

25 February 2010

THE BUILDING ACT 1984

THE BUILDING (LOCAL AUTHORITY CHARGES) REGULATIONS 2010

- **NEW PROVISION FOR LOCAL AUTHORITY BUILDING CONTROL CHARGES**
- **INCREASE OF MINIMUM AND MAXIMUM FEES FOR QUESTIONS REFERRED TO THE SECRETARY OF STATE FOR DETERMINATION, RELATING TO PLANS OF PROPOSED BUILDING WORK**
- **REVOCATION, WITH SAVINGS, OF THE BUILDING (LOCAL AUTHORITY CHARGES) REGULATIONS 1998**

GUIDANCE

- **GENERAL DEPARTMENTAL GUIDANCE ON THE REQUIREMENTS OF THE BUILDING (LOCAL AUTHORITY CHARGES) REGULATIONS 2010**
- **NEW CIPFA GUIDANCE ON LOCAL AUTHORITY BUILDING CONTROL ACCOUNTING**

INTRODUCTION

1. I am directed by the Secretary of State for Communities and Local Government to draw to your attention to the Building (Local Authority Charges) Regulations 2010 (SI 2010/404) (the 2010 Regulations) which were made on **22 February 2010** and will come into force on **1 April 2010**, subject to the transitional provisions and savings referred to in paragraphs 7 and 8 below. The 2010 Regulations can be found on the Office for Public Sector Information (OPSI) website: www.opsi.gov.uk
2. The 2010 Regulations were made after consultation with the Building Regulations Advisory Committee and other bodies representative of the interests concerned.
3. The purpose of this Circular is to:
 - draw attention to the provisions of the 2010 Regulations and to explain their purpose;
 - explain the transitional provisions;
 - draw attention to general guidance issued by the Department on the requirements of the 2010 Regulations and to new local authority (LA) building control accounting guidance to be published by The Chartered Institute of Public Finance and Accountancy (CIPFA).
4. The Annex to this Circular sets out in the tabular form the purpose of each of the regulations in the 2010 Regulations.

CHARGES PROVISIONS

5. The 2010 Regulations revoke and replace the Building (Local Authority Charges) Regulations 1998 (SI 1998/3129) (the 1998 Regulations). They authorise LAs in England and Wales to fix and recover charges for the performance of their main building control functions relating to building regulations in a charging scheme governed by principles laid down in the Regulations. The Regulations make each LA responsible for setting their own charges and for doing so within the accounting and administrative requirements laid down in the Regulations.
6. The 2010 Regulations make a number of modifications and departures to the provisions that were in the 1998 Regulations and provide in particular for the following:
 - LAs to be able to charge for carrying out their current five building control chargeable functions and also to charge for providing substantive advice (consisting of more than an hour) relating to those functions but given in advance of those functions having effect, ie prior to receiving an application/notice;
 - a new overriding accounting objective which requires LAs to ensure that “taking one financial year with another” their charges income as nearly as possible equates to the costs incurred by the authority in carrying out their chargeable functions and providing chargeable advice, ie to break-even and achieve full cost recovery. LAs are also required to set out the

accounting treatment of income, costs and any surplus income or deficit in an annual financial statement to be approved by the appropriate LA officer with the necessary financial authority prior to publication;

- LAs to calculate charges by relating the average hourly rate of building control officers to the time spent carrying out their building control services in relation to particular building work or building work of particular descriptions. The regulations also provide for an increased number of factors which LAs can take into account in determining the estimated time to be spent on their building control services;
- LAs to fix a charge in relation to building work either by reference to standardised charges that they have determined and published in their charging scheme or by making an individual determination. An individual determination can be made in all cases where there is no standard charge or, where one or more standard charges apply to the work, only with the agreement of the applicant;
- LAs to make refunds of charges where they have carried out less work than they have received payment for, and to request supplementary charges where more work has been carried out than they have received payment for.
- LAs to set out in their charging scheme their provision for consideration and handling of complaints;
- an increase in the minimum and maximum level of fees 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.

