

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2010

**Report of the Director of Planning Transport and Leisure
and the Director of Finance**

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 THE BUILDING (LOCAL AUTHORITY CHARGES) REGULATIONS 2010

Summary

The report sets out how the new Building (Local Authority Charges) Regulations 2010 will require a new charges scheme to be in place by 1 October 2010 and the reasons for its introduction. Delegated authority to exercise a certain level of discretion for larger projects is already in place and these new regulations extend the opportunity for a more flexible approach. The Building (Local Authority Charges) Regulations 1998 as amended have now been revoked and Local Authorities therefore required to draw up and implement a new scheme of charges. There is also a requirement to publicise its introduction at least 7 days prior to the implementation date.

1.1 Background

- 1.1.1 In April 2009 the Department for Communities and Local Government consulted on a package of proposals to change the LA building control charging regime with the aim of introducing more flexibility, accuracy, fairness and transparency into the regime and improving the standards and environment within which LAs and Approved Inspectors (AIs) operate and compete. The proposals also aimed to support the introduction of a risk assessment approach to inspections of building work, as explained in the *Future of Building Control Implementation Plan* published in September 2009.
- 1.1.2 Following the broad support from consultees for most of the proposals the Department implemented the changes through the 2010 Regulations, although some modifications were made to reflect the views of consultees and restrictions imposed by the relevant charging power in the Building Act 1984 (as amended).

1.2 New Charges Legislation

- 1.2.1 The 2010 Regulations contain a transitional provision which allows LAs to introduce a new charging scheme under these Regulations any time between 1 April and 1 October 2010, although they must do so by the latter date.

1.3 Key Principles

- 1.3.1 As previously, LAs are still required to fix their charges “by means of schemes”. They are not restricted into setting prefixed standard charges but can include individually determined charges. The Regulations also provide for refunds or supplementary charges in certain circumstances.
- 1.3.2 The 2010 Regulations give more emphasis to setting charges in relation to the level of building control input into individual projects. It is recognised, for example, that the amount of building control input involved in processing a building notice can be greater than dealing with a full plans application.
- 1.3.3 The 2010 Regulations also introduce a new chargeable service referred to as “chargeable advice. This allows LAs to charge for providing substantive advice consisting of more than an hour in advance of receiving an application or notice.
- 1.3.4 The 2010 Regulations provide a streamlined and clearer provision relating to the exemption from charging for building control services for building work carried out for disabled people (the costs of which should be excluded from a LA’s chargeable account). The regulations make it clear that the exemption only applies to building work in relation to existing dwellings where the disabled person is or will be a permanent resident or to existing buildings to which members of the public are admitted (e.g. public buildings, shops, banks etc). The exemption does not apply to the construction of a new building, however, the regulations have been extended to include work to provide or extend a room which will be used for sleeping accommodation for a full time (i.e. 24 hours) carer.
- 1.3.5 The key principle of requiring LAs to estimate and fix their charges with the aim of fully recovering the costs of carrying out their chargeable building control services remains unchanged in the 2010 Regulations. However, there are some fundamental changes to the way LAs should achieve the full cost recovery requirement.
- 1.3.6 Under the 1998 Regulations, LAs were required to set their charges with the aim of ensuring that their total income “shall not be less than the costs” incurred over a continuous three-year accounting period. It was felt that this requirement was inflexible and contributed to the level of surpluses arising as it could encourage LAs to be over cautious and always aim to make a surplus.
- 1.3.7 Under the 2010 Regulations, LAs are required to set their charges with the aim of achieving the overriding objective of ensuring that “taking one financial year with another” their income from their charges “as nearly as possible equates to the

costs incurred” of carrying out their chargeable functions (and providing chargeable advice related to those functions), i.e. year on year they should always aim to ‘break-even’.

