

2010 No. 404

BUILDING AND BUILDINGS, ENGLAND AND WALES

The Building (Local Authority Charges) Regulations 2010

Made - - - - 22nd February 2010

Laid before Parliament 25th February 2010

Coming into force - - 1st April 2010

The Secretary of State, in exercise of the powers conferred by sections 1, 16(10), 35 and 50(3) of, and paragraphs 9 and 10 of Schedule 1 to, the Building Act 1984(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Building (Local Authority Charges) Regulations 2010 and shall come into force on 1st April 2010.

Interpretation

2. In these Regulations—

“the Act” means the Building Act 1984;

“the Approved Inspectors Regulations” means the Building (Approved Inspectors etc.) Regulations 2000(b);

“building” means any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building;

“building notice” means a notice given in accordance with regulations 12(2)(a) and 13(c) of the Principal Regulations;

“building work” has the meaning given in regulation 3(1) of the Principal Regulations(d);

“chargeable function” means a function listed in regulation 5(1);

“the Principal Regulations” means the Building Regulations 2000(e); and

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- (a) 1984 c.55; section 1(1) was amended by section 1 of the Sustainable and Secure Buildings Act 2004 (c.22). Certain functions of a Minister of the Crown under the 1984 Act were transferred to the National Assembly for Wales constituted by the Government of Wales Act 1998 (c. 38) by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, as varied by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253), article 4 and Schedule 3; and have been transferred to Welsh Ministers by the Government for Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Subject to certain exceptions and reservations, the remaining functions conferred on the Secretary of State under the 1984 Act are transferred to Welsh Ministers, as far as they are exercisable in relation to Wales, by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019) with effect from 31st December 2011.
- (b) S.I. 2000/2532, amended by S.I. 2004/1466, 2004/3210 and 2008/671; there are other amending instruments but none is relevant.
- (c) Paragraph (2) of regulation 12 was substituted by S.I 2006/652. Regulation 13 was amended by S.I 2001/3335, 2006/652 and is prospectively amended by 2009/1219.
- (d) Regulation 3 was amended by S.I. 2001/3335, 2003/2692 and 2006/652.
- (e) S.I. 2000/2531, relevant amendments are made by S.I. 2001/3335, 2002/2871, 2003/2692, 2004/1465, 2004/3210, and 2006/652.

“relevant person” means—

- (a) in relation to a plan charge, inspection charge, reversion charge or building notice charge, the person who carries out the building work or on whose behalf the building work is carried out;
- (b) in relation to a regularisation charge, the owner of the building; and
- (c) in relation to chargeable advice, any person requesting advice for which a charge may be made pursuant to regulation 5(2).

Authorisation to fix and recover charges by way of a scheme

3.—(1) A local authority are authorised by means of a scheme made under these Regulations (a “charging scheme”) to—

- (a) fix such charges as they may determine, from time to time and in accordance with these Regulations, for or in connection with the performance of their functions relating to building regulations; and
- (b) recover those charges, to the extent provided for by these Regulations, from relevant persons.

(2) The authorisation given by paragraph (1) is subject to the exception in regulation 4.

Exception for building work solely required for disabled persons

4.—(1) Subject to paragraph (2), in relation to an existing dwelling which is, or is to be, occupied by a disabled person as a permanent residence, a local authority shall not fix or recover any charges where the whole of the building work in question is solely—

- (a) for the purpose of providing means of access for the disabled person by way of entrance or exit to or from the dwelling or any part of it, or
- (b) for the purpose of providing accommodation or facilities designed to secure the greater health, safety, welfare or convenience of the disabled person.

(2) Building work does not fall within paragraph (1)(b) unless the local authority are satisfied that the work consists of—

- (a) the adaptation or extension of existing accommodation or an existing facility or the provision of alternative accommodation or an alternative facility where the existing accommodation or facility could not be used by the disabled person or could be used by the disabled person only with assistance; or
- (b) the provision or extension of a room which is or will be used solely—
 - (i) for the carrying out for the benefit of the disabled person of medical treatment which cannot reasonably be carried out in any other room in the dwelling, or
 - (ii) for the storage of medical equipment for the use of the disabled person, or
 - (iii) to provide sleeping accommodation for a carer where the disabled person requires 24-hour care.

