



# **Consultation on proposed Building Safety Regulator fees and charges regulations**

Consultation response

August 2023

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# Introduction

1. Government has acted to improve building safety through the Building Safety Act, which became law on 28 April 2022.
2. The Building Safety Act 2022 (the Act) 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 built environment industry the clear, proportionate framework it needs to deliver more, better, high-quality buildings. A key part of these reforms includes a new more stringent regulatory regime for certain buildings, known as higher-risk buildings.
3. The Act aims to strengthen the regulatory oversight and protections for residents in higher risk residential buildings<sup>1</sup> throughout their lifecycle (i.e., planning, design, construction and occupation phases) as well as the regulatory oversight of the safety performance of buildings generally and competence among the building sector professions and regulators. HSE is designated as the Building Safety Regulator (BSR) under the Act with the duty and powers to enforce the new, more stringent, regulatory regime.
4. BSR will oversee compliance with the new regulations once they come into force and promote the competence and organisational capability of professionals, tradespeople and building control professionals working on all buildings. The Act gives BSR appropriate powers to recover the costs incurred in the fulfilment of its relevant statutory functions. Regulations may be made under the Act authorising BSR to charge fees to recover the costs of its activities for and in connection with the performance of a relevant function.
5. The regulations referred to in Paragraph 4 can only be made by the Secretary of State for the Department for Levelling Up, Housing and Communities, but they may also consider proposals for regulations from the regulator (BSR).
6. As an established regulator experienced in operating cost recovery regimes, HSE (as BSR) was asked to take on the preparation of proposed secondary legislation (regulations) and a charging scheme, to put these powers into effect and provide the necessary framework for BSR cost recovery.
7. Before making any proposals, BSR (the regulator) must consult such persons as it considers appropriate. HSE (as BSR) consulted on the draft proposals from 1 August

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<sup>1</sup> The term “Higher Risk Residential Building” is defined in Section 65 of the Act.

to 7 October 2022, with the intention that, after considering responses, we would then propose regulations and a charging scheme to the Secretary of State (SoS) for the Department for Levelling Up Housing and Communities (DLUHC).

8. The cost recovery proposals presented for consultation were developed in accordance with the relevant provisions of the Act, and with the support of officials from DLUHC, Local Authority Building Control, the Home Office, and fire and rescue authorities. The policy intent of the proposals is the implementation of an effective, proportionate approach through which BSR will recover its reasonable costs while also incentivising dutyholders to do the right thing.
9. The draft Statutory Instrument (The Building Safety (Fees and Charges) Regulations [2023]) on which we consulted allows BSR to recover the costs of specific chargeable functions through fees and charges. Whilst the Act says we must consult on the regulations rather than the charging scheme, we included the draft charging scheme in order to help make sense of the regulations in this first instance.
10. The 10-week consultation sought views on whether the proposals were reasonable and fair, as well as whether the proposals were perceived to have or risk adverse effects on persons with protected characteristics.
11. This paper summarises the replies received and sets out our response to them in terms of our proposals to DLUHC for BSR Fees and Charges Regulations. Proposals also needed to align with developing secondary legislation and operational policy and any changes made to proposals since the consultation are also set out in this paper.
12. Proposals are for DLUHC SoS to consider and make and lay any final regulations, in line with developing secondary legislation and government financial policy; nothing in our proposals therefore is at this time confirmed as government policy.

## The consultation process

13. The consultation was live on HSE's Citizen Space Consultation Hub website for 10 weeks between August 1 - October 7, 2022. Responses were accepted via online survey and by email. A copy of the consultation questionnaire is provided at Annex 1.
14. The consultation generally sought to establish whether the cost recovery proposals were considered reasonable and also whether there were any perceived adverse effects from the proposals on persons with protected characteristics.
15. This was an open consultation. Due to the subject matter as well as the technical nature of the regulations and charging scheme detail, we expected the consultation to be of most interest to industry and trade stakeholders.
16. There were more than 2,500 online views of the consultation and 38 responses were made to the consultation during this period. The demographics of respondents reflected a broad spectrum of the expected audience for the consultation i.e., industry and trade stakeholders, including local regulators and new dutyholders.
17. We acknowledge the quality and breadth of the responses from all respondents. We also note the willingness among respondents to be contacted further if BSR needed to or believed it would be useful to follow up on individual responses.
18. We have carefully considered all replies to the consultation and set out a summary of and our response below.

