

**EXPLANATORY MEMORANDUM TO**  
**THE BUILDING (LOCAL AUTHORITY CHARGES) REGULATIONS 2010**

**2010 No. 404**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 These Regulations revoke and replace the Building (Local Authority Charges) Regulations 1998 (SI 1998/3129) (the 1998 Regulations). They authorise local authorities to fix and recover charges for the performance of their main building control functions relating to building regulations according to a charging scheme governed by principles laid down in the Regulations. The Regulations make each local authority responsible for setting their own charges and for doing so within the accounting and administrative requirements laid down in the Regulations.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations (as did the 1998 Regulations) also set the fees charged by the Secretary of State for questions arising related to compliance of plans of proposed building work with building regulations, which are referred to him for determination. The fee is set at half the local authority plan charge for the building work in question (whether this has been assessed by reference to a standard charge or through an individual assessment), subject to a minimum and maximum fee. The Regulations increase the minimum and maximum figures, which had not been revised since 1994, to £100 and £1,000 respectively so as to more accurately reflect, with regard to the principle of full cost recovery, the Department's costs of dealing with a determination.

**4. Legislative Context**

4.1 The Government consulted on a wide range of issues relating to Building Control in the Consultation paper *The Future of Building Control*<sup>1</sup>, including the broad principles of a review of the current local authority building control charging regime. An undertaking was also given to consult on detailed proposals to change the charging regime. Further to that undertaking, the Government issued a consultation paper on the *Proposed Changes to the Local Authority Building Control Charging Regime*<sup>2</sup> (the Consultation paper). These Regulations are made further to that consultation and the responses to it.

4.2 These Regulations make a number of significant modifications to the 1998 Regulations by removing some restrictions and providing in particular for the following:

- in addition to their current chargeable building control functions, a local authority are authorised to charge for providing substantive advice (consisting of more than an hour) relating to their functions but given in advance of those functions having effect (i.e. before receipt of an application or notice);
- make provision for greater transparency in relating income from charges for building control services to the costs of providing those services, including a requirement that the accounting treatment of income, costs and any surplus income or deficit is set out in an annual statement to be approved by the appropriate local authority accounting officer prior to publication;

---

<sup>1</sup> [www.communities.gov.uk/publications/planningandbuilding/futurebuildingcontrol](http://www.communities.gov.uk/publications/planningandbuilding/futurebuildingcontrol)

<sup>2</sup> [www.communities.gov.uk/publications/planningandbuilding/lachargingregimeconsult](http://www.communities.gov.uk/publications/planningandbuilding/lachargingregimeconsult)

- a more accurate method is provided for calculating charges to achieve full cost recovery by relating the hourly charge of building control officers to the time spent carrying out their building control functions, together with an increased number of factors (i.e. more than is currently provided under the 1998 Regulations) which a local authority can take into account in determining the estimated time, in relation to particular building work;
- a local authority will be authorised to fix a charge in relation to particular building work either by reference to standardised charges published in its charging scheme or by providing an individual determination;
- a local authority are required to set out in its charging scheme its provision for consideration and handling of complaints;
- detailed provision is made in relation to refunds of charges and supplementary charges;
- transitional provision is made so that those local authorities who wish to introduce a charging scheme under these Regulations can do so from 1<sup>st</sup> April 2010, but those authorities who want to delay introduction of the new charging scheme, for example to take more time to prepare, can do so until 1<sup>st</sup> October 2010.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Building regulations set standards for the design and construction of buildings, primarily to ensure the health and safety of people and, increasingly to provide for reasonable access and energy efficiency. Building work is subject to approval by building control bodies, either the local authority or a private sector Approved Inspector (AI), who provide a checking service to help ensure that the requirements of the regulations are met. The choice of which building control body to use is for the applicant to make.

7.2 Local authorities have been empowered to charge for carrying out their main building control functions relating to building regulations (i.e. plan checking and inspection of work) since the late 1970s. This derives from the principle of ‘user pays the costs’ and avoids putting further pressure on those who pay Council Tax. Originally fees were prescribed by Government and were calculated to achieve full cost recovery which continues to be the overriding principle.