(3) In relation to an existing building to which members of the public are admitted (whether on payment or otherwise) a local authority shall not fix charges where the whole of the building work in question is solely—

- (a) for the purpose of providing means of access for disabled persons by way of entrance or exit to or from the building or any part of it; or
- (b) for the provision of facilities designed to secure the greater health, safety, welfare or convenience of disabled persons.

(4) In this regulation—

“disabled person” means a person who is within any of the descriptions of persons to whom section 29(1) of the National Assistance Act 1948(a), as extended by virtue of section 8(2) of the Mental Health Act 1959(b), applied but disregarding the amendments made by paragraph 11 of Schedule 13 to the Children Act 1989(c); and

“dwelling” includes a dwelling-house and a flat; and “dwelling-house” and “flat” have the same meanings as in the Principal Regulations(d).

Principles of charging scheme: chargeable functions and advice

5.—(1) A local authority are authorised, by means of a charging scheme, to make a charge for or in connection with each of the following functions carried out by them—

- (a) the passing or rejection of plans of proposed building work which have been deposited with the local authority, in accordance with section 16 of the Act(e) (a “plan charge”);
- (b) the inspection of building work for which plans have been deposited in accordance with the Principal Regulations and with section 16 of the Act (an “inspection charge”);
- (c) the consideration of a building notice which has been given to the local authority in accordance with the Principal Regulations (a “building notice charge”);
- (d) the consideration of building work reverting to local authority control under the Approved Inspectors Regulations (a “reversion charge”); and
- (e) the consideration of an application under regulation 21 of the Principal Regulations and the inspection of any building work to which that application relates (a “regularisation charge”).

(2) A local authority are authorised by means of a charging scheme, to make a charge in relation to a request for advice as regards any particular case (in these Regulations called “chargeable advice”) where such a charge is made in anticipation of the future exercise of their chargeable functions in relation to that case; but no charge may be made for the first hour of time spent by an officer of the authority in providing chargeable advice.

Principles of charging scheme: overriding objective in determining charges

6.—(1) In determining the amount of the charges to be made within a charging scheme, a local authority shall have regard to the overriding objective in paragraph (3).

(2) At the end of the financial year in which a local authority first make a charging scheme, and of each subsequent financial year, the authority shall conduct a review of the level of charges set under their charging scheme in accordance with regulation 7, for the purpose of achieving the overriding objective.

(3) The overriding objective is that the authority must ensure that, taking one financial year with another, the income derived by the authority from performing chargeable functions and providing chargeable advice (“chargeable income”) as nearly as possible equates to the costs incurred by the authority in performing chargeable functions and providing chargeable advice (“chargeable costs”).

(4) Immediately following the review mentioned in paragraph (2) a local authority shall prepare a statement which sets out, as regards the financial year to which it relates—

- (a) the chargeable costs;
- (b) the chargeable income; and
- (c) the amount of any surplus or deficit.

(a) 1948 c.29.

(b) 1959 c.72. The words in section 8(2) which extend the meaning of disabled person in section 29(1) of the National Assistance Act 1948 are prospectively repealed by the National Health Service and Community Care Act 1990, section 66(2), Schedule 10, as from a day to be appointed.

(c) 1989 c.41.

(d) See regulation 2(1) of S.I. 2000/2531.

(e) Section 16 was amended by the Statute Law (Repeals) Act 1993 (c.50), Schedule XIII, Group 1.

(5) The statement prepared in accordance with paragraph (4) shall be published not more than six months after the end of the financial year to which the statement relates.

(6) The statement to be published under this regulation must be approved by the person having responsibility for the administration of the financial affairs of the local authority under—

- (a) section 151 of the Local Government Act 1972(a); or
- (b) in the case of the Common Council of the City of London, section 6 of the Local Government and Housing Act 1989(b).