# Overview of the consultation responses

19. Both quantitative and qualitative analysis of the responses to the consultation showed broad support of the proposals overall. Some useful issues were brought to our attention for consideration as well. The responses to the individual questions are summarised in more detail below.

## Summary of responses and analysis

### a) Profile of the respondent population (Demographic questions)

20. The consultation included questions to understand:
- Whether the respondent was an individual or represented an organisation.
  - The capacity in which the respondents were responding.
  - The type of organisation the respondents either worked for, represented or owned/managed.
  - The size of the organisation represented by the respondents.
21. As we expected, interest in the consultation was primarily from the potential duty holders (industry and trade stakeholders) - particularly local regulators. 38 responses were received. Our analysis of the responses to these questions shows the consultation achieved good engagement across the spectrum of that expected audience i.e.:
- Sector individuals and organisations.
  - Various sized organisations ranging across the self-employed, Small and Medium Businesses, to larger organisations.
  - Professional and trade associations representing sectors within the industry.
  - Relevant authorities (enforcers) and other dutyholders under the proposed legislation.
  - There was also one response from a law firm on behalf of owners/investors of buildings in scope.

### b) The reasonableness of the overall BSR cost recovery proposals

22. Consultees were asked “Overall, do you think the proposed BSR cost recovery proposals are reasonable?”

23. The responses to this question were mainly positive. Of the 36 responses, most participants (23) indicated that they agreed with the proposals; 6 participants did not agree; and 7 offered no opinion (neither agreed nor disagreed).
24. Positive reactions included comments on proposals such as being 'fair, 'balanced', 'sensible', 'proportionate', and supporting behaviour change to focus on safety.
25. Those who offered no opinion were still in the main supportive of the proposals in comments but largely wanted additional detail on costs or various aspects of how the process would work in practice before expressing a definite opinion. However, these were operational issues outside the scope of the consultation. A couple suggested particular or general costs should be fixed/ flexible or estimated.
26. For those who did not agree BSRs proposals were reasonable overall, our analysis suggests the responses again included issues outside the scope of the consultation including views on matters already outlined in the Act<sup>2</sup>. There was also a concern that HSE may expand the charging scheme greatly over time. Again, a couple of respondents felt that particular or general costs should ideally be fixed/ flexible or estimated.
27. Other suggestions raised in comments were the charging scheme being published as early as possible and the fees perhaps being based on a sliding scale according to building size and complexity.
28. Comments were also received from those agreeing with the reasonableness of the proposals. These included:
  - elements already decided within the Act or outside the scope of the consultation (including fee amounts; relevant authority funding (outside of cost recovery for BSR functions); how the BSR will operate or use the assistance of relevant authorities and third parties; and how specific operations/activities will work, for example, details of the appeals processes and appellate body or reimbursement)
  - questions and suggestions as to whether:
    - individual Registered Building Inspectors (RBIs) should have to fund investigations against them where there may be no culpability
    - the costs for investigations could be rolled into other fees such as for registration
    - complaints (from whatever source) can be managed so that malicious / spurious complaints are discouraged
    - local authorities should be charged for audits (particularly of routine or low risk work)
    - oversight functions should be recovered as fixed fees

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<sup>2</sup> For example, whether or not the HSE should be the BSR or the BSR should be funded through taxation.

- Annex B of the draft charging scheme needs to reflect that not all approved inspectors (particularly the larger ones) are represented by the Association of Consultant Approved Inspectors (ACAI)
- non-uniform fees and charges should be estimated, with an adjustment ahead of completion to account for under/overspend
- BSR should additionally charge for pre-application advice before a building control approval application is submitted
- BSR should additionally charge for the voluntary reporting system
- systems and charges should mirror and not duplicate the existing HSE fees and charges regime
- it is reasonable to charge regulated parties to pay costs up to the point of laying information if a prosecution is subsequently unsuccessful
- respondees also asked for clarification of:
  - what the annual maintenance fee for Registered Building Inspector/ Registered Building Control Approver registration and ‘assessment costs’ entail and that this does not duplicate costs
  - the difference between investigating a complaint and conduct of a criminal investigation
  - definitions of ‘client’

