



Department of

**Finance**

---

An Roinn

**Airgeadais**

---

[www.finance-ni.gov.uk](http://www.finance-ni.gov.uk)

## **Building (Prescribed Fees) (Amendment) Regulations (Northern Ireland) 2022**

### **Summary of consultation responses and intended post consultation actions**

**February 2022**

## Contents

<b>Background and introduction to proposals</b> .....	2
<b>Overview of the consultation</b> .....	5
<b>Responses to consultation questions</b> .....	7
Question 1: Would you support a move to a 100% cost recovery model, where the user pays the full cost incurred by councils of processing building control applications rather than ratepayers subsidising the service? .....	7
Question 2: Are there any other aspects of the Fees Regulations you feel should be included in the review? .....	8
Question 3: Do you agree with the Department’s proposals to increase fees for Schedule 1 by 17.5% from 1st April 2022? .....	10
Question 4: Do you agree with the Department’s proposals for a further increase in Schedule 1 fees from 1st April 2023 that would result in an overall increase of 35% on these fees as they are now? .....	11
Question 5: Do you agree with the Department’s proposals to increase fees for Schedule 2 by 17.5% from 1st April 2022? .....	12
Question 6: Do you agree with the Department’s proposals for a further increase in Schedule 2 fees from 1st April 2023 that would result in an overall increase of 35% on these fees as they are now? .....	13
Question 7: Do you agree with the analysis/principal assumptions, costs and impacts set out in the Draft RIA? .....	13
<b>Conclusions and Departmental intended post consultation actions</b> .....	15
Full cost recovery .....	15
Two-stage uplift in current Schedule 1 and most Schedule 2 fees .....	15
Full review of the Fees Regulations .....	16
<b>Annex A :List of respondents</b> .....	17

## **Background and introduction to proposals**

1. The Department of Finance (“the Department”) has responsibility for maintaining the building regulations in Northern Ireland.
2. Building Regulations apply to most building work and are made generally to ensure the health, safety, welfare and convenience of people in and around buildings, to further the conservation of fuel and power, to protect and enhance the environment and to promote sustainable development.
3. The current building regulations are The Building Regulations (Northern Ireland) 2012 (as amended), (the Building Regulations) and were made using powers provided in the Building Regulations (Northern Ireland) Order 1979 (as amended) (“the Order”).
4. The Order places a duty on a district council to “enforce building regulations in its district” (article 10(1)) and clarifies that a district council has “to ascertain after taking all reasonable steps in that behalf, (that) the requirements of building regulations as to matters of any prescribed description are satisfied in any particular case” (article 13 (2)(c)).
5. Building regulations are enforced by a district council’s building control Officers and this includes:
  - Approval of plans – If you intend to erect, alter or extend a building, to install services, fittings or works to a building, or to materially change the use of a building, you must first seek approval to do so from your district council. This may involve the submission of plans or (for certain domestic applications) a building notice to your local building control Office; and
  - Site Inspections – the Building Regulations set a number of statutory notifications requiring the applicant to notify the district council when certain stages of work have been reached so that, if appropriate, an inspection of the works by a building control officer may be undertaken. A number of additional inspections appropriate to the type of development may be undertaken.
6. The Order also authorises “district councils to charge prescribed fees for or in connection with the performance of prescribed functions of theirs relating to building regulations” (article 13(2)(e)).

7. Prescribed fees were introduced locally for applications for building regulations approvals in 1982. Before the introduction of fees, the cost of the building control function in district councils here was borne fully by ratepayers, rather than users of the service.
8. The Building (Prescribed Fees) Regulations (Northern Ireland) 1997<sup>1</sup> (as amended) (“the Fees Regulations”) sets out the prescribed functions for which a district council may charge a fee in relation to applications for building regulations approvals for the construction, renovation or alteration of buildings. The regulations also set the level of fee that may be charged for each function. Other activities undertaken by building control (including other building regulations activities) are rate borne.
9. The prescribed functions are:
  - approval or rejection of plans or building notices;
  - inspection of works;
  - regularisation of unapproved work; and
  - approval or rejection of type approval certificates.
10. In the current Fees Regulations, fees are set out in three schedules to the regulations:
  - Schedule 1 for one or more small domestic buildings;
  - Schedule 2 for certain small buildings, extensions and alterations;  
and
  - Schedule 3 for all other work.
11. Since their introduction in November 1997, the Fees Regulations have only been amended to increase the prescribed fees on one occasion, in 2013. Although the fees for applications under Schedule 3 are based on the estimated cost of works and have risen as prices have increased, the fees set by Schedule 1 and Schedule 2 are “fixed” and can only be changed through an amendment to the regulations.
12. Over time a “drift” in the relationship between the application fee set by Schedules 1 & 2 and the cost to district councils of processing building control applications has occurred. This has resulted in major shortfalls in the fees income covering the cost of enforcement activity for the work set