7.3 When AIs were first introduced in 1985 there were very few of them and they were restricted in the type of building control work that they could undertake. However, by the mid-1990s, there had been an increase in both the number of AIs and their range of work and, unlike local authorities, AIs have no restrictions on how they set their charges and can make a profit. The Government therefore devolved the process for setting local authority building control charges to individual authorities via the 1998 Regulations. The main objective was to enable local authorities to directly reflect their own actual costs in their charges with the aim of encouraging efficiencies in the building control service, reducing charges and improving competition between authorities and AIs.

7.4 Although the principle of devolving charge-setting to individual local authorities has broadly been considered a success, representations from key stakeholders indicated that over time the 1998 Regulations have become inflexible and restrictive due to the way authorities are required to set their charges, the limited range of factors they can take into account and the fact charges cannot be adjusted. Local authorities have not been able to accurately match charges to

the actual costs of delivering their building control service, which has resulted in under and particularly over-charging. This was evidenced by the annual monitoring exercises of local authorities' total income and expenditure carried out by the Department following the introduction of the 1998 Regulations in 1999 until 2006. As a result local authorities have not been able to compete effectively with AIs or provide full value for money for consumers and the building industry. There have also been suggestions that surpluses arising have inappropriately been used to help fund other local authority activities.

7.5 In addition, the Government is in the process of introducing fundamental changes<sup>3</sup> to make the building control system more effective, including a move towards risk-based inspections for which the current charging regime does not provide. These Regulations therefore aim to address the deficiencies of the charging regime by providing more flexibility, accuracy, fairness and transparency, and also further improve the standards and environment within which local authorities and AIs operate and compete. The main changes are stated in paragraph 4.2 above.

## 8. Consultation outcome

8.1 As indicated in paragraph 4.1 above, the Government consulted in early 2008 on the broad principles of a review of the current LA building control charging regime. The majority of the responses agreed that the current regime was inflexible, restrictive and in need of detailed review.

8.2 The detailed proposals for change were the subject of a 12 week public consultation in spring 2009. 152 responses were received to the Consultation paper, 86% of which were from LAs. Most consultees who responded supported the vast majority of the proposals. The question asking whether the overall package of proposals would deliver the objectives was overwhelmingly supported. Only one proposed change received a low level of support - to remove the derogation principle which provided for local authorities to recover 90% (instead of 100%) of their total costs through their charges income in certain circumstances. However, the evidence the Department had from past monitoring exercises indicated that the derogation was very rarely used and the greater flexibility introduced by the new charging principles, particularly the accounting period, as well as the increasing tendency for smaller authorities to form formal partnerships operating as a single entity will mean the scope for using the derogation in future would be very small. We have therefore decided to proceed with its removal as it should have very little impact in practice.

8.3 A number of other proposals have also been modified to take account of helpful comments received from consultees, e.g. the factors that local authorities should be able to take into account when setting their charges and the need to allow authorities to take administrative costs into account when making refunds. In addition, although the Consultation paper explained the Department's views on why it would not be appropriate to force local authorities to ring-fence their building control chargeable accounts and that authorities should publicise the making/amendment of their charging schemes and how these can be accessed, ie on accountability and transparency grounds, a number of consultees disagreed. Having considered the comments received, we still do not consider that there is a case to make any changes to the current position with respect to these issues. A summary<sup>4</sup> of responses to the consultation is published on the Department's website.

8.4 Since the consultation closed the Department has further consulted a key stakeholder - the LABC (the organisation representing local authority building control departments) - on refining the details of the changes to ensure that they are clear and capable of being implemented in practice.

## 9. Guidance

<sup>3</sup> As set out in *Future of Building Control – Implementation Plan* September 2009:

[www.communities.gov.uk/publications/planningandbuilding/buildingcontrolimplementation](http://www.communities.gov.uk/publications/planningandbuilding/buildingcontrolimplementation)

<sup>4</sup> Summary of Responses: [www.communities.gov.uk/planningandbuilding/publications/consultations/](http://www.communities.gov.uk/planningandbuilding/publications/consultations/)

9.1 The Department has supplemented these Regulations with non-statutory guidance to provide helpful information on their requirements and how they might be implemented in practice. This will be issued to all building control bodies via a circular letter<sup>5</sup> and published on the Department's website. We will also publicise the new Regulations as appropriate.