(7) Paragraph (8) applies where—

- (a) an authority first makes a charging scheme under these Regulations, and
- (b) that scheme first takes effect at any time other than at the beginning of a financial year.

(8) Where this paragraph applies, in determining the charges under their charging scheme, an authority shall have regard to any estimated surplus or deficit arising for that part of the financial year for which an existing scheme made under the Building (Local Authority Charges) Regulations 1998(c) continues to have effect.

(9) A financial year is the period of 12 months beginning with 1st April.

Principles of charging scheme: calculating charges

7.—(1) A local authority shall determine the charges referred to in their charging scheme by reference to the costs of providing services in relation to particular building work or building work of particular descriptions, having regard in doing so to the overriding objective in regulation 6(3).

(2) The costs of providing the services shall be calculated using—

- (a) the hourly rate at which the time of their officers will be charged, and
- (b) such of the factors listed in paragraph (5) as will be taken into account in estimating the time required by their officers for performing a chargeable function or providing chargeable advice.

(3) Where the local authority consider it necessary to engage and incur the costs of a consultant to provide specialist advice or services in relation to a particular aspect of building work those costs shall also be included in the determination referred to in paragraph (1).

(4) The hourly rate determined for the purposes of paragraph (2)(a) shall be stated in the charging scheme.

(5) The factors to be taken into account as mentioned in paragraph (2)(b) are such of the following factors as may be applicable in the particular case—

- (a) the existing use of a building, or the proposed use of the building after completion of the building work;
- (b) the different kinds of building work described in regulation 3(1)(a) to (i)(d) of the Principal Regulations;
- (c) the floor area of the building or extension;
- (d) the nature of the design of the building work and whether innovative or high risk construction techniques are to be used;
- (e) the estimated duration of the building work and the anticipated number of inspections to be carried out;
- (f) the estimated cost of the building work;

(a) 1972 c.70.

(b) 1989 c.55.

(c) S.I. 1998/3129, amended by S.I. 2004/533.

(d) See footnote (d) to regulation 2 for amendments to regulation 3 of the Principal Regulations.

- (g) whether a person who intends to carry out part of the building work is a person mentioned in regulation 12(5) or 20B(4) of the Principal Regulations^(a) in respect of that part of the work;
 - (h) whether in respect of the building work a notification will be made in accordance with regulation 20A(4) of the Principal Regulations^(b);
 - (i) whether an application or building notice is in respect of two or more buildings or building works all of which are substantially the same as each other;
 - (j) whether an application or building notice is in respect of building work which is substantially the same as building work in respect of which plans have previously been deposited or building works inspected by the same local authority;
 - (k) whether chargeable advice has been given which is likely to result in less time being taken by the local authority to perform the chargeable function;
 - (l) whether it is necessary to engage and incur the costs of a consultant to provide specialist advice or services in relation to a particular aspect of the building work.
- (6) A local authority shall publish in their charging scheme—
- (a) any standard charges determined by the authority in relation to particular building work or building work of particular descriptions, and
 - (b) such of the factors listed in paragraph (5) as they have taken into account in determining the standard charges.
- (7) Where a local authority determine a charge (other than a standard charge) the authority shall give to the relevant person notice in writing specifying—
- (a) the amount of the charge, and
 - (b) the factors in paragraph (5), which the authority have taken into account in determining the charge.
- (8) Where in relation to a request from a relevant person, one or more standard charges would apply to the building work in question the local authority may, with the agreement of that person, determine the charge otherwise than by applying the standard charge or (in the case of two or more standard charges) aggregating the amounts of the standard charges; and if they do so, shall give to that person notice in writing specifying—
- (a) the amount of the charge, and
 - (b) the factors in paragraph (5) which the authority have taken into account in determining the charge.
- (9) For the purpose of paragraph (5)(c)—
- (a) the floor area of a building or extension is the total floor area calculated by reference to the finished internal faces of the walls enclosing the area, or, if at any point there is no enclosing wall, by reference to the outermost edge of the floor;
 - (b) the total floor area of any building is the total of the floor area of all the storeys which comprise that building; and
 - (c) the total floor area of an extension is the total floor areas of all the storeys in the extension.
- (10) In this regulation—
- “estimated cost” means the amount accepted by the local authority as that which a person engaged in the business of carrying out building work would reasonably charge for carrying out the work in question, excluding value added tax and professional fees.

