

To:
The Chief Executive
Unitary, Metropolitan, District and London Borough
Councils in England
County and County Borough Councils in Wales
The Town Clerk, City of London
The Clerk, Council of Isles of Scilly
The Sub-Treasurer, Inner Temple
The Under Treasurer, Middle Temple

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

Approved Inspectors

cc.
The Chief Executive:
County Councils in England
National Park Authorities in England and Wales

The Chief Fire Officer, Fire Authorities in England and Wales

25 February 2010

Our Ref: SB/006/010/011

Dear Sir or Madam

THE BUILDING (LOCAL AUTHORITY CHARGES) REGULATIONS 2010 (SI 2010/404)

I am writing to inform you of the Building (Local Authority Charges) Regulations 2010 (SI 2010/404) (the 2010 Regulations), which were laid before Parliament today, and associated documents.

The 2010 Regulations revoke and replace the Building (Local Authority Charges) Regulations 1998 (SI 1998/3129) (the 1998 Regulations) and come into force on 1 April 2010. They make new provision authorising local authorities (LAs) in England and Wales to fix their own charges in a scheme, based on the full recovery of their costs, for carrying out their main building control functions relating to building regulations.

Background

In April 2009 the Department consulted on a package of proposals to change the LA building control charging regime with the aim of introducing more flexibility, accuracy, fairness and transparency into the regime and improving the standards and environment within which LAs and Approved Inspectors (AIs) operate and compete. The proposals also aimed to support the introduction of a risk assessment approach to inspections of building work, as explained in the *Future of Building Control Implementation Plan* published in September 2009.

Following the broad support from consultees for most of the proposals the Department implemented the changes through the 2010 Regulations, although some modifications were made to reflect the views of consultees and restrictions imposed by the relevant charging power in the Building Act 1984 (as amended).

The consultation paper, a summary of the consultation responses, and a final Impact Assessment (which was revised following the consultation) can be found on the Building Regulations section of the Department's website at:

www.communities.gov.uk/planningandbuilding/buildingregulations/legislation/localauthoritycharges/

The 2010 Regulations can be found on the Office of Public Sector Information (OPSI) website: www.opsi.gov.uk/si/si2010/uksi_20100404_en_1

Guidance

General guidance on the implementation of the 2010 Regulations is appended to this letter. The Department may supplement this with further guidance from time to time.

In addition, the following publications also contain relevant guidance:

- *Communities and Local Government Circular 01/2010*

The Circular explains the purpose of each of the individual regulations in the 2010 Regulations and how they differ from the 1998 Regulations. It is available on the Department's website by following the link above. Alternatively hard copies can be purchased from the Stationery office (TSO) at: www.tsoshop.co.uk/

- *Local Authority Building Control Accounting Guidance for England and Wales*

The Chartered Institute of Public Finance and Accountancy (CIPFA) will shortly be publishing updated guidance, titled *Local Authority Building Control Accounting Guidance for England and Wales (Fully Revised Second Edition 2010)*, to assist LAs in determining the costs of carrying out their chargeable building control service relating to building regulations that they should be seeking to recover when setting their charges under the 2010 Regulations. The Department has assisted CIPFA in the production of this guidance which will be available to purchase through the CIPFA Shop on: www.cipfa.org.uk/shop.

- *LABC Model Charging Scheme*

The LABC has undertaken to prepare an updated Model Charging Scheme to assist LAs to prepare a scheme which meets the requirements of the 2010 Regulations. When available it can be found at the members' area of the LABC website: <http://www.labc.uk.com/site/index.php>.

Transitional provisions

The 2010 Regulations contain a transitional provision which allows LAs to introduce a new charging scheme under these regulations any time between 1 April and 1 October 2010, although they must do so by the latter date. This will enable those LAs who wish to take advantage of the new flexibilities to do so at the earliest opportunity, whilst allowing those who need more time to implement the changes longer to adopt the new charging regime. As was the case under the 1998 Regulations, LAs are required to publicise the making of a new (and replacement or amended) charging scheme in their areas at least 7 days before it comes into effect.

The 1998 Regulations and any existing scheme made under those regulations will continue to operate until a LA first introduces a new charging scheme under the 2010 Regulations. They will also continue to apply in relation to any building work for which an application or notice was received by a LA prior to the introduction of a new scheme, for so long as the application or notice remains under consideration.

Dissemination

The LABC has indicated that it will run a series of workshops to promulgate the requirements of the 2010 Regulations to its members.

Enquiries

Any enquiries on this circular letter should be addressed to Kevin Flanagan or Tracey Cull in the Department's Sustainable Buildings Division - see address and contact details at the foot of the first page.