### **c) Charging scheme schedules – trigger points<sup>3</sup>**

29. Consultees were asked *“Do you think the trigger points for the charges in the charging scheme are reasonable?”*
30. There were 34 responses to this question. Most believed that the trigger points for the charges were reasonable, with 25 answering ‘yes’, and nine answering ‘no’.
31. The 9 who answered no were asked to then *“please tell us which charging scheme schedules you think have trigger points that are not reasonable and why”* and *“For each schedule you have identified, please tell us what you think the trigger point should be set as, and why”*.
32. Only 2 identified specific charging scheme schedules. One was around the management of complaints to allow the Principle Accountable Person (PAP) the opportunity to provide their findings first, with the trigger point being where the regulator is not satisfied that the complaint has been dealt with appropriately. Another stated that they *“would have answered ‘yes’ if there was a comment box”* and raised suggestions that the legislation made clear what costs can be recovered from leaseholders as a service charge, and that charges applying to the management of

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<sup>3</sup> The point at which a fixed fee becomes due or at which time recording commences for the hourly rate for variable charges.



complaints and/or investigation are applied only if there is a breach found. This respondent also asked what circumstances could trigger an “unplanned” event; and suggested that the freeholder should be responsible for registration for a new higher risk building whereas PAP should be responsible following occupation.

33. More general responses again included issues outside the scope of the consultation including views on matters already outlined in the Act<sup>4</sup>. There were also concerns/ suggestions raised that: HSE might “charge for everything” with trigger points themselves leading to charges; inspection costs should be charged at interspersed points (particularly for large/longer projects); Local Authorities should not be charged for audits /inspections; fixed fees could be provided on a standard scale rating; and fees are waived where the regulator did not respond within its own statutory timescales or caused a delay ~ particularly that fees should not be payable in respect of the same process twice in the event this occurs.

#### **d) Charging scheme schedules – allocation of costs**

34. Consultees were asked *“Do you think the charging scheme schedules allocate their costs to the appropriate person for the activity described in the schedule?”*
35. 27 of the 34 responses to this question agreed that the BSR charging scheme allocated costs for each of its schedules to the appropriate person. The remaining 7 did not agree.
36. Those who answered no were asked to then *“please tell us which charging scheme schedules you think do not allocate their associated costs to the appropriate person and why”* and *“For each schedule you have identified, please tell us who you think is the appropriate person from whom these costs should be sought and why”*.
37. Most respondents did not answer the follow up questions to explain their responses, but raised the same questions as above, including issues out of scope of the consultation. Concerns or suggestions raised were: for regulations to make clear what costs can be recovered from leaseholders as a service charge; to provide for fixed fees on a scale according to building size and complexity; to set a capped fee for audits; the potential impact on individuals for the registration of RBIs and whether this should be paid by the organisation they work for; the client or PAP being liable for fees which may have arisen through another’s actions; the management of complaints and ensuring that malicious/spurious complaints are discouraged; and the charging for oversight of the building profession and investigations where the individual is not found to be at fault.

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<sup>4</sup> For example, whether or not the system should be free.

### e) Protected characteristics

38. Questions were asked to seek to understand consultees' views as to whether any aspects of the proposed regulations or charging scheme could impact or be perceived to impact on persons with protected characteristics.
39. Consultees were asked *"Do you think any aspect of the charging scheme will adversely impact on those with protected characteristics?"*
40. 33 of the 35 responses to this question indicated that they did not think the charging scheme proposals will adversely impact on those with protected characteristics.
41. Anyone indicating that they did think proposals could create an adverse impact were asked to then *"please tell us which charging scheme schedules you think may adversely impact those with protected characteristics"* and *"For each schedule you have identified, please tell us who you think will be adversely impacted and why?"*
42. Only two respondents replied that they believed the proposals might adversely affect those with protected characteristics but did not provide any specific detail which we could use to consider any potential changes.
43. One commented that "Disability maybe a caveat for reduced fees due to low incomes", however leaseholders will not be dutyholders under these proposals i.e., BSR will not itself seek to recover its costs from residents/leaseholders. Another added that 'some disability fees are free' and asked whether this would have an impact. We understood this to relate to the exemption referred to at 47 below.
44. Consultees were also asked *"Do you think any aspect of the regulations will adversely affect those with protected characteristics?"*
45. Only 1 of 33 respondents to this question answered yes and was then asked to *"please identify the regulation you think may adversely affect those with protected characteristics"* and *"For each regulation you have identified, please tell us who you think will be adversely impacted and why?"*
46. The respondent again added that 'some disability fees are free' and asked whether this would have an impact. As noted above, we think this is related to the comment below (paragraph 47).
47. A separate, emailed reply raised the question as to whether the proposals needed to include an equivalent provision as that contained in the Building (Local Authority Charges) Regulations 2010. This referred to where there is an existing exception to charging for building work solely required for disabled persons (for example, altering internal walls/corridors inside flats to better facilitate wheelchair access, alterations to

stairs in flats or the fitting of through floor lifts, alterations to main entrance/egress routes to provide improved access).