---

<sup>1</sup> [Building \(Prescribed Fees\) Regulations \(Northern Ireland\) 1997 \(legislation.gov.uk\)](#) amended by [Building \(Prescribed Fees\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(legislation.gov.uk\)](#)

out in Schedule 1 and Schedule 2, as a result the ratepayer is subsidising this service.

13. The Department has therefore identified a need to review the Fees Regulations to ensure that the level of fees charged by district councils for undertaking prescribed functions in respect of the building regulations follows the 'user pays principle'. This means that the person using the building control service meets the full cost of that service. However, to achieve this in line with the fees charged in other administrations in the UK, significant uplifts would be required, in some cases more than doubling the current fee level. Both the Department and district councils recognise that a move to a 100% cost recovery model where the user pays for the service would therefore need to be achieved in a phased approach.
14. In advance of the outcome of this review, as an interim step, the Department proposes to uplift the fees by way of amendment regulations to begin to address the shortfall experienced by district councils, as follows:
  - A 17.5% increase in the fees in Schedules 1 and 2 from 1 April 2022
  - A further increase in the Schedule 1 and 2 fees from 1 April 2023 that would result in an overall increase of 35% on these fees as they are now.
15. Prior to making any amendment to building regulations, the Department undertakes consultation with the local Building Regulations Advisory Committee (NIBRAC) and such other bodies as appear to the Department to be representative of the interests concerned" (article 5(4) 1979 Order).
16. The Committee was consulted on the proposals prior to the consultation issuing. It is considered that this consultation satisfies the above duty in relation to other bodies for the two increments of fee increases proposed.

## **Overview of the consultation**

17. The Department carried out an eight-week public consultation from 25 October to 19 December 2021, to seek views on proposed amendments to the Building (Prescribed Fees) Regulations (Northern Ireland) 1997 (as amended).

18. The Fees Regulations consultation comprised seven questions, as follows:

- Questions 1 and 2 served as a call for evidence to inform a wholesale review of the Fees Regulations, including whether respondents agreed to a ‘user pays’ principle for funding enforcement of the Building Regulations;
- Questions 3-6 sought views on the proposed two-stage uplift to most of the fees set out in Schedules 1 and 2 of the Fees Regulations; and
- Question 7 afforded consultees the opportunity to submit their views on the analysis and principal assumptions, costs and impacts set out in the Draft Regulatory Impact Assessment.

19. The consultation package was available online at the DoF website and responses could be made on the Citizen Space platform.

20. The consultation was promoted in the following ways:

- Notification of the proposals was sent to a total of 351 recipients – 320 by email and 31 by post. In addition, a link to the Draft Equality Screening document was sent to all on the statutory list on the day of the consultation launch.
- Four social media posts were issued by the Department’s Press Office on Facebook and Twitter. District Councils were tagged into the first tweet on launch day, which linked to a related press release. The other posts contained a link to the DoF consultation page to enable people to click through to find out more.

21. A total of 16 responses was received, as follows:

- 10 from district councils and related bodies (all referred to as district councils in this document);
- Three from individuals;
- Two from professional bodies; and
- One from a political party

21. As expected, given the funding issued cited by District Councils and the ongoing dialogue on the matter, most – eight out of 11 – responded. However, the response from the wider construction industry was minimal, with only one response received from a related professional body.
22. Eleven responses were made on Citizen Space. The remaining five were submitted by email and added manually to Citizen Space to facilitate the analysis of responses.