Yours faithfully



Anthony Burd
Deputy Head of Sustainable Buildings Division

**GENERAL CLG GUIDANCE ON THE IMPLEMENTATION OF THE BUILDING
(LOCAL AUTHORITY CHARGES) REGULATIONS 2010 (SI 2010/404)**

Contents	Paragraph nos
<i>Introduction</i>	1
<i>Key principles</i>	2-4
<i>Authority to charge – “fix by means of a scheme”</i>	5-7
<i>Authority to charge – “chargeable functions”</i>	8-10
<i>Authority to charge – “chargeable advice”</i>	11-14
<i>Authority to charge – disabled persons exemption</i>	15-18
<i>Authority to charge - green building projects</i>	19
<i>Authority to charge - cavity wall insulation</i>	20-28
<i>Authority to charge - unvented hot water systems</i>	29
<i>Overriding objective - safeguarding building control income</i>	30
<i>Overriding objective - full cost recovery</i>	31-38
<i>Overriding objective - financial statement</i>	39-41
<i>Overriding objective - derogation from the full cost recovery requirement</i>	42-43
<i>Overriding objective - users pays principle</i>	44-46
<i>Calculating charges - hourly rate</i>	47-50
<i>Calculating charges - factors to be taken into account</i>	51-57
<i>Calculating charges - standard and individually determined charges</i>	58-65
<i>Calculating charges - power to request information</i>	66
<i>Payment of charges</i>	67-70
<i>Refunds and supplementary charges</i>	71-75
<i>Complaints about charges</i>	76-77
<i>Publicity</i>	78-79
<i>Partnerships</i>	80-82
<i>Monitoring</i>	83-85
<i>Determination Fees</i>	86

Introduction

1. As stated in the covering letter, CLG Circular 01/2010 contains guidance on the purpose of each regulation in the 2010 Regulations. This document contains additional general guidance on the key principles of the regulations and other related matters which local authorities (LAs) may find helpful in implementing the requirements.

Key principles

2. The key principles relating to LA building control charges remain the need to fix their charges by means of a scheme, full cost recovery and the fact that the user should pay for the actual service that they receive. However, greater emphasis is given to the need to relate charges to the cost of carrying out the building control function for individual building projects.
3. The main changes in the 2010 Regulations relate to new flexibilities, in particular: the ability for LAs to charge for giving substantive advice related to their building control functions; an increased range of factors to be taken into account in setting charges; the option of setting either standard charges or making individual determinations of charges; and being able to give refunds and make supplementary charges, all of which are intended to make the charging regime more accurate and fairer. New accounting requirements are also included which are intended to make the regime more transparent and accountable.
4. LAs should continue to make every effort to keep their costs to a minimum to ensure that charges remain affordable and competitive and do not encourage people to circumvent the building regulations. The Department expects that LAs will always seek to determine their charges appropriately at the outset and so the provisions relating to refunds and supplementary charges will be used sparingly. We do not expect LAs to set their charges artificially low to win work from AIs and then routinely increase them later on, nor do we expect them to set charges high where they are operating in effect as a monopoly and routinely need to give refunds.

Authority to charge – “fix by means of a scheme”

5. As previously, LAs are still required to fix their charges “by means of schemes” due to the nature of the charging power set out in paragraph 9 of Schedule 1 of the Building Act 1984 (as amended). The 2010 Regulations make it clear that this does not restrict LAs to setting pre-fixed “standard” charges, but can also include individually determined charges provided that the framework for these is set out in a charging scheme and they are fixed by confirmation in writing (see paragraphs 58-65). The regulations also allow LAs to give refunds or request supplementary charges in certain circumstances (see paragraphs 71-75).
6. The 2010 Regulations explicitly require certain information to be included in a charging scheme but in practice LAs are expected to reflect all of the principles

prescribed by the regulations in their scheme so that applicants are clear on the LA's charging framework and how their charges have been, or will be, calculated.

7. Although not specifically stated in the 2010 Regulations, LAs continue to be able to amend, revoke or replace any charging scheme they make under the 2010 Regulations at any time (subject to the 7 days notice period).

Authority to charge – “chargeable functions”

8. As in the 1998 Regulations, the 2010 Regulations authorise LAs to charge for carrying out the five main building control functions relating to building regulations - i.e. checking plans, carrying out inspections of building work in connection with plans, and checking and inspecting work covered by building notices, reversion and regularisation applications. These are referred to as “the chargeable functions”.
9. Government policy continues to be that LAs should charge for carrying out these functions based on the principle that the user pays the cost of the service that they receive (subject to one exception - see paragraphs 15-18).
10. The 1998 Regulations required that charges for most of the chargeable functions should be equal, i.e. that building notice and reversion charges should equal full plans plus inspection charges and also that the regularisation charge should be 20% greater than these charges. The 2010 Regulations give more emphasis to setting charges in relation to the level of building control input into individual projects, therefore this link has been removed. It is recognised, for example, that the amount of building control input involved in processing a building notice can be greater than dealing with a full plans application.