- 1.3.8 LAs are also required to review their charges at the end of each financial year for the purpose of achieving the overall objective. When setting their charges for a particular financial year LAs must take account of surpluses and deficits made in earlier years (including those arising under the 1998 Regulations, where a LA first introduces a charging scheme under the 2010 Regulations after the financial year has commenced). They are required to offset these against income received for that year and subsequent years and projected future costs thereby resulting in reduced or increased charges, as appropriate, so that over a reasonable period income matches costs.
- 1.3.9 It should be noted that surpluses can, where appropriate, be invested in improving the quality of delivery of the chargeable building control service but this should be reflected in the following year’s expenditure account as part of setting the average hourly rate. LAs are not empowered to use such surpluses to fund other LA services.
- 1.3.10 To assist LAs and others in monitoring compliance with the overriding objective, the 2010 Regulations require LAs to prepare and publish an annual financial statement no later than six months after the end of each financial year within which they have made a charging scheme. The statement should set out the chargeable costs, income and any surplus or deficit brought forward from the previous year and carried forward to the following year. This statement should be signed-off by a person with the necessary statutory financial authority within the LA before publication.
- 1.3.11 The Government will monitor on a three-yearly basis whether LAs are achieving the overriding objective. This will be separate from the formal post-implementation review of the new regulations which will consider the wider impacts of the changes to the charging regime. Auditors will also consider any complaints about a LA’s financial statement.
- 1.3.12 Under the 1998 Regulations there was no explicit requirement to relate charges to carrying out building control functions for individual building projects. This was felt to be unfair as it did not take account of where the same types of work need more or less building control input and led to cross-subsidisation between types of applications/notices and projects.
- 1.3.13 To ensure more accurate and fairer charging, under the 2010 Regulations LAs are required to relate their charges to recovering the costs of carrying out their chargeable building control functions (and providing chargeable advice related to those functions) for particular building work or building work of particular descriptions.

- 1.3.14 These can be grouped according to types. Ensuring that users pay for the service that they receive will facilitate the implementation of service level agreements based on risk assessment and help to demonstrate the value that building control adds. In other words the charge is the hourly rate multiplied by the number of hours spent on individual / types of building projects.
- 1.3.15 The hourly rate, which must be fixed and published within the charging scheme, is a single rate based on the average cost of providing the chargeable building control service. A single average hourly rate is provided for as it would not be equitable for an applicant to be charged a different amount simply because the Building Control officer dealing with the project was on a different salary. However, the 2010 Regulations do allow the direct allocation of certain costs such as specialist consultancy advice to particular building projects. The Director of Finance is currently assisting in the development of hourly rates based on the information contained within the CIPFA guidance document which accompanies the new Regulations.
- 1.3.16 It is recognised that most LAs currently set their pre-fixed charges in three schedules related to two factors either to the floor area of the building for the erection or extension of small domestic buildings and dwellings, or to the estimated cost of the building work for all other work. This has led to unfair charges in some circumstances, particularly where charges have been based solely on the estimated cost of the work but require very little input from building control.
- 1.3.17 When making a new charging scheme under the 2010 Regulations LAs will therefore be required to take into account an increased number of factors in determining the estimated time to be spent on their chargeable functions. All the factors in the regulations should be listed in a LA's charging scheme with an explanation of how they will be applied to provide transparency. For example, whether or not a 'competent person' scheme member is involved may be relevant if the work were a domestic extension to provide a new bathroom but would not be relevant if the work comprised a removal of a supporting wall.
- 1.3.18 Under the 1998 Regulations there was a presumption that LAs had to pre-fix and publish flat-rate charges in their charging scheme for carrying out their chargeable functions in relation to all types of building work. The 2010 Regulations provide that LAs may determine pre-fixed "standard" charges which should be published in their charging scheme or individually determine a charge and then fix it by confirming it in writing with the applicant.
- 1.3.19 However, it is likely that, given the requirement to relate charges to the cost of carrying out individual building projects, most LAs will choose to use standard charges for those, typically smaller, projects where they can set and publish accurate and fair standard charges in advance and to use individually determined charges for those, typically larger, projects where they may not be able to set accurate and fair charges in advance. The regulations do not set a 'cut-off' point

between the two charging mechanisms as this is a matter for individual LAs. However, LAs should make clear in their charging scheme which approach they intend to adopt for different types of project. A draft charging scheme (based on a national model) together with possible categories for standard charges is shown at **Annex 1**.