# HSE Response

## Consultation responses

48. Our analysis shows responses to the consultation on BSRs cost recovery proposals raising issues within the scope<sup>5</sup> of the consultation fall into three categories:

- supportive
- responses raising concerns or suggestions
- responses asking for more detail or suggesting further consideration

### Supportive responses

49. This represents the overall trend of the response to the BSRs cost recovery proposals. Support was expressed for the approach taken, allocation of costs and suggested trigger points. Comments also showed a general trend of opinion that proposals will incentivise positive behaviours among dutyholders, help to focus stakeholder's minds on safety and ensuring compliance, and will not be restrictive of growth.

### Responses raising concerns or suggestions

50. These fell into three themes:

#### *i) Suggestions for changes to the approach to fees*

51. Some respondents suggested that particular or general fees should be provided as a fixed fee, and/or on a standard scale rating according to building size and complexity. Others suggested that non-uniform fees and charges should be estimated with an adjustment ahead of completion to account for under/overspend.

52. BSR needs to ensure it can accurately recover its costs for those situations where the regulatory input may vary depending on the nature and associated complexities of the intervention. Proposals therefore suggest the recovery of costs for more uniform regulatory activity such as registrations as a fixed fee (where the cost may be more predictable), and the recovery of costs where the regulatory effort involved/required may vary (for example, investigations into misconduct or audits) as a charge based on an hourly rate.

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<sup>5</sup> The consultation set out the scope and that questions falling outside of that scope would not be considered.

53. This approach is in line with the Hackitt Review recommendations and ensures the costs recovered are aligned to the regulatory effort deployed and equate to the actual costs of the activity against which they are recovered. This means that those whose activities require the greater regulatory effort pay the greater charges, ensuring fairness for those who demand less effort and/or better demonstrate compliance.
54. Based on HSE experience with other sectors, estimating fees for less prescriptive or less uniform work adds complexity (and therefore costs) because of the need to reconcile refunds or top-ups for every case, and this is something we are aiming to avoid. The actual effort may also be much greater than the original estimate but can drive an expected outcome for operational staff where the effort should really be based on risk, quality and the necessary work to approve or complete the task. We see hourly rates as the most equitable basis for recovering the costs of activity where the regulatory effort also depends on the nature of the project. The proposed fees and charges structure has the flexibility to evolve over time to adjust fees and charges where necessary).
55. As part of that approach, we do not propose to roll fees such as for investigation into other fees such as for registration as this would mean spreading the cost of addressing non-compliance by a dutyholder to others. Dame Judith Hackitt recommended that “those whose work needs the highest level of intervention and oversight should pay the highest cost”. Fees and charges must be referenced to the individual duty-holder(s) and reflect the regulatory activity and effort needed.
56. The regulations and charging scheme set out from which dutyholder the BSR will seek payment for fees and charges incurred for chargeable activities. Dutyholders can and may wish to have their own arrangements set out in order to retrieve their costs from others. BSR does not propose to recover fees and charges from individuals other than as set out in the charging scheme as this would incur a prohibitive cost to both BSR and payees and our intention is that the regime should be proportionate and efficient.
57. Suggestions were also made that:
- Provision is made for interim payments for inspection activity, including to take account of longer or more complex inspections; the hourly rate approach allows us to do this and recover costs at periodic intervals as needed.
  - Fees are introduced for advice provided pre-application for building control approval applications. It is currently intended that such advice, if charged for, would be provided on a commercial charging basis rather than cost recovered and this has not therefore been added to our proposals for DLUHC.
  - Fees are introduced for voluntary occurrence reporting activity. This is covered in related charging schemes or admin/overhead costs built into blended hourly rates.