TRANSITIONAL PROVISIONS AND SAVINGS

7. The 2010 Regulations contain a transitional provision which allows LAs to introduce a new charging scheme under these Regulations at any time between 1 April and 1 October 2010. However, all LAs have to introduce a new charging scheme by 1 October 2010. 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.
8. The 1998 Regulations and any existing scheme made under those regulations will continue to operate and apply (ie are saved) in relation to building work for which any application is made, building notice given or work reverted to LA control, until a LA first introduces a new charging scheme under the 2010 Regulations.

GUIDANCE

9. In addition to this Circular, the Department will provide general guidance on implementation of the requirements of the 2010 Regulations in a circular letter to Building Control Bodies, which may be supplemented by further guidance from time to time as necessary. This can be found on the Department's website:

www.communities.gov.uk/publications/planningandbuilding/divletterbuildingcontrolcharges

10. CIPFA will shortly be publishing updated guidance, titled *Local Authority Building Control Accounting Guidance for England and Wales*, to assist LAs in determining the costs of carrying out their chargeable building control functions and providing chargeable advice 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:

www.cipfa.org.uk/shop

CANCELLATION

11. This Circular hereby cancels Environment Circular 10/98 / WO Circular 39/98 subject to the transitional provisions set out in paragraphs 7 and 8 above.

ENQUIRIES

12. All enquiries on matters covered by this Circular should be addressed to:

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Signed:

Sarah Sturrock

An Assistant Secretary in the Department for Communities and Local Government

ANNEX A

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

The following table lists and briefly explains the provisions of the 2010 Regulations and indicates where these differ from the 1998 Regulations.

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
1	<p><i>Citation and Commencement</i></p> <p>Provides for the 2010 Regulations to come into force on 1 April 2010.</p>	
2	<p><i>Interpretation</i></p> <p>Defines the meaning of certain words.</p>	<p>Introduces new definitions of “chargeable function” and “relevant person”. Some redundant definitions in the 1998 Regulations have been removed or, where specific to a particular regulation, now sit within that regulation.</p>
3(1)&(2)	<p><i>Authorisation to fix and recover charges by way of a scheme</i></p> <p>Authorise a local authority (LA) to fix their charges by means of a charging scheme and recover those charges in respect of those building control functions prescribed in regulation 5 (subject to one exception in regulation 4).</p>	<p>Similar to regulations 3(1) and 4(5) of the 1998 Regulations.</p>
4	<p><i>Exception for building work solely required for disabled persons</i></p> <p>Exempts from charging building work carried out for disabled persons in existing dwellings and other existing buildings where the work relates to providing means of access or accommodation or facilities, in defined circumstances.</p>	<p>Clarifies regulation 9 of the 1998 Regulations and extends scope of exemption to include work comprising sleeping accommodation for full-time carers.</p>

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
5(1)	<p><i>Principles of charging scheme: chargeable functions and advice</i></p> <p>Authorises a LA to fix and recover charges in their charging scheme for carrying out five building control functions (“chargeable functions”) relating to the:</p> <ul style="list-style-type: none"> • passing or rejection of plans of proposed building work; • inspection of building work relating to the above plans; • consideration of a building notice; • consideration of building work reverting to LA control; • consideration of a regularisation application. 	<p>The chargeable functions are the same as in regulation 4(1) of the 1998 Regulations (previous regulations 4(2)-(4) have been revoked).</p>
5(2)	<p><i>Principles of charging scheme: chargeable functions and advice</i></p> <p>Authorises a LA to make provision in their charging scheme to charge for providing advice consisting of more than an hour relating to their chargeable functions, given in advance of those functions having effect, ie before receipt of an application or notice for building work (NB: by virtue of regulation 7(5)(k) this charge may be discounted from the charge for a subsequent application or notice received).</p>	<p>New provision.</p>

