

SOUTH THAMES GATEWAY BUILDING CONTROL JOINT COMMITTEE

9 JUNE 2009

HARMONISATION OF CHARGING

Report from: Tony Van Veghel, Director, South Thames Gateway
Building Control Partnership

Summary

This report sets out proposals to harmonise the charges for property searches that are made to the South Thames Gateway Building Control Partnership under the requirements of the Local Authorities (England) (Charges for Property Searches) Regulation 2008.

1. Budget and Policy Framework

1.1 The constitution requires that the South Thames Gateway Building Control Joint Committee agree any changes to the charges levied by STGBC other than those Local Authority Charges regulations which are delegated to the Director.

2. Background

2.1 The only charges which are delegated to the Director to determine are those for building regulation application which are made under the Local Authority Charges regulation 1998.

2.2 All other changes to charges must be approved by the Joint Committee.

2.3 Since the Partnership began on 1 October 2007, charges levied for answering enquiries about a property whether from personal search companies or via the partner authorities Land Search department have accrued a different charge depending on the address of the property.

2.4 Historically the charges were £30 for searches in Gravesham Borough Council area, £20 for searches in Swale Borough Council area and £11 for searches in the Medway Council area.

2.5 These charges were based on criteria agreed at each authority and depended on the ease and accessibility of the records and the consequent time in researching the answers.

- 2.6 From the start of the Partnership records have been held in different formats such as microfilm, cd-roms and a different database as supported by each local authorities IT provider. The majority of what was then current information was transferred to the new software system MIS on the 30 September 2007.
- 2.7 However, as with any data transfer the operation is reliant on the areas of the new system being populated by data from the old system as it recognises certain identified fields.
- 2.8 The data in the new system has been subject to vigorous quality checks and where it is found information is lacking, the cause for the omission is investigated and a new programme written to retrieve the required information.
- 2.9 Searches that are made through the land charge section for Swale and Medway were researched by a dedicated member of staff to ensure turn around times were adhered to in compliance with an agreed service level agreement. They only required a certain amount of limited information to be supplied unlike personal searches which required a great deal of investigation and more detailed response.
- 2.10 Gravesham land charges elected to have access to STG's MIS system through a remote access device and researched enquiries independently, however, personal searches would quite often make more detailed enquiries to STG separately.

3. Director's Comments

- 3.1 A new regulation entitled the Local Authorities (England) (Charges for Property Searches) Regulation 2008 came into force in April 2009. The regulation allows local authorities to make charges for services provided in connection with property searches, specifically "access to property records" and "answering enquiries about a property".
- 3.2 The charging arrangements set out in the Regulations apply whether or not a local authority provides the service under a power or duty. However, they do not apply where a local authority has another power to charge or is under a duty to do so. They also do not apply in respect of access to "free statutory information".
- 3.3 Specific regulations deal with the calculation of charges and provide that the charges must not amount to more than the cost of granting access. Specifically each charge made (the unit charge) must be calculated by dividing an estimate of the total yearly costs in providing access by an estimate of the number of requests to be received that year.
- 3.4 As the unit charge is based on estimates the regulations provide that over a period of three consecutive years, a local authority must ensure that the total income from charges does not exceed their total costs. Where a local authority has made an under or over estimate of the unit

charge it must take this into account in determining charges for the following year.

- 3.5 There is a requirement that local authorities publish certain information each year in connection with the charges made under these regulations. Each year a local authority must publish information relating to unit charges. Additionally from 2010 each must publish a yearly summary of the total income from answering enquiries. The information published under this requirement must be approved by the officer responsible under Section 151 of the Local Government Act 1972.
- 3.6 In order to harmonise the charge for property searches across the STG area the principles of these regulations to resolve a unit cost are currently being discussed between the three partner authorities and a proposed unit cost will be presented at the Joint Committee meeting.

4. Risk Management

- 4.1 An incorrect unit charge determined results in insufficient income to cover costs. This would need adjustment in the second year to achieve a zero balance by the end of year three.

5. Financial Implications

- 5.1 Income received from this service is taken into account in the fees and charges.

6. Legal Implications

- 6.1 The legal requirements of this legislation are contained in paragraphs 3.3 to 3.5 of the report.

7. Recommendations

- 7.1 The Joint Committee is asked to approve the unit charge for 2009/10 for all property searches governed by this legislation.

8. Suggested Reasons for Decision

- 8.1 The constitution requires the Joint Committee to agree charges to be levied by the Partnership other than those delegated to the Director.

Lead officer contact

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Background papers

Local Authorities (England) (Charges for Property Searches) Regulation 2008

Proposed Changes to the Local Authority Building Control Charging Regime

Consultation paper



**Proposed Changes to the Local Authority
Building Control Charging Regime**
a Consultation paper

April 2009

Department for Communities and Local Government: London

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Summary of Consultation

Scope of the consultation

Topic of this consultation:	This consultation paper sets out the Government's detailed proposals to change the current local authority (LA) building control charging regime.
Scope of this consultation:	<p>The aim is to introduce more flexibility, accuracy and transparency into the LA building control charging regime, leading to fairer charges for all and improving the competitive environment within which LAs operate (see paragraphs 21-22 of the Introduction).</p> <p>This consultation seeks the views of consultees on the Government's proposals and invites other suggestions and comments before final decisions are taken. It is possible that some or all of the proposals may be amended or dropped as a result of this consultation.</p>
Geographical scope:	The charging proposals relate to England and Wales. However, the UK Government is currently considering the possibility of transferring the power to make building regulations for Wales to Welsh Ministers – see paragraph 25 of the Introduction.
Impact Assessment:	A Consultation Stage Impact Assessment on the charging proposals has been prepared – see Annex B of the consultation paper.

Basic Information

To:	This consultation is primarily aimed at: <ul style="list-style-type: none"> • LAs • property owners • property developers and builders • building professionals • private sector approved inspectors
Body/bodies responsible for the consultation:	Department for Communities and Local Government Sustainable Buildings Division
Duration:	12 weeks – Consultation begins 2 April and ends 25 June 2009
Enquiries:	Yvonne Jackson (020 7944 5755) or Kevin Flanagan (020 7944 5748) yvonne.jackson@communities.gsi.gov.uk or kevin.flanagan@communities.gsi.gov.uk
How to respond:	Responses can be submitted by email to: yvonne.jackson@communities.gsi.gov.uk Alternatively, hard copy responses should be sent or faxed to: Yvonne Jackson Sustainable Buildings Division Department for Communities and Local Government Zone 5/E8, Eland House Bressenden Place London SW1E 5DU Fax: 020 7944 5719
Additional ways to become involved:	A written exercise only is proposed during the consultation stage. It is anticipated that events will be held with LAs (as the key stakeholders affected) to discuss the detail of new charges regulations and accompanying guidance before they are introduced.

<p>After the consultation:</p>	<p>A summary of responses to the consultation will be published on the Department's website within three months of the closing date for consultation, ie by 25 September 2009. Information on the Department's consultations is available from:</p> <p>www.communities.gov.uk/corporate/publications/consultations/</p> <p>Subject to consideration of the consultation responses, the Department aims to arrange for new charges regulations to be laid before Parliament on 1 October 2009, to come into force on 1 April 2010. It is proposed that guidance on the new regulations and updated accounting guidance will also be issued to the main stakeholders – LAs – in October 2009.</p>
<p>Compliance with the Code of Practice on Consultation:</p>	<p>This consultation complies with HM Government's Code of Practice on Consultation.</p>

Background

<p>Getting to this stage:</p>	<p>The current regulations which allow LAs to charge for carrying out their main building control functions related to building regulations and prescribe the principles for doing so are 'The Building (Local Authority Charges) Regulations 1998'. These came into force on 1 April 1999.</p> <p>The Government set out its broad principles relating to a review of the charging regime in its wider consultation on <i>The Future of Building Control</i> (FOBC) issued in March 2008. This included a commitment to issue a more detailed consultation paper on the charging proposals which this document sets out to fulfil.</p>
<p>Previous engagement:</p>	<p>The proposals in this consultation have been developed following consultation with key stakeholders, the Local Government Association (LGA) and LABC, and following consideration of the responses to the broad charging proposals in the FOBC consultation. The Building Regulations Advisory Committee (BRAC), which provides advice to the Government on building regulations matters, has also been consulted.</p>

Introduction

1. The Government recently consulted on a wide range of issues relating to Building Control in the consultation paper *The Future of Building Control* (FOBC)¹. This included consulting on the broad principles of a review of the current local authority (LA) building control charging regime as well as giving a commitment for a more detailed consultation on these charging proposals, which this document sets out to fulfil. The responses to that consultation, as well as other stakeholder input, have been carefully considered in taking these proposals forward.

Background

2. The principle of empowering LAs in England and Wales to charge for carrying out their main building control functions related to building regulations has been Government policy since the late 1970s. It derives from the 'user pays' principle and avoids putting further pressure on all those who pay Council Tax. The charges were originally prescribed in regulations by Government and were calculated with the intention of achieving full cost recovery.
3. The Building Act 1984 (the 1984 Act) introduced a private sector alternative to LA building control, Approved Inspectors (AIs). The choice of whether to use the LA or an AI is for the applicant to decide on a project by project basis. However, AIs have no restrictions on how they set their charges and can make a profit.
4. Initially there were few AIs and they were restricted in the type of building control work that they could undertake. However, from the mid-1990s, following an increase in both the number of AIs and the range of work they were authorised to undertake, the Government was urged to devolve the process for setting LA building control charges to individual LAs. The main objective was to enable LAs to directly reflect their own actual costs in their charges. This had the aim of encouraging efficiencies in the building control service, reducing charges, and giving LAs greater opportunity to compete with AIs on a level playing field.
5. However, because AIs could not undertake all types of building control work and because LAs cannot refuse to accept an application, it was felt that there should remain some restrictions on the factors LAs could take into account in setting their charges because of their effective monopoly position.

