

SL(6)427 – The Building Control Profession (Charges) (Wales) Regulations 2023

Background and Purpose

Part 2A of the Building Act 1984 (**the 1984 Act**) provides for the regulation of the building control profession and the oversight of those exercising building control functions. Part 2A aims to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control.

The 1984 Act also includes a regulation-making power for the Welsh Ministers to recover charges for, and in connection with, the performance of their functions under the 1984 Act. These Regulations are made under that power, allowing the Welsh Ministers to recover charges for functions performed under the 1984 Act (**chargeable functions**), such as: determining applications for registration as a registered building inspector or a building control approver; investigating professional misconduct; responding to appeals.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 3(2) sets out a list of chargeable functions. Regulation 3(2)(c) to (e) refers to “action” taken in respect of certain functions, while regulation 3(2)(f) to (g) refers to “any action” taken in respect of certain other functions.

It is unclear whether “action” and “any action” are intended to have different meanings. If they are intended to be different, what is the difference? If they are not intended to be different, why are different terms used?

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 6(1) says that a person must pay certain charges if the Welsh Ministers have “reasonable grounds” to believe the person contravenes Part 2A of the Building Act 1984. Therefore, regulation 6(1) expressly requires the grounds to be reasonable.

However, elsewhere in the Regulations, there is no express requirement to be reasonable. For example:

- In regulation 3(2)(c), a chargeable function includes “action” taken by the Welsh Ministers under section 58H of the Building Act 1984. Regulation 3(2)(c) does not say “reasonable action”.
- In regulation 4(2), there is reference to the “costs” incurred by the Welsh Ministers. Regulation 4(2) does not say “reasonable costs”.

As a matter of public law, the Welsh Ministers must always act reasonably, therefore it is unclear why regulation 6(1) needs to refer to the Welsh Ministers being reasonable.

We would welcome clarification from the Welsh Government as to its approach to including “reasonable” in legislative provisions such as those outlined above.

3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the English regulation 8(2)(a), a request for payment of charges must include:

“a statement of the work done and the costs incurred by the Welsh Ministers **in the performance of the chargeable function**” (our emphasis).

However, the words emphasised are missing in the Welsh regulation 8(2)(a).

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

4. Standing Order 21.3(ii) – that that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Regulations refer to the following documents:

- a charging scheme (regulation 4),
- a code of conduct (regulation 6(4)(a)),
- professional conduct rules (regulation 6(4)(b)),
- operational standards rules (regulation 6(4)(b)).

We would be grateful if the Welsh Government could confirm the current status of these documents, including details of where they will be available and confirmation that each document has been finalised and is easily accessible from the time the Regulations came into force on 1 January 2024.

Welsh Government response

A Welsh Government response is required to each reporting point.

Legal Advisers

Legislation, Justice and Constitution Committee

21 December 2023