the potential scale of a licensing scheme, likely running costs, and the possible revenue that could be obtained from initial registration fees.

If the cost to run the CORGI scheme in 2003 were directly upscaled to reflect one million licensable construction businesses today (not allowing for any economies of scale that could be achieved), that would equate to an annual running cost of approximately £115 million. If all of these licensable businesses paid a registration fee of £150¹³, this would equate to £150 million of income. The true amount would potentially be higher under a banded model with a fee range from £150 to £1,000, although one would need to factor in that fees are only collected from businesses every three to five years.

Further work would be needed to explore these cost assumptions in more detail, including ensuring there is sufficient capital available to cover set-up, development and marketing costs. It is possible that this may need a capital injection from Government with a view that the scheme becomes self-sustaining over a period of time.

Table 2: Estimate of total construction firms in the UK

With employees	1	22,120
	2-4	97,770
	5-9	25,315
	10-19	11,360
	20-49	4,970
	50-99	1,375
	100-199	440
	200-249	95
	250-499	165
	500 or more	135
Sub-total (With employees)		163,745
With no employees (unregistered for PAYE or VAT)		689,415
With no employees (registered for PAYE or VAT)		154,340
All businesses (registered and unregistered, including sole traders)		1,007,500

Source: BEIS Business Population Estimates for the UK and Regions 2017

Fees might range from £150 to £1,000 and be collected every three to five years.

¹² Department for Education and Skills/Frontier Economics (2003) *An Economic Review and Analysis of the Implications of Occupational Licensing*.

¹³ These are crude estimates and will vary under a system of tiered fee-setting, e.g. by size of the business.

7.4 Consultation and legislation

It is almost certain that a formal licensing proposal would require new, primary legislation to enable it to become law. The starting point for creating new laws typically comes from various sources such as lobbyists, campaign groups, public inquiries or civil servants.

The first set of detailed proposals will need Government backing to form the basis of a Green Paper that is subject to public consultation. The findings from the consultation will inform next steps – either that the proposals are abandoned or that changes are made (as appropriate) to deal with issues raised through the consultation.

The next step would involve a Government department proposing a Construction Industry Licence Bill to the Parliamentary Business and Legislation (PBL) Committee of the Cabinet. This would be needed approximately one year before the beginning of the session to which it would be introduced. The PBL Committee would then consider all the bids for that session and make a recommendation to Cabinet about the provisional content of the programme. This typically takes into account:

- The need for the Bill;
- Links to Government priorities; and
- Whether there has been a published draft for consultation.

If a Construction Industry Licence Bill is to be given a slot in the legislative programme, a team would be formed to take this forward, comprising policy officials and legal teams. Several drafts of the Bill may be needed until all parties are content with the content.

Given that the Bill's proposed provision would apply to Wales, Scotland and Northern Ireland, the department or the drafter would need to consult the devolved administrations to seek consent on aspects which relate to devolved policy areas.

The next stage of the process would be the passage of the Bill through both Houses of Parliament (including a process of revisions as required) prior to being granted Royal Assent and coming into force as an Act of Parliament.

7.5 Staged implementation

The new licensing scheme should allow sufficient lead-in time once approved (approximately two years), to allow governance schemes to be established and enable businesses to prepare and ensure they can meet the pre-requisite requirements. This is especially important given the size of the sector, including the high proportion of micro business and unregistered firms (in terms of VAT/PAYE) that will need to be encompassed.

The scheme should be implemented on a phased basis to enable thorough piloting and testing, perhaps encompassing the largest business (i.e. in terms of total direct staff or turnover) for the first 12 months, followed by a period of evaluation and modification, prior to wider rollout to smaller firms in the sector.

The scheme should be supported by strong and effective branding, marketing and PR to ensure it engages clients and members of the public so that they clearly understand and buy into its purpose, remit and importance. This should encompass:

- Scheme name, logo, purpose and objectives;
- Detailed design study followed by the development of a PR and marketing strategy
- Strong public awareness campaign in parallel to information being distributed to contractors and traders

A strong and on-going programme of consumer education would be needed to emphasise:

- Importance of using a licensed builder;
- Risks and potential consequences of not doing so;
- How to source and check the credentials of builders;
- The necessity of written quotations and contracts; and
- What to do (including rights) if things go wrong.

7.6 Do you support licensing?

If your organisation would like to formally support the proposal for licensing UK construction, please contact publicaffairs@fmb.org.uk.





About the Federation of Master Builders

The Federation of Master Builders (FMB) is the largest trade association in the UK construction industry representing thousands of firms in England, Scotland, Wales and Northern Ireland. Established in 1941 to protect the interests of small and medium-sized (SME) construction firms, the FMB is independent and non-profit making, lobbying for members' interests at both the national and local level. The FMB is a source of knowledge, professional advice and support for its members, providing a range of modern and relevant business building services to help them succeed. The FMB is committed to raising quality in the construction industry and offers a free service to consumers called 'Find a Builder'.

Please visit fmb.org.uk.

  @fmbuilders