9.2 The Department has commissioned 'The Chartered Institute of Public Finance and Accountancy' (CIPFA) to prepare new building control accounting guidance to assist local authorities in determining the costs that they should be seeking to recover when setting their charges under these Regulations, which will be published shortly. We have also offered to assist the LABC in preparing a new 'model charging scheme' to help local authorities prepare their new schemes to meet the requirements of the Regulations.

## **10. Impact**

10.1 There is no direct impact on business, charities, voluntary bodies or consumers. However, should these groups carry out building work subject to building regulations, they will benefit from fairer and potentially reduced building control charges and better value for money in future. AIs are businesses and it is possible that increased competition will mean that some AIs will lose business to local authorities. But neither the Department nor those AIs who responded to the consultation consider that the impact will be significant.

10.2 In the public sector, the impact is on local authorities only. There will be one-off preparation and training costs, including adjustment of charging and accounting systems and guidance estimated at an average of £3,000 per local authority - the costs of which will be covered by the charges themselves. There will also be a justified cost to local authorities in terms of reduced unauthorised surpluses (i.e. income over costs) but it is difficult to estimate the potential level of reduction at this time.

10.3 An Impact Assessment is attached to this memorandum which concludes that the benefits justify the costs. The key benefits identified are:

- more accuracy and fairness in local authority building control charges based on the actual costs of providing services to users;
- the safeguarding of building control income through improved accounting procedures and greater transparency;
- better value for money and potentially reduced charges for consumers and the building industry;
- higher building standards and greater compliance with building regulations;
- greater and more effective competition between local authorities and AIs.

## **11. Regulating small business**

11.1 The legislation does not apply directly to small business. The responsibility for implementing the changes and the main impacts will fall primarily on local authority building control departments which, although many employ fewer than 30 people are not classed as small firms because they are part of the local authority. Some AIs may be considered as small businesses but - as stated in paragraph 10.1 above - the Department does not consider that the legislation will have a significant impact on AIs.

## **12. Monitoring & review**

12.1 As indicated in paragraph 7.4 above, the Department carried out an annual monitoring exercise of local authorities' total building control income and expenditure from 1999 to 2006, as a means of assessing the impact of the 1998 Regulations. To avoid imposing an unnecessary

<sup>5</sup> Circular Letter: [www.communities.gov.uk/planningandbuilding/buildingregulations/circularscircular/divisionalcircularletters/](http://www.communities.gov.uk/planningandbuilding/buildingregulations/circularscircular/divisionalcircularletters/)

burden, the Department / the National Assembly for Wales propose in future to monitor local authorities' total income and expenditure on a three-yearly basis to assess whether the 2010 Regulations meet their key objective of enabling authorities to set charges which more accurately balance their income with their costs. The first returns under these Regulations will be at the end of the financial year 2012/13. We also propose to carry out a wider review of the impact of the Regulations in 2013 to ensure that they meet their policy objectives.

### **13. Contact**

13.1 The following officials can be contacted at the Department for Communities and Local Government regarding any queries on the SI:

**Kevin Flanagan**, email: [kevin.flanagan@communities.gsi.gov.uk](mailto:kevin.flanagan@communities.gsi.gov.uk), tel: 0303 4441809

**Tracey Cull**, email: [tracey.cull@communities.gsi.gov.uk](mailto:tracey.cull@communities.gsi.gov.uk), tel: 0303 4441815

## Summary: Intervention & Options

<b>Department /Agency:</b>	<b>Title:</b>	
<b>Department for Communities and Local Government</b>	<b>Final Impact Assessment of proposed changes to the local authority building control charging regime</b>	
<b>Stage: Final</b>	<b>Version:</b>	<b>Date: February 2010</b>
<b>Related Publications:</b> Consultation on proposed changes to the LA building control charging regime; The Building (Local Authority Charges) Regulations 1998 and 2010		

Available to view or download at:

[www.communities.gov.uk/planningandbuilding/publications/consultations](http://www.communities.gov.uk/planningandbuilding/publications/consultations)

Contact for enquiries: Kevin Flanagan

Telephone: 0303 444 1809

### 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 have been unable to adjust these when appropriate, so it is difficult for charges income to accurately match costs. This has resulted in unfair charging and large surpluses, which may have been inappropriately used. This has also meant that LAs have not had 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 charges within a scheme, but will allow for greater flexibility in the setting of charges, a greater range of factors to be taken into account and for reasonable adjustments to be made where appropriate. The new regulations will also introduce more transparency into the process and help safeguard building control income. The main effect will be to allow LAs 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 an improvement in 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 paragraph 17) to provide flexibility, accuracy, transparency and competitiveness. If no changes are made to the 1998 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?