¹ The Future of Building Control is available at:
www.communities.gov.uk/publications/planningandbuilding/futurebuildingcontrol

6. The charge-setting process was devolved to individual LAs by means of 'The Building (Local Authority Charges) Regulations 1998' (SI 1998/3129)² (the charges regulations), which came into force on 1 April 1999 (guidance can be found in Environment Circular 10/98). These regulations were made under the powers in the 1984 Act, in particular paragraph 9 of Schedule 1 which provides that:

*"Building regulations may authorise local authorities, subject to and in accordance with the regulations, to **fix by means of schemes** and to **recover such charges** for or in connection with the performance of functions of theirs relating to building regulations as they may determine **in accordance with principles prescribed by the regulations.**"*

7. The charges regulations enable LAs to charge for work undertaken in, or in connection with, carrying out the building control functions specified in the regulations, ie:
- checking plans
 - checking building notices
 - inspecting work
 - checking/inspecting work reverting to LA control
 - regularisation work.
8. The regulations authorise LAs to fix their own charges in a scheme according to a number of prescribed principles, in particular to achieve full cost recovery, ie that they should be set so that their total income fully recovers the estimated aggregated costs of carrying out the specified building control functions over a continuous three-year accounting period, with some exceptions (see regulations 4 and 5). LAs are also required to relate their charges to either the estimated cost of the building work and or use/type of the building/work, or for smaller domestic projects, to the floor area of the building or extension.

Case for change and the Future of Building Control consultation

9. As stated in the FOBC consultation, although it is considered that the charges regulations have served their primary purpose fairly well, ie devolving the charging regime to individual LAs, the Department has received representations from stakeholders, such as the Local Government Association (LGA) and more recently from LABC (the organisation which represents LA building control departments), indicating that over time the regulations have become inflexible,

² The Building (Local Authority Charges) Regulations 1998(SI 1998/3129): www.opsi.gov.uk/si/si1998/19983129.htm

restrictive, do not enable them to compete effectively with AIs, and do not provide best value for the public.

10. They have asserted that LAs have been unable to match their charges to the actual costs of delivering their building control service, resulting in under and, particularly, over-charging for some work. For example, as the charges are primarily related to the estimated cost of the building work, a project that uses more expensive materials will attract a higher building control charge than an identical project that involves the same level of building control input but which uses less expensive materials and therefore has a lower estimated cost. Equally one project (eg redesigning an internal layout to construct a new WC with consequent drainage works) could involve significantly more building control input than another project of similar cost (eg installing a new glass shopfront).
11. Also, as LAs cannot increase or decrease their charges if the level of building control input goes up (or down) there is the tendency to set charges at a higher level to ensure that their costs will always be covered as required by the charges regulations. This puts them at a disadvantage with AIs, is unfair on those applicants who have no choice but to use the LA, disincentivises 'bad' builders who need more supervision by building control, and can result in significant unintended/unauthorised surpluses (income over costs) arising.
12. The FOBC consultation also raised the Department's concerns relating to the level of surpluses that arose following the introduction of the charges regulations in 1999 and the possible inappropriate use of this income. This was evidenced by the annual monitoring charges returns provided to the Department from 1999 to 2006 which indicated that total surpluses for all LAs were averaging around £14m per annum, ie income £162m, costs £148m (approximately nine per cent of the total cost of providing the building control service) with some LAs charging more than double the cost.
13. Following concerns expressed by the Department to LAs, the level of surpluses gradually decreased, but some were still accruing large surpluses in 2006. This would suggest that the charges regulations do not allow LAs to match their charges to their costs effectively. NB While large surpluses arising may not currently be an issue because of the current economic climate we need to ensure that this is addressed in the proposed changes to the charges regulations so that it does not arise again in the future.

14. As well as considering amending the charging regime to address these concerns, a new charging regime is needed to reflect fundamental changes that will be introduced to the building control system as a result of other issues arising from the FOBC consultation. The Government intends to introduce a risk assessment approach to inspection of building work, which accords with the better regulation agenda and the *Hampton Review*³. This will provide for LAs to focus their resources on higher-risk building projects and adopt a lighter touch approach to low risk projects. The current regime which requires charges to be pre-fixed for all types of projects does not allow the results of an individual risk-based approach to be reflected in the charges. This is inconsistent with the 'user pays' principle. Changes are therefore required to ensure better, targeted and fairer charges.
15. The majority of responses⁴ to the FOBC consultation agreed with the view that the current LA building control charging regime is inflexible, restrictive and in need of review. They also agreed with the view that income/surpluses derived from LA building control charges may have been used to fund other services within LAs, although little evidence was provided. There was also general support for the broad proposals in the consultation to provide the flexibility and transparency sought in the charging regime and a number of other comments were made.
16. Some respondents questioned why LAs should remain subject to constraints on their ability to charge for carrying out their main building control functions when there is competition with the private sector. While one of the aims of the charging review is to improve the competitive environment within which LAs compete with AIs, it should be appreciated that there are fundamental differences between non-profit making public sector LAs and independent private sector AIs.
17. We consider that there are two main reasons for retaining some level of restriction in LA charging. Although there is competition in the sector, LAs remain the 'backstop' provider. Obtaining building control consent is a statutory requirement but AIs are not obliged to undertake the supervision of any particular building project or may not operate in some areas and therefore applicants may have no choice but to apply to the LA for such consent. In addition, as building control is primarily intended to ensure the health and safety of people in and around buildings, it is considered essential that LAs should continue to provide this service 'at cost' to ensure building control remains as affordable as possible and that high charges do not encourage circumvention of the building regulations and a reduction in the level of health and safety.
18. There was also a broader suggestion that LA building control departments should be given the same commercial freedoms and opportunities as AIs and thus should be made subject to the same

³ *Hampton Review*:

www.berr.gov.uk/whatwedo/bre/inspection-enforcement/assessing-regulatory-system/page44042.html

⁴ *The Future of Building Control: Analysis of Consultation Responses* is available at:

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

controls that apply to private trading companies. Notwithstanding the arguments above regarding the need to ensure that LA building control remains affordable, it is our opinion that LAs are not empowered to arrange for the discharge of their statutory building control functions via an LA company and we do not propose to alter this position.

19. We are also of the opinion that, where LAs enter into a contractual arrangement with a third party to provide building control services (ie where the statutory responsibility and decision-making process remains within the authority), the arrangement remains subject to the requirements of the charges regulations. Therefore any savings or surpluses made in the cost of providing the building control chargeable service should either be used to reduce the charges or be reinvested in improving the quality of the delivery of the service. We would also expect that LAs should take into account the need for building control charges to remain affordable when negotiating such contracts, for example, when setting the amount the third party might charge for providing central functions, such as IT support or HR services.
20. Some have suggested that increased competition in the sector will drive down standards. As stated in the FOBC consultation, the *“Government’s view remains that competition between local authorities and Approved Inspectors in the provision of building control services provides a stimulus to greater efficiency and higher standards of service to the customer as long as appropriate performance standards are applied”*. We will continue to work with industry to ensure that the industry-wide building control performance standards and indicators, to which both LAs and AIs subscribe, remain fit-for-purpose in the future and that standards remain high.

Aims and objectives

21. The proposals in this consultation paper therefore take account of the responses to the FOBC consultation, earlier correspondence and discussions with LABC representatives, and also advice given by the Building Regulations Advisory Committee (BRAC). The main objectives of new charges regulations and any accompanying guidance will be to build on the principle of devolving charge setting to LAs in order to:
 - introduce more **flexibility** and **discretion**, remove some restrictions and ambiguities, and enable LAs to more **accurately** relate their charges to the actual costs of carrying out their main building control functions (ie plan checking and inspections) for individual building projects as appropriate, thereby avoiding under or over charging and significant surpluses arising and providing **fairer** charges
 - introduce more **transparency** into the building control charging regime, with a view to safeguarding income

- further improve the **competitive environment** within which LAs and AIs compete and the standards within which they operate.
22. To achieve these objectives, we are therefore seeking views on the proposed changes to the charging regime identified in this consultation, which expand on the broad principles proposed in the FOBC consultation. Consultees are also invited to let us have any other suggestions and comments they may have for consideration. We would also appreciate any evidence consultees may wish to provide on the potential impact of these proposals (see section 'How to respond and help with queries').

Consultation Stage Impact Assessment

23. A Consultation Stage Impact Assessment can be found at **Annex B** of this consultation paper. This broadly shows that the main impacts are likely to be:
- more accurate and flexible charging, leading to a reduction in the charges to industry and in the surpluses made by LAs. This will clearly depend on the extent to which LAs choose to adopt the new flexibilities
 - a one-off estimated transitional cost to LAs of around £3,000 to cover the costs of setting up the new system (eg developing new or expanded charge calculation tools, training etc) based on evidence provided by a number of LA building control officers (NB the costs of maintaining and operating the new system are expected to be broadly similar to those for operating the current system)
 - improved competition with AIs and thereby the potential to reduce costs in the longer-term
 - fairer charges based on the actual cost of carrying out building control functions which should incentivise those builders who currently require higher levels of building control supervision to raise their standards and potentially result in the need for less building control input and therefore reduced charges over time

Legal context

24. We hope that the charging proposals can be achieved either by revoking and replacing, or amending, the principles in the current charges regulations made under the constraints of the existing charging power in the 1984 Act (see paragraph 6). However, if changes to the charging power prove necessary to fully achieve some or all of the desired outcomes, then provision for this would need to be found in a Bill before Parliament, which may take some time. The proposals for change are made within this context.

Devolution of building regulations to Wales

25. The Welsh Assembly Government (WAG) has been consulted on and supports the proposals in this consultation. At the request of Welsh Ministers the UK Government is currently considering the possibility of transferring to them the power to make building regulations for Wales. Should a transfer of responsibility take place prior to the implementation of the changes proposed in this document, the WAG will have full regard to this consultation, the responses received (in particular those received from Welsh respondents) and the conclusions reached in bringing forward any proposals for change in Wales.

Timetable

26. Following consideration of the responses to this consultation exercise, subject to paragraph 24, our aim is to have new regulations and guidance (including updated accounting guidance prepared by CIPFA) in place by 1 October 2009, with a coming into force date of 1 April 2010. This should give LAs sufficient time to adapt their charging systems and introduce new charging schemes. We will also assist the LABC to prepare a new 'Model Scheme' in due course to help LAs with the production of their new charging schemes.

