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STATUTORY INSTRUMENTS

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**1998 No. 3129**

**BUILDING AND BUILDINGS**

**The Building (Local Authority Charges) Regulations 1998**

*Made* - - - - *14th December 1998*  
*Laid before Parliament* *15th December 1998*  
*Coming into force* - - *1st April 1999*

The Secretary of State in exercise of the powers conferred on him by sections 1, 16(10), 35 and 50(3) of, and paragraphs 9 and 10(c) of Schedule 1 to, the Building Act 1984(1), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Building (Local Authority Charges) Regulations 1998 and shall come into force on 1st April 1999.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Building Act 1984;

“the Approved Inspectors Regulations” means the Building (Approved Inspectors etc.) Regulations 1985(2);

“building” has the meaning it has in the Principal Regulations;

“building notice” has the meaning it has in the Principal Regulations;

“building work” has the meaning it has in the Principal Regulations;

“carport” means a building forming a shelter for a vehicle, open on at least two sides;

“cost” does not include any professional fees paid to an architect, quantity surveyor or any other person;

“dwelling” has the meaning it has in the Principal Regulations;

“estimate” in relation to the cost of carrying out building work, means an estimate, accepted by the local authority, of such reasonable amount as would be charged for the carrying out

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(1) 1984 c. 55 to which there are amendments not relevant to these Regulations. For the definition of “prescribed” see section 126 of the Act.  
(2) S.I. 1985/1066, to which there are amendments made by S.I. 1987/792, 1989/1119, 1992/740, 1995/1387, 1996/1096 and 1998/2332.

of that building work by a person in business to carry out such building work (excluding the amount of any value added tax chargeable), and references to “estimated cost” shall be construed accordingly;

“extension” means an extension which has no more than three storeys, each basement level (if any) counting as one storey;

“the Principal Regulations” means the Building Regulations 1991(3);

“small domestic building” means a building (including connected drainage work within the curtilage of that building)–

- (a) which is used or intended to be used wholly for the purposes of one or more dwellings, none of which has a floor area exceeding 300m<sup>2</sup>, excluding any garage or carport;
- (b) the whole of which is–
  - (i) shown on plans deposited for the purposes of section 16 of the Act,
  - (ii) shown on plans accompanying a building notice, or
  - (iii) shown on plans given to a local authority in accordance with regulation 18 of the Approved Inspectors Regulations;
- (c) which has no more than three storeys, each basement level being counted as one storey, including such a building which incorporates an integral garage or to which is attached a garage or carport or both which shares one or more walls with that building.

(2) In these Regulations–

- (a) the floor area of–
  - (i) any storey of a dwelling or extension; or
  - (ii) a garage or carport,
 is the total floor area calculated by reference to the finished internal faces of the walls enclosing the area, or, if at any point there is no enclosing wall, by reference to the outermost edge of the floor;
- (b) the total floor area of any dwelling is the total of the floor area of all the storeys which comprise that dwelling; and
- (c) the total floor area of an extension of a dwelling is the total of the floor areas of all the storeys in the extension.

### **Authority to fix and recover charges**

3.—(1) A local authority are authorised, subject to and in accordance with these Regulations, to fix by means of a scheme (in these Regulations called a “scheme”) and to recover such charges as they may determine for or in connection with the performance of the functions of theirs relating to building regulations, as provided by these Regulations.

(2) A local authority are authorised, subject to and in accordance with these Regulations, to amend, revoke or replace any scheme which has been made by them in accordance with paragraph (1).

### **Principles of the scheme in respect of general charges**

4.—(1) A local authority are authorised, within a scheme, to make–

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(3) S.I. 1991/2768; relevant amendments are made in S.I. 1994/1850.

- (a) a charge (in these Regulations called “a plan charge”) for or in connection with the passing or rejection by the local authority of plans of proposed building work deposited with them in accordance with section 16 of the Act;
  - (b) a charge (in these Regulations called “an inspection charge”) for or in connection with the inspection of building work for which plans have been deposited in accordance with the Principal Regulations and with section 16 of the Act;
  - (c) a charge (in these Regulations called “a building notice charge”) for or in connection with the consideration of a building notice which has been given to the local authority in accordance with the Principal Regulations;
  - (d) a charge (in these Regulations called “a reversion charge”) for or in connection with the consideration of building work reverting to local authority control;
  - (e) a charge (in these Regulations called “a regularisation charge”) for or in connection with the consideration of an application under regulation 13A of the Principal Regulations and the inspection of any building work to which that application relates.
- (2) The sum of the plan charge and the inspection charge shall be equal to the building notice charge.
- (3) The reversion charge shall be equal to the building notice charge.
- (4) The regularisation charge shall be 20% greater than the building notice charge.
- (5) This regulation is subject to the provisions of regulation 8.