(a) Regulation 12(5) was amended by S.I. 2004/3210 and S.I. 2008/671. Regulation 20B was inserted by S.I. 2006/652.
(b) Regulation 20A was inserted by S.I. 2002/2871 and paragraph (4) of that regulation was inserted by S.I. 2004/1465.

Principles of charging scheme as to payment

8.—(1) Subject to paragraph (3), a charging scheme made under these Regulations shall provide that—

- (a) any plan charge shall be payable when plans of the building work are deposited with the authority;
- (b) any inspection charge shall be payable on demand made after the authority carry out the first inspection in respect of which the charge is payable;
- (c) any building notice charge shall be payable when the building notice is given to the authority;
- (d) any reversion charge shall be payable for building work in relation to a building—
 - (i) which has been substantially completed before plans are first deposited with the authority in accordance with regulation 20(2)(a)(i) of the Approved Inspectors Regulations, or
 - (ii) in respect of which plans for further building work have been deposited with the authority in accordance with regulation 20(3) of the Approved Inspectors Regulations,
on the first occasion on which those plans are or have been deposited;
- (e) any regularisation charge shall be payable at the time of the application to the authority in accordance with regulation 21 of the Principal Regulations;
- (f) any charge for chargeable advice shall be payable on demand after the authority have given the notice required by regulation 7(7);
- (g) the charges payable in accordance with sub-paragraphs (a) to (f) are to be payable by the relevant person;
- (h) there shall be paid with any charge payable to the authority under these Regulations an amount equal to any value added tax payable in respect of that charge;
- (i) notwithstanding sub-paragraphs (a) to (f), any charge which is payable to the authority may, in a particular case, and with the agreement of the authority, be paid by instalments of such amounts payable on such dates as may be specified by the authority.

(2) Plans which are deposited without payment of the plan charge imposed by virtue of paragraph (1)(a) or as agreed under paragraph (1)(i) are not deposited in accordance with building regulations for the purposes of section 16 of the Act; and a building notice given without payment of the building notice charge imposed by virtue of paragraph (1)(c) or as agreed under paragraph (1)(i) is not validly given for the purposes of the Principal Regulations.

(3) Where—

- (a) a local authority determine a charge other than a standard charge; and
- (b) plans of building work are deposited or a building notice is given before the authority have confirmed in writing the amount of the plan charge or the building notice charge (as the case may be),

the requirement imposed by virtue of paragraph (1)(a) or (c) shall not apply until the plan charge or the building notice charge (as the case may be) has been notified in accordance with paragraph (7) or (8) of regulation 7.

Principles of charging scheme in respect of information necessary for determination of charges

9. A local authority are authorised to make provision in their charging scheme for information to be supplied where it is required for the purpose of determining any charge.

Principles of charging scheme in respect of complaints about charges

10. A local authority shall make provision in their charging scheme about the handling and consideration of complaints relating to the determination of any charge.

Refunds and supplementary charges

11.—(1) Where, for any reason other than that mentioned in paragraph (2), a local authority do not give notice of passing or rejection of plans within the period required by section 16 of the Act, they shall refund any plan charge paid.

(2) The reason mentioned in this paragraph is the failure by the person by whom or on whose behalf the plans were deposited to supply the authority with information requested of the person by the authority a reasonable time before the date on which they reasonably required the information in order to comply with section 16 of the Act.

(3) Where, in relation to the determination of a charge under regulation 7—

(a) the amount of work required of an officer of a local authority is less than that which was estimated, and

(b) payment has been made of the charge as determined under the charging scheme,

the authority shall, subject to paragraph (5), make a refund of an amount equal to the charge attributable to work that was not required.