List of the new local authority building control charging proposals

We are consulting on the following proposals to change 'The Building (Local Authority Charges) Regulations 1998' (SI 1998/3129):

Proposal 1 – To introduce a new charging principle for LAs to relate their charges to the recovery of the costs of carrying out building control function(s) for individual building projects (*new provision*)

Proposal 2 – To introduce a system, in addition to setting pre-fixed charges, to allow LAs to assess charges on an individual basis where appropriate, eg for carrying out building control functions in relation to larger building projects (*new provision*)

Proposal 3 – To introduce more factors relating to building projects for LAs to take into account when setting their charges (*currently covered by regulations 6 and 7*)

Proposal 4 – To provide more discretion for LAs not to charge and to give reductions and refunds (*currently regulations 8 and 10*)

Proposal 5 – To provide a power for LAs to increase a charge where appropriate (*new provision*)

Proposal 6 – To remove the current link between charges for carrying out different building control functions (*currently regulation 4*)

Proposal 7 – To remove current restrictions for charging for new housing and domestic extensions etc (*currently regulation 7*)

Proposal 8 – To clarify the exemption from charging for building work for disabled persons (*currently regulation 9*)

Proposal 9 – To clarify the requirement to publicise charging schemes (*currently regulation 12*)

Proposal 10 – To clarify the position regarding charging requirements when LAs enter into joint arrangements and/or partnerships with each other to carry out building control functions (*new provision*)

Proposal 11 – To introduce new accounting, auditing and monitoring requirements (*currently regulation 5*)

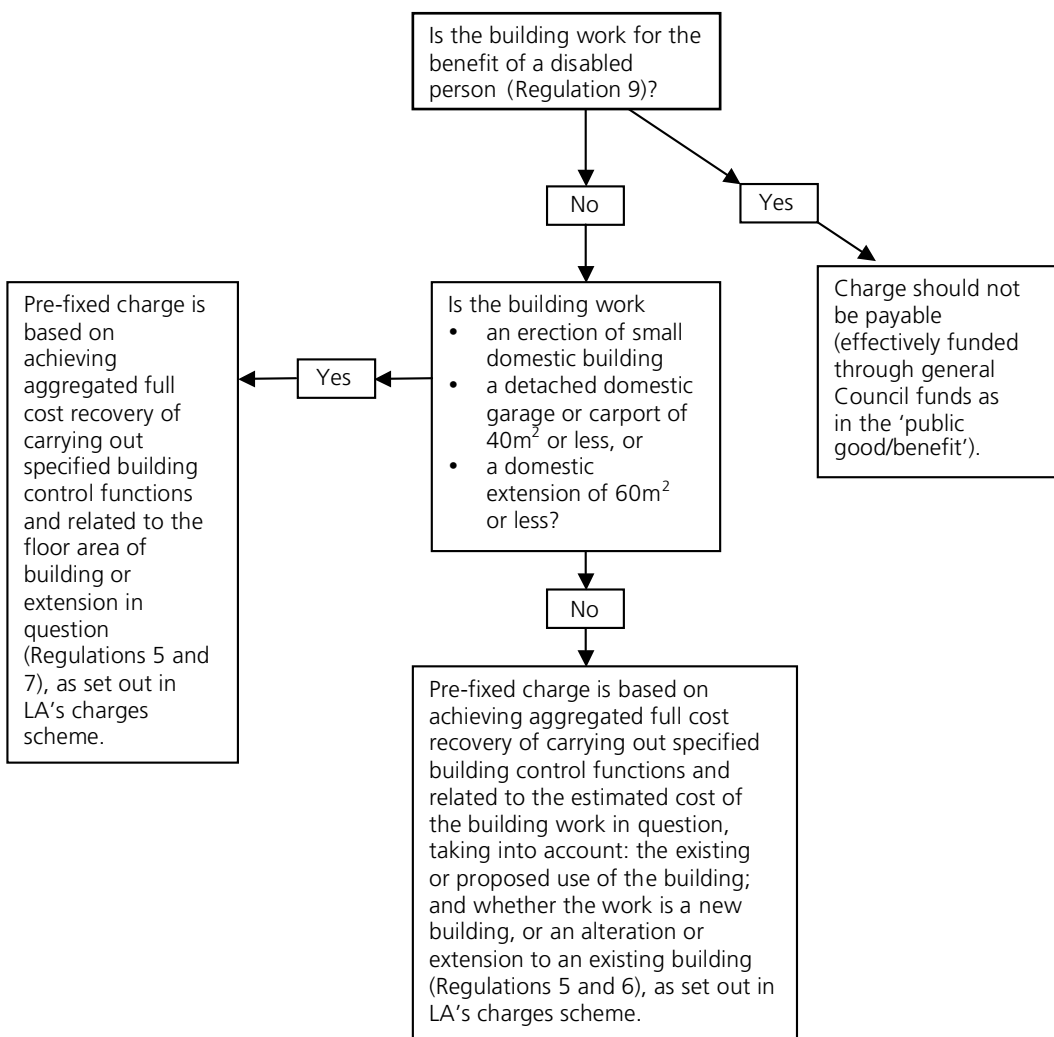
Proposal 12 – To remove the current accounting requirement relating to the ‘derogation’ principle (*currently regulation 5(2)*)

Proposal 13 – To consider whether LAs should be able to charge for carrying out other building control functions (*new provision*)

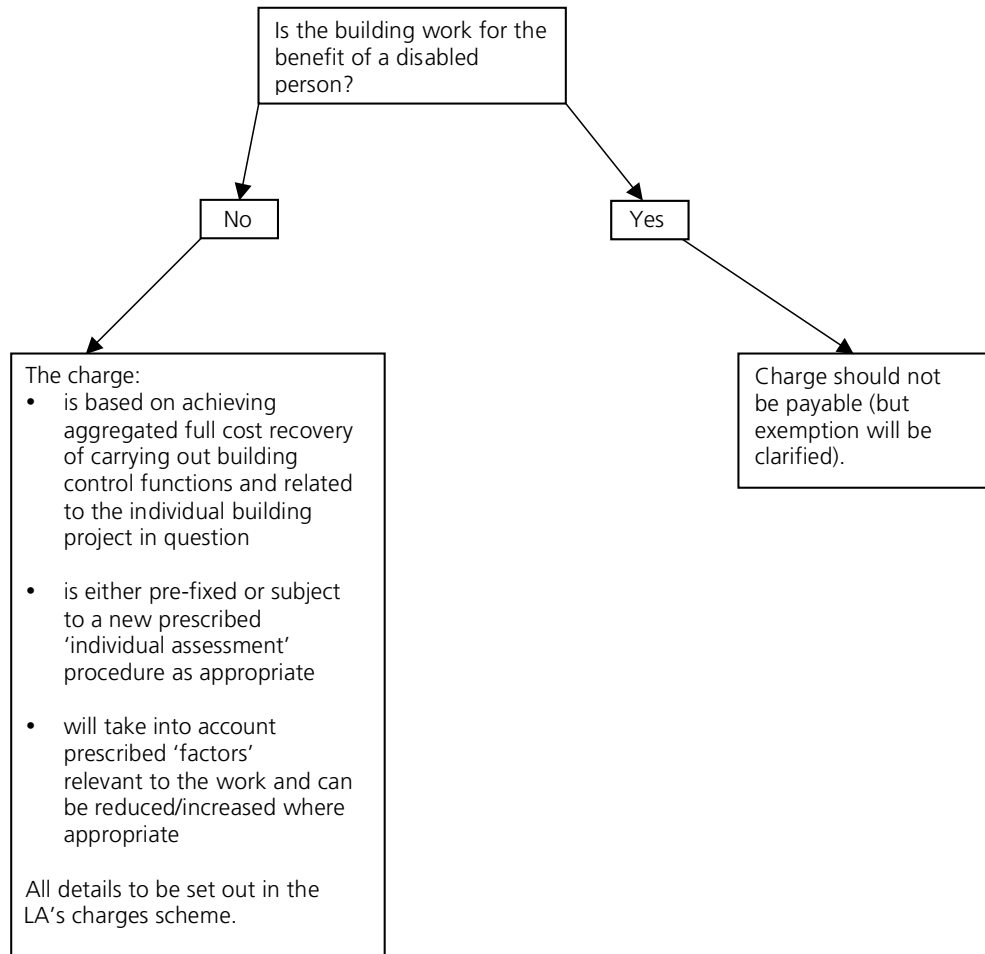
Proposal 14 – To increase fees for Determination applications submitted to the Secretary of State (*currently regulation 15*)

Note: While we have no plans to amend other substantive aspects of the current LA building control charging regime, if consultees have comments they wish to make about any other aspects, these should be raised under the section at the end of the response form inviting any other proposals or comments.

Main principles of current local authority building control charging system



Main principles of proposed new local authority building control charging system



Details of the new local authority building control charging proposals

Proposal 1 – To introduce a new charging principle for LAs to relate their charges to the recovery of the costs of carrying out building control function(s) for individual building projects (*new provision*)

- 1.1 As stated in paragraph 17 of the Introduction, because building regulations exist primarily to ensure the health and safety of people in and around buildings, Government policy has been to treat the regulatory process as an ‘at cost’ service only to ensure that it remains as affordable as possible and does not encourage circumvention of the regulations.
- 1.2 Regulation 5 of the current charges regulations therefore requires LAs to fix their charges for carrying out their main building control functions (ie those specified in regulation 4 – see paragraph 7 of the Introduction) by way of a scheme with a view to fully recovering their estimated aggregated costs over a continuous three-year accounting period (with some exceptions). The charges regulations also require LAs to fix their charges either by relating these to the estimated cost of the building work and use/type of the building/work (regulation 6), or to the floor area of the building/extension (regulation 7). In practice, it would appear that most LAs have continued to group their charges under three schedules in their charging schemes according to the principles in regulations 6 and 7 (as previously set out in the predecessor Building (Prescribed Fees) Regulations 1994).
- 1.3 In our view, the principle of LAs basing their charges on full recovery of the costs of carrying out their specified building control functions over the relevant accounting period is fair and appropriate and should continue in new regulations. However, this accounting requirement currently only applies to the aggregated total of income and costs and not to individual charges. This can lead to cross-subsidisation and can be unfair on individual applicants. We also consider that primarily relating charges to the estimated cost of the building work is not an accurate means of LAs ensuring full cost recovery as less expensive projects can, of course, cost more to supervise, which is contrary to LAs’ current practice of charging more for expensive projects (see paragraph 10 of the Introduction).