Authority to charge – “chargeable advice”

11. The 2010 Regulations also introduce a new chargeable service referred to as “chargeable advice” which was supported by most respondents to the consultation. This allows LAs to charge for providing substantive advice - consisting of more than an hour - relating to the chargeable functions in advance of receiving an application or notice. NB this is not intended to cover general queries about building work or the application of the building regulations, or advice given once an application or notice has been received. It is intended to cover specific detailed advice relating to how a particular piece of proposed building work might comply with the building regulations (e.g. how a listed building might be converted to a new use) prior to an application or notice being finalised and submitted.
12. Because chargeable advice will relate to a proposed application or notice, it is quite possible that when the application or notice is received, dealing with it will require less building control input than if the LA were not already aware of the detailed proposals. The 2010 Regulations therefore enable the LA to take this into account when setting the charge for carrying out the chargeable function. Effectively this means that some or all of the costs of providing chargeable advice

may be discounted from the charge for any subsequent application or notice (see paragraph 54 - regulation 7(5)(k)).

13. In the Department's view, it will not be feasible for LAs to set accurate standard charges for providing chargeable advice, therefore the 2010 Regulations provide for each charge to be individually determined having regard to the particular circumstances of the case (see paragraphs 58-65).
14. It should be noted that there was mixed support from consultees to authorising LAs to charge for other building control services as raised in the consultation paper. These were given careful consideration but it was not felt appropriate to further extend the range of chargeable services at this time.

Authority to charge – disabled persons exemption

15. The 2010 Regulations provide a streamlined and clearer provision relating to the exemption from charging for building control services for building work carried out for disabled people (the costs of which should be excluded from a LA's chargeable account). The regulations make it clear that the exemption only applies to building work in relation to existing dwellings where the disabled person is or will be a permanent resident or to existing buildings to which members of the public are admitted (e.g. public buildings, shops, banks etc). The exemption does not apply to the construction of a new building.
16. The exemption only applies where the whole of the work in question is either to provide means of access to enter or exit the building or to move to or from any part of it (e.g. through the installation of a lift or widening openings), or for the purpose of providing accommodation or facilities designed to secure the greater health, safety, welfare or convenience of a disabled person. Where a larger building project comprises some work that falls within the exemption the LA may wish to consider treating that part of the work as exempt rather than requiring two separate applications.
17. In relation to existing dwellings, the type of building work that is considered to be "accommodation or facilities designed to secure the greater health, safety, welfare or convenience of a disabled person" is set out in regulation 4(2). This is broadly the same as in the 1998 Regulations but has been extended to include work to provide or extend a room which will be used for sleeping accommodation for a full time (i.e. 24 hours) carer.
18. As indicated in the consultation paper, the Department has received questions about the meaning of the reference to "building work solely required for disabled persons" in the past, although consultees did not provide any substantive comments on this. In our view, it needs to be demonstrated that the work is being carried out for the purpose of facilitating a person's disability, regardless of whether others may also benefit from the work. For example, where an occupant is unable to use an upstairs bathroom (or can use it only with assistance), the provision of a downstairs bathroom would be considered as exempt even though other occupants of the dwelling will benefit from the facility. However, the fact that an

occupant of the dwelling is deaf would be insufficient to justify the need for a downstairs bathroom on the grounds of disability.

Authority to charge - green building projects

19. In addition to the cost savings principle, the consultation paper sought views on the possibility of introducing scope for LAs to waive, reduce or refund, on a discretionary basis, their charges for 'green' building projects to encourage more sustainable buildings (i.e. a public good/benefit principle), subject to confirmation of the legal vires. In the event, this suggestion was not widely supported as there were concerns about how this would work and be funded. It was not, in any event, felt possible to pursue this at present under the constraints of the existing charging power in the Building Act 1984. LAs may wish to consider assisting 'green' building projects through other means, including grants.

Authority to charge - cavity wall insulation

20. The 1998 Regulations contained an exemption from charging for building work comprising the installation of cavity wall insulation where the work was certified to an approved standard or installed by an approved installer. However, there have been no such Departmental approvals in place since the Principal Building Regulations were amended in 2000 and so the conditions to which the exemption applied could not be met. The exemption is therefore considered to be defective legislation and so it could not be carried forward to the 2010 Regulations.

21. All installations of cavity wall insulation have therefore been chargeable building work since 2000, with charges for inspections being set according to the estimated cost of the work. However, it would appear that many LAs have, in practice, treated the installation of cavity wall insulation as exempt from charges. Others may have exercised their discretion under the 1998 Regulations not to make inspection charges for building work under £5,000 in value.

22. Under the 2010 Regulations, LAs are required to set their charges in relation to the amount of building control input with regard to particular or types of building work (see paragraph 45), whatever their value. This means that charges will need to reflect the amount of time building control spend dealing with individual building projects.

23. Currently the Department believes that LAs do not routinely inspect cavity wall insulation installations. We do not expect this situation to change because of the new charges regulations.

24. In a few cases, it may be appropriate for LAs to carry out an inspection of a cavity wall insulation installation so as to ensure that the requirements of the building regulations are met. However, the risk of non-compliance with building regulations is generally considered to be low with respect to cavity wall installations, as evidenced by the current low rate of inspections and the low rate of problems arising from such installations.