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

### **Ministerial Sign-off** For final proposal/implementation stage Final 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:

Bill McKenzie .....Date: 22<sup>nd</sup> February 2010

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Final Impact Assessment of proposed changes to the local authority building control charging regime**

<b>NE-ORR</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 1m</b>	1	One-off preparation and training costs, including adjustment of charging and accounting systems and guidance, estimated at an average of £3,000 per LA.
	<b>Average Annual Cost</b> (excluding one-off)		
<b>£ 0</b>		<b>Total Cost (PV)</b>	<b>£ 1m</b>
<p>Other <b>key non-monetised costs</b> by 'main affected groups' LAs will have lower income from accurately reflecting the cost of carrying out their building control functions in their charges thus reducing surpluses. It is difficult to estimate the potential reduction and this will be offset as a benefit to consumers / industry. Increased competition may also result in reduced income for AIs.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
<b>£ 0</b>		<b>Total Benefit (PV)</b>	<b>£ 0</b>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups' There will be a benefit to consumers / industry in terms of fairer and potentially reduced charges from greater accuracy (as above). There may also be a benefit over time in terms of reduced building control costs from greater competition and improved standards but there is no evidence to quantify.</p>			

**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	<b>Net Benefit Range (NPV)</b> <b>£ (0.9 - 1.4m)</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ (1.0m)</b>
-------------------------	-------------------------	---	---

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?	<b>£ 0</b>			
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?	<b>£ N/A</b>			
What is the value of changes in greenhouse gas emissions?	<b>£ N/A</b>			
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	No	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	<b>Net Impact</b>	<b>£</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### Introduction/Background

1. Local authorities (LAs) in England and Wales have been empowered to charge for carrying out their main building control functions relating to building regulations since the late 1970s. This derives from the 'user pays the costs' 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, which continues to be the overriding principle.
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 LAs. The main objective of this was to enable LAs to reflect their individual costs in setting their charges to help to encourage efficiencies and reduce charges and 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 LA charging 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 1998 Regulations). These regulations were primarily made under the power 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 primarily in relation to the estimated cost of the building work or, for small domestic projects, on the floor area.

### Rationale for Government Intervention (prior to Consultation)

5. Although it was generally considered that the 1998 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 value for money for consumers and the building industry.
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, most charges are primarily related to the estimated cost of the building work, so 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 (e.g. 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 (e.g. 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 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 1998 Regulations in 1999/2000 of £17m, i.e. 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, averaging £14m per annum (9 per cent of the total) and by 2005/06, the last year for which returns were collected, this had levelled out at around £7m (4 per cent of the total) but some LAs were still charging more than 50 per cent of costs. This would suggest that the 1998 Regulations have not enabled 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 there is a need to ensure that this is addressed in the changes to the 1998 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 as set out in the *Future of Building Control Implementation Plan* published in September 2009. 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 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 building projects based on a limited number of factors does not allow the results of an individual risk assessment approach to be reflected in the charges. This is inconsistent with the 'user pays the costs' 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 the necessary 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 regulations.

## Consultation

11. The Department therefore developed a package of proposals to address the deficiencies of the existing LA building control charging regime. The broad principles of the package - i.e. to introduce greater flexibility, accuracy and transparency and improve the competitive environment and standards within which LAs operate - were consulted on as part of the *Future of Building Control* consultation in 2008 and received broad support from across the industry. A commitment was also given to consult on the detailed proposals which were developed with input from key stakeholders, including representatives of LABC and were supported by the Building Regulations Advisory Committee (BRAC) who are independent statutory advisors to the Secretary of State.
12. The detailed proposals were the subject of a public consultation document, *Proposed Changes to the Local Authority Building Control Charging Regime* which included a consultation stage Impact Assessment, published on the Department's website<sup>6</sup> in April 2009. All consultees' responses have been compiled, reviewed and carefully considered. These have been used to inform the final proposals to be included in new charges regulations. The consultation results are published on the Department's website.
13. A total of 152 responses were received mostly from LAs, but also from AIs and other organisations and individuals. Generally, consultees supported the need to introduce more flexibility into the