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
6(1)-(3)	<p><i>Principles of charging scheme: overriding objective in determining charges</i></p> <p>Require a LA to estimate and fix their charges with the aim of achieving the overriding objective of ensuring that “taking one financial year with another” their income from charges as nearly as possible equates to the costs incurred of carrying out the chargeable functions and providing chargeable advice, ie to break even and achieve full cost recovery. A LA is also required to review their charges at the end of each financial year to ensure that this objective is achieved.</p>	<p>Overriding principle similar to regulations 5(1) and 5(4) of the 1998 Regulations.</p> <p>New accounting requirement, ie “taking one financial year with another” replaces “a continuous period of 3 years” in regulation 5(5) of the 1998 Regulations.</p> <p>New requirement to review charges annually.</p> <p>‘Derogation’ principle relating to the full cost recovery requirement in regulation 5(2) of the 1998 Regulations has been revoked.</p>
6(4)-(6)	<p><i>Principles of charging scheme: overriding objective in determining charges</i></p> <p>Require a LA to prepare and publish a financial statement, approved by a person with the necessary financial authority, not more than six months after the end of each financial year setting out the chargeable costs, income and any surplus income or deficit arising.</p>	<p>Similar requirement for annual financial statement was set out in regulation 5(6) of the 1998 Regulations. There is a new requirement for any surplus income or deficit to be set out in the financial statement, and for the statement to be signed by a person with the necessary financial authority.</p>
6(7)-(9)	<p><i>Principles of charging scheme: overriding objective in determining charges</i></p> <p>Where a LA first introduces a charging scheme under the 2010 Regulations midway through the financial year, the LA is required to take account of any estimated surplus or deficit arising for that part of the year under the 1998 Regulations.</p> <p>Reference to “a financial year” is also defined.</p>	<p>New provisions.</p>

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
7(1)-(4)	<p><i>Principles of charging scheme: calculating charges</i></p> <p>Set out the main principles on which LA charges are to be determined by reference to the costs (including those of any consultants engaged) of providing building control services in relation to particular building work, or building work of particular descriptions, having regard to the overriding objective in regulation 6. Charges must be related to the average hourly rate (ie a single rate) of the relevant officers of the LA, which must be stated in their charging scheme, and the amount of time estimated for performing chargeable functions and providing chargeable advice, taking into account the applicable factors in regulation 7(5).</p>	New provisions.
7(5)	<p><i>Principles of charging scheme: calculating charges</i></p> <p>Prescribes the factors that a LA must take into account in estimating the amount of time for performing chargeable functions and providing chargeable advice, as applicable in each case.</p>	Extends the factors provided in regulations 6, 7, 8 and 10(1)(h) of the 1998 Regulations.
7(6)	<p><i>Principles of charging scheme: calculating charges</i></p> <p>Requires a LA to publish any standard charges determined and the factors relied on in calculating those charges in their charging scheme.</p>	New provision.
7(7)&(8)	<p><i>Principles of charging scheme: calculating charges</i></p> <p>Provide for a LA to individually determine a charge where there is no standard charge or, with the agreement of the “relevant person”, other than applying one or more standard charges set. Also require the LA to confirm the amount of the charge and the factors taken into account in writing to the “relevant person”.</p>	New provisions.
7(9)&(10)	<p><i>Principles of charging scheme: calculating charges</i></p> <p>Provide definitions of “the floor area of a building or extension” and “estimated cost” for the purpose of the factors stated in regulations 7(5)(c) and 7(5)(f).</p>	Similar definitions prescribed in regulation 2 of the 1998 Regulations

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
8(1)	<p><i>Principles of charging scheme as to payment</i></p> <p>Requires a LA to set out in their charging scheme when charges should be paid by the “relevant person”, as prescribed, including any VAT payable, and provides that the charges may be paid by instalments with the agreement of the LA.</p>	Similarly provided for in regulation 10(1) of the 1998 Regulations.
8(2)	<p><i>Principles of charging scheme as to payment</i></p> <p>Provides that full plans applications and building notices are not validly deposited / given for the purposes of section 16 of the Building Act 1984 (as amended) (the 1984 Act) or the Principal Regulations (as defined) without payment of the correct plan charge or building notice charge imposed by the 2010 Regulations (whether determined by a standard charge or an individually assessed charge).</p>	Similarly provided for in regulation 10(2) of the 1998 Regulations.
8(3)	<p><i>Principles of charging scheme as to payment</i></p> <p>Provides that, where a LA individually determines a plan charge or a building notice charge, the payment requirements in regulation 8 shall not apply until the charges have been notified to the “relevant person” as provided for in regulation 7(7) or 7(8).</p>	New provision.
9	<p><i>Principles of charging scheme in respect of information necessary for determination of charges</i></p> <p>Provides for a LA to make provision in their charging scheme enabling them to request information where required to determine any charge.</p>	New provision, but builds on regulation 11 of the 1998 Regulations requiring the submission of estimates of the cost of building work.
10	<p><i>Principles of charging scheme in respect of complaints about charges</i></p> <p>Requires a LA to make provision in their charging scheme about how they will handle and consider complaints about the determination of their charges.</p>	New provision.
11(1)	<p><i>Refunds and supplementary charges</i></p> <p>Subject to regulation 11(2), requires any plan charge paid to be refunded where a LA does not give notice of passing or rejection of plans within the period required by section 16 of the 1984 Act.</p>	Similar provision in regulation 10(1)(i) of the 1998 Regulations.