25. As with any decision about inspections, a decision as to whether an inspection is required should be justified and proportionate to the risk involved. When considering whether an inspection is necessary for cavity wall insulation, LAs may wish to take into account whether the work has been carried out by a member of a body, such as the British Board of Agrément or the Cavity Wall Insulation Guarantee Agency, whose members have been assessed and approved by them for carrying out such work. In such cases, LAs may consider that such inspections may not be necessary.
26. **Therefore, the Department does not anticipate an increase in either the number of inspections or the level of charging in relation to such work.**
27. LAs may wish to note that the Department intends to seek applications from bodies who may wish to run a competent person scheme for the installation of cavity wall insulation. It is intended that such a scheme should be in place by 1 October 2010 at the latest.
28. NB where cavity wall insulation is part of a larger building project, any inspections of cavity wall insulation should be carried out as part of the inspections of the larger project. As under the 2010 Regulations the charge should be set based on the level of building control input for the overall project and can take into account a far wider range of factors than previously, no separate provision is considered necessary in respect of charging for cavity wall insulation when part of a larger project.

Authority to charge - unvented hot water systems

29. The specific provisions in the 1998 Regulations relating to charging for building work comprising the installation of unvented hot water systems in accordance with Part G of the Building Regulations have not been carried forward to the 2010 Regulations. This is due to the fact that changes to the requirements of Part G introduced in 2009 (which come into effect on 6 April 2010) and the need to ensure parity with vented systems, mean that a separate provision is no longer considered necessary. LAs should therefore charge for this work as appropriate under the requirements of the 2010 Regulations.

Overriding objective - safeguarding building control income

30. As indicated in the consultation paper, the Department does not consider it necessary or appropriate to require LAs to 'ring-fence' their building control chargeable accounts. This is because LAs are already free to do this if they wish and to impose this requirement would be inconsistent with Government policy of giving LAs greater discretion and local accountability. We believe, however, that the new charging and accounting principles in the 2010 Regulations referred to in the following paragraphs should provide more transparency and help safeguard the use of building control income, including any surpluses, as well as ensuring that any deficits are addressed. Further information on the accounting treatment of building control income and any surpluses arising is set out in the updated CIPFA guidance (see covering letter).

Overriding objective - full cost recovery

31. The key principle of requiring LAs to estimate and fix their charges with the aim of fully recovering the costs of carrying out their chargeable building control services remains unchanged in the 2010 Regulations. However, there are some fundamental changes to the way LAs should achieve the full cost recovery requirement.
32. Under the 1998 Regulations, LAs were required to set their charges with the aim of ensuring that their total income “shall not be less than the costs” incurred over a continuous three-year accounting period. As indicated in the consultation paper it was felt that this requirement was inflexible and contributed to the level of surpluses arising as it could encourage LAs to be over cautious and always aim to make a surplus.
33. Under the 2010 Regulations, LAs are required to set their charges with the aim of achieving the overriding objective of ensuring that “taking one financial year with another” their income from their charges “as nearly as possible equates to the costs incurred” of carrying out their chargeable functions (and providing chargeable advice related to those functions), i.e. year on year they should always aim to ‘break-even’.
34. The duty to “take one financial year with another” recognises the inevitable variation over time in the level of building activity and the fluctuating demands on the building control service and therefore the practical difficulties LAs may have in estimating income and calculating charges to accurately recover their costs each year. Accordingly, the 2010 Regulations establish the concept of balancing income and costs over a reasonable period of time, rather than the fixed three-year period specified in the 1998 Regulations.
35. LAs are also required to review their charges at the end of each financial year for the purpose of achieving the overall objective. When setting their charges for a particular financial year LAs must take account of surpluses and deficits made in earlier years (including those arising under the 1998 Regulations, where a LA first introduces a charging scheme under the 2010 Regulations after the financial year has commenced). They are required to offset these against income received for that year and subsequent years and projected future costs thereby resulting in reduced or increased charges, as appropriate, so that over a reasonable period income matches costs.
36. The 2010 Regulations do not define “a reasonable period” as this will depend on each LA’s circumstances, but in the Department’s view it would normally be good practice for LAs to achieve ‘break-even’ over a rolling period of three years, although five years may be more appropriate where unusually large surpluses or deficits have occurred.
37. It should be noted that surpluses can, where appropriate, be invested in improving the quality of delivery of the chargeable building control service but this should be reflected in the following year’s expenditure account as part of setting

the average hourly rate (see paragraphs 47-50). LAs are not empowered to use such surpluses to fund other LA services.

