
WELSH STATUTORY INSTRUMENTS

2023 No. 1303 (W. 233)

BUILDING AND BUILDINGS, WALES

**The Building Control Profession
(Charges) (Wales) Regulations 2023**

<i>Made</i>	- - - -	<i>1 December 2023</i>
<i>Laid before Senedd Cymru</i>		<i>5 December 2023</i>
<i>Coming into force</i>	- -	<i>1 January 2024</i>

The Welsh Ministers, in exercise of the powers conferred on them by sections 105B(1), (2)(b) and (3) and 120A(2)(a) and (b) of the Building Act 1984(1), make the following Regulations.

In accordance with section 120C(1)(2) of the Building Act 1984 the Welsh Ministers have consulted such persons as they consider appropriate.

Title, application and coming into force

1.—(1) The title of these Regulations is the Building Control Profession (Charges) (Wales) Regulations 2023.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 1 January 2024.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Building Act 1984;

“chargeable functions” (“*swyddogaethau y gellir codi tâl amdanynt*”) means the functions set out in regulation 3(2);

“charging scheme” (“*cynllun codi tâl*”) means a scheme made under regulation 4(1).

(2) Subject to paragraph (1), words and expressions used in these Regulations and in the Building Act 1984 have the same meaning as in that Act.

(1) 1984 c. 55. Sections 105B and 120A were inserted by section 57 and paragraph 77 of Schedule to the Building Safety Act 2022 (c. 30) respectively. Section 105B(1) confers a regulation making power on the “appropriate national authority”, which is defined in section 126 of the Building Act 1984 as, in relation to Wales, the Welsh Ministers.

(2) Section 120C was inserted by paragraph 77 of Schedule 5 to the Building Safety Act 2022.

Chargeable functions

3.—(1) The Welsh Ministers may recover charges for or in connection with the performance of chargeable functions.

(2) The following are chargeable functions—

- (a) the determination of an application for registration of a person as a building inspector made under section 58D of the Act and maintenance of the register under section 58C of the Act, including the variation or cancellation of a registration under section 58E of the Act;
- (b) the determination of an application for registration of a person as a building control approver made under section 58P of the Act and maintenance of the register under section 58O of the Act, including the variation or cancellation of a registration under section 58Q of the Act;
- (c) action taken under section 58H(1) (professional misconduct investigations) of the Act;
- (d) action taken under section 58T(1) (investigations into contraventions of professional conduct rules) of the Act;
- (e) action taken under section 58Z3(1) (investigations into contraventions of operational standards rules) of the Act;
- (f) any action taken with a view to or in connection with—
 - (i) securing compliance with Part 2A of the Act or a requirement imposed under it; or
 - (ii) the imposition of a sanction in respect of a contravention of Part 2A of the Act or a requirement imposed under it;
- (g) any action taken in order to respond to an appeal against a decision of the Welsh Ministers made under Part 2A of the Act;
- (h) the inspection of a local authority or a registered building control approver under section 58Z8(1) of the Act.

Charging scheme

4.—(1) The amount of any charge that is payable under these Regulations must be determined by the Welsh Ministers in accordance with a scheme made and published by the Welsh Ministers.

(2) The Welsh Ministers must ensure that, taking one year with another, the charges payable under the charging scheme as far as possible equate to the costs incurred by the Welsh Ministers in performing the chargeable functions.

(3) The Welsh Ministers may amend the charging scheme from time to time.

(4) The Welsh Ministers must publish the charging scheme or any amendments to the scheme on the Welsh Government website at least 7 days before the date on which the scheme or the amendment is to come into effect.

Charges for local authorities and the building control profession

5.—(1) The person who makes the application must pay the charges for the performance of the chargeable functions under regulation 3(2)(a) and (b), as applicable.

(2) A local authority or a registered building control approver, which is the subject of an inspection under section 58Z8 of the Act, must pay the charges arising from the performance of chargeable functions under regulation 3(2)(h).