***ii) Concerns about overcharging or duplication, and the impact of charging on individuals or organisations***

58. A couple of respondents raised concerns that HSE might use the charging scheme and trigger points to expand what can be charged for, however cost recovery activity as the BSR is in accordance with the provisions of the Act and the Building Act 1984 (as amended) which set out the 'chargeable' functions for which BSR may recover its costs. Chargeable functions are therefore set out in law and can only be changed by amending the regulations for which specific parliamentary process and scrutiny exists.
59. The scope of fees and charges is also limited to cost recovery by the proposed regulations. The proposed use of a charging scheme will enable a review of rates so that fees and charges can be adjusted as needed to ensure that they will, taking one year with another, cover such expenditure as may be incurred by or on behalf of BSR in relation to the chargeable functions.
60. Dutyholders need to know at which point a fee becomes payable or charges begin to accrue and the trigger points in the charging scheme schedules simply provide clarity and transparency to assist them with their forecasting and planning. Each charging scheme schedule links to a specific chargeable function in the regulations and the charging scheme must also be published before it comes into effect.
61. There was a suggestion that systems and charges should mirror and not duplicate the existing HSE fees and charges regime however, while HSE has been designated as the BSR, BSR functions are set out and actioned within separate legislation from other HSE activities and the latter are not part of BSR cost recovery.
62. The issue of how complaints and reports (for example from the Voluntary Occurrence Reporting system) are managed to discourage malicious or spurious complaints was raised. Respondees were concerned that dutyholders should not experience undue costs as a result of such reporting; also, that dutyholders might otherwise feel pressured to act in a way that discourages such reporting themselves. While this is operational process and out of scope of the consultation, we would reassure respondents that this issue is being considered. BSR intends to have procedures in place to triage/assess complaints and intelligence as a first step and ensure that any follow up action is based on the outcome of this process. As part of that investigation, BSR will consider all relevant information including that provided by both the complainant and the relevant duty holder.
63. In terms of concerns about the extent of charges placed on any one dutyholder, the approach to fees and charges, as stated above, is designed to ensure that costs recovered are aligned to the regulatory effort deployed and equate to the actual costs of the activity against which they are recovered. This ensures that those whose

activities require less effort and/or better demonstrate compliance pay less than those whose activities require a greater regulatory effort meaning that costs are to a large extent in duty holder's own hands.

64. Responses also highlighted that there is an existing exemption under the Building (Local Authority Charges) Regulations 2010 for building work solely required to facilitate/improve the buildings use by disabled persons from LA Building Control charges (referred to as reasonable adjustments). This relates only to work on existing buildings (for new buildings, accessibility is part of the design requirements). This was an unintended omission, and we are grateful for the prompt in responses; the exemption for higher risk buildings is now maintained in proposals.

**iii) Suggestions for change to specific regulations, schedules or charging scheme annexes**

65. There were a number of suggestions made for consideration in the context of specific elements of the proposals. Some of those involved the introduction of duties set out in the Act or how BSR functions operate and are therefore beyond the scope of the consultation<sup>6</sup> but others were:

- *the charging scheme being published as early as possible.* Proposals set out that the regulator must publish the charging scheme or any amendment to the scheme at least 7 days before the date on which the scheme or the amendment is to come into effect. This follows the approach set out in reg 12 of the Building (Local Authority Charges) Regulations 2010. Where we are able to publish earlier than the 7-day deadline we will.
- *needing to amend annex B of the draft charging scheme to reflect that not all approved inspectors particularly the larger ones are represented by ACAI.* We have removed references to who we will contract with for third party assistance following a response pointing out that not all approved inspectors are represented by the Association of Consulting Approved Inspectors (ACAI) or National House Building Council (NHBC) as was originally referenced. The procurement for third party assistance will be open to all enterprises who can demonstrate the required levels of skills knowledge and expertise/experience to provide the assistance required.
- *individual RBIs not being asked to fund investigations against themselves where no breach is identified (and where the trigger may be a malicious/spurious complaint).* Generally, we have followed the same approach as with the HSE Major Hazards regime in charging for investigations. However, in relation to the regulation of the Building Control profession it is accepted the proposed charging approach may raise questions about fairness as it impacts on individuals. We are therefore proposing that cost recovery for this activity is undertaken where 'fault is found (i.e.,

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<sup>6</sup> This include the ask to set out in proposals can be passed on to leaseholders. This is set out in the Building Safety Act 2022 and separate regulations apply.

misconduct, a breach or contravention is found to have occurred). The charging scheme approach allows us to revisit this if expectations on cost are exceeded.