38. LAs might therefore want to review their charging scheme over a rolling three-year period as follows to comply with the above:

- *towards the end of year 1 a LA considers whether they want to revise their charging scheme as it will apply to year 2. They will use estimates of the outturn for year 1 to judge whether charges need to be adjusted to reflect their costs and whether there will be any surplus or deficit in year 1 that needs to be offset in year 2 or in subsequent years. On this basis they will decide on the charges for year 2;*
- *after the end of year 1 they must carry out the review of that year as required by the 2010 Regulations. This will show whether the estimates mentioned above were sufficiently accurate. If there was a serious divergence they might want to change the charging scheme in year for year 2, or they might decide to hold over the adjustments until they form a judgement on year 3 - the "one financial year with another" provision allows this discretion;*
- *towards the end of year 2 the LA will consider the charges for year 3, taking account of the estimated outturn for year 2 and any outstanding surplus/deficit from year 1.*

Overriding objective - financial statement

39. To assist LAs and others in monitoring compliance with the overriding objective, the 2010 Regulations require LAs to prepare and publish an annual financial statement no later than six months after the end of each financial year within which they have made a charging scheme. The statement should set out the chargeable costs, income and any surplus or deficit brought forward from the previous year and carried forward to the following year. This statement should be signed-off by a person with the necessary statutory financial authority within the LA before publication.

40. The Department / the National Assembly for Wales will monitor on a three-yearly basis whether LAs are achieving the overriding objective (see paragraphs 83-85). This will be separate from the formal post-implementation review of the new regulations which will consider the wider impacts of the changes to the charging regime. Auditors will also consider any complaints about a LA's financial statement.

41. Further advice on full cost recovery and other accounting requirements, including how the requirement to prepare and publish the annual financial statement can be met, can be found in CIPFA's building control accounting guidance.

Overriding objective - derogation from the full cost recovery requirement

42. The Department decided not to carry forward the derogation from full cost recovery principle in the 1998 Regulations into the 2010 Regulations. This

allowed LAs to recover 90% of their total costs through charges income, instead of 100%. This only applied where their costs did not exceed £450,000 over the relevant accounting period, or where at least 65% of all charges received over this period related to small domestic buildings, garages, carports and extensions to dwellings.

43. The derogation was removed because the evidence from past monitoring exercises indicated that it was not understood or very rarely used in practice and the greater flexibility introduced by the new charging principles in the 2010 Regulations, particularly the overriding objective, reduces the case for the derogation. Furthermore, a number of the LAs that might have taken advantage of the derogation if they choose to do so have now formed formal partnerships to carry out their building control functions, operating as a single entity with a single charging scheme, which will increase their efficiency so they should be able to fully reflect their costs in their charges and would be unlikely to meet the criteria for the derogation.

Overriding objective - user pays principle

44. Under the 1998 Regulations there was no explicit requirement to relate charges to carrying out building control functions for individual building projects. This was felt to be unfair as it did not take account of where the same types of work need more or less building control input and led to cross-subsidisation between types of applications/notices and projects.
45. To ensure more accurate and fairer charging, under the 2010 Regulations LAs are required to relate their charges to recovering the costs of carrying out their chargeable building control functions (and providing chargeable advice related to those functions) for particular building work or building work of particular descriptions, i.e. individual building projects. These can be grouped according to types (see paragraph 61).
46. Ensuring that users pay for the service that they receive will facilitate the implementation of service level agreements based on risk assessment (as set out in the Future of Building Control Implementation Plan) and help to demonstrate the value that building control adds.

Calculating charges - hourly rate

47. Under the 2010 Regulations, LAs are required to calculate their charges by relating the hourly rate of their building control officers to the time spent carrying out their chargeable functions (and in providing chargeable advice) in relation to particular building work or building work of particular descriptions. In other words the charge is the hourly rate multiplied by the number of hours spent on individual / types of building projects.
48. The hourly rate, which must be fixed and published within the charging scheme, is a single rate based on the average cost of providing the chargeable building control service. A single average hourly rate is provided for as it would not be

equitable for an applicant to be charged a different amount simply because the building control officer dealing with their building project was on a different salary.

49. CIPFA guidance contains detailed advice on the calculation of the hourly rate. The hourly rate should reflect all the direct (eg salaries) and indirect (eg training) costs of running the chargeable service, including the allocation and apportionment of support services. It should be noted that travel time and associated costs should be apportioned to the chargeable account as part of calculating the hourly rate rather than in calculating the amount of time spent on dealing with a particular project. This is because it would not be appropriate to charge an applicant more simply because the site was further away from the office. Also many building control officers will travel from site to site which would make direct allocation very difficult.
50. However, the 2010 Regulations do allow the direct allocation of certain costs such as specialist consultancy advice to particular building projects. For example, if an application requires the LA to contract a fire engineer to provide specialist advice in relation to a particular project that cost can be charged directly to that project. So the charge would be the hourly rate multiplied by the number of hours spent on the project plus the consultancy fee.