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
11(2)	<p><i>Refunds and supplementary charges</i></p> <p>Provides for the disapplication of regulation 11(1) if this was due to a failure by the person, by whom or on whose behalf the plans were deposited, to supply the LA with information within a reasonable time requested.</p>	New provision.
11(3)	<p><i>Refunds and supplementary charges</i></p> <p>Requires a LA to make a refund equal to the charge attributable to work that was not required, where the work required of a LA officer is less than was estimated and payment of the charge determined under the charging scheme has been made, subject to regulation 11(5).</p>	New provision.
11(4)	<p><i>Refunds and supplementary charges</i></p> <p>Enables a LA to raise a supplementary charge in respect of the additional work, where the work required of a LA officer is more than was estimated and payment of the charge determined under the charging scheme has been made, subject to regulation 11(5).</p>	New provision.
11(5)	<p><i>Refunds and supplementary charges</i></p> <p>Allows a LA to disregard one hour of an officer's time when calculating a refund or raising a supplementary charge, so that administrative costs can be taken into account.</p>	New provision.
11(6)	<p><i>Refunds and supplementary charges</i></p> <p>Allows a LA to aggregate a plans charge and an inspection charge for the purpose of calculating any refund or supplementary charge payable.</p>	New provision.
11(7)	<p><i>Refunds and supplementary charges</i></p> <p>Requires a LA to provide a statement setting out the basis for payment of a refund or a request for a supplementary charge and, in the case of the latter, how this was calculated.</p>	New provision.

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
12	<p><i>Publicity</i></p> <p>Requires a LA to publish within their area as they consider appropriate, at least 7 days beforehand, the fact that they have made, replaced or amended a charging scheme, and to provide details including the date the scheme or amendment takes effect and the address where it may be inspected. The LA is also required to keep the scheme up to date and make it available for inspection by any member of the public free of charge.</p>	Replicates regulation 12 of the 1998 Regulations.
13	<p><i>Contravention of regulations not to be an offence</i></p> <p>Prevents contravention of any provision of the 2010 Regulations from being an offence under the 1984 Act.</p>	Replicates regulation 13 of the 1998 Regulations.
14(1)-(2)	<p><i>Fees for determination of questions by the Secretary of State</i></p> <p>Prescribe fees payable to the Secretary of State for questions arising related to conformity of plans of proposed building work with building regulations, which are referred to him for determination under section 16 or 50 of the 1984 Act.</p>	Modifies regulation 15 of the 1998 Regulations to provide for an increase in the minimum and maximum determination fees payable.
14(3)	<p><i>Fees for determination of questions by the Secretary of State</i></p> <p>Exempts from payment of a fee, the determination of any question by the Secretary of State relating to building work solely required for disabled persons as prescribed in regulation 4.</p>	New provision
15(1)	<p><i>Revocation, transitional and saving provision</i></p> <p>Revokes the 1998 Regulations.</p>	

SI 2010/404 (the 2010 Regulations) Regulation No.	Effect	Main Changes from SI 1998/3129 (the 1998 Regulations)
15(2)&(3)	<p><i>Revocation, transitional and saving provision</i></p> <p>The transitional and saving provisions provide for:</p> <p>(2) the 1998 Regulations and any schemes made under those regulations to continue to operate until a LA first makes a charging scheme under the 2010 Regulations, which must be no later than 1 October 2010.</p> <p>(3) the 1998 Regulations and any schemes made under those regulations to continue to apply in relation to building work where: plans were first deposited; a building notice was given; a reversion charge has become payable; or an application for a regularisation certificate was made, before the 2010 Regulations come into force which, by virtue of regulation 15(2), is the date on which a LA first makes a charging scheme under the 2010 Regulations.</p>	

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