<sup>6</sup> <http://www.communities.gov.uk/publications/planningandbuilding/lachargingregimeconsult>

charging regime, remove some restrictions and enable local authorities to more accurately relate their charges to the actual costs of carrying out their main building control functions. Most consultees supported the vast majority of the proposals and some provided additional comments or made suggestions for changes. Where appropriate, adjustments have been made to reflect this, e.g. the list of factors outlined in proposal 3 (see paragraph 17) have been reviewed and amended to take account of consultees' comments. The consultation also broadly supported the suggested analysis of the costs and benefits associated with introducing the new charging system. Where there was some disagreement; no evidence was provided to support alternative figures or analysis.

## Options

14. There were 2 options for consideration:

- Option 1: The first option was to do nothing and retain the current LA building control charging regime.
- Option 2: The second option was to introduce new regulations to take forward the package of proposals consulted on to address the deficiencies in the current charging system. Although presented as a package of measures some of these proposals have been modified as a result of the responses to the consultation. It should also be noted that some 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

15. Following consideration of the costs and benefits (paragraphs 18-33) and consultees' responses, the Department has developed new regulations – *The Building (Local Authority Charges) Regulations 2010* (the 2010 Regulations) - and accompanying guidance, which will implement the charging proposals and revoke the 1998 Regulations. We have worked closely with LABC contacts in formulating these policies and have participated in a steering group set up by the Chartered Institute of Public Finance and Accountancy (CIPFA) to update their guidance on LA building control accounting to support the 2010 Regulations.
16. The main aims of the 2010 Regulations will be to build on the principle of the devolved charge setting to LAs in order to:
- Introduce more **flexibility**, 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 (i.e. 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

17. The charges consultation paper listed and explained the charging proposals in detail. Some of these proposals have been modified to reflect the views of consultees. Outlined below are the proposals and a brief explanation of whether or not they will be taken forward by the 2010 Regulations (or in guidance where indicated):
- Proposal 1 – There will be a requirement for LAs to relate their charges to the recovery of the costs of carrying out building control function(s) in relation to particular building work or work of particular descriptions, i.e. individual projects.

- Proposal 2 – In addition to setting standard (also referred to as pre-fixed) charges, LAs will be able to individually determine a charge for building projects where appropriate to provide for more accurate charging on a project by project basis. As larger projects are most likely to differ in the level of building control input that may be required because of more complex design and construction issues, they are most likely to benefit from the ability to individually determine charges.
- Proposal 3 – LAs will be required to calculate their charges for carrying out building control functions by relating the average hourly rate of their relevant officers to the time spent carrying out the functions. They can also take into account an increased number of factors, for example the estimated duration of the building work and the anticipated number of inspections.
- Proposal 4 – LAs will be able to give more reductions (but not waivers) where appropriate but they will need to give consideration to this when considering the factors they propose to take into account in setting their charges. The proposal for more scope to give refunds is also being taken forward and allowance has been made for the deduction of administrative costs as suggested by consultees.
- Proposal 5 – LAs will also be able to increase a charge (i.e. raise a supplementary charge) where appropriate, for example where there have been substantial alterations to a design during the development phase and as a result more inspections are needed which may lead to additional costs. LAs will be required to provide a statement to applicants to explain any refund or request for a supplementary charge.
- Proposal 6 – The link requiring parity between charges for carrying different building control functions has been removed. The aim is for LAs to accurately recover the actual costs of carrying out each of their functions.
- Proposal 7 – The current restrictions relating to the height of the building and maximum floor area for charging for new housing and domestic extensions etc. has been removed. However, LAs can continue to set their charges relating to the floor area of buildings or extensions as appropriate and this can now be applied to all new and extended buildings.
- Proposal 8 – The exemption from charging for building work to provide access to, or accommodation / facilities in, existing buildings required for disabled persons has been clarified. In particular, the 2010 Regulations distinguishes between dwellings and other buildings. The exemption has also been extended to include provision for sleeping accommodation for carers where the disabled person requires 24-hour care.
- Proposal 9 – Although there was some disagreement from consultees, there are no plans to remove the requirement for LAs to publicise the making of their charging schemes and how they can be inspected, on accountability and transparency grounds. The requirement will be clarified in guidance.
- Proposal 10 – The position regarding charging requirements when LAs enter into joint arrangements and/or partnerships with each other to carry out building control functions will be clarified in guidance.
- Proposal 11 – There will be a more flexible and transparent annual accounting requirement relating to the balancing of total charges income with costs. LAs will also be required to publish an annual financial statement setting out their total income and costs, specifying any surplus or deficit. CIPFA will publish new building control accounting guidance to assist LAs in determining costs that they should be seeking to recover when setting their charges. The Department's proposals for monitoring the impact of the 2010 Regulations are set out in paragraph 36.
- Proposal 12 – A large number of consultees were concerned about the proposal to remove the derogation principle which provided for LAs to recover 90 per cent of their total costs (instead of 100 per cent, i.e. full cost recovery) through their charges income in certain circumstances. However, the evidence from past annual monitoring exercises carried out by the Department indicates that the derogation is very rarely used and the greater flexibility introduced by the new charging principles, particularly the accounting period, as well as the increasing tendency for smaller LAs to form formal partnerships operating as a single entity will mean the scope for using the derogation in future would be very small. The Department has therefore decided to proceed with its removal as this should have very little impact in practice.