- 1.4 To facilitate the setting of more accurate and fairer charges, we consider that there needs to be a more proportionate relationship between the cost of the building control service for an individual building project and the charge. We therefore propose to introduce a new charging principle which will require LAs to set their charges by relating these to the recovery of their estimated costs of providing the relevant building control function(s) for each building project. This should facilitate more accurate charging and assist LAs to comply with their accounting requirement to balance total income with costs. Within this context, the new regulations will give LAs the discretion to either continue to calculate and set pre-fixed flat fees for carrying out their specified functions in their charging schemes as at present, or to calculate individually assessed charges where appropriate (see proposal 2).
- 1.5 LAs will be required to set out their general approach and methodology for both proposed charging mechanisms in their schemes and charges will be calculated in relation to the LA's estimate of the building control input required for each building project (or types of project). LAs will also be able to have regard to existing and a number of further defined factors relating to the project in question when assessing how much time will be spent carrying out their building control functions and thus their charges (see proposal 3).
- 1.6 In the light of the proposed requirement to recover costs proportionately to the amount of building control input needed for individual building projects, it is proposed to discontinue the current discretion that LAs have to not charge for building work where the value of the work or total floor area is below certain levels (regulations 6(3) and 7(2) of the charges regulations).

Proposal 2 – To introduce a system, in addition to setting pre-fixed charges, to allow LAs to assess charges on an individual basis where appropriate, eg for carrying out building control functions in relation to larger building projects (*new provision*)

- 2.1 As stated in paragraph 6 of the Introduction, the power to make regulations allowing LAs to set their own charges derives from paragraph 9 of Schedule 1 of the 1984 Act, which requires LAs to “fix” their charges by “means of schemes”. The charges regulations have been made under this power and require charges to be fixed for carrying out specified building control functions in the prescribed way. The LABC has indicated that these requirements are inflexible and restrictive in that they require LAs to pre-fix all of their charges in a scheme, taking account of limited factors, in advance of handling any building project, which they cannot alter. This has restricted an LA's ability to set accurate charges based on their actual costs, particularly

for larger projects, which has led to over or undercharging in some cases. It has also contributed to significant surpluses arising and hindered an LA's ability to compete with Als.

- 2.2 Moreover, this is also inconsistent with the 'user pays' principle as some people pay more than the cost of the building control service whilst others pay less. This will become even greater with the introduction of the new risk assessment approach to inspection proposed in the FOBC consultation.
- 2.3 We have therefore given consideration to the LABC's suggestion that LAs should be able to individually assess a charge for certain 'major' building projects to provide for more accurate charging on a project by project basis. It is accepted that larger projects are most likely to differ in the level of building control input that may be required. They are also more likely to have complex design and construction issues which can lead to the actual level of input varying from that originally estimated. They are therefore most likely to benefit from the ability to individually assess the charges.
- 2.4 The LABC has also suggested that LAs may wish to retain pre-fixed charging for smaller building projects, particularly for domestic work such as extensions, because the amount of building control input required for these projects is unlikely to vary significantly and accurate charging is therefore easier to calculate in advance.
- 2.5 We agree that there may be less benefit to LAs setting an individually assessed charge for smaller projects, such as that involving an extension and internal alteration work. However, we believe that there may still be a case for enabling LAs to assess charges individually for such projects. For example, where an applicant employs a competent person who can self-certify much of the building work the level of LA building control input may be reduced so allowing the LA to assess the charge would help ensure that applicants are not double-charged.
- 2.6 We have also considered whether there should be a cut-off point between pre-fixed charges and an individually assessed charging system in new regulations. Charging could, for example, continue to be pre-fixed for defined 'domestic building work' and subject to an individually assessed charging system for other defined projects such as 'major building work' as suggested by LABC. The cut-off could be a financial limit based on the estimated cost of the building work (eg work valued over £100,000), or alternatively on the type of building project (eg two or more new dwellings). The Department has in the past sought statistical and financial information from LAs to help form a view on this, but this has proved inconclusive.
- 2.7 We accept, however, that it may be difficult to define 'major building work' in regulations because the criteria will differ from LA to LA and costs will vary. For example, a supermarket with a unique design could

be considered as a major project to an LA that has to bring in consultant structural engineers to check the building. The LA may not be familiar with dealing with this type of project and it would take them longer to check the plans and undertake additional inspections on site. Conversely, another LA may have dealt with this type of development before and have the necessary expertise to speedily deal with the application and work on site and would not therefore consider the project to be major.

- 2.8 As stated in paragraph 24 of the Introduction, to amend or remove the requirement in the 1984 Act to “fix” charges by “means of schemes”, primary legislation will be needed, which could take some time. We have therefore given consideration to whether our objective to provide more flexibility could be achieved in new regulations made under the existing charging power.
- 2.9 In our view, the existing charging power does not require all charges included in a scheme to be of a pre-fixed, flat fee nature. While the scheme must provide a means by which charges are ‘fixed’, we consider that this does not rule out mechanisms such as basing a charge on the number of inspections that need to be carried out and/or providing for an hourly charging rate to be set (see proposal 3), which would allow charges to be assessed on an individual basis. Nor do we believe that the power would require the regulations to prescribe which types of building project should be individually assessed and which should be subject to a pre-fixed flat fee.
- 2.10 We therefore propose that the new regulations should prescribe broad charging principles which would not provide a ‘cut-off’ point and/or seek to define types of work. Instead LAs would be given freedom to decide whether or not they wish to continue to set pre-fixed charges or adopt individually assessed charges for carrying out their building control functions for some or all building projects, whichever is considered most appropriate to ensure the accurate recovery of costs. We anticipate that many LAs will, initially at least, tend to use the individually assessed approach for larger projects but anticipate that over time, many will begin to assess the charges for smaller projects as well, particularly once the new risk-assessed approach to inspection is introduced. As explained in proposal 1, a new principle will be introduced requiring charges for individual building projects (small or large) to, as far as practical, relate (ie be proportionate) to the costs of delivering the building control service for that project, which will underpin the assessment of individual charges.
- 2.11 The new regulations and any associated guidance would also set out a simple procedure with which LAs will be required to comply when calculating a charge based on an individual assessment of costs prior to confirming a fixed charge for an application. As stated in paragraph 1.5, LAs will also be required to set out in their schemes the general approach and methodology for setting pre-fixed charges and

calculating individually assessed charges (should they choose to take up the option of using both charging mechanisms) which should have regard to the need for fairness, consistency and transparency.

- 2.12 In the light of this proposal, **more flexibility** could also be provided to LAs and applicants as to **when inspection charges are payable** (currently regulation 10), ie they could be paid up-front with the plans charge for either pre-fixed charges or individually assessed charges – if the applicant is content – or after the first inspection is carried out as currently. To assist applicants, the option of charges being payable by instalments could also be retained.

Proposal 3 – To introduce more factors relating to building projects for LAs to take into account when setting their charges (*currently covered by regulations 6 and 7*)

- 3.1 As stated in paragraph 1.2, the current regulatory position is that LAs are required to relate their charges to either the estimated cost of the building work and use/type of the building/work (regulation 6), or to the floor area of the building/extension (regulation 7), as applicable. To assist LAs to provide more accurate and fair charges based on assessing the building control input required, we propose to provide in new regulations (or possibly in guidance) for LAs to be able to take the following factors (in no particular order) into account, as appropriate, when calculating their costs of carrying out their building control functions and thus setting pre-fixed charges or making individually assessed charges:
- (i) The estimated cost of the building work, ie those parts of the construction which comprise of defined 'building work' (existing).
 - (ii) The use, or proposed use, of the building (existing).
 - (iii) The type of work, ie new build, alteration, extension, etc (existing).
 - (iv) The floor area of the building or extension (existing).
 - (v) The type and complexity of building project, eg design and build; innovative or high-risk construction techniques etc (new).
 - (vi) The duration of the project, ie length of the contract period (new).
 - (vii) The site regime and competency of the design team/builder, ie likely number of inspections (new) using a risk assessment approach.
 - (viii) Whether an installer is a member of a self-certification scheme or where a 'pattern book' approach is being followed (new).

- 3.2 LAs will be required to specify the above factors in their charging schemes and indicate which will be taken into account in pre-fixing or assessing their charges for the various types of building projects. In the case of an assessed charge, this should be supported by a tool which enables an applicant to calculate their charge based on fixed inputs/assumptions, eg the cost of inspections and/or hourly rate.
- 3.3 It would be helpful if consultees would comment on the factors in the above list (i) – (viii) and whether there are other factors that should be included. We propose to carry out research and issue guidance to LAs on risk assessment as part of the follow-up work to the FOBC consultation. However, views on how the competency of the design team/builder should be measured for charging purposes to ensure fairness are invited.

Proposal 4 – To provide more discretion for LAs not to charge and to give reductions and refunds (*currently regulations 8 and 10*)

- 4.1 LAs currently have little discretion in the charges regulations to waive a charge or make reductions/give refunds to reflect the actual time spent on carrying out building control functions for individual building projects, and to provide incentives for builders to raise their standards. This is also contrary to the 'user pays' principle.
- 4.2 LAs must currently refund a charge where they fail to give a decision on a full plans application within the statutory timescale. They can, at their discretion, waive a charge or make a reduction where plans are deposited for substantially the same building work as previously deposited or for repetitive building work, in certain circumstances. We propose to extend this discretion so as to allow LAs to waive a charge or make a reduction/give a refund based on two key principles: where there are either significant cost savings to the LA or for building projects which are Government priorities and are for the broader public good/benefit (eg similar to the current exemption for work for disabled persons – see proposal 8). This could provide for:

Cost savings principle

- (i) Where fewer inspections are actually carried out than originally envisaged and charged for, eg following the risk assessment approach, or for partially completed building projects.
- (ii) Where LAs are involved in the 'Partner Authority Scheme', ie where a 'geographical authority' contracts direct with a 'partner authority' (under section 101 of the Local Government Act 1972) to carry out certain building control functions, such as plan checking, leading to cost savings.

- (iii) Where building work is carried out and self-certified by a member of a competent person self-certification scheme and therefore does not need to be checked/inspected, but this was not known at the time of the application and therefore has not been excluded from the charge already levied.
- (iv) Where the applicant changes from one building control procedure to another (building notice to full plans) having already paid a charge.
- (v) Where cavity wall insulation or unvented hot water systems is/are being installed in certain circumstances (currently covered under regulation 6(4) and 6(5) of the charges regulations).
- (vi) Where project guides (eg for loft conversions and domestic extensions) and 'pattern book' schemes such as Robust Details – as proposed in the FOBC consultation – are being followed but this was not known at the time of the application and therefore has not been excluded from the charge already levied.