- *considering whether regulated parties should pay costs up to the point of laying information if a prosecution is subsequently unsuccessful.* This is designed to cover costs of investigations up to where an application is made to prosecute.
- *recognising that the freeholder should be responsible for registration for a new higher risk building and the PAP responsible following occupation.* This registration only happens at the point of occupation, at which point a Principal Accountable Person (PAP) should be in place.
- *waiving fees if the regulator does not respond within its own statutory timescales or causes a delay ~ and recognising that fees should not be payable in respect of the same process twice in the event this occurs.* Where there is a timescale given for BSR work, BSR will plan that work to meet the given timescale. We expect relevant authorities and third parties to work with us to provide assistance and would expect adequate contingencies to be in place such as arrangements to provide an alternative person where appropriate.
- *Considering the potential impact on individuals for the registration of RBIs and whether this should be paid by the organisation for which they work.* We expect individuals who wish to carry out the role of a registered building inspector to act to ensure they meet the legal duty to be listed on the statutory register. We accept that individuals and employers may between them come to an agreement on what costs are covered on an employee's behalf, but this is a confidential business matter for individual organisations.
- *Local Authorities not being charged for audits /inspections (particularly of routine or low risk work);* The audit of a Building Control Body is a regulatory function of the BSR (and thus within the scope of cost recovery) under the Act. The provision in proposals to recover the costs for this are in line with the recommendations of the Hackitt review for BSR to operate a full cost recovery model where possible. Cost recovery proposals are ultimately for DLUHC and HM Treasury to agree and would be subject to a new burdens assessment.

### Responses asking for more detail

66. Some clarifications were sought as follows:

- *the annual maintenance fee for RBI/RBCA registration and 'assessment costs' and reassurance that this does not duplicate costs.* BSR has a duty to establish and maintain a register of building inspectors and building control approvers. There will be an ongoing need to maintain these registers and to ensure that registration criteria are fulfilled (BSR assessment). Consideration is ongoing as to whether fees for this (which apply to any RBI or RBCA registration) are part of or separate to the registration fee provision.



- *the difference between investigating a complaint and conduct of a criminal investigation.* This is the distinction between supporting compliance and enforcement. BSR must provide such assistance and encouragement to relevant persons as it considers appropriate with a view to facilitating their securing the safety of people on or about higher-risk buildings. The BSR's regulatory approach aims to provide assurance that the duty holders are identifying and effectively managing risks and investigation is one of its regulatory tools and is monitoring in nature. As part of that monitoring, a "compliance notice" might be used to identify material weaknesses or issues that need to be actioned for dutyholders to meet their legal requirements. As long as these are actioned there is no further regulatory activity. If the improvements in the compliance notice are not actioned, then the BSR will take enforcement action (prosecution) through the Courts. The costs of taking this enforcement action will be sought through a bill of costs to be considered by the Courts. The BSR's aim will be to aid compliance and, as with other major hazard regimes, the need to take enforcement through the Courts is expected to be very low.
- *The definition of 'client and whether the use of the term 'Client' will create problems/issues for debt recovery in the event of; client' changing or going into administration, insolvency.* The definition of client is as set out in relevant, separate regulations. At time of writing, we anticipate that provisions for the notification to the regulator of a change in client, principal contractor, principal designer and any insolvency status will also be set out in separate regulations.
- *how 'actual' costs can be claimed by relevant authorities.* We have considered feedback in this area, and, for greater clarity, we have removed the word 'actual' from the charging scheme reference to costs of relevant authorities and third parties. The key intention is that costs for relevant authorities and third-party support to BSR are charged to and recovered from a dutyholder on a cost recovery basis only, and through a charging scheme that enables adjustments as needed to ensure that this continues to remain the case.
- Will any charges for investigations only come into effect where the investigation determines there has been a breach/non-compliance. No, we propose to follow the same approach as with the HSE Major Hazards regimes which is not driven by the identification of an actual breach (other than in relation to the regulation of the Building Control profession as outlined in paragraph 65).
- what circumstances could trigger an "unplanned" event. We do not consider it possible to be clearer in this as, by its nature, an unplanned event would be unknown until it has occurred.
- Whether the existing exemption under the Building (Local Authority Charges) Regulations 2010 for building work solely required to facilitate/improve the use of the building by disabled persons from Local Authority Building Control charges will also be extended to the BSR cost recovery proposals. This was an unintended

inconsistency with current charging practices, and we have proposed that the exemption should be maintained in any final regulations.