(4) Where, in relation to a determination of a charge made under regulation 7—

(a) the amount of work required of an officer of a local authority is more than that which was estimated, and

(b) payment has been made only of the charge determined under the charging scheme,

the authority may, subject to paragraph (5), raise a supplementary charge in respect of the additional work.

(5) A local authority may disregard one hour of an officer's time in calculating the amount of the refund or, as the case may be, the supplementary charge.

(6) In respect of plans which are deposited with a local authority under section 16 of the Act, the plan charge and inspection charge may be aggregated for the purpose of calculating any refund or supplementary charge.

(7) Any payment of a refund or request for a supplementary charge shall be accompanied by a statement setting out the basis for the refund or supplementary charge and, in the case of the latter, a calculation of that charge.

Publicity

12.—(1) A local authority shall, not less than 7 days before the date on which a charging scheme (including any replacement scheme) is to come into effect, publish in their area, in such manner as they consider appropriate, the fact that they have made the charging scheme, the date on which it comes into effect and the address where it may be inspected.

(2) A local authority shall, not less than 7 days before the date on which an amendment to a charging scheme is to come into effect, publish in their area, in such manner as they consider appropriate, the fact that they have made the amendment (identifying its subject-matter), the date on which it comes into effect and the address where the amendment and the scheme as amended may be inspected.

(3) A local authority shall maintain a copy of any charging scheme currently in force as made by them, or as made and amended by them, and shall make this available for inspection free of charge by any member of the public on request and at any reasonable time at the address which it has published in accordance with paragraph (1).

Contraventions of regulations not to be an offence

13. Each of the provisions of these Regulations is designated as a provision to which section 35 of the Act (penalty for contravening building regulations) does not apply.

Fees for determinations of questions by the Secretary of State

14.—(1) The fee which shall accompany an application for a reference under section 16(10) of the Act (determination of questions by the Secretary of State) is—

- (a) where the question is whether plans of proposed work are in conformity with building regulations, an amount equal to half the plan charge fixed by the charging scheme made and published by the local authority concerned, subject to a minimum of £100 and a maximum of £1,000;
- (b) where the question is whether the local authority are prohibited from rejecting plans of proposed work by virtue of section 16(9) of the Act, £100.

(2) The fee which shall accompany an application for a reference under section 50(2) of the Act of the question whether plans of proposed work are in conformity with building regulations is an amount equal to half the plan charge fixed by the charging scheme made and published by the local authority to which the plans certificate is or would be given, subject to a minimum of £100 and a maximum of £1,000.

(3) No fee shall be payable in respect of the determination of any question relating to building work of the description in regulation 4.

Revocation, transitional and saving provision

15.—(1) The Building (Local Authority Charges) Regulations 1998 (“the 1998 Regulations”) are revoked.

(2) Before 1st October 2010, nothing in paragraph (1) or in these Regulations shall affect the continuing operation of the 1998 Regulations or of schemes made under the 1998 Regulations until, where a local authority first makes a charging scheme under these Regulations, the date (which must be no later than 1st October 2010) on which that charging scheme comes into effect.

(3) Nothing in paragraphs (1) or (2) shall affect the continuing operation of the 1998 Regulations or of schemes made under those Regulations in relation to building work for which—

- (a) plans were first deposited,
- (b) a building notice was given,
- (c) a reversion charge has become payable as described in regulation 8(1)(d), or
- (d) an application for a regularisation certificate was made,

before the date on which these Regulations come into force.

Signed by authority of the Secretary of State for Communities and Local Government

22nd February 2010

Bill McKenzie
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations authorise a local authority to fix and recover charges for the performance of their building control functions relating to building regulations according to a charging scheme governed by principles laid down in the Regulations. The Regulations make each local authority responsible for setting their own building control charges; and for doing so within the accounting and administrative requirements laid down in the Regulations. These Regulations largely re-enact the Building (Local Authority Charges) Regulations 1998 (“the 1998 Regulations”) which are revoked with savings.