Public good/benefit principle

- (vii) To provide incentives for 'green' and sustainable building projects, where developers choose to build to higher energy or other sustainable standards than those in building regulations. This proposal has been considered in Scotland (although it has been deferred because of the economic downturn affecting the construction industry) and needs further development and defining. However, the view of consultees on whether this is feasible and how it might work would be welcomed (eg by linking to the Code for Sustainable Homes?) Consideration would also need to be given on how the shortfall in building control charges submitted by the applicants in question should be funded.

4.3 It is important that this proposed broad discretionary power is used in a fair and consistent manner. It is therefore intended that guidance will be given on the circumstances for waiving a charge or making refunds and reductions and that LAs would be required to demonstrate how these principle would be applied in their charging schemes.

4.4 The views of consultees would be welcomed on the proposal to provide LAs with more discretion to alter their charges through waivers, reductions and refunds, including the above listed principles/ circumstances suggested and whether this might include others (eg to assist the elderly and those in poverty).

Proposal 5 – To provide a power for LAs to increase a charge where appropriate (new provision)

- 5.1 As explained in proposal 4, we are proposing to give LAs more discretion to waive charges and to make reductions and refunds in certain circumstances. However, it also follows that to ensure full recovery of costs, LAs should also have the power to increase a charge where, for example, there have been substantial alterations to a design during the development phase or an applicant requests additional support from an LA, and thus more inspections are needed leading to additional costs. This might also apply where LAs incur unforeseen additional costs such as for inspecting and testing whether electrical work is compliant with Part P (Electrical Safety) of the Building Regulations.
- 5.2 As in proposal 4, this discretionary power would have to be used fairly and consistently and be fully justified. The triggers for increasing the charge and the amount of any increase would need to be set in advance (ie 'fixed') in charging schemes. For example, the charge would be assessed at X, based on Y inspections, and additional inspections would incur a cost of Z. The views of consultees are also requested on the proposal to allow LAs to alter charges by means of an increase, where appropriate.

Proposal 6 – To remove the current link between charges for carrying out different building control functions (currently regulation 4)

- 6.1 We recognise that: full plans applications and site inspections; building notices; reversion and regularisation applications are separate building control functions and often do not incur the same costs for individual building projects. In particular, as indicated in the FOBC consultation, there is concern that the building notice system is being misused and LAs need to be able to reflect in their charges the true costs of processing building notices, eg the extra inspections that are often needed on site.
- 6.2 We therefore propose to remove the current requirement in regulation 4 of the charges regulations that charges for carrying out building control functions should be equal (although 20 per cent is added to regularisation applications because this function is not subject to VAT) and provide for LAs to set charges for each of their building control functions with the aim of accurately recovering the costs of carrying out that function(s) for individual building projects. This is in line with the principles discussed elsewhere in this document.

Proposal 7 – To remove current restrictions for charging for new housing and domestic extensions etc (*currently regulation 7*)

- 7.1 As explained in proposal 3, we propose to continue to allow LAs to set their charges related to the floor area of the building or extension where appropriate. But the current restrictions relating to the height of the building and maximum floor areas etc, defined in regulation 3 and 7 of the charges regulations for establishing a charge for ‘small domestic buildings’ and domestic extensions etc, will be repealed to provide more flexibility and accuracy in charging. This will allow LAs to set a charge related to floor area for any building project where they consider it an accurate means of charging.
- 7.2 We also propose to provide for the floor area charging principle to be extended to cover all new and extended buildings, where appropriate, not just ‘small domestic buildings’. LAs will also have discretion to set their charges as appropriate relating to work involving mixed-use buildings (ie domestic and commercial), having regard to the proposed new charging principles in this document.

Proposal 8 – To clarify the exemption from charging for building work for disabled persons (*currently regulation 9*)

- 8.1 We have received representations suggesting that the current exemption from charging for building work to existing buildings which is solely for the benefit of disabled persons, in regulation 9 of the charges regulations, should be removed at least where work is carried out by commercial organisations. It is felt that the Disability Discrimination Act has resulted in an increase in this type of work and this has imposed an additional financial burden on LAs.
- 8.2 New buildings should be designed to conform to building regulations, including Part M (Access to and use of buildings) and the cost of building control will not materially reduce the likelihood of a building being accessible, whereas in an existing building this might be the case. Not charging for the control of building work to existing buildings reflects general Government policy of providing some support for disabled persons and their carers and an incentive for builders to adapt existing buildings to improve access and improve their quality of life for such persons. This is consistent with the charging regime for planning applications. We therefore intend to retain this exemption, but we propose to clarify the scope of the current regulation 9 of the charges regulations (in new regulations and guidance) as – in the light of the enquiries we have received – it is subject to varying interpretations. We accept that regulation 9 lacks clarity in that the principal subject

matters to which it relates are not clear and oscillate across the types of building, work, and facility.

- 8.3 The scope of the current exemption will not be materially altered, but we propose to take buildings as the primary subject matter of the exemption in new regulations and deal with them by distinguishing between domestic and non-domestic. We will attempt to make it clearer what is exempt, ie work involving alterations or extensions to existing buildings to provide or improve access and other specified accommodation or facilities which are clearly relevant to, and are for the benefit of, a disabled person. In addition to the current provisions in regulation 9, this could include the provision, by material alteration or extension, of accommodation for a live-in carer in those circumstances where the disabled person requires 24 hour care.
- 8.4 We are also aware that the reference to building work being exempt which is “solely required for disabled persons” is particularly subject to varying interpretation. We could tighten this definition so that it has to be demonstrated that the work is for the ‘sole’ benefit of a disabled person and no one else. Alternatively, as long as it can be demonstrated that the work is being carried out primarily for the benefit of facilitating a person’s disability, we could accept that other people living in the building may also benefit indirectly by the work, eg by having a downstairs bathroom. The views of consultees are invited on this question.

Proposal 9 – To clarify the requirement to publicise charging schemes (*currently regulation 12*)

- 9.1 The need for LAs to publish all their charges in a formal ‘charges scheme’ and to advertise amendments, and how these can be inspected, has been raised with the Department. It has been suggested that requiring LAs to publish their charges is unfair as it allows AIs to know their competitors’ rates. However, as stated above, the requirement to fix charges “by means of schemes” derives from the existing charging power in paragraph 9 of Schedule 1 of the 1984 Act and would require primary legislation to alter it. It follows that on accountability and transparency grounds the information within charging schemes and any amendments should be publicised for the benefit of the general public. We therefore have no plans to remove this requirement at the current time.
- 9.2 It has also been suggested that LAs are not clear what is required by the phrase to “*publish in their area, in such manner as they consider appropriate...*” in regulation 12(1) and (2) of the charges regulations, eg whether they have to advertise the new or amended charges scheme in local newspapers. We consider that a simple note added to the LA’s website and to other published material such as leaflets (for those who do not have access to the Internet) indicating how a

charges scheme can be accessed and when it has been amended, should suffice. We therefore propose to clarify this in new regulations or guidance.

- 9.3 LAs will also continue to be able to extract information from their charging schemes and provide this to the public in a simpler format, ie in a leaflet or list either by paper or on their websites, which will reduce the need for the public to access the full schemes.

Proposal 10 – To clarify the position regarding charging requirements when LAs enter into joint arrangements and/or partnerships with each other to carry out building control functions (new provision)

- 10.1 In the past, some LAs have questioned whether LAs who enter into 'joint arrangements' and/or partnerships with each other to carry out their building control functions (under Section 101 of the Local Government Act 1972 as amended, and/or other legislation) are required to continue to prepare separate charging schemes and financial statements.
- 10.2 It falls to LAs to satisfy themselves that they are complying with relevant legislative requirements, but it would be helpful if consultees could let us know if there remains some ambiguity on the above position. We will then consider whether further provision for joint arrangements and/or partnerships is needed in new regulations or if guidance will suffice.

Proposal 11 – To introduce new accounting, auditing and monitoring requirements (*currently regulation 5*)

- 11.1 Although building control income is not specifically 'ring-fenced', the charges regulations give LAs the power to make and set charges with the aim of recovering the costs of carrying out their specified building control functions only (ie in regulation 4). It therefore follows that **building control income should only be used to fund and support the chargeable functions related to building regulations specified in the charges regulations.**
- 11.2 However, as indicated in paragraph 12 of the Introduction, the annual monitoring exercises carried out by the Department (up to 2005-06 – see below) have shown that in the past some LAs have consistently set what would appear to be unnecessarily high charges which have generated significant surpluses (ie income over costs), and there is concern that this money may have been used to help fund the provision of other LA services instead of the building control chargeable service. Charges should be fixed so that they are not

consistently disproportionate to the cost of the building control functions performed. We are aware that some Local Government auditors have also reported their concerns in this respect directly to some authorities.

- 11.3 LAs should carry forward any accidental surpluses arising from one year to another (which should not be significant as LAs are not empowered to make sizeable profits) and either offset these against future building control charges, resulting in reduced charges, or reinvest them in improving the quality of delivery of the building control chargeable service, including relevant support services costs. This principle will be maintained in new regulations. We do not consider it necessary or appropriate to 'ring-fence' the building control/regulations charging account in new regulations, which would be inconsistent with Government policy to give LAs greater discretion and more local accountability. This view was strongly supported by the LGA in their response to the FOBC consultation. The setting of building control charges has been devolved to individual LAs and authorities are free to 'ring-fence' their own charging accounts if they wish – indeed some responses to the FOBC consultation indicate that this is currently the case.
- 11.4 The proposal (proposal 1) requiring LAs to relate their charges to individual building projects should ensure more accurate charging and prevent significant surpluses (or deficits) arising. However, to help safeguard building control income, we also propose to improve accounting, auditing and monitoring requirements.
- 11.5 Regulation 5 of the charges regulations requires LAs to ensure that the total income received from their charges set in their schemes, is no less than the estimated total aggregated costs of carrying out the specified building control functions over a continuous (ie rolling) three-year accounting period (unless the 'derogation' principle applies – see proposal 12). However, evidence suggests that this regulation is flawed in practice and subject to varying interpretations and has contributed to the surpluses which have arisen. While the intention of the three-year accounting period was to help LAs better balance income with costs, in practice it may be difficult for an LA to budget accurately in one particular year when the authority is specifically obliged to correct deficits or surpluses in their charges that have occurred in the two previous years. Also, the requirement in regulation 5(1) is for LAs to ensure that income is not less than the costs incurred over the three-year period, which could encourage LAs to err on the side of caution and ensure that there is always a surplus. Furthermore, as different people will use the building control service in different years any significant variance in charges could be unfair.
- 11.6 We propose therefore to introduce a new, more flexible and transparent annual **accounting** requirement that will require LAs to demonstrate 'taking one financial year with another' that the

aggregate of all charges levied for carrying out their specified building control functions is equal as far as practical to the estimated aggregated costs of carrying out all those functions, ie the requirement will be for them to aim to 'break even'. It accepted that LAs will not break even every year but this new provision should provide LAs with the flexibility of correcting deficits and surpluses over a longer period than the current three-year requirement, with the aim of better balancing income with costs each year, which is consistent with other charging legislation for LAs.