## Responses to consultation questions

**Question 1: Would you support a move to a 100% cost recovery model, where the user pays the full cost incurred by councils of processing building control applications rather than ratepayers subsidising the service?**

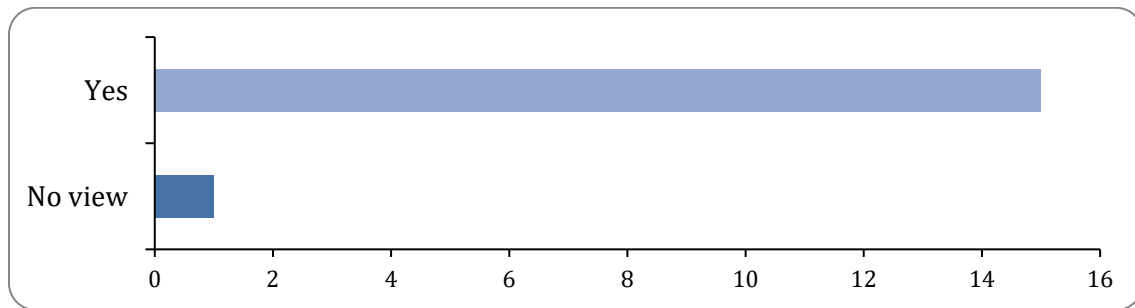


Figure 1: Breakdown of response to Question 1

23. As Figure 1 shows, all respondents answered this question and there was an overwhelming majority (94%) in favour of the 'user pays' principle, with only one respondent (from a professional body) selecting neither yes nor no.

24. Below is a summary of the comments received,

- District councils supported the principle of full cost recovery, citing that the fees had only increased once since 1997, as well as the large disparity in the fees in covering the prescribed functions.
- Four district councils highlighted that the first increment would only bring some fees to a level proposed, but not implemented, in a previous consultation (2012), and with the proposed reductions in some Schedule 2 fees, they highlighted that the first uplift planned this time would result 'in a worse financial position' than that previously consulted upon. As a result, it was deemed 'critical that the second uplift as planned is also delivered' in this phase of uplifts.
- District Councils also highlighted the issue of the increasing complexity of the Building Regulations as an exacerbating factor in the funding gap, concerns on how full cost recovery would be calculated and a mechanism to review fees on an annual basis.
- One of the professional bodies that responded to the consultation indicated its support for a full cost recovery model, adding that it



was important to ensure that the level of fee increases would be reflected in investment in this area by local government.

- Another cited an exception in the Managing Public Money NI guidance, Box 6.1, permitting the subsidising of certain services to result in lower costs for users. The organisation therefore concluded that adopting the user pays principle would be a policy decision.
- A political party advocated a ‘gradual and phased approach’ towards the user pays model, without sudden and huge increases.

**Question 2: Are there any other aspects of the Fees Regulations you feel should be included in the review?**

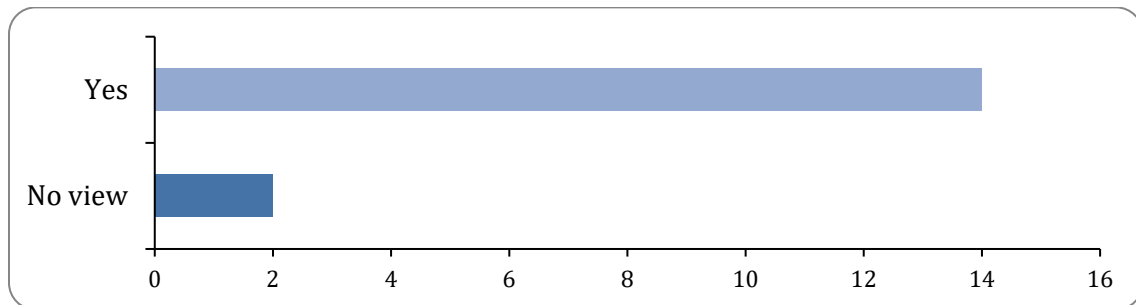


Figure 2: Breakdown of response to Question 2

25. As Figure 2 shows, all respondents answered this question and 88% of respondents indicated that they had points to offer to feed into the wider review as a result of this ‘call for evidence’.