- Proposal 13 – The consultation paper asked for views on the case for enabling LAs to charge for other building control services. There was strong support from consultees in particular for enabling a LA to charge for giving substantive ‘pre-application advice’ relating to their building control functions and provision has been made for this in the 2010 Regulations (i.e. consisting of more than an hour).
- Proposal 14 – The minimum and maximum fees for Determination applications submitted to the Secretary of State have been doubled as proposed, so as to more accurately reflect, with regard to the principle of full cost recovery, the Department’s costs of dealing with an application. NB This is expected to affect one or two cases a year so the impact will be minimal.
- Other proposals - In response to concerns raised by some consultees about the new charging flexibilities, LAs will be required to set out in their schemes how they will handle complaints about their charges.

## **Costs and Benefits**

### Reduction in LA surpluses

18. If we do not introduce a more flexible LA building control charging regime (i.e. paragraph 14, Option 1 – ‘Do Nothing’) there will be no impact on the level of surpluses 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 level of surpluses arising, leading to fairer and potentially reduced charges. The impact is likely to vary from one LA to another. Larger authorities are more likely to make surpluses and so will have greater scope for making reductions. They are also more likely to be involved with the larger building projects which may benefit most from the new charging proposals and to adopt the full range of flexibilities sooner rather than later.
19. It is estimated that the total surplus for all LAs could reduce by approximately 5 -10 per cent in the first year after the new regulations take effect which could equate to around £0.5m - £1m. 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 consumers and the 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 the costs’ principle is a social benefit. No additional evidence was provided by consultees and therefore the figures were not included in the net present value (NPV) figures section of the summary table.

### Costs of introducing and operating the new charging regime

20. 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 (e.g. guidance), training new staff, keeping IT systems up-to-date and carrying out the associated monitoring, accounting and auditing requirements.
21. 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 £1m overall. This has been reduced from the original estimated figure of £1.1m resulting from a Local Government reorganisation and recognition being given to formal LA partnerships operating a single charging scheme, as these mergers have seen a reduction in the total number of LAs (i.e. 332). Whilst many consultees indicated that the cost of £3,000 seemed reasonable, some suggested that this figure was a little low, but gave no indication of what would be more appropriate. As this figure is an average it would be expected that some LAs may pay slightly more. The NPV has therefore been calculated on the same basis (i.e. £3,000) but the range has been adjusted to reflect the fact that the cost may be slightly underestimated.

22. Once set up, the cost of operating and updating the new charging 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).
23. There is also potentially a cost to applicants of providing additional information to LAs to allow charges to be individually calculated where appropriate. It is anticipated that many LAs will continue to primarily use the current method of pre-fixing their charges (i.e. set standard charges) for most small building projects related to the floor area of the building or extension 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 the new flexibilities are 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 LAs 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 surpluses and charges.

#### Greater transparency, accuracy and fairness

24. The requirement for a more detailed and authorised 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.
25. 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. This will lead to fairer and potentially reduced charges for consumers and the building industry over time. It will also result in better competition between LAs and AIs in the provision of building control services. If we do nothing then these benefits will not be realised.

