

Consultation on proposals for  
Fees and Charges Regulations  
for the Building Safety Regulator's  
regulatory functions

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# 1. Background and purpose of the consultation

## 1.1 Background

- 1.1.1 Following the Grenfell Tower tragedy, the government appointed Dame Judith Hackitt to lead an independent review of building regulations and fire safety. In her report, [Building a safer future](#), Dame Judith outlined a new approach to managing fire and structural safety risks in high-rise multi-occupied residential buildings. Overall, 53 recommendations were made for government and industry to drive the cultural change and right behaviours necessary to improve building safety.
- 1.1.2 Government committed to implementing Dame Judith Hackitt's recommendations and introduced the Building Safety Bill in Parliament. The bill received royal assent and became an act of Parliament on 28 April 2022. The [Building Safety Act 2022](#) brought forward a package of legislative changes to make buildings safer, deliver improvements across the entire built environment and strengthen oversight and protections for residents in high-rise buildings. Its focus on risk helps owners to manage their buildings better, while giving the home-building industry the clear, proportionate framework it needs to deliver more, better, high-quality homes.
- 1.1.3 A key part of these reforms includes a new more stringent regulatory regime for certain buildings, known as higher-risk buildings. The new more stringent regulatory regime will place legal responsibilities on those who commission building work, participate in the design and construction process and those who are responsible for managing structural and fire safety in higher-risk buildings when they are occupied. These people will be called dutyholders during design and construction, and accountable persons when the building is occupied. When a building is being refurbished this may involve both dutyholders and accountable persons, as many buildings will remain occupied during refurbishment.
- 1.1.4 Requirements of the new more stringent regime are being brought forward through part 3 and part 4 of the Building Safety Act 2022 and will be supported by a package of secondary legislation. The new requirements include a series of gateway points during the design and construction of a higher-risk building, a requirement to register the building prior to occupation, the creation of a safety case and safety case report during occupation, duties to engage residents, the ongoing management of a digital golden thread of information throughout the building lifecycle and the creation of a mandatory occurrence reporting framework.

- 1.1.5 The review also recommended the establishment of a new national Building Safety Regulator (BSR) and in January 2020, government announced the establishment of BSR within the Health and Safety Executive (HSE). BSR will enforce the new more stringent regulatory regime overseeing compliance with the new regulations once they come into force and promoting the competence and organisational capability of professionals, tradespeople and building control professionals working on all buildings.
- 1.1.6 In accordance with the review's recommendation that the regulatory framework must incentivise duty holders to do the right thing and those whose work needs the highest level of intervention and oversight should pay the highest cost, BSR will implement a cost recovery regime. The Building Safety Act gives BSR appropriate powers to recover the costs incurred in the fulfilment of its relevant statutory functions. Some of BSR's costs will be funded by government (for example, the costs of developing policy and some elements of the oversight and competence functions which are not deemed specific to duty holders) with funding sought through DLUHC's future spending review bids.
- 1.1.7 Section 28 of the Building Safety Act gives the Secretary of State the power to make regulations to make provision authorising the regulator to charge fees and recover charges for or in connection with the performance of a relevant function. 28(3) states that these regulations may provide for the publication of a charging scheme setting out how those fees and charges are to be determined. Sections 7(2) and (3) allow the regulator to make proposals to the Secretary of State for the making of regulations, after consulting such persons as it considers appropriate.
- 1.1.8 As an established regulator experienced in operating cost recovery regimes, HSE was asked to take on the preparation of proposed secondary legislation (regulations) and the charging scheme designed to put these powers into effect and provide the necessary framework for BSR cost recovery. HSE has developed these proposals with the support of officials from DLUHC policy, Local Authority Building Control, the Home Office, and fire and rescue authorities.
- 1.1.9 We are now consulting on the draft proposals. This is being done in line with the relevant provisions of the Building Safety Act, with the intention that, after consultation, we will propose regulations and a charging scheme to the Secretary of State for the Department of Levelling Up Housing and Communities (DLUHC).

1.1.10 Whilst the Building Safety Act says we must consult on the regulations rather than the charging scheme, we are including the charging scheme in order to help make sense of the regulations.