26. The Department values the suggestions, information and insights, which will be interrogated more closely during the review process. Many of the district councils and related bodies highlighted common issues, raising such points as:

- That the current legislation only prescribes fees for four functions. Respondents referred to various other areas of work involved in the Building Control function which are not currently chargeable;
- The potential impact of a Building Safety Programme, similar to that in England, being introduced locally, in terms of the additional roles in councils this would necessitate, as well as the handling of applications for relevant building types;
- Current exemptions in the fees regulations that should be reviewed;

- Anomalies in the current regulations were highlighted;
- Suggestions for changes to fee structures and new fee categories were made;
- Standardising the estimated cost of work by using industry data such as the BCIS review or other indices;
- Increasing regularisation fees to address the difficulty inspecting work retrospectively; and
- To mandate in legislation the investment of all fees received to the building control function.

27. Other key points raised by respondents were as follows:

- An individual suggested allowing the use of the private sector for enforcement.
- Another individual suggested applying additional fees where increased site visits are required due to a lack of onsite knowledge skills and experience.
- A professional body referred to planned changes to the technical guidance accompanying the Building Regulations (Technical Booklet F, conservation of fuel and power), which may increase build costs. Similarly, the political party which responded cautioned against increased fees deterring people from carrying out work to make their homes more energy efficient.
- Against a backdrop of construction cost increases, another professional body suggested there was 'an apparent tension between policies potentially increasing the costs of new development, while at the same time looking to increase housing supply via new development'. The rising cost of living and energy were noted as other considerations.

**Question 3: Do you agree with the Department’s proposals to increase fees for Schedule 1 by 17.5% from 1st April 2022?**

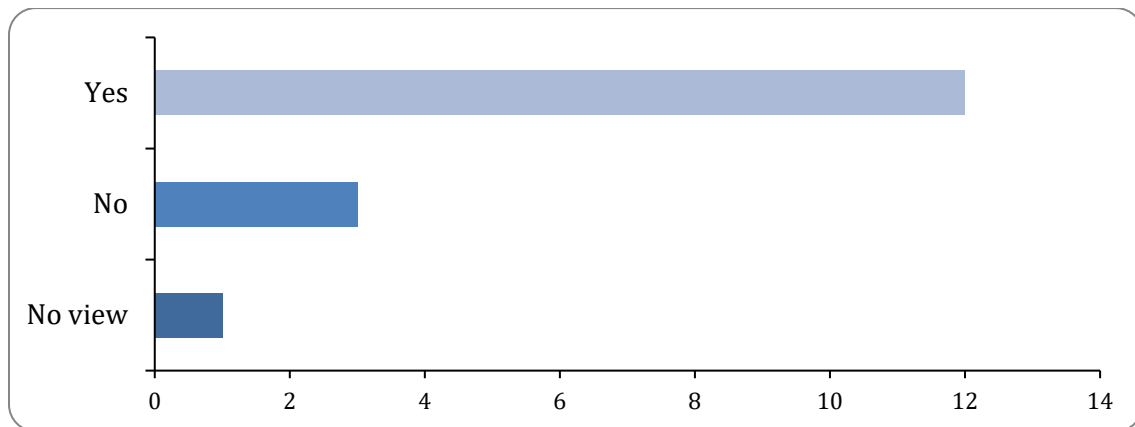


Figure 3: Breakdown of response to Question 3

28. As shown in Figure 3, all respondents answered this question and a majority of 75% agreed with this proposed uplift. Of the 19% who answered ‘no’ to the question, two were individuals and one was from a council. It should be noted that those who disagreed were not opposed to the principle of a fees increase – rather they either commented that it should be more or that the increase should reflect the true cost of the work involved. One professional body did not express a view.

29. Below is a summary of the comments received:

- Most district councils sought assurances that the second uplift planned for 2023 would definitely take place. They also requested assurances that the Fees Regulations would be reviewed within the stated five-year timescale, with the outcome of full cost recovery, adding that they were keen to see a timetable for this work.
- It was highlighted by a council that its calculations showed that the actual increases in income would be lower than 17.5% and 35%, due to the reduction in some Schedule 2 fees. By reviewing applications within Schedules 1 and 2 for a sample 14-week period (July to September 2021), it reported that the reality would be increases of 8% in the first year and 4% in the second year. Following the submission of this response the Department investigated these figures with the respondent, a review of the Council methodology was undertaken and a revised figure of 14% and 25 % was reported.