Calculating charges - factors to be taken into account

51. The Department is aware that most LAs currently primarily set their pre-fixed charges in three schedules related to two factors either to the floor area of the building for the erection or extension of small domestic buildings and dwellings etc, or to the estimated cost of the building work for all other work. This has led to unfair charges in some circumstances, particularly where charges have been based solely on the estimated cost of the work but require very little input from building control (see also paragraph 55).
52. When making a new charging scheme under the 2010 Regulations LAs will therefore be required to take into account an increased number of factors in determining the estimated time to be spent on their chargeable functions (and in providing chargeable advice) and therefore in determining the charge. All the factors in the regulations should be listed in a LA's charging scheme with an explanation of how they will be applied to provide transparency. For example, whether or not a competent person scheme member is involved may be relevant if the work were a domestic extension to provide a new bathroom but would not be relevant if the work comprised a removal of a supporting wall.
53. Therefore, the current method of listing charges in three schedules will need to be adapted/expanded accordingly. The key factors which may be relevant to most building work are set out in regulation 7(5)(a) to (f), i.e.:

- (a) the existing use of a building, or the proposed use of the building after completion of the building work (*as in regulation 6(2)(a) of the 1998 Regulations*);

- (b) the different kinds of building work described in regulation 3(1)(a) to (i) of the Building Regulations 2000 (as amended - referred to below as the Principal Regulations) (*regulation 6(2)(b) of the 1998 Regulations has been extended to allow charging for all prescribed "building work"*);
- (c) the floor area of the building or extension (*a simplification and extension to all buildings of regulation 7(1) of the 1998 Regulations*);
- (d) the nature of the design of the building work and whether innovative or high risk construction techniques are to be used (*new*);
- (e) the estimated duration of the building work and the anticipated number of inspections to be carried out (*new - this will facilitate a risk assessment approach to inspections - LAs may find it helpful to refer to the draft risk assessment guidance published on the CLG website in January 2010:*
www.communities.gov.uk/publications/planningandbuilding/draftriskassessment);
- (f) the estimated cost of the building work (*as in regulation 6(1) of the 1998 Regulations*).

54. The other factors set out in regulation 7(5)(g)-(l) relate to the case for a reduction or increase of a charge, which LAs should consider when setting charges (depending on the level of building control input needed) at the outset, i.e.:

- (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 in respect of that part of the work, (*new - i.e. competent person/self-certification schemes or other defined non-notifiable work*);
- (h) whether in respect of the building work a notification will be made in accordance with regulation 20A(4) of the Principal Regulations, (*new - i.e. where, for the purpose of achieving compliance with Requirement E1 of the Principal Regulations, design details approved by Robust Details Limited have been used; this recognises the 'pattern book' approach*);
- (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 (*i.e. repetitive building work, as in regulation 8(a) of the 1998 Regulations*);
- (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 (*i.e. repetitive building work - a simplification of regulations 8(b) and 10(1)(h) of the 1998 Regulations*);
- (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 (*new - see paragraphs 11-13*);
- (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 (*new - see paragraph 50*).

55. Although “estimated cost of the building work” (which relates to the cost of the work that is subject to building regulations) has been retained in the 2010 Regulations, the Department takes the view that this factor is not in itself an accurate and fair means of calculating the costs of building control input. Although by and large the more expensive the work the more building control input is likely to be required, this is not true in every case. Some work is by its nature expensive but involves little building control input, eg replacement roofing. Furthermore, a building project that uses better and more expensive materials could incur a higher building control charge than an identical project that uses poorer and less expensive materials but which could involve the same or even less level of building control input.
56. Therefore whilst it is a useful indicator in general, LAs should not primarily relate their charges to this factor but should always use in combination with a range of other factors, particularly (a) - (e) above, as applicable to the building work.
57. It should be noted that LAs are not authorised to take into account any other factors in setting their charges. Although it was raised in the consultation paper, it was not possible to give recognition to the LABC ‘Partner Authority Scheme’ in the regulations as it does not have a formal legal status.

Calculating charges - standard and individually determined charges

58. Under the 1998 Regulations there was a presumption that LAs had to pre-fix and publish flat-rate charges in their charging scheme for carrying out their chargeable functions in relation to all types of building work. The 2010 Regulations provide that LAs may determine pre-fixed “standard” charges which should be published in their charging scheme or LAs may individually determine a charge and then fix it by confirming it in writing with the applicant.
59. LAs have the discretion to continue to set standard charges for all types of work or could individually determine all their charges if they wish (but see paragraph 13 in relation to charging for chargeable advice). However, it is likely that, given the requirement to relate charges to the cost of carrying out individual building projects, most LAs will choose to use standard charges for those, typically smaller, projects where they can set and publish accurate and fair standard charges in advance and to use individually determined charges for those, typically larger, projects where they may not be able to set accurate and fair charges in advance. The regulations do not set a ‘cut-off’ point between the two charging mechanisms as this will be a matter for individual LAs. However, LAs should make clear in their charging scheme which approach they intend to adopt for different types of project.
60. LAs should therefore give careful consideration to the types of building projects for which they can set standard charges in advance. The charging scheme should set out the standard charges together with the particular factors in regulation 7(5) that they have taken into account in doing so (see paragraphs 53-54). Additional guidance on this will be set out in the LABC Model Charging Scheme (see covering letter).