## 1.2 Purpose of the consultation

1.2.1 This consultation sets out the draft proposals for the cost recovery legislative package, made up of draft secondary legislation and the corresponding charging scheme.

1.2.2 The proposed Building Safety (Fees and Charges) Regulations 202[3] empower BSR to charge fees and recover charges for performing the relevant (chargeable) functions.

1.2.3 BSR may call on other public authorities and, where necessary, additional third parties to provide the required expertise and assistance needed in performing a chargeable function. The regulations therefore also provide for BSR to recover the costs of reimbursing these relevant authorities and remunerating third parties for their actions in complying with a BSR request or directive for assistance.

1.2.4 The proposed regulations also require that the fees and charges to be recovered for, or in connection with, the performance of the chargeable functions are to be set out in a charging scheme; and calculated in accordance with that charging scheme.

1.2.5 The charging scheme sets out and explains:

- the chargeable activity for which BSR will charge fees and recover charges.
- the trigger for each chargeable activity.
- who is required to pay the fee/charge for each chargeable activity.
- how those fees or charges will be calculated.
- how payments and repayments are processed; and
- the queries and disputes process.

1.2.6 The charging scheme must be published by the regulator at least seven days before the date on which the scheme is to come into effect. In practice, changes will be publicised as far in advance as possible. The regulations themselves must be periodically reviewed, and they will be consulted on and remade as necessary to amend the chargeable functions, or if the reviews identify any necessary amendments.

**1.2.7 We are looking for your views as to whether the cost recovery proposals as set out in the draft legislation and charging scheme (and, specifically, the trigger points for fees and charges) seem reasonable, and whether the proposed approach means costs are sought from the appropriate person.**

**1.3 Out of scope.**

1.3.1 The following were debated in the passing of the bill and have been set out within the Building Safety Act and are therefore out of the scope of this consultation:

- What BSR can set a fee or charge for (the “chargeable functions”).
- BSR’s responsibilities under the Building Safety Act or Building Act 1984 (as amended).
- What costs may, or may not, be passed on to residents and leaseholders from those charged. (For the latest on leaseholder protections you may wish to refer to the [BSR factsheet for leaseholders](#) published by DLUHC on gov.uk).

1.3.2 The consultation explains how cost recovery rates will be calculated but does not include the fixed fees or the hourly rates which BSR, fire and rescue authorities (FRAs), Local Authority Building Control (LABC) and others will ultimately charge. These are not being consulted on but will be developed and modelled as the relevant services and associated processes are designed and finalised. The cost recovery rates will be published before implementation.

1.3.3 The detailed drafting of the legislation is a matter for government legal services and is therefore out of scope.

1.3.4 Comments on aspects which are deemed to be out of scope of this consultation will not be considered.

## **2 The proposed BSR cost recovery approach**

2.1 In line with the recommendations from the review to establish a BSR cost recovery regime, the proposed secondary legislation and corresponding charging scheme aim, as far as is feasible, to recover the costs BSR incurs in carrying out its relevant statutory duties under the Building Safety Act.

2.2 The cost recovery approach is in line with HSE’s other major hazard regimes (for example, Control of Major Accident Hazards and Offshore safety) where the regulator recovers its costs from regulated parties to deliver its relevant risk

based regulatory intervention activity. This higher-risk building sector includes significant hazard, risk, and issues of public concern. BSR will take a proportionate approach ensuring the amount of regulatory effort and associated costs incurred by dutyholders reflects the risk profile and necessary regulatory intervention.