- A third individual suggested that complete reform of the system was needed, as they had reported a very negative experience on buying new build home, which they said had numerous defects.
- Rising costs to industry was cited as an issue by a professional body, which noted the impact of this on Schedule 3 fees.
- A professional body commented that the fees should not be a deterrent to compliance, adding that any changes arising from the review ‘must not act as an economic inhibitor in precipitating a delay to small domestic projects’.
- It was also noted by a professional body that councils were not obliged to invest all fees in enforcement activity, but that the fees should be used for this purpose.

**Question 4: Do you agree with the Department’s proposals for a further increase in Schedule 1 fees from 1st April 2023 that would result in an overall increase of 35% on these fees as they are now?**

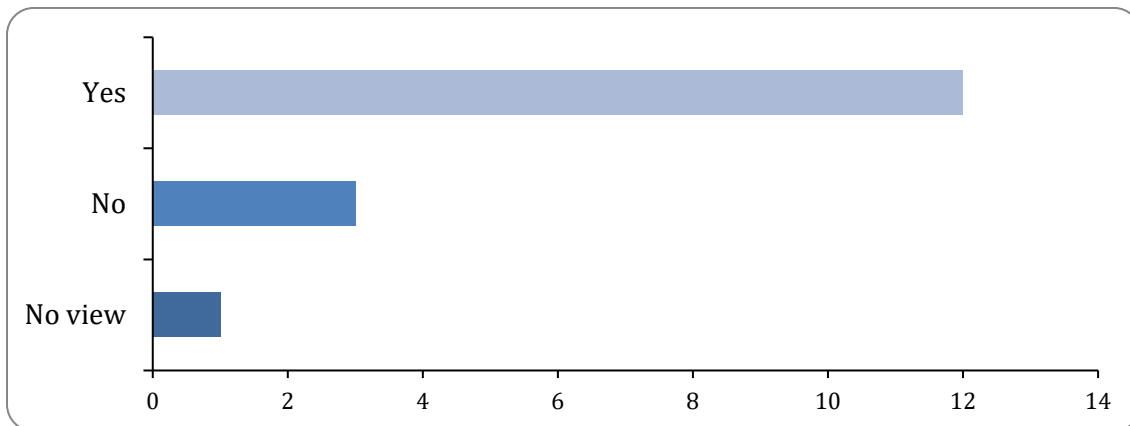


Figure 4: Breakdown of response to Question 4

30. As with Question three, all respondents answered this question and 75% of respondents agreed with the increase, with the 19% who said no expressing the view there should be more of an increase/based on cost of work involved. This was perhaps not surprising given that the principles behind it were the same, with the only difference being the year to which it applied.

**Question 5: Do you agree with the Department's proposals to increase fees for Schedule 2 by 17.5% from 1st April 2022?**