#### **Principles of the scheme in respect of income from the charges**

5.—(1) Subject to paragraph (2) below, the amount of the charges determined within a scheme by a local authority in accordance with these Regulations shall be such that the income to be derived, or which it is reasonably expected will be derived, from them during the relevant period shall be not less than the costs directly or indirectly incurred as determined in accordance with proper accounting practices, as defined by section 66(4) and (5) of the Local Government and Housing Act 1989(4), by that authority in performing their functions under the Principal Regulations during that period (the “proper costs”).

(2) Where the proper costs for building regulations control functions for a local authority do not exceed £450,000 for the relevant period, or where at least 65% of all charges received by it over the relevant period relate to charges arising under Regulation 7 (excluding charges arising under regulation 7(1)(a)), the income derived may be less than the income referred to in paragraph (1) above, but shall not be less than 90% of the costs to the local authority of performing their functions under the Principal Regulations.

(3) In calculating the amount of the proper costs, a local authority shall not include in the sum of those costs any costs which they incur as a result of the performance of their functions relating to building regulations which relate to building work required solely for disabled persons as defined by regulation 9 of these Regulations.

(4) Before determining the amount of any charge mentioned in paragraph (1) above, a local authority shall on the best information estimate a reasonable amount which represents the aggregate of the proper costs during the relevant period.

(5) In this regulation, the “relevant period” means a continuous period of 3 years commencing with the date on which a scheme comes into force (whether or not it is replaced by a further scheme during that period) in which the local authority fixes the amount of the charges mentioned in paragraph (1) above.

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(4) 1989 c. 42.

(6) A local authority shall, at the end of the financial year within which the local authority makes a scheme and immediately after the end of each successive financial year, prepare a statement which shall set out fully the scheme made by it and the amount of the income and proper costs.

#### **Principles of the scheme for establishing the basis on which charges shall be made**

6.—(1) A local authority shall determine within a scheme the charges referred to in regulation 4 by relating each charge to the estimated cost of the building work and to the matters referred to in paragraph (2) below.

(2) The matters referred to in paragraph (1) above are either or both of—

- (a) the existing use of a building, or the proposed use of the building after completion of the building works; or
- (b) whether the building work is in respect of the construction of a new building, or an alteration or extension to an existing building.

(3) Where the estimated cost of the building work is below £5,000, a local authority may determine that an inspection charge shall not be payable.

(4) Where building work comprises—

- (a) the installation of cavity fill insulation in accordance with Part D of Schedule 1 to the Principal Regulations where the installation is not certified to an approved standard, or is not installed by an approved installer or is not a part of a larger project comprising other building work, or
- (b) the installation of an unvented hot water system in accordance with Part G of Schedule 1 to the Principal Regulations where the installation is not part of a larger project comprising other building work, a local authority are authorised to fix their charges by reference to the estimated cost of the building work only, and are not authorised to make a plan charge in respect of such building work.

(5) Where building work comprises—

- (a) the installation of cavity fill insulation in accordance with Part D of Schedule 1 to the Principal Regulations where the installation is certified to an approved standard, or is installed by an approved installer or is part of a larger project comprising other building work, or
- (b) the installation of an unvented hot water system in accordance with Part G of Schedule 1 to the Principal Regulations where the installation is part of a larger project comprising other building work,

a local authority are not authorised to make any charge.

(6) The provisions of this regulation shall not apply to regulation 7 other than where regulation 7(5) applies.

#### **Principles of the scheme in respect of the erection of small domestic buildings, certain garages, carports and extensions**

7.—(1) Where building work comprises—

- (a) erection of one or more small domestic buildings; or
- (b) erection of a detached building which consists of a garage or carport (or both) with a total floor area not exceeding 40m<sup>2</sup> and which is intended for use with an existing dwelling; or
- (c) extension of any dwelling by a floor area not exceeding 60m<sup>2</sup>, including extension by the erection or extension of an attached garage or carport which is intended for use with the dwelling,

a local authority are authorised to determine their charges for that building work by reference to the floor area of the building or extension, as the case may be, and in the case of the work mentioned in sub-paragraph (c) the charges so determined shall cover any associated work relating to means of access.