11.7 In addition, responses to the FOBC consultation suggested that it was not entirely clear which costs, particularly those related to support services, eg recruitment, training and development, LAs should be seeking to recover when setting their charges. The current recommended CIPFA guidance 'Building Control Accounting' was issued in 1997 and is out of date. CIPFA has therefore agreed to provide **new building control accounting guidance** to support new regulations, in consultation with the Department and other key stakeholders. This will cover both the core and support costs that should be reflected in building control charges and how to calculate charges.

11.8 We also propose to continue with a similar requirement to the current regulation 5(6) for an **annual financial statement of building control/regulations total income and costs** to be prepared. Currently LAs are required under the Local Government SORP (*Code of Practice on LA Accounting in the UK – A Statement of Recommended Practice*) to include a note in their published statement of accounts reflecting their financial statement. This note can be reviewed and reported on to those charged with governance by auditors during the audit of the financial statements. However, this requirement is currently being reconsidered by CIPFA following a consultation on the future format of LA accounts. We have therefore discussed with CIPFA and the Audit Commission whether new **auditing** measures could be introduced, including a proposal that the financial statement might in future be included in LAs' charging schemes to provide more transparency on the use of building control resources and help safeguard these. In this respect, we propose that the financial statement should include details of any deficits or surpluses carried forward from the previous year. A 'model' financial statement will be included in new accounting guidance.

11.9 With regard to **monitoring**, as referred to above, the Department carried out a voluntary annual monitoring exercise of building control charges income and costs following the coming into force of the charges regulations in 1999, whereby LAs in England and Wales were asked to complete and submit a proforma stating total income and costs figures each financial year. This exercise was suspended following the 2005-06 returns as part of the Department's aim to reduce burdens on LAs and pending the review of the charging regime. However, it

enabled the Department and the LABC (with whom the information was shared) to monitor whether LAs were complying with full cost recovery requirements and the level of any surpluses/deficits arising, thus helping to develop future policy. There was virtually a 100 per cent response each year so this was a successful exercise and we could recommence it when new regulations are introduced. Alternatively, consideration could be given to whether monitoring of income and costs could be reflected in other reporting mechanisms to the Department, or in Building Control Performance Standards, in future.

11.10 We want to avoid imposing a new burden but consider that some form of monitoring will be necessary. Subject to views from consultees, our initial view is to request voluntary returns from LAs every three years after new regulations are introduced, detailing total income and costs for the chargeable building control functions and the level and use of any surpluses/deficits arising as included in financial statements. We would also be interested to ascertain the extent to which LAs have taken up the new flexibilities, for which types of building projects etc and whether they intend to make greater use of them in the future. This will help to inform a broader review of the impact of the new charging regime.

Proposal 12 – To remove the current accounting requirement relating to the ‘derogation’ principle (*currently regulation 5(2)*)

12.1 Regulation 5(2) of the charges regulations prescribes a ‘derogation’ principle which applies to those LAs whose costs of carrying out their building control functions do not exceed £450,000 over the relevant three-year accounting period, or where at least 65 per cent of all charges received over this period relate to certain small domestic building work. In those circumstances LAs are only required to fully recover 90 per cent of the total costs of carrying out all their functions, instead of 100 per cent (ie not full cost recovery).

12.2 Evidence we have acquired from our annual monitoring exercises suggests that this principle has rarely applied in the past, as most LAs have incurred a surplus rather than a deficit. Although we accept that this may not be the case in the current economic climate, we consider that our proposals relating to the following will render the ‘derogation’ principle superfluous:

- (i) The requirement to relate charges to recovering the costs of carrying out building control functions for individual building projects (proposal 1).
- (ii) A more flexible annual accounting requirement (proposal 11).

It would therefore appear unnecessary to include the derogation principle in new regulations but, as some smaller LAs may have been dependent on this principle to avoid breaching the full cost recovery requirement, we would welcome the views of consultees.

Proposal 13 – To consider whether LAs should be able to charge for carrying out other building control functions (*new provision*)

- 13.1 Regulation 4 of the charges regulations provides for LAs to levy charges to recover the costs of carrying out their main building control functions related to building regulations, ie checking and processing full plans, building notices, reversion and regularisation applications, and carrying out site inspections.
- 13.2 We have received representations suggesting that LAs should have specific powers to levy separate charges, or reflect the costs in their current charges, for other building control functions or activities, such as (in no particular order):
- (i) Giving substantive pre-application/notice building control/regulations advice, which might be deducted from a subsequent building regulations application.
 - (ii) Enforcement of building regulations.
 - (iii) Managing building control information received from AIs and competent person self-certification schemes.
 - (iv) Administering statements submitted with building notices such as those covering cavity wall insulation and hot water storage systems carried out by approved installers.
- 13.3 We would need to have regard to the principles of fairness and competitiveness before extending the power to charge beyond the current chargeable building control functions, but we would welcome the views of consultees on whether there is a case to take forward any or all of the proposals referred to above.
- 13.4 As the provision of pre-application/notice advice on building control/regulations is not a statutory function, it may be that LAs are currently able to charge for undertaking this service, subject to certain conditions, under the general power for best value authorities to charge for discretionary services in section 93 of the Local Government Act 2003. The views of consultees on this would be particularly helpful.

Proposal 14 – To increase fees for Determination applications submitted to the Secretary of State (*currently regulation 15*)

- 14.1 This proposal is not directly related to the LA building control charges system but the current charges regulations include a regulation enabling the relevant Secretary of State to charge a fee for the determination of questions referred to him/her relating to whether plans of proposed building work are in conformity with building regulations (see sections 16(10) and 50(2) of the 1984 Act*). These fees are currently set at half of the relevant LA's plan charge in relation to the work, excluding VAT but subject to a minimum of £50 and a maximum of £500. These have not been reviewed since 1998 and therefore in need of review so that they more accurately reflect the cost to the Department of providing the determination.
- 14.2 We do not propose to alter the basis for determination fees, ie half of the LA's full plans charge, but our initial view is that the current minimum and maximum levels could be doubled to reflect inflation and the Department's costs in considering the determination application. This will only affect a handful of cases we receive each year and we therefore expect the impact to be minimal. We are proposing to carry out a more general review of building control dispute procedures, including determinations and appeals (which is another initiative arising from the FOBC consultation), but the views of consultees are invited at this stage on our proposal to increase minimum and maximum determination fees.

Invitation to make any other proposals or comments

- 15.1 Please let us know if you have any other proposals or comments on the LA building control charging regime, for our consideration.

* Appeals to the Secretary of State under Section 39 of the 1984 Act are not subject to a fee.

How to respond and help with queries

How to respond

1. This consultation paper is being published on the Department's website at:
www.communities.gov.uk/planningandbuilding/publications/consultations/

Paper copies are available on request (contact details are in paragraphs 3 and 9 below). You may make copies of this document without seeking permission.

2. We are seeking input on all the charging proposals and questions raised throughout the consultation paper. Comments are also requested on the Consultation Stage Impact Assessment on the charging proposals at **Annex B**. Please use the response form set out in **Annex C** (published separately on the consultation webpage).
3. Responses to this consultation must be received by **25 June 2009** and can be submitted by email, letter or fax to:

Yvonne Jackson
Sustainable Buildings Division
Department for Communities and Local Government
Zone 5/E8
Eland House
Bressenden Place
London SW1E 5DU

email: yvonne.jackson@communities.gsi.gov.uk
fax: 020 7944 5719

4. When responding, please state on the response form whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please note that individual responses will not be acknowledged unless specifically requested.
5. A summary of responses to this consultation will be published within three months of the closing date for this consultation (ie 25 September 2009) on the Department's website at: www.communities.gov.uk/planningandbuilding/publications/consultations/
Paper copies of the summary will be available on request.

Confidentiality & Data Protection

6. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
7. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
8. The Department will process your personal data in accordance with the Data Protection Act and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Help with queries

9. Questions about the policy issues raised in this document can be raised with either Yvonne Jackson or Kevin Flanagan at the addresses in paragraph 3 above, or by telephone on 020 7944 5755 or 020 7944 5748.

Conclusion

10. Your comments and opinions are valuable to us. Thank you for taking the time to read this document and respond.

Annex A:

Consultation Criteria

The Government has adopted a code of practice on public consultations. This consultation aims to follow the code criteria, which are set out below:

Criterion 1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full consultation code may be found at:

www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html.

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process itself, please contact:

Communities and Local Government Consultation Co-ordinator
Zone 6/H10
Eland House
Bressenden Place
London SW1E 5DU

or e-mail: consultationcoordinator@communities.gsi.gov.uk

Annex B: Consultation Stage Impact Assessment

Summary: Intervention & Options

Department/Agency: Department for Communities and Local Government	Title: Impact Assessment of proposed changes to the Local Authority building control charging regime	
Stage: Consultation	Version: 1	Date: 10 March 2009
Related Publications: Consultation on proposed changes to the LA building control charging regime; The Building (Local Authority Charges) Regulations 1998 (SI 1998/3129); Environment Circular 10/98		

Available to view or download at:

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

Contact for enquiries: Yvonne Jackson or Kevin Flanagan

Telephone: 020 7944 5755/5748

What is the problem under consideration? Why is government intervention necessary?

The Building (Local Authority Charges) Regulations 1998 enable individual local authorities (LAs) to fix their charges by means of a scheme based on the full cost recovery of carrying out their main building control functions. However, over time these regulations have been shown to be inflexible and restrictive as LAs have pre-fixed their charges having regard to a limited number of factors and cannot adjust these when appropriate, so it is difficult for charges income to accurately match their costs. This has resulted in unfair charging and large surpluses, which may have been inappropriately used. This also means that LAs do not have maximum opportunity to compete with private sector Approved Inspectors (AIs) who are not subject to any charging restrictions.

What are the policy objectives and the intended effects?