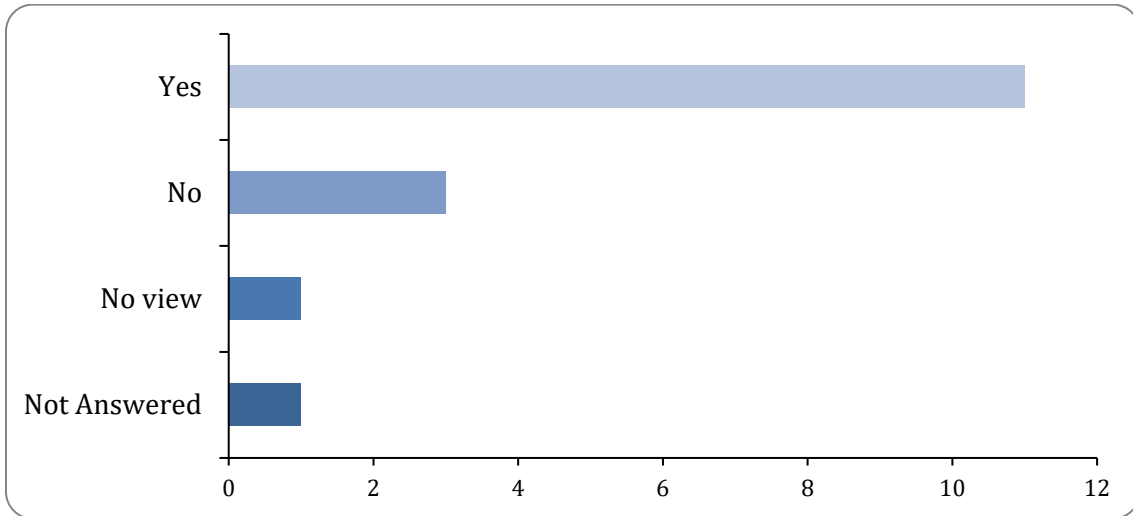


Figure 5: Breakdown of response to Question 5

31. As with the proposals to increase Schedule 1 fees there was a strong majority in favour of the proposal. There was a reduction in support for this proposal and this was due to one respondent who previously answered 'Yes' not answering this question. This brought the percentage who agreed down to 69%, but as covered previously, those who did not agree commented either that it should be more, or that it should reflect the true cost.

32. As with the comments for Question 4, most of these were the same as those made for Question 3. However, one of the respondents highlighted that not all of the fees in Schedule 2 would increase, with some set to decrease under the consultation proposals.

**Question 6: Do you agree with the Department’s proposals for a further increase in Schedule 2 fees from 1st April 2023 that would result in an overall increase of 35% on these fees as they are now?**

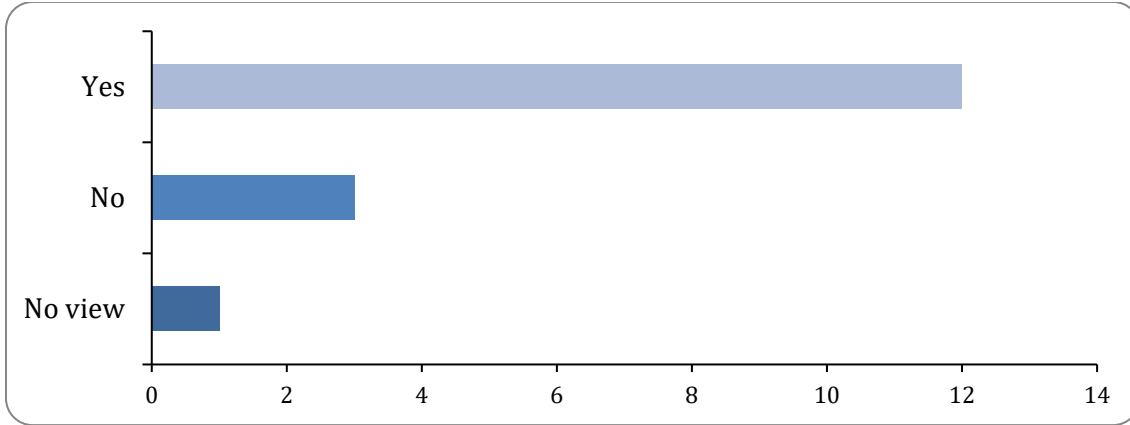


Figure 6: Breakdown of response to Question 6

33. The responses given were the same as for Questions 3 and 4 and all respondents answered this question. All comments made mirrored those made previously, to questions 3 to 5.

**Question 7: Do you agree with the analysis/principal assumptions, costs and impacts set out in the Draft RIA?**

There were 16 responses to this part of the question.

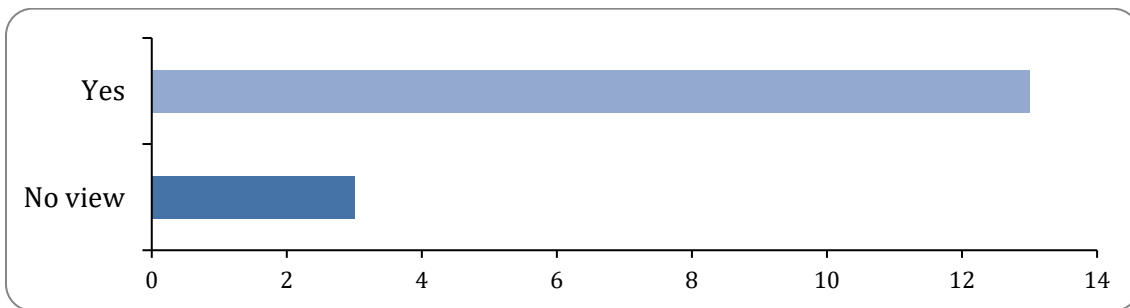


Figure 7: Breakdown of response to Question 7

34. As above, 81% of respondents agreed with the question asked, while 19% had no view.

35. Fourteen of the respondents made comments, many of which reiterated or reinforced the views submitted with the previous questions. Below is a summary of the comments received:

- While all of district councils answered 'yes' to this question, they all commented on the changing nature of Building Regulations which would affect these figures in future, citing both upcoming changes to the local Building Regulations and the impact of the Grenfell Inquiry, which may lead to some form of Building Safety Programme here.
- The need for a full analysis of costs across all council areas was suggested by a district council, which commented that further work would be required to arrive at an accurate cost per hour figure on which to base these proposals.
- A district council cautioned against using the England and Wales figures as a benchmark as they believed that fee competition had been detrimental there.
- The political party which responded commented on the importance of making this information available to show the public the rationale behind the proposals and the alternatives considered.

## **Conclusions and Departmental intended post consultation actions**

36. The Department has taken account of the consultation responses received and plans to proceed as follows:

### **Full cost recovery**

37. All respondents who expressed a view to Question 1 were supportive of the principle of the fees meeting the cost of the prescribed functions, rather than the work being subsidised by ratepayers, as at present. This was reflected in both the answers selected and in the comments submitted.

38. This endorses the Department's policy direction of working towards full cost recovery and implementation of a 'user pays' system.

39. It is acknowledged by the Department and was strongly stated in the consultation responses that substantial increases to the fees would be required to achieve this. Due to the scale of the shortfall, it is recognised that this will need to be achieved in stages. A full review of the Fees Regulations is also planned, to ensure the system is fair and fit for purpose, while achieving full cost recovery

### **Two-stage uplift in current Schedule 1 and most Schedule 2 fees**

40. There was universal agreement amongst respondents for increases to these fees as an interim measure, with most respondents agreeing in the proposed uplifts to Schedules 1 and 2 in 2022 and 2023, which would result in a total increase of 35% in most of these fees. Those who answered that they did not agree with the increases clarified their position in the comments either that they should be more or that they should reflect the full cost of the activity.

41. The Department will therefore implement the two-stage increase in fees consulted upon, resulting in one Statutory Rule to amend the Fees Regulations as follows:

April 2022 – a 17.5% increase in all the fees for Schedule 1 and most of those in Schedule 2<sup>2</sup>; followed by

April 2023 – a further increase that would result in an overall 35% increase in all of the fees for Schedule 1 and most of those in Schedule 2.

---

<sup>2</sup> Some costs in Schedule 2 will be decreased so that the fees do not exceed the cost of activity, as outlined in the consultation document.



## **Full review of the Fees Regulations**

42. The Department has already undertaken some preparatory work in relation to the full review of the Fees Regulations referred to in the consultation document. Work on the review will be resumed when the interim uplift to the Fees Regulations has been made.
  
43. In conducting the review, the suggestions, insights and information provided by respondents in the comments at Question 2 in the consultation will be taken into account. Deeper analysis of these responses is already underway and the Department is grateful to respondents for their valuable comments.
  
44. We will continue to engage with stakeholders such as NIBRAC and district councils' building control departments during the review process. Respondents from councils and related bodies requested assurances that the review will take place and of the timescales. Further information on the review and its timings will be conveyed to parties that requested this information in due course.
  
45. As part of the review process, a further public consultation exercise will be undertaken to seek views on the proposed revised Fees Regulations.

## **Annex A :List of respondents**

The following organisations responded to the consultation:

- Ards and North Down Borough Council
- Mid and East Antrim Borough Council
- Lisburn and Castlereagh City Council
- Armagh, Banbridge and Craigavon Borough Council
- Building Control Northern Ireland
- Fermanagh and Omagh District Council

A further ten responses were received, which have not been listed above for one or more of the following reasons:

- They were from an individual;
- The respondent had indicated they wished for their response to remain confidential; or
- The respondent had not indicated whether or not they wished for their response to remain confidential.