(2) Where building work is of a kind mentioned in paragraph (1) above, a local authority may determine that an inspection charge shall not be payable where the total floor area of the building or extension is less than 10m<sup>2</sup>.

(3) Where any building work of a kind mentioned in paragraph (1)(c) comprises or includes the erection of more than one extension to a building used or intended to be used for the purposes of a single dwelling, a scheme shall provide that the total floor areas of all such extensions be aggregated in determining the relevant charge payable.

(4) Where the aggregation of the floor area of all extensions referred to in paragraph (1)(c) does not exceed 60m<sup>2</sup>, the scheme shall provide for the relevant charge to be based on the total floor area of the extensions.

(5) Where the total or the aggregation of the floor area of one or more extensions referred to in paragraph (1)(c) exceeds 60m<sup>2</sup>, the scheme shall provide for the relevant charge to be based on the estimated cost of the building work as prescribed in Regulation 6.

#### **Principles of the scheme in respect of reductions for repetitive building work or applications or notices for substantially the same work**

**8.** A local authority are authorised within a scheme to fix reductions to the charges they make under Regulation 4 in respect of building work where—

- (a) one application or building notice is in respect of two or more buildings or building works all of which are substantially the same as each other; or
- (b) an application or building notice is in respect of building work which is substantially the same as building work in respect of which plans have previously been approved or building works inspected by the same local authority, and where that local authority are satisfied that the owner of the plans who deposits them or who gives a building notice in respect of them, is the same person who originally deposited the plans or gave a building notice in respect of them.

#### **Principles of the scheme in relation to building work solely required for disabled persons**

**9.—(1)** A local authority are not authorised to fix by means of a scheme and recover a charge—

- (a) where they are satisfied that the whole of the building work in question consists of an alteration; and
- (b) where the building work is—
  - (i) solely for the purpose of providing means of access to enable disabled persons to get into or out of an existing building and to or from any part of it, or of providing facilities designed to secure the greater health, safety, welfare or convenience of such persons; and
  - (ii) is to be carried out in relation to—
    - (a) an existing building to which members of the public are admitted (whether on payment or otherwise); or
    - (b) an existing dwelling which is, or is to be, occupied by a disabled person.

(2) A local authority are not authorised to fix by means of a scheme and recover a charge which consists solely of a charge in respect of building work for the provision or extension of a room in a dwelling where they are satisfied that the sole use of the room is or will be—

- (a) for the carrying out of medical treatment of a disabled person which cannot reasonably be carried out in any other room in the dwelling; or
- (b) for the storage of medical equipment for the use of a disabled person; or
- (c) to provide necessary accommodation or a necessary facility by adapting or replacing accommodation or a facility which already existed within the building which was incapable of being used, or used without assistance, by the disabled person.

(3) In this regulation, “disabled person” means a person who is within any of the descriptions of persons to whom section 29(1) of the National Assistance Act 1948<sup>(5)</sup> applied, as that section was extended by virtue of section 8(2) of the Mental Health Act 1959<sup>(6)</sup>, but not taking into account amendments made to section 29(1) by paragraph 11 of Schedule 13 to the Children Act 1989<sup>(7)</sup>.

### **Principles of the scheme as to the payment and refunding of charges**

**10.**—(1) A scheme made under these Regulations shall provide that—

- (a) any plan charge shall be payable when plans of the building work are deposited with the authority;
- (b) any inspection charge shall be payable on demand made after the authority carry out the first inspection in respect of which the charge is payable;
- (c) any building notice charge shall be payable when the building notice is given to the authority;
- (d) any reversion charge shall be payable for building work in relation to a building—
  - (i) which has been substantially completed before plans are first deposited with the authority in accordance with regulation 18(2)(a)(i) of the Approved Inspectors Regulations, or
  - (ii) in respect of which plans for further building work have been deposited with the authority in accordance with regulation 18(3) of the Approved Inspectors Regulations<sup>(8)</sup>

on the first occasion on which those plans have been deposited;

- (e) any regularisation charge shall be payable at the time of the application to the authority in accordance with regulation 13A<sup>(9)</sup> of the Principal Regulations;
- (f) any charge which is payable to the authority shall be paid together with an amount equal to any value added tax payable in respect of that charge;
- (g) notwithstanding sub-paragraphs (a) to (e), part of any charge which is payable to the authority may, in a particular case, and with the agreement of the authority be paid by instalments of such amounts payable on such dates as may be specified by the authority;
- (h) where a plan charge has been paid and not refunded, the authority may, in any case they consider reasonable, decide not to make a further plan charge in respect of plans subsequently deposited for substantially the same building work;
- (i) where for any reason an authority do not give notice of passing or rejection of plans within the period required by section 16 of the Act, they shall refund any plan charge paid;

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<sup>(5)</sup> 1948 c. 29.