The new charges regulations will build on the principle of the current devolved process whereby LAs set their own individual charges within a fixed scheme but will allow for a greater range of factors to be taken into account and for reasonable adjustments to be made where relevant. The objectives are to provide greater flexibility and discretion in the way LAs calculate their charges and to introduce more transparency into the process. This will enable them to more accurately relate their charges to the actual costs of carrying out their main building control functions for individual building projects, resulting in fairer charges, and improve the competitive environment with AIs.

What policy options have been considered? Please justify any preferred option.

The main options considered are to (i) do nothing and (ii) introduce a package of charging proposals (outlined in consultation paper) to provide flexibility, accuracy, transparency and competitiveness. If no changes are made to the current regulations, under and, particularly, over-charging will continue in individual cases resulting in unfair charges and, potentially, large surpluses again in the future. LAs will also not be able to compete more effectively with AIs for the provision of building control services.

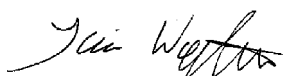
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We will review LAs' income and expenditure and the take-up and impact of the new flexibilities in 2013 (3 years after practical implementation).

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



.....Date: 10 March 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Impact Assessment of Local Authority Register of Building Control Information

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 1.1m	1	One-off preparation and training costs, including adjustment of charging and accounting systems and guidance, estimated at £3,000 per LA.
	Average Annual Cost (excluding one-off)		
£ 0		Total Cost (PV) £ 1.1m	
Other key non-monetised costs by 'main affected groups' There will be a cost to LAs in terms of lower income from more accurately reflecting the cost of carrying out their building control functions in their charges thus reducing the unintended surpluses. It is difficult to estimate the potential level of reduction at this time but it is hoped that evidence will become available during the consultation.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
£ 0		Total Benefit (PV) £ 0	
Other key non-monetised benefits by 'main affected groups' There will be a benefit to industry in terms of fairer and reduced charges from greater accuracy (as above). There may also be a benefit over time in terms of reduced costs from greater competition and improved standards but again there is no evidence to quantify this at this stage. We believe the benefits will be greater than the costs.			

Key Assumptions/Sensitivities/Risks Assumes no on-going annual costs for LAs as running new charging system will be the same as for current system and that larger LAs will make greater use of new flexibilities and reduce surpluses quicker. Risk that current economic climate will result in reduced income but this will improve when the economy recovers.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ (1.0-1.2m)	NET BENEFIT (NPV Best estimate) £ (1.1m)

What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	1 April 2010			
Which organisation(s) will enforce the policy?	LAs			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase – Decrease)
Increase of	£	Decrease of	£	Net Impact £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

Introduction/Background

1. Local authorities (LAs) in England and Wales have been empowered to charge for carrying out their main building control functions related to building regulations since the late 1970s. This derives from the 'user pays' principle and avoids putting further pressure on all those who pay Council Tax. These charges were originally prescribed by Government and were calculated with the intention of achieving full cost recovery.
2. The Building Act 1984 (the 1984 Act) introduced a private sector alternative to LA building control, Approved Inspectors (AIs). AIs have no restrictions on how they set their charges so they are free to accurately reflect the costs of carrying out the building control function of an individual project and to make a profit. An applicant can choose whether to use an AI or the LA on a project by project basis.
3. Initially there were few AIs and they were restricted in the type of building control work that they could undertake. However, from the mid-1990s, following an increase in both the number of AIs and the range of work for which they were authorised, the Government was urged to devolve the LA charge setting process to individual LAs. The main objective of this was to enable LAs to reflect their own actual costs in the setting of their charges to help to encourage efficiencies and reduce charges and so give LAs greater opportunity to compete with AIs. However, because AIs could not undertake all types of work and LAs cannot refuse to accept an application, it was felt that there should remain some restrictions on what factors LAs could take into account in setting their charges because of their effective monopoly position.
4. The devolution of the charge-setting process was achieved through 'The Building (Local Authority Charges) Regulations 1998' (the charges regulations). These regulations were made under the powers in paragraph 9 of Schedule 1 of the 1984 Act which requires LAs to fix their charges in a scheme, according to a number of prescribed principles. In particular, that the charges should be set so that their total income fully recovers the estimated aggregated costs of carrying out the specified building control functions over a three-year continuous (rolling) accounting period. Also that the charges can only be set based primarily on the estimated cost of the building work or, for small projects, on the floor area.

Rationale for Government Intervention

5. Although it was generally considered that the charges regulations have served their purpose fairly well, the Department has received representations from stakeholders, such as the Local Government Association (LGA) and LABC (the organisation which represents LA building control bodies), indicating that over time the regulations have become inflexible and restrictive, do not enable them to compete effectively with AIs, and do not provide best value for the public.
6. They asserted that LAs have been unable to match their charges to the actual costs of delivering their building control service, resulting in under and, particularly, over-charging for some work. For example, as the charges are primarily related to the estimated cost of the work, a building project that uses more expensive materials will attract a higher building control charge than an identical project that involves the same level of building control input but which uses less expensive materials and therefore has a lower estimated cost. Equally one project (eg redesigning an internal layout to construct a new WC with consequent drainage works) could involve significantly more building control input than another project of similar cost (eg installing a new glass shopfront). As LAs cannot increase or decrease their charges if the level of building control input goes up (or down) there is the tendency to set charges at a higher level to ensure that their costs will always be covered as required by the charges regulations. This puts them at a disadvantage with AIs, is unfair on those applicants who have no choice but to use the LA, disincentivises 'bad' builders who need more supervision by building control and can result in significant unintended/unauthorised surpluses (income over costs) arising.
7. This was evidenced by the annual monitoring returns provided to the Department which indicated that there was a significant total level of surpluses for all LAs arising following the introduction of the charges regulations in 1999, at £17m per annum, ie income £139m, costs £122m (approximately 14 per cent of the total cost of providing the building control service) with some LAs charging more than double the cost. Following concerns expressed by the Department to LAs, the level of surpluses gradually decreased and by 2006, the last year for which returns were collected, this had levelled out at around £7m (4 per cent of the total) but some were still charging more than 50 per cent of costs. This would suggest that the charges regulations do not enable LAs to match their charges to their costs effectively. NB While large surpluses arising may not currently be an issue because of the current economic climate, we need to ensure that this is addressed in the proposed changes to the charges regulations so that it does not arise again in the future.
8. In addition, a new charging regime is needed to reflect fundamental changes that are being introduced to the building control system following the consultation on the *Future of Building Control* in 2008.

The Government intends to introduce a risk assessment approach to inspection of building work, which accords with the better regulation agenda and the Hampton Review. This will allow LAs to focus their resources on higher-risk projects and adopt a lighter touch approach to low risk projects. The current regime which requires charges to be pre-fixed for all types of building projects does not allow the results of an individual risk assessment approach to be reflected in the charges. This is inconsistent with the 'user pays' principle. Changes are therefore required to ensure better, targeted and fairer charges.

9. Furthermore, as LAs cannot increase or decrease their charges if the level of building control input goes up (or down) this also puts them at a disadvantage with AIs. As AIs do not have any restrictions placed on the way they set their charges, they can already take such factors into account which tends to distort competition with LAs. By allowing LAs to set their charges in a more flexible way they will be able to compete with AIs on a more level-playing field.
10. Finally, although there is competition in the sector, LAs remain the 'backstop' provider. Obtaining building control consent is a statutory requirement but AIs are not obliged to undertake any particular work or may not operate in some areas and therefore applicants may have no choice but to use the LA. As building control is primarily intended to ensure the health and safety of people in and around buildings it is considered essential that LAs should continue to provide this service 'at cost' to ensure building control remains as affordable as possible and that high charges do not encourage circumvention of the building regulations.

Options

11. The Department has therefore developed a package of proposals to address the problems of the existing charging regime. The broad principles of the package (ie to introduce greater flexibility, accuracy and transparency in the charge-setting process) were consulted on as part of the *Future of Building Control* consultation and received broad support from across the industry. The detailed proposals have been developed with input from key stakeholders, including representatives of LABC and are supported by the Building Regulations Advisory Committee.
12. There are 2 options under consideration:
 - *Option 1*: The first option is to do nothing and retain the current charging regime.

- *Option 2*: The second option is to introduce new regulations to take forward a package of proposals to address the deficiencies in the current charging system. Although presented as a package of measures it is possible that some or all of these may be amended or dropped as a result of the consultation. It should also be noted that many of these proposals merely enable LAs to take account of additional flexibilities which some LAs may choose not to adopt for some or all work.

Aim and Objectives

13. The main aims of the new charges regulations will be to build on the principle of the devolved charge setting for LAs in order to:
- introduce more **flexibility** and **discretion**, remove some restrictions and ambiguities, and enable LAs to more **accurately** relate their charges to the actual costs of carrying out their main building control functions (ie plan checking and inspections) for individual building projects as appropriate, thereby avoiding under or over charging and surpluses arising and providing **fairer** charges
 - introduce more **transparency** into the building control charging regime, with a view to safeguarding income
 - further improve the **competitive environment** within which LAs and AIs compete and the standards within which they operate

Main Proposals

14. The consultation paper⁵ lists and explains the charging proposals in detail, which are:
- *Proposal 1* – To introduce a new charging principle for LAs to relate their charges to the recovery of the costs of carrying out building control function(s) for individual building projects (*new provision*)
 - *Proposal 2* – To introduce a system, in addition to setting pre-fixed charges, to allow LAs to assess charges on an individual basis where appropriate, eg for carrying out building control functions in relation to larger building projects (*new provision*)
 - *Proposal 3* – To introduce more factors relating to building projects for LAs to take into account when setting their charges (*currently covered by regulations 6 and 7*)
 - *Proposal 4* – To provide more discretion for LAs not to charge and to give reductions and refunds (*currently regulations 8 and 10*)
 - *Proposal 5* – To provide a power for LAs to increase a charge where appropriate (*new provision*)

⁵ This can be accessed at: www.communities.gov.uk/planningandbuilding/publications/consultations

- *Proposal 6* – To remove the current link between charges for carrying out different building control functions (*currently regulation 4*)
- *Proposal 7* – To remove current restrictions for charging for new housing and domestic extensions etc (*currently regulation 7*)
- *Proposal 8* – To clarify the exemption from charging for building work for disabled persons (*currently regulation 9*)
- *Proposal 9* – To clarify the requirement to publicise charging schemes (*currently regulation 12*)
- *Proposal 10* – To clarify the position regarding charging requirements when LAs enter into joint arrangements and/or partnerships with each other to carry out building control functions (*new provision*)
- *Proposal 11* – To introduce new accounting, auditing and monitoring requirements (*currently regulation 5*)
- *Proposal 12* – To remove the current accounting requirement relating to the ‘derogation’ principle (*currently regulation 5(2)*)
- *Proposal 13* – To consider whether LAs should be able to charge for carrying out other building control functions (*new provision*)
- *Proposal 14* – To increase fees for Determination applications submitted to the Secretary of State (*currently regulation 15*)
- Other proposals and comments are also invited.