61. It is not the intention of the 2010 Regulations to require a separate standard charge for every single individual type of building project. For some types of work it may be possible to set individual standard charges based on the particular type of work (eg erection of new dwellings, extensions, loft conversions, replacement roofs etc). For other types of work it may be possible to group together different types of work that are expected to have similar building control input and set a single standard charge (eg minor work up to the value of £1,000). In the same way it may be possible to identify a “standard” reduction where appropriate. For example, the charge for a domestic extension up to xm^2 is £y; the charge for a domestic extension up to xm^2 where a competent person is involved is £z.
62. As stated in paragraph 53, when publishing “standard” charges there will be a need to adapt and expand the three schedule approach that LAs currently use. How many categories of standard charge are needed in practice will be a matter for LAs and will depend on the extent to which they can set accurate charges in advance for different types of work.
63. Standard charges might take into account most of the key factors prescribed in regulation 7(5)(a)-(f), with provision made for a standard reduction or increase (i.e. a specified amount or percentage reduction) to be applied where the factors in regulations 7(5)(g)-(l) are applicable, such as where a competent person is used who can self-certify part of the work.
64. LAs should note that once a standard charge has been set and published they will only be able to ‘flex’ (i.e. adapt) the charge to take account of individual circumstances in a particular case - i.e. provide an individual determination instead - if the applicant agrees. The LA will have to confirm the revised charge and the particular factors they have taken into account in writing. It is considered that this approach will be particularly helpful where different types of building work that have standard charges are being carried out concurrently, which could therefore be considered at the same time. For example, loft conversions and domestic extensions might be subject to standard charges. If being carried out at the same time on the same house, the inspections could be combined which could reduce the amount of building control input and thereby justify a reduced charge.
65. Where LAs individually determine a charge for an application or notice they are required to confirm the amount in writing to the applicant and state which of the particular factors in regulation 7(5) they have taken into account in the determination, having had regard to the particular circumstances of the case. The consultation paper suggested that LAs should provide a “tool” enabling an applicant to calculate an individually determined charge “based on fixed inputs/assumptions”. This is not a formal legal requirement in the 2010 Regulations. However, to aid transparency, LAs may wish to provide such a tool as a matter of good practice.

Calculating charges - power to request information

66. LAs have a new power to make provision in their charging scheme allowing them to request any information they consider necessary to determine a charge. This builds on the requirement in the 1998 Regulations whereby LAs could request a written estimate of the cost of the building work. While this may still apply in the case of the factor in regulation 7(5)(f), LAs may now need to also request other information, eg details of the builder involved to help determine the number of inspections needed (the factor in regulation 7(5)(e)), or to confirm that part of the work will be self-certified under a competent person scheme (the factor in regulation 7(5)(g)).

Payment of charges

67. As in the case of the 1998 Regulations, the 2010 Regulations provide for LAs to state in their charging scheme when charges for the chargeable functions (including any VAT payable) should be paid by the “relevant person” (as defined), i.e. when applications or notices are first made and, in the case of inspection charges, after the first inspection is carried out. Alternatively charges can be paid in instalments if the LA agrees. Payment for chargeable advice should be paid on demand by the LA.

68. However, if a charge is individually determined, payment will be due when the correct amount is confirmed by the LA in writing, which includes the provision of chargeable advice. An individually determined charge may also be paid in instalments if the LA agrees.

69. In the Department’s view, the ability to pay by instalments enables an inspection charge to be fully or partly paid up front with a full plans charge if the LA and the applicant agree.

70. Full plans applications and building notices received by a LA without the correct payment are not validly deposited / given for the purposes of the time limits in the Building Act 1984 and the Building Regulations 2000 (as amended).

Refunds and supplementary charges

71. LAs continue to be required to refund a plans charge where they do not give notice of passing or rejection of the plans within the statutory period, unless the applicant does not provide relevant information requested by an LA within a reasonable time to enable them to consider the application within that period.

72. LAs are now also required to refund part of a charge, or may request a supplementary charge, where the amount of building control input required is less or more than was originally estimated and paid for, eg where there are substantial alterations to the building work (NB plans and inspection charges may be aggregated for this purpose). As requested by consultees, provision has been made for administrative costs incurred to be taken into account, i.e. LAs may disregard one hour of an officer’s time in calculating the amount of the refund or supplementary charge.

73. Any payment of a refund or request for a supplementary charge must be accompanied by a written statement setting out the basis for the refund/charge and, in the case of a supplementary charge, how this was calculated. It is therefore particularly important that supplementary charges are fully justified in advance to avoid complaints and challenges. It is good practice that LAs should state the circumstances when supplementary charges (and refunds) would apply in their charging scheme. For example, a standard inspection charge for project A would be £X, based on Y inspections, and additional inspections would incur a cost of £Z. Alternatively, the standard rate for project B is £x is but if you use an installer who is a member of a competent person scheme to carry out (and therefore self-certify compliance of) some of the work, the discount will be £z.
74. Although not specified in the 2010 Regulations, LAs should of course refund any over payment made by the applicant as soon as possible after it becomes evident. It is also good practice to allow a reasonable time for applicants to pay a supplementary charge requested, before taking any further action.
75. The Department expects that LAs will always seek to determine their charges appropriately at the outset and so the provisions relating to refunds and supplementary charges will be used sparingly. We do not expect LAs to set their charges artificially low to win work from AIs and then routinely increase them later on, nor do we expect them to set charges high where they are operating in effect as a monopoly and routinely need to give refunds.