## New elements of proposals

67. As stated, proposals have needed to align with developing secondary legislation and operational policy and we have amended the regulations and charging scheme accordingly.
68. Some redrafting has been required but the changes have not altered the meaning or intent of the regulations or charging scheme schedules; they do not introduce new requirements but are more specific to reflect other legislation or reflect where we have identified broader/ more relevant wording is needed for clarity. For example:
- The proposed regulations now set out where fees must accompany an application, notification or request and that payments may be required to be up to date before the BSR completes an activity.
  - A fee was developed for Higher-Risk Building registration for The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 to ensure we could cost recover for this activity from April 2023. The proposals revoke that part of those registration regulations to cover that fee in the charging scheme, and otherwise reflect that extant legislation as needed.
69. Some technical changes have also been made to ensure that the regulations (and therefore charging scheme schedules) reflect legislative and policy development since the consultation, including provision for:
- A new regulation to include applications under section 8(3A) of the Building Act 1984 (a direction and decision to dispense with or relax a building requirement where the BSR is the Building Control Authority). (A new upfront fee and hourly rate, payable by the client in the charging scheme.)
  - A new regulation to cover work carried out in relation to building control for out-of-scope buildings where BSR is the Building Control Authority (BCA) by virtue of a regulators notice (mainly used where a developer has a mix of in and out of scope buildings on a site). (A new upfront fee and hourly rate, payable by the client in the charging scheme.)
  - A new regulation to cover an application for a regularisation certificate - where relevant building work has been completed without building control approval and 'regularisation' is needed for work already done. (A new upfront fee and hourly rate, payable by the client in the charging scheme)
  - A new regulation to cover ongoing work that transitions to the BSR as the new Building Control Authority. (A new upfront fee and hourly rate, payable by the client in the charging scheme)

- A new regulation to cover any action taken in order to respond to an appeal against a decision of the regulator, payable if the appeal is unsuccessful or withdrawn. (This involves a new hourly rate charge, payable by the appellant in the charging scheme.)
- Additionally, there is a new split between provisions for a notifiable change and a change control application (with a fee applying to both), and some changes for clarity (for example, specifying a completion or partial completion certificate). An upfront fee has also been added for the Building Assessment Certificate application.

70. Other changes include where:

- We have proposed that hourly rate charges may also be applied for the assessment to up or down grade class of registration of a person as a building inspector. We have also slightly broadened the criteria for a refund for cancelling a registration before its expiry dates (including for the registration of a person as a building control approver).
- Investigation, inspection and testing triggered by the BSR becoming aware of the potential for building safety risks or in response to an unplanned event has been broadened to cover the design and construction phase (payable by the client) as well as in occupation.

71. The disability exemption, new schedules and fees are detailed, technical changes from the versions on which we consulted but reflect emerging secondary legislation and ensuing policy changes since the consultation and the principles of the cost recovery approach outlined in those documents has been followed throughout. We expect other issues to potentially emerge as legislation and policy is further developed and have asked DLUHC to consider where these need to be reflected in their development of final regulations.

## Implementation and next steps

72. Government remains committed to ensuring BSR recovers the reasonable costs of its regulatory activities.
73. BSRs cost recovery proposals are intended to make sure those benefiting from the service bear the cost and to ensure a proportionate approach where those whose activities need the highest level of intervention and oversight will pay the highest cost.
74. We have listened carefully to the feedback on the proposals, within the consultation and outside of this, including through discussions with stakeholders, and other government departments.
75. BSR may only recover its actual costs and we propose the most appropriate way to achieve this is through mutually supporting regulations and a separate (though its use is mandated by regulation) charging scheme.
76. It is HSE's position that this approach will ensure an appropriate level of scrutiny for the regulations and for a charging scheme to provide the flexibility to ensure any necessary adjustments are made to ensure that fees and charges reflect the actual costs of delivering the functions in question.
77. 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 where these are not deemed specific to duty holders) with funding sought through DLUHC's future spending review bids.
78. Sections 28 of the Building Safety Act 2022 and 105B of the Building Act 1984 (as amended) give the Secretary of State for the Department for Levelling Up, Housing and Communities (SoS, DLUHC) the power to make regulations authorising the BSR to charge fees and recover charges for, or in connection with, the performance of a relevant function (including the costs of local authorities and other third parties who provide assistance).
79. Under Section 120B of the Building Act 1984 (as amended) and Section 7 of the Building Safety Act 2022, the regulator may at any time make proposals to the DLUHC Secretary of State for the making of regulations after consulting such persons as it considers appropriate.
80. DLUHC asked HSE to develop proposals for BSR Fees and Charges regulations. Proposals are for the SoS DLUHC to consider, make and lay any final regulations,

including any further changes to align with developing legislation or government financial policy.

