



Department for Communities and Local Government

To:

Our Ref:

Your Ref:

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 the Isles of Scilly
The Sub-Treasurer, Inner Temple
The Under Treasurer, Middle Temple

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

Approved Inspectors

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

The Chief Fire Officer: Fire Authorities in
England and Wales

14 February 2014

Dear Sir/Madam

Building Act 1984 and the Building (Local Authority Charges) Regulations 2010

I am writing to remind local authorities carrying out functions under the Building Act 1984 of the provisions where charges for the performance of their functions are payable and where charges are not payable.

Scope

This Circular letter applies to local authorities in England carrying out building control functions. It also applies to local authorities in Wales carrying out building control functions in respect of *excepted energy buildings*¹ or in respect of any functions they carry out in respect of Crown

¹ "Excepted energy buildings are defined in the schedule to the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019)

buildings or the buildings of statutory undertakers as set out in regulation 34 of the Building Regulations 2010 as amended.

(a) Charges related to functions under Part I of the Building Act 1984 and the Building Regulations 2010

Local authorities are authorised under the [Building \(Local Authority Charges\) Regulations 2010 \(S.I. 2010/404\)](#) ("the Charges regulations") to charge those carrying out building work and building owners for carrying out certain functions under Part I of the Building Act 1984 and the Building Regulations 2010. The following references, unless stated otherwise, are to the Charges regulations. In particular:

- Local authorities must prepare and publish a charging scheme in respect of the charges it makes to those carrying out building work, those applying for regularisation of unauthorised work, or those seeking chargeable advice (regulation 5).
- Charges must be set at a level that ensures, taking one financial year with another, that the income of an authority from charges equates to the costs that it incurs in providing chargeable functions and advice (regulation 6(3)) (i.e. the chargeable functions are to be self-financing but are not meant also to cover the costs of non-chargeable functions).
- Each year the local authority must prepare and publish a statement of its chargeable costs, chargeable income and the amount of any surplus or deficit in respect of the previous year (regulation 6(2) and (4)).
- Charges are to be based on the hourly rate at which the time of officers of the authority will be charged (regulation 7(2)). Regulation 7(5) lists a number of factors to be taken into account in estimating the time that its officers will need to spend on a particular job.
- Contractors to local authorities and persons employed by such contractors to provide chargeable functions or provide chargeable advice must be treated as local authority officers for this purpose and the rate charged their time is thus the same as for a directly employed local authority officer.
- A local authority must publish in its charging scheme any standard charges that it determines in relation to building work (regulation 7(6)). Where the authority determines a charge other than a standard charge it must give the person liable a notice in writing specifying the charge payable and the factors taken into account under regulation 7(5) in determining the charge.
- The authority must make a proportionate refund of the charge paid in respect of any overestimate of the time it would spend on carrying out its building control function in respect of a job (regulation 11(3)).
- The authority may make a supplementary charge if the estimated time in respect of a particular job needs to be exceeded (regulation 11(3)).
- All published charging schemes must contain information on how complaints about charges will be handled (regulation 10).
- There is no provision to charge for bringing a prosecution for an offence. In that case costs will be recoverable at the discretion of the court in the event of a conviction. Neither is there provision to charge for serving a notice under section 36 (removal or alteration of offending work) of the Building Act 1984.

Note: The provisions of the Charges Regulations apply also to the charges for any person subcontracted by a local authority to carry out parts of its chargeable building control functions.

(b) Functions under Part III of the Building Act 1984

Under provisions in Part III of the Building Act 1984 local authorities are given powers to serve notices on building owners in respect of a number of matters (including provision of fire escapes, unsatisfactory drainage, dangerous or dilapidated buildings, and demolition) requiring remedial

action. There is no provision in the Building Act 1984 to charge building owners for the giving of such notices or for any inspections required.

Many of the provisions in Part III however give local authorities powers to carry out the work required by the notices or to demolish a building where the building owner does not carry out the work required. In such cases the Act allows a local authority to recover expenses incurred in taking such action.

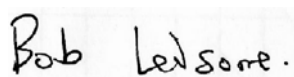
(c) *Localism Act 2011*

Local authorities are also reminded of the prohibition in section 4(3) of the [Localism Act 2011](#), under which they may not do things for a commercial purpose in relation to a person if statutory provision requires them to do those things in relation to that person.

Enquiries

Any enquiries on this Circular Letter should be addressed to enquiries.br@communities.gsi.gov.uk.

Yours faithfully

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

R J Ledsome

Deputy Director

Building Regulations and Standards Division