#### Improved building standards

26. 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 charges cannot be levied if, for example, the plans are defective and the work requires substantive building control input on site 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 and improve compliance with building regulations as the costs of providing the building control service are spread equally over good and bad alike, according to the cost of the building work or floor area.
27. The new flexibilities will allow LAs to set their charges according to the amount of input required from building control and 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 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 1 per cent reduction occurred this would result in an additional saving to both LAs and industry of £1.8m pa. If the current charging system is retained there will be no incentive to raise standards and therefore these potential benefits would not be realised. No additional evidence was provided during the consultation to either support or oppose these figures. Due to the uncertainty over the likely impact these figures have not been included in the NPV calculations.

#### Improved competition with private sector AIs

28. 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 approximately 70 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 (e.g. loft conversions), in many parts of the country the LA is the only provider for such work.

29. 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 building work. The new flexibilities will allow LAs to set their charges more accurately based on the 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 which the current charging system will not provide.
30. However, it should be noted that LAs will still be required to set their charges according to a fixed scheme governed by principles laid down in the new regulations. Although they will be able to take into account a greater range of factors and will be able to make adjustments if more or less building control input is required (e.g. more time spent checking plans or 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.
31. Most of the AIs who responded to the consultations 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 for choosing a building control body.
32. Although there is a potential for some work to transfer from AIs to LAs, we - and the AIs who responded to the consultations - 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 consumer and the building industry. 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 £1m pa. If we do nothing these potential benefits would not be realised. Again no additional evidence was provided by consultees to support or oppose these figures and due to the uncertainty over the likely impact these figures have not been included in the NPV calculations.
33. NB 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**

34. The key assumptions are that:

- There will be no on-going annual costs for LAs as the costs for running a new La building control 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**

35. It is expected that the package of charging measures will provide the following benefits:
- More accurate and fairer LA building control charges, based on the actual costs of providing services to users, reducing the potential to overcharge and large surpluses arising.
  - The safeguarding of building control income through improved accounting procedures and greater transparency.
  - Better value for money and potentially reduced charges for consumers and the building industry.
  - Higher building standards and greater compliance with building regulations.
  - Greater and more effective competition between LAs and private sector AIs.

### **Monitoring and evaluation**

36. The 2010 Regulations will come into effect on 1 April 2010 and outturn figures for charges income and expenditure should first become available at the end of the 2010/11 financial year, although the regulations will have a transitional provision allowing LAs to introduce a new charging scheme under the 2010 Regulations any time from 1 April to 1 October 2010. Notwithstanding the transitional provision, the Department (in Wales – the National Assembly for Wales) proposes to monitor LAs' building control income and costs on a three-yearly basis from 2012/13 to assess whether the 2010 Regulations meet their overriding accounting objective of enabling LAs to set charges which more accurately balance their income with their costs. We also propose to carry out a wider review of the impact of the 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.

## 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



## **Competition Assessment**

37. Competition between LAs and AIs is discussed in paragraphs 28–33. 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**

38. 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.
39. The fact that the new charging system should result in lower overall costs for the LA building control service, potentially leading to reduced charges, 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.
40. A small number of small firms, particularly AIs, responded to the consultations and the majority supported the proposals - see paragraph 31.

## **Sustainable Development, Carbon Assessment and Other Environment**

41. The charges consultation raised the possibility of introducing scope for LAs to waive or reduce, on a discretionary basis, their building control charges for 'green' building projects to encourage more sustainable buildings, subject to the views of consultees and confirmation of the legal vires. In the event, this suggestion was not widely supported and it was not felt possible to pursue this at present under the constraints of the existing charging power in the Building Act 1984.

## **Health Impact Assessment**

42. It is envisaged that a more flexible LA charging system will help to raise standards and improve compliance with building regulations (see paragraphs 26-27). As 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 buildings.

## **Disability Equality**

43. The 2010 Regulations will provide a streamlined and clearer provision relating to the exemption from LA charging for building control input in relation to certain building work carried out solely for the benefit of disabled persons and this provision has been extended to include work comprising sleeping accommodation for full time carers. Such work, to improve access and provide accommodation / facilities in existing buildings helps to improve the quality of life for disabled persons. The changes may result in the charge being waived for a greater number of such building projects.

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

44. We have considered the potential impacts of the changes to the charging regime on Legal Aid, Race Equality, Gender Equality, Human Rights and Rural Proofing and do not believe that there will be any negative impact on these or any risks involved.