Subject to one exception, regulation 3 enables a local authority to fix their charges by means of a charging scheme and recover those charges in respect of the five building control functions defined in regulation 5(1) and chargeable advice relating to those functions. Regulation 3(2) provides that in one instance, as set out in regulation 4, a local authority cannot fix charges in relation to building work solely for disabled persons.

Regulation 5(1) sets out the types of charge which a local authority are authorised to make for the five different control functions (“the chargeable functions”) of the Building Regulations. Regulation 5(2) authorises a local authority to charge for advice given in anticipation of the exercise of those functions.

Regulation 6 prescribes the principles of the scheme in respect of how local authorities are to estimate and fix their charges. The basic principle requires a local authority to have as their overriding objective, the need to balance as nearly as possible the costs of the services provided in relation to the chargeable functions and advice with the income derived from those services. Regulation 6(4) and (5) requires the authority to prepare and publish a financial statement at the end of each financial year setting out the costs, income and any surplus income or deficit. Under regulation 6(6) the statement has to be approved by a person who has the necessary financial authority to sign the statement. Where a charging scheme under these Regulations takes effect for the first time part of the way through the financial year, paragraphs (7) and (8) of regulation 6 require a local authority to take account of any estimated surplus or deficit arising in relation to the period of the financial year under which a scheme made under the 1998 Regulations has effect.

Regulation 7 sets out the main principles on which the charges are to be determined: charges must relate to the hourly charge-out rate of the officers of the local authority and the amount of time estimated for performing chargeable functions and providing chargeable advice. Regulation 7(4) stipulates that the hourly charge-out rate is to be set out in the charging scheme. Regulation 7(5) prescribes factors, as applicable in each case, to be taken into account in estimating the amount of time in relation to particular building work. Regulation 7(6) requires a local authority to publish any standard charges and the factors relied on in calculating those charges in their charging scheme. Regulation 7(7) allows a local authority to determine a charge where there is no standard charge for the building work in question. With the agreement of the relevant person, regulation 7(8) allows an authority to determine a charge (other than applying a standard charge) where one or more standard charges exist in relation to the building work in question.

Regulation 8 deals with the payment of charges. It identifies the times at which the different charges are payable, provides that charges may be paid by instalments by agreement; and specifies that the relevant person (as defined) will be responsible for payment of the different types of charge.

Regulation 9 authorises a local authority to make provision in their charging scheme to enable them to request necessary information before determining charges.

Regulation 10 imposes on local authorities a new requirement to make provision in their charging scheme about complaints.

Regulation 11 makes provision for refunds and supplementary charges, including as to their calculation.

Regulation 12 requires a local authority to publish within their area and at least 7 days before their charging scheme, any amendment or any replacement scheme is to have effect, the fact that they have made, amended or replaced the scheme, and to provide details including the date it is to come into effect and where it can be inspected. The regulation also requires that the scheme should be kept up-to-date and be made available for inspection by any member of the public free of charge.

Regulation 13 prevents contravention of any provision of the Regulations from being an offence under the Building Act 1984.

Regulation 14 prescribes fees payable to the Secretary of State where questions are referred to him for determination under section 16 or 50 of the Building Act 1984.

Regulation 15 provides for the revocation of the 1998 regulations but with transitional and saving provision. In particular, the transitional provision allows a local authority to make a charging scheme under these Regulations to come into force before 1st October 2010 but until it does so an existing scheme under the 1998 Regulations may continue to apply. All authorities must have done so by that date.

A full impact assessment of the effect that this instrument will have on the costs of business, and the public sector is available from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU, and is annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website (which can be found at: <http://www.opsi.gov.uk>).

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STATUTORY INSTRUMENTS

2010 No. 404

BUILDING AND BUILDINGS, ENGLAND AND WALES

The Building (Local Authority Charges) Regulations 2010

£5.50