<sup>(6)</sup> 1959 c. 72.

<sup>(7)</sup> 1989 c. 41.

<sup>(8)</sup> S.I. 1985/1066, to which there are amendments made by S.I. 1987/792, 1989/1119, 1992/740, 1995/1387 and 1996/1096.

<sup>(9)</sup> S.I. 1994/1850 regulation 2.

- (j) any plan charge, inspection charge, reversion charge, or building notice charge is to be payable by the person who carries out the building work, or on whose behalf the building work is carried out, and any regularisation charge is to be payable by the owner of the building.

(2) Plans which are deposited otherwise than in accordance with a requirement imposed under paragraph (1)(a) or an agreement under paragraph (1)(g) are not deposited in accordance with building regulations for the purposes of section 16 of the Act; and a building notice given otherwise than in accordance with a requirement imposed under paragraph (1)(c) or an agreement under paragraph (1)(g) is not validly given for the purposes of the Principal Regulations.

### **Principles of the scheme in respect of the submission of estimates**

**11.**—(1) A scheme shall provide that no later than the time when plans are deposited with the local authority under section 16 of the Act, or a building notice is given to the local authority, they shall, except in the case of building work described in regulation 7(1), have received a written estimate of the cost of the building work.

(2) A scheme shall also provide that where building work of a kind—

- (a) not described in regulation 7(1); and
- (b) in respect of which a reversion charge is payable,

reverts to local authority control, any plans relating to that building work given to the authority in accordance with regulation 18 of the Approved Inspectors Regulations shall be accompanied by a current estimate in writing of the cost of that building work.

### **Publicity**

**12.**—(1) A local authority shall, not less than 7 days before the date on which a scheme (including any replacement scheme) is to come into effect, publish in their area, in such manner as they consider appropriate, the fact that they have made the scheme, the date on which it comes into effect and the address where it may be inspected.

(2) A local authority shall, not less than 7 days before the date on which an amendment to a scheme is to come into effect, publish in their area, in such manner as they consider appropriate, the fact that they have made the amendment (identifying its subject-matter), the date on which it comes into effect and the address where the amendment and the scheme as amended may be inspected.

(3) A local authority shall maintain a copy of any scheme currently in force as made by them, or as made and amended by them, and shall make this available for inspection free of charge by any member of the public on request and at reasonable times at the address which it has published in accordance with paragraphs (1) and (2).

### **Contravention of Regulations not to be an offence**

**13.** Each of these Regulations is designated as a provision to which section 35 of the Act (penalty for contravening building regulations) does not apply.

### **Transitional provisions**

**14.**—(1) Where before 1st April 1999 plans have been deposited or a building notice has been given in respect of any building work and, on or after that date, plans are deposited or such a notice is given in respect of substantially the same building work, any charges which would be payable under a scheme in relation to the building work which is substantially the same shall, if the local authority consider it reasonable, not be payable.

(2) The Building (Prescribed Fees) Regulations 1994<sup>(10)</sup> shall continue to apply in relation to building work for which plans were first deposited or a building or initial notice was given before 1st April, 1999.

#### **Fees for determinations of questions by the Secretary of State**

**15.**—(1) The fee which shall accompany an application for a reference under section 16(10) of the Act (determination of questions by the Secretary of State) is—

- (a) where the question is whether plans of proposed work are in conformity with building regulations, an amount equal to half the plan charge fixed by the scheme made and published by the local authority concerned, subject to a minimum fee of £50 and a maximum of £500, or
- (b) where the question is whether the local authority are prohibited from rejecting plans of proposed work by virtue of section 16(9) of the Act, £50.

(2) The fee which shall accompany an application for a reference under section 50(2) of the Act of the question whether plans of work are in conformity with building regulations is an amount equal to half the plan charge fixed by the scheme made and published by the local authority to whom the plans certificate is or would be given, subject to a minimum fee of £50 and a maximum of £500.