- 2.3 The principles of this approach are for BSR to cost recover (including costs of external expertise and assistance where engaged) based on the following:
- applying hourly rates as a cost-effective and equitable cost recovery basis in situations where the amount of regulatory effort may vary (such as the regulation of Higher-Risk Buildings (HRBs) and other buildings in scope). These will be a blended (meaning they will include administration and management time) hourly rate which seeks to recover the full cost of delivering the function.
  - applying fixed fees for more uniform regulatory activity such as the registration of building inspectors and building control approvers. Where fixed fees are charged, the fee will reflect the average (forecast) effort to deliver the function.
  - maintaining continuity of approach wherever appropriate. For example, the current principle/practice of the developer paying for building control will be retained for the building control process set out in secondary legislation under the Building Safety Act.
  - limiting the scope of BSR's fees and charges to cost recovery, other than where it acts in an advisory capacity on the specific request of a customer, in a discretionary commercial arrangement.
- 2.4 Where BSR requests (or directs) the expertise and/or assistance of other 'relevant authorities' (local authorities and fire and rescue authorities), their costs are determined by the relevant authorities independently, in line with the relevant elements of Managing public money<sup>1</sup> and the Chartered Institute of Public Finance and Accountancy (CIPFA) local authority building control accounting guidance<sup>2</sup>. Where applied, these rates will be identified on the invoice, as required by the regulations.
- 2.5 Where work is contracted to a third party, the actual cost of the service will be recovered and identified as such on the invoice.
- 2.6 BSR will set fees and charges in line with the Managing public money guidance, seeking to recover the full cost of the relevant activity based on the best

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<sup>1</sup> [Managing public money - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>2</sup> [LA Building Control Accounting Guidance | CIPFA](#)

available activity plans and forecasts, and seeking to avoid material surpluses or deficits. Using a charging scheme allows BSR to take advantage of the greater flexibility to rapidly update, either by decreasing or increasing fees and charges, to ensure they meet this objective.

- 2.7 With some exceptions (for registrations, for example) where the associated fees are required up front, cost recovery will be through invoicing. Regulation 11 of the statutory instrument and annex C of the charging scheme sets out the process for how BSR will do this.
- 2.8 Where regulatory action leads to prosecution through the courts, the regulatory costs will be recovered up to the beginning of the prosecution process (laying the information), following which the costs will be claimed through the courts in line with existing HSE procedures for claiming costs associated with prosecutions.

### **3 Overview of the proposed Building Safety (Fees and Charges) Regulations 202[3].**

- 3.1 The proposed Building Safety (Fees and Charges) Regulations 202[3] will be made in exercise of the powers conferred by sections 15(4) and 28 of the Building Safety Act 2022 and section 105B of the Building Act 1984. The regulations are briefly summarised below.
- 3.2 **Chargeable functions and the charging scheme (regulations 3 and 4):** Provisions for BSR to charge fees and recover charges for, or in connection with, the performance of a chargeable function; the list of those chargeable functions; and the requirement for BSR to set out the fees and charges to be sought for carrying out those chargeable functions in a charging scheme. Also, any fees and charges payable under the regulations must be calculated in accordance with the published charging scheme.
- 3.3 **Persons (legal entities) to be charged (regulations 5-8):** Identifies the legal entities who will be charged for the carrying out of any related/subsequent enforcement activity for BSR's chargeable functions. The scope of charges for BSR enforcement activity and the requirement for BSR to refund any fees and charges paid if an appeal against the action taken by BSR is upheld are also set out.
- 3.4 **Fees and charges for reviews and appeals (regulation 9):** Provisions for fees and charges relating to:
  - an application for BSR to review a decision it has made; or

- an appeal against the decisions or actions of a local authority or registered building control approver.

3.5 **Reimbursement of relevant authorities (regulation 10):** Provisions for BSR to recover fees and charges for or in connection with its reimbursement of any expenditure incurred by a relevant authority.

3.6 **Payment of fees and charges (regulation 11):** Provisions covering the invoicing and payment of BSR's costs (fees and charges).

3.7 The proposals set out in this consultation apply to England only, with the exception of the regulator's enforcement powers under schedule 2 of the Building Safety Act 2022 which extend and apply to England and Wales (although they only relate to breaches in England).<sup>3</sup>

#### 4 The proposed BSR charging scheme.

4.1 The proposed BSR charging scheme describes the chargeable activity for which a fee or charge is to be made in "schedules" and each schedule has a clear reference to the specific chargeable function to which it refers. It also sets out the trigger point for fees and charges and the person(s) from whom fees and charges will be sought.