## Equalities

81. We used the consultation to help gather information on the potential impact of the proposals on those with protected characteristics to inform a draft Public Sector Equality Duty (PSED) analysis for these proposals. The issue of the existing exemption for disability adjustments was raised and this has been included in proposals.
82. The draft PSED suggests that proposals will have minimal to nil impact on those with protected characteristics, and notes the overall positive impact of the proposals as costs are recovered as part of activities to strengthen regulatory oversight and protections for all residents in higher risk residential buildings - this is of benefit to all residents in all buildings in scope.

## Summary

83. We are grateful to all respondents for taking the time to submit responses to this consultation. All responses have been carefully considered and taken into account in the development of our final proposals submitted to the Department for Levelling Up Housing and Communities.

# Annex 1: consultation questions

## About you (demographics)

- What is your name?
- What is your email address?
- Are you content for HSE to contact you about your response if needed?
- In what main capacity are you responding to this consultation?
  - Private citizen (not a potential legal entity under the fees and charges regulations)
  - Potential legal entity under the fees and charges regulations – client
  - Potential legal entity under the fees and charges regulations - principal accountable person (PAP)/accountable person (AP)
  - Potential legal entity under the fees and charges regulations – applicant
  - Potential legal entity under the fees and charges regulations - building control professional /profession
  - Representative of an LABC/ fire and rescue service
  - Representative of a local authority
  - Representative of a housing association
  - Residents association representative
  - Trade association/interest group representative - please specify who you are representing and their interest
  - Other – with option to specify who is represented and their interest
- What type of organisation do you work for (including owning/managing)?
  - Other building safety regulator, for example, LABC, fire and rescue services
  - Local authority owning or leasing higher-risk buildings in scope
  - Organisation/ housing association owning or leasing higher-risk buildings in scope
  - Housebuilder/ building developer
  - Private sector building control professions/professionals (for example, building control approvers)
  - Organisation/profession/individual involved in the design and construction of higher-risk buildings in scope. For example, a designer
  - Organisation/profession/individual involved in the maintenance or management of higher-risk buildings in scope
  - Trade association/interest group - please specify



- Other - please specify
- Not applicable
  
- If responding on behalf of your organisation, approximately how many people work in your organisation/does your organisation represent? Please select only ONE.
  - N/A – I am not representing an organisation
  - Only me (self-employed)
  - 1 - 4 employees
  - 5 - 9 employees
  - 10 - 24 employees
  - 25 - 49 employees
  - 50 - 99 employees
  - 100 - 249 employees
  - 250 - 499 employees
  - 500 - 999 employees
  - 1000+ employees
  - Unsure / don't know

### **The overall BSR cost recovery proposals**

- Overall, do you think the proposed BSR cost recovery proposals are reasonable?
  - Strongly disagree
  - Disagree
  - Don't agree or disagree
  - Agree
  - Strongly agree
  
- Please explain your reasons for this score.

### **The charging scheme – trigger points**

- Do you think the trigger points for the charges in the charging scheme are reasonable?
  - Yes
  - No
  
- If you answered 'no', please tell us which charging scheme schedules you think have trigger points that are not reasonable and why

- For each schedule you have identified, please tell us what you think the trigger point should be set as, and why

### **The charging scheme – allocation of costs**

- Do you think the charging scheme schedules allocate their costs to the appropriate person for the activity described in the schedule?
  - Yes
  - No
- If you answered ‘no’, please tell us which charging scheme schedules you think do not allocate their associated costs to the appropriate person and why
- For each schedule you have identified, please tell us who you think is the appropriate person from whom these costs should be sought and why (Note: the costs in the charging scheme can only be recovered from the legal entities under the regulations)

### **Protected characteristics**

- Do you think any aspect of the charging scheme will adversely impact on those with protected characteristics?
  - Yes
  - No
- If you answered ‘yes’, please tell us which charging scheme schedules you think may adversely impact those with protected characteristics?
- For each schedule you have identified, please tell us who you think will be adversely impacted and why?
- Do you think any of the regulations will adversely affect those with protected characteristics?
  - Yes
  - No
- If you answered ‘yes’, please identify the regulation you think may adversely affect those with protected characteristics
- For each regulation you have identified, please tell us who you think will be adversely impacted and why?



## Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit [www.hse.gov.uk](http://www.hse.gov.uk).

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