#### **Revocation**

**16.** The Building (Prescribed Fees) Regulations 1994 are revoked.

Signed by authority of the Secretary of State

*Nick Raynsford*  
Parliamentary Under-Secretary of State,  
Department of the Environment, Transport and  
the Regions

14th December 1998

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<sup>(10)</sup> S.I. 1994/2020.



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations authorise local authorities to fix and recover charges for the performance of their building regulations control functions according to a scheme governed by principles laid down in the regulations. The regulations make each local authority responsible for setting their own building regulations charges for the five functions prescribed; and for doing so within the accounting and administrative requirements laid down in the regulations. The regulations revoke the Building (Prescribed Fees) Regulations 1994 (“the 1994 Regulations”).

Regulation 2 contains definitions. Differences from the 1994 Regulations include the following: “carport” is now defined; the definition of “small domestic building” now incorporates connected drainage building work and an increased total floor area of a dwelling of 300m<sup>2</sup>; and the definition of “building work” ensures that work such as underpinning, installation of insulation material in cavity walls, and the installation of unvented hot water systems comes within the provisions of these regulations.

Regulation 3 provides the authority for a local authority to fix their charges by means of a scheme and recover those charges in respect of the five building regulations control functions defined in Regulation 4.

Regulation 4 sets out the five charges which may be made for the five different control functions of the Building Regulations and prescribes the mathematical relationship which must apply between them.

Regulation 5 prescribes the principles of the scheme in respect of the income to be derived by a local authority from the charges it fixes. The basic principle, subject to an exception in regulation 5(2), is that the income derived over any 3 year period shall not be less than the costs directly or indirectly incurred. The Regulation also prescribes the method for estimating any of the costs and requires the preparation of a statement setting out the scheme and matters relating to it. Regulation 5(3) excludes the costs from the provision of this regulation in respect of functions carried out on building work solely for disabled persons.

Regulation 6 prescribes the main principle on which the charges are to be determined and fixed in the scheme: that, with the exception of certain types of residential building work prescribed in Regulation 7, charges shall be related to the estimated cost of the building work. Regulation 6(2) provides additionally that the use and type of building work involved are to be taken into account when fixing the charges. Regulation 6(3) prescribes a discretion not to charge for the inspection function where the estimated cost of work falls below £5,000. Regulations 6(4) and 6(5) contain special provisions relating to the installation of cavity fill insulation and unvented hot water systems. Regulation 6(6) continues the principle of the 1994 Regulations that charges relating to small domestic buildings and domestic garages, carports and extensions are to be based on floor area.

Regulation 7 provides for determining charges for the erection of one or more small domestic buildings and the erection of certain garages, carports or extensions. Where more than one extension is involved, the floor areas must be aggregated and charged according to floor area up to a limit of 60m<sup>2</sup>.

Regulation 8 provides a discretion for a local authority to fix reductions to their charges in their scheme in two circumstances. The first is where building work contained in one application or building notice is in respect of two or more buildings or building works which are substantially the same. The second is in respect of an application or building notice in respect of building work

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which is substantially the same as that previously approved or previously inspected by the same local authority and where the owner of the plans or the person giving the notice is the same.

Regulation 9 provides that no charges shall be fixed or charged in respect of certain specified building work solely required for the purposes of disabled persons.

Regulation 10 deals with payment. It provides the point at which the five different charges are payable, together with any VAT; for any charges to be paid by instalments by agreement; for refunds in certain circumstances; and whom will be responsible for payment of the different types of charge.

Regulation 11 relates to the submission of estimates in respect of the depositing of plans, or the giving of a notice, or the reverting of building work to the local authority.

Regulation 12 requires a local authority to publish its scheme within the local authority area within 7 days of making, amending or revoking it, and to provide details including the date it is to come into effect and where it can be inspected. The Regulation also requires that the scheme should be kept up-to-date and available for inspection by any member of the public free of charge.

Regulation 13 prevents contravention of any of the regulations from being an offence under the Building Act 1984.

Regulation 14 contains transitional provisions.

Regulation 15 prescribes fees payable to the Secretary of State where questions are referred to him for a determination under sections 16 and 50 of the Building Act 1984.

Because these Regulations do not impose new or additional types of charges, a Regulatory Impact Assessment has not been prepared.