#### 4.2 Payment of the fees and charges.

4.2.1 BSR will seek to recover the costs for chargeable functions as:

- a fixed fee; and/or
- a charge for the costs of BSR's regulatory effort (hours worked) and any additional costs for any relevant authority or third-party support that was required.

4.2.2 The fees and charges set out in the charging scheme will be charged to the following:

- **The client:** the person for whom a project is carried out.

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<sup>3</sup> An authorised officer's investigatory powers extend and apply to premises in England and Wales but only in relation to a relevant building function, which is any function of the regulator under, or under an instrument made under, Part 4 of the Building Safety Act 2022 or under the Building Act 1984. The relevant building functions apply in England and not in Wales, which is the reason why the regulator's Schedule 2 powers only relate to a breach in England. By way of example, this could mean that if a registered building control approver is suspected of breaches of the professional conduct rules in England and has an office in Cardiff where there may be evidence relating to the breaches, the regulator's authorised officers may exercise their Schedule 2 powers in respect of the Cardiff office to enter and seize evidence etc.



- **The principal accountable person/accountable person:** The accountable person (AP) is the duty holder throughout the period during which the building is occupied (the in-occupation phase). Where a building has only one AP they will by default also be the principal accountable person (PAP) but where there are two or more APs for a building, one will be formally designated as the PAP.
- **The applicant:** for either the registration of building control approvers/ building inspectors or for a review of a decision of the regulator (BSR).
- **The building control professions.** The relevant building control bodies or building control professional.
- **The appellant:** the person/body appealing against a decision of a local authority or registered building approver.
- **The regulated party:** The party against whom any enforcement action is taken by BSR.

#### 4.3 Overview of the fees and charges proposed.

4.3.1 The fees and charges which may be required or recovered by BSR from the various entities listed in 4.2.2. are briefly described below. The descriptions below describe the charges in general terms; the specific detail is set out in the relevant charging scheme schedules.

#### 4.4 The client

4.4.1 In essence, the client will be charged for the costs to BSR for dealing with activity in relation to buildings in the design, construction, and completion phase, for example building control application, completion certification of building work, particular actions falling under the Building Act 1984, and inspection and testing in that phase (**schedule(s) 1-8**).

#### 4.5 The principal accountable person/ accountable person.

4.5.1 In essence, the principal accountable person or accountable person will be charged for the costs to BSR for dealing with activity in relation to occupied buildings including registration, building assessment certification, the review of a safety case report, and investigations of incidents and potential risks involving building safety as well as any non-compliance (**schedule(s) 8-14**).

## 4.6 The applicant

4.6.1 The applicant will be charged for the costs to BSR associated with:

- the determination of applications for registration of a person as a building inspector /building control approver and the maintenance of the register of building inspectors /building control approvers (schedules 15-16).
- the review, under the relevant sections of the Building Safety Act 2022, of a prescribed decision of the regulator (schedule 20).

## 4.7 Building control bodies or professionals.

4.7.1 Building control bodies and professionals will be charged for:

- regulatory investigations and enforcement of:
  - professional misconduct and/or any contravention of the code of conduct for registered building inspectors (schedule 17).
  - professional misconduct or any contravention of the operational standards rules and the professional conduct rules applicable to local authorities or registered building control approvers (schedule 18).
- regulatory inspections (audits) of building control bodies (schedule 19).

## 4.8 The appellant

4.8.1 The appellant will be charged for the costs to BSR of the conduct of an appeal by BSR against decisions or actions of a local authority or registered building control approver. (Should the appeal find in favour of the applicant, any costs charged by BSR in conducting the appeal would be exempted or refunded in whole or part.) (**schedule 21**).

## 4.9 Regulated parties.

4.9.1 Regulated parties will be charged for the costs to BSR for:

- any regulatory intervention undertaken by BSR to secure compliance with or in connection with the imposition of a sanction in response to a contravention of a building enactment or requirement imposed by virtue of such an enactment (schedule 22).
- prosecutions under the relevant sections of the Building Safety Act 2022, and the Building Act 1984 (schedule 23).

## 4.10 Queries and disputes

There is a separate resolution process to deal with queries and disputes regarding any BSR fees and charges. This is set out in annex D of the charging scheme.