Costs and Benefits

Reduction in LA Surpluses

15. If we do not introduce a more flexible LA charging regime (ie Option 1 – ‘Do Nothing’) there will be no impact on the level of surpluses currently being made. The main impact of Option 2 will be to more accurately reflect the actual costs of providing the building control service in the charges set and thereby reduce the surpluses currently being made, leading to reduced and fairer charges. The impact is likely to vary from one LA to another. Larger authorities are more likely to be making surpluses at present and so will have greater scope for making reductions. They are also more likely to be involved with the larger projects which may benefit most from the new charging proposals and to adopt the flexibilities sooner rather than later.
16. It is estimated that the total surplus for all LAs could reduce by 10 per cent in the first year after implementation which could equate to around £1m-2m. This is expected to increase over time as more LAs take advantage of the new flexibilities, particularly once the new risk assessment approach to inspections is introduced in the future, perhaps to as much as 25 per cent although there is no direct evidence to support this figure. It should be noted that this is a benefit to industry

but a cost to LAs and so the impact is therefore a distributional one. Although it could be argued that enforcing the 'users pays' principle is a social benefit.

Costs of Introducing and Operating the New Regime

17. If we do not introduce a new charging regime, there will be no additional costs over and above those involved with maintaining and operating the current system, such as updating the figures that underpin charging schemes and recalculating the charges at least annually, revising and publishing the scheme and related documentation (eg guidance), training new staff, keeping IT systems up-to-date and carrying out the associated monitoring, accounting and auditing requirements.
18. By introducing the new charging regime, there will clearly be an additional, one-off cost on LAs associated with expanding the existing calculation tool to accommodate the new flexibilities (or developing a new tool), training staff on the new system and adjusting monitoring, accounting and auditing systems. Based on estimates provided by a number of LA building control officers this one-off cost is likely to be an average of £3,000 per LA which would equate to around £1.1m overall. Once set up, the cost of operating and updating the new system and any ongoing training etc is anticipated to be broadly similar to that of the current system. In addition, there is already a process in place which is needed to monitor the costs of providing the building control service to enable LAs to set their existing charges so any additional cost should be minimal. However, it should also be noted that the costs of calculating the charges are part of the cost of carrying out the service and will therefore be taken into account in the income received (so the charges will not reduce by as much in the first year as they would if no additional training etc was required).
19. There is also potentially a cost to applicants of providing additional information to LAs to allow charges to be individually calculated. It is anticipated that many LAs will continue to use the current method of pre-fixing their charges for small building projects related to the floor area of the work as these charges can generally be calculated with a fair degree of accuracy and so there will be little or no increased cost. For the larger projects where this flexibility is most likely to be adopted, the costs of providing the additional information required should be minimal as the project manager will have the relevant information which is often already provided to building control as part of the application. However, it is expected that any additional cost in providing this information will be more than offset by the reduced charges/surpluses.

Greater transparency and fairness

20. The proposed requirement for a more detailed financial statement of building control income and costs for audit purposes, supported by a

new accounting provision and new accounting guidance prepared by CIPFA, should help provide for more transparency and help ensure that building control income is used only to fund and benefit the building control chargeable service.

21. Moreover, the new charging system will enable LAs to relate their charges more accurately to the costs of carrying out their building control functions for individual building projects, resulting in less under and over charging and a reduction in surpluses arising. It will also result in better competition between LAs and AIs in the provision of building control services. This will mean fairer charges for the building industry and property owners, including reduced charges in some cases. If we do nothing then these benefits will not be realised.

Improved building standards

22. At present, the building control charge for two projects of equal cost will be the same regardless of the amount of building control input required. Additional fees cannot be charged if, for example, the plans are defective and require substantive building control input or if the workmanship is faulty and needs to be rectified and re-inspected. From a building control perspective, there is little or no incentive for applicants and builders to raise their standards as the costs of providing the building control service are spread equally over good and bad alike, according to the cost of the work.
23. The proposed flexibilities would allow LAs to set their charges according to the amount of input required from building control and, potentially to increase the building control charge if for example, additional inspections are required. In the short term this will be much fairer as 'good' builders will pay less and 'bad' builders will pay more. However, in the longer term this will encourage those carrying out the building work to improve their standards and, should result in less input from building control which will have the effect of reducing the overall cost of building control. The total cost of providing the LA building control chargeable service in England and Wales in 2005-06 was £178m. If even a one per cent reduction occurred this would result in an additional saving to both LAs and industry of £1.8m pa. If we retain the current system there will be no incentive to raise standards and therefore these potential benefits would not be realised.

Improved competition with Private Sector Approved Inspectors (AIs)

24. Approved Inspectors (AIs) are in competition with LAs to carry out building control services. AIs are private companies and, unlike LAs, are not subject to any charging restrictions in legislation. There are currently 67 AIs which range from large companies to small businesses. Historically AIs have tended to provide the building control service for larger building projects or work with national companies who wish to deal with a single provider rather than lots of individual LAs. Although some AIs do deal with small scale domestic projects (eg loft

conversions), in many parts of the country the LA is the only provider for such work.

25. LAs are concerned that the inflexibility of the current charging regime does not allow them to compete on a level playing field with AIs, particularly when dealing with larger building projects where the level of building control input can vary according to many factors, not just the cost of the work. The new flexibilities would allow LAs to set their charges based on the actual cost of providing the building control service which is more in line with the way in which an AI would calculate their fees and should ensure a more level-playing field between LAs and AIs. This should enable a greater degree of competition and has the potential to drive down costs over time.
26. However, it should be noted that LAs will still be required to set their charges in advance according to a fixed scheme. Although they will be able to take into account a greater range of factors and may be able to make adjustments if less building control input is required (eg fewer inspections) they will not have complete freedom to negotiate individual charges. A developer who wishes to use an AI purely on the basis of cost would still be able to negotiate the price down after receiving the LA's charge.
27. Most of the AIs who responded to the *Future of Building Control* consultation supported the new charging proposals, although a few questioned the extent of any impact on competition. They felt that where an LA's charge has been considered excessive the work may have gone to an AI, but because the building control charge is so small compared to the overall project costs, it is generally not the decisive factor.
28. We do not therefore consider that the new charging proposals will materially affect the overall market share, but they should enable LAs to better compete on a level playing field. Moreover, we consider that improved and fairer competition between LAs and AIs will be of benefit to the building industry and the general public. Once again, if the effect of better competition were to drive down LA costs across the board by just 1 per cent, this could result in a saving of around £1.8m pa. If we do nothing these potential benefits would not be realised.
29. It is considered unlikely that more effective competition would have an impact on the quality of the building control service as building control officers are issued with strong guidelines and are required to demonstrate professional competence and integrity in following both the technical and procedural requirements of the building regulations. Both private sector and LA building control bodies have signed up to industry-wide performance standards and indicators and we will continue to work with industry to ensure that these remain fit-for purpose in the future and that standards remain high.

Assumptions

30. The key assumptions are that:

- there will be no on-going annual costs for LAs as the costs for running a new charging system will be the same as for the current system
- larger LAs will make greater use of new flexibilities and thereby introduce more accurate charging and reduce surpluses quicker
- any reduced income as a result of the current economic climate will improve when the economy recovers

Conclusions

31. It is expected that the proposed package of charging measures will:

- introduce fairer charges, reducing the potential to overcharge and therefore large surpluses will not be accrued
- help safeguard building control income
- lead to greater compliance and higher standards
- deliver greater and more effective competition between LAs and the private sector
- give customers greater choice and better value for money.

Monitoring and Evaluation

32. It is anticipated that the proposed package of measures will come into effect on 1 April 2010 to coincide with the start of the financial year. Outturn figures for charges income and expenditure would therefore become available from end March 2011. It is therefore proposed to review the policy in 2013, ie once three years worth of outturn figures are available. The review will consider income and expenditure figures and the take-up of the new flexibilities by LAs and the impact this has had. 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.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Competition Assessment

33. Competition between LAs and AIs is discussed in paragraphs 24-29. We do not believe that the impact will be significant and consider that the benefits to be gained outweigh any potential impact.

Small Firms Impact Test

34. The responsibility for implementing the changes and the main impacts will fall primarily on LA building control departments which, although many employ fewer than 30 people are not classed as small firms because they are part of the LA.
35. The fact that the new system should result in lower overall costs for the LA building control service should have a positive impact on those seeking to have building work carried out, be they small firms or large. The extent to which they benefit will depend on the nature of the work being undertaken, the quality of the work and the extent to which the LAs adopt the flexibilities open to them.
36. During the consultation on the *Future of Building Control*, which explored the broad principle of these changes, a number of small firms (particularly AIs) were consulted. The majority supported the proposals but few commented (see paragraph 27). We will actively seek the views from small firms (amongst others) on the detailed proposals during this consultation.

Sustainable Development, Carbon Assessment and Other Environment

37. We are considering whether to introduce scope for LAs to reduce their building control charges for 'green' building projects, if they wish. If this were to go ahead, this could help to reduce the costs of these projects and encourage more sustainable buildings.

Health Impact Assessment

38. It is envisaged that a more flexible LA building control charges system will help to raise standards and improve compliance with the building regulations (see paragraphs 22-23). As the building regulations cover issues relating to the health and safety of people such as hygiene, toxic substances, drainage and moisture, there is likely to be a positive health impact on the people living and working in those buildings.

Disability Assessment

39. Regulation 9 of the charges regulations allows LAs to waive the charge for carrying out building control functions for work solely for the benefit of disabled persons. However, it has been subject to varying interpretations so clarification will ensure that this regulation is effectively interpreted. This may result in the charge being waived on a greater number of building projects where the work is solely for the benefit of a disabled person.

Legal Aid, Race Equality, Gender Equality, Human Rights and Rural Proofing

40. We have considered the potential impacts of this proposal on Legal Aid, Race Equality, Gender Equality, Human Rights and Rural Proofing and do not believe that there will be any effect.