Complaints about charges

76. Some concerns were expressed by consultees about the increased flexibilities open to LAs under the new charging regime, eg requesting a supplementary charge where appropriate. The Department considered that the costs of operating a formal appeals procedure would be disproportionate and outweigh the benefits of such a system. Instead, the 2010 Regulations require LAs to make provision in their charging scheme advising how they will handle and consider any complaints they receive about their charges. This does not necessarily require a separate complaints procedure to be introduced - the LAs standard complaints procedure may well be sufficient for this purpose. It would however, be good practice to bring it to the attention of applicants - particularly in instances where supplementary charges may be requested. Any complaints received about a LA's annual charges financial statement should also be considered similarly.
77. LAs will need to be able to fully justify their charges in a transparent manner if challenged. It will of course remain open to a member of the public to raise any complaint about a LA with the Local Government Ombudsman if they consider that they have been a victim of maladministration. Complaints about a LA's financial statement can also be raised with the authority's auditor to consider.

Publicity

78. As in the 1998 Regulations, the 2010 Regulations require LAs to "publish in their area, in such manner as they consider appropriate" at least 7 days beforehand,

the making, replacement or amendment of their charging scheme and to provide details, including how it can be inspected by a member of the public free of charge. They must also keep it up to date. This is not a requirement to publish the scheme itself but to publicise the making/replacing/amending of the scheme. This might be done through adding a simple note to the LA's website and to other relevant published materials (for those who do not have Internet access).

79. Although some consultees questioned whether this requirement should be retained, as stated in the consultation paper, the Department takes the view that this is appropriate on public accountability and transparency grounds. LAs can of course continue to separately publish information extracted from their charging scheme (such as lists of standard charges) on their website or in leaflets, which would reduce the need for anyone to access the scheme itself.

Partnerships

80. As mentioned in paragraph 43, the Department is aware that as a means of improving efficiency and financial viability there is an increasing tendency for smaller LAs to form formal partnerships. Such partnerships would appear to operate as a single entity across the relevant LA areas to carry out their building control functions.

81. It falls to individual LAs to satisfy themselves that they are complying with necessary legislative requirements and have the power to enter into such partnerships. For example, such an arrangement may be provided under section 101 of the Local Government Act to enable authorities to discharge their joint chargeable building control functions. The requirements of the 2010 Regulations may then be exercised by a joint committee on behalf of the relevant LAs, as a single entity. This would mean for example that one charging scheme and one annual financial statement would have to be prepared, although this should be clearly indicated in the documentation.

82. As stated in the consultation paper, it is the Department's opinion that LAs are not empowered to arrange for the discharge of their statutory building control functions via an LA company. We are also of the opinion that, where LAs enter into a contractual arrangement with a third party to provide building control services (i.e. where the statutory responsibility and decision-making process remains with the LA), it remains the responsibility of the LA involved to ensure that the requirements of the 2010 Regulations are adhered to.

Monitoring

83. The 2010 Regulations will come into effect on 1 April 2010 and outturn figures for charges income and expenditure should first become available at the end of the 2010/11 financial year, although the regulations will have a transitional provision allowing LAs to introduce a new charging scheme under the 2010 Regulations any time from 1 April - 1 October 2010 (they must do so by the latter date).

84. Notwithstanding the transitional provision, the Department and in Wales the National Assembly for Wales propose to monitor LAs' total building control

income and costs in England and Wales on a three-yearly basis from 2012/13 to assess whether the 2010 Regulations meet their overriding accounting objective of enabling LAs to set charges which more accurately balance their income with their costs. To assist this process, we also propose to carry out a monitoring exercise in 2010 relating to the last financial year under the 1998 Regulations (i.e. 2009/10) to provide a baseline for future monitoring under the 2010 Regulations.

85. In addition, the Department and the National Assembly for Wales propose to carry out a wider review of the impact of the 2010 Regulations in 2013 to ensure that they meet their policy objectives. However, it is recognised that some of the potential benefits may not be realised within this timescale and it will therefore be necessary to continue to monitor the impact of the policy on a long-term basis.

Determination fees

86. Although not directly related to LA charges, the 2010 Regulations also provide for an increase in the minimum and maximum level of fees payable for questions relating to conformity of plans of proposed building work with building regulations, which are referred to the Secretary of State for his determination. From 1 April 2010, the fee is set at half of the relevant LA's plan charge, excluding VAT, subject to a minimum fee of £100 and a maximum of £1,000.