Charges for monitoring and regulatory intervention to ensure compliance

6.—(1) Subject to paragraphs (3) and (4), a person must pay the charges arising from the performance of the chargeable functions under regulation 3(2)(c) to (f) if the Welsh Ministers have reasonable grounds to believe that the person may contravene, is contravening or has contravened Part 2A of the Act or a requirement imposed by virtue of Part 2A.

(2) Charges for the performance of chargeable functions under regulation 3(2)(c) to (f) must not include any costs connected with a criminal investigation or prosecution and which are incurred, in either case, from the date on which any information is laid by the Welsh Ministers.

(3) Where charges are payable under paragraph (1) by a person acting in their capacity as an employee, that person's employer must pay the charges.

(4) A charge is not payable under paragraph (1) in relation to an investigation under section 58H, 58T or 58Z3 of the Act by—

- (a) a registered building inspector if the Welsh Ministers' investigation concludes that they have not breached the code of conduct⁽³⁾ or been guilty of professional misconduct⁽⁴⁾;
- (b) a registered building control approver if the Welsh Ministers' investigation concludes that they have not contravened the professional conduct rules⁽⁵⁾ or the operational standards rules⁽⁶⁾.

Charges for appeals

7. The person who makes the appeal must pay the charges for the performance of the chargeable functions under regulation 3(2)(g) if—

- (a) they withdraw the appeal, or
- (b) the magistrates' court confirms the decision of the Welsh Ministers.

Payment of charges

8.—(1) Subject to paragraph (3), a person must pay the charge for or in connection with the performance of a chargeable function for which they are liable within 30 days from the date on which the request for payment of that charge is issued to them by the Welsh Ministers.

(2) Any request for a payment of charges under paragraph (1) must include—

- (a) a statement of the work done and the costs incurred by the Welsh Ministers in the performance of the chargeable function,
- (b) a statement of any work done and the costs incurred by any person for or in connection with the performance of a chargeable function,
- (c) the period to which the statement of work under sub-paragraph (a) relates, and
- (d) the provision of the charging scheme under which the charge has been determined.

(3) Where—

- (a) an application is submitted to the Welsh Ministers, and the charging scheme provides for a charge in relation to that application to be paid upfront, the person submitting the application must pay that charge when they submit the application;

(3) Prepared and published under section 58F of the Building Act 1984.

(4) See definition of "professional misconduct" in section 58H of the Building Act 1984.

(5) Prepared and published under section 58R of the Building Act 1984.

(6) Made and published under section 58Z of the Building Act 1984.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) a notification or request is sent to the Welsh Ministers, and in relation to which the charging scheme provides for a charge to be paid upfront, the person sending the notification or request must pay that charge when they send the notification or request.
- (4) The Welsh Ministers may require that the total amount of charges for the performance of a chargeable function is paid before the Welsh Ministers perform that chargeable function or issue a notification of the outcome of its determination or a certificate, as applicable.
- (5) The Welsh Ministers may refund, in whole or in part, any charge paid.

1 December 2023

Julie James
The Minister for Climate Change, one of the
Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the recovery of charges for and in connection with the performance of the Welsh Ministers' functions under Part 2A of the Building Act 1984 ("Part 2A"). Part 2A, which is inserted by section 42 of the Building Safety Act 2022, makes provision in relation to the regulation of the building control profession and oversight of those exercising building control functions.

Regulation 3 authorises the Welsh Ministers to recover charges for or in connection with the functions listed in that regulation ("chargeable functions").

Regulation 4 provides that the amount of any charge must be determined in accordance with a charging scheme made and published by the Welsh Ministers. Under the scheme the charges payable must, as far as possible and taking one year with another, reflect the costs incurred in undertaking the chargeable functions. Provision is made for the charging scheme to be amended and for the publication of the scheme and any amendments.

Regulations 5 to 7 specify the circumstances in which a particular person is responsible for paying the charges specified in those regulations.

Regulation 8 makes provision in relation to the payment and recovery of charges, including provision in relation to timings and statements of work.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.