- 1.3.20 When publishing “standard” charges there will be a need to adapt and expand the three schedule approach that LAs currently use. How many categories of standard charge are needed in practice will be a matter for LAs and will depend on the extent to which they can set accurate charges in advance for different types of work.
- 1.3.21 Members will appreciate that due to the lateness of any guidance being issued by CIPFA and the CLG on these new regulations, there is still much work to be done in terms of establishing hourly rates and ensuring that we are not left in a worse position than now, particularly in these testing economic times. It is therefore proposed that further work be carried out, including colleagues in Finance and consulting with other authorities across Kent, to ensure a safe and smooth transition from our existing format to the new one for the commencement date of 1st October.
- 1.3.22 LAs should note that once a standard charge has been set and published they will only be able to adapt the charge to take account of individual circumstances in a particular case if the applicant agrees. The LA will have to confirm the revised charge and the particular factors they have taken into account in writing. It is considered that this approach will be particularly helpful where different types of building work that have standard charges are being carried out concurrently, which could therefore be considered at the same time. For example, loft conversions and domestic extensions might be subject to standard charges. If being carried out at the same time on the same house, the inspections could be combined which could reduce the amount of building control input and thereby justify a reduced charge.
- 1.3.23 LAs have a new power to make provision in their charging scheme allowing them to request any information they consider necessary to determine a charge. This builds on the requirement in the 1998 Regulations whereby LAs could request a written estimate of the cost of the building work. LAs may now need to also request other information to help determine the number of inspections needed, or to confirm that part of the work will be self-certified under a ‘competent person’ scheme.
- 1.3.24 If a charge is individually determined, payment will be due when the correct amount is confirmed by the LA in writing, which includes the provision of chargeable advice. An individually determined charge may also be paid in instalments if the LA agrees.

- 1.3.25 LAs continue to be required to refund a plans charge where they do not give notice of passing or rejection of the plans within the statutory period, unless the applicant does not provide relevant information requested by an LA within a reasonable time to enable them to consider the application within that period.
- 1.3.26 An important new feature is that LAs are now also required to refund part of a charge, or may request a supplementary charge, where the amount of building control input required is less or more than was originally estimated and paid for, eg where there are substantial alterations to the building work. Provision has also been made for administrative costs incurred to be taken into account.
- 1.3.27 As in the 1998 Regulations, the 2010 Regulations require LAs to “publish in their area, in such manner as they consider appropriate” at least 7 days beforehand, the making, replacement or amendment of their charging scheme and to provide details, including how it can be inspected by a member of the public free of charge. They must also keep it up to date. This is not a requirement to publish the scheme itself but to publicise the making/replacing/amending of the scheme. This might be done through adding a simple note to the LA’s website and to other relevant published materials (for those who do not have Internet access).
- 1.3.28 In addition, the Department and the National Assembly for Wales propose to carry out a wider review of the impact of the 2010 Regulations in 2013 to ensure that they meet their policy objectives. However, it is recognised that some of the potential benefits may not be realised within this timescale and it will therefore be necessary to continue to monitor the impact of the policy on a long-term basis.
- 1.3.29 Although not directly related to LA charges, the 2010 Regulations also provide for an increase in the minimum and maximum level of fees payable for questions relating to conformity of plans of proposed building work with building regulations, which are referred to the Secretary of State for his determination. From 1 April 2010, the fee is set at half of the relevant LA’s plan charge, excluding VAT, subject to a minimum fee of £100 and a maximum of £1,000.

1.4 Financial Implications

- 1.4.1 The financial implications are contained within the report outlining a clearer and more transparent approach to charging for Building regulation applications.

1.5 Legal Implications

- 1.5.1 These are set out in the report in that a charging scheme must be in place by the 1 October 2010 and that it must be publicised at least 7 days before it is implemented.

1.6 Risk Management

- 1.6.1 There is a risk that the number of inspections on any given site could be more or less than anticipated. This could result in refunds or supplementary charges being given or charged for respectively and these are likely to translate into an increased number of transactions and potential complaints from customer's. Careful consideration will therefore have to be given to the way the new charges are implemented.

1.7 Recommendations

- 1.7.1 Cabinet be **RECOMMENDED** to approve that:

- 1) The Director of Planning, Transport and Leisure and the Chief Building Control Surveyor in consultation with the Director of Finance develop and implement a new scheme of charges, together with any consequential adjustments to building control policy, in compliance with the new regulations to be implemented by the 1 October 2010.
- 2) Due to the timescale for implementation authority be given for (1) above to be implemented in advance of formal approval by Cabinet following agreement of the Leader of the Council, Chairman of Scrutiny Committee, Cabinet Member for Planning and Transportation and Cabinet Member for Finance.

Background papers:

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Nil

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