Title: Leaseholder Protections Regulations Impact Assessment
IA No: N/A

RPC Reference No: N/A

Lead department or agency: Department for Levelling Up, Housing and Communities

Other departments or agencies: N/A

Date: 16/06/2022

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries: Jonny Murphy, jonny.murphy@levellingup.gov.uk

Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status** Non Qualifying provision
N/A	N/A	N/A	

What is the problem under consideration? Why is government action or intervention necessary?

Following the Grenfell Tower fire in 2017, it became apparent that a significant number of residential blocks of flats have serious historical fire safety defects, often, but not always, associated with their original construction. This has included the use of unsafe cladding on the external walls of these buildings as well as other non-cladding fire safety defects. Due to the risk to life posed by these defects, extensive and often costly remediation work can be needed to make buildings safe. The previous legal position was that, while building owners are responsible for carrying out that work, it was the leaseholders who were liable in full for these costs. This resulted in many leaseholders being faced with bills they could not afford, for problems they did not cause, to pay for work over which they have limited influence. The Government has been clear that this was unfair. The leaseholder protections contained within the Building Safety Act 2022 protect leaseholders from unaffordable bills. The provisions contained within the Act set out significant detail as to the operation of the protections. The Act also contains a series of powers which allow secondary legislation to be made to complete the provisions contained within the Act. The Government must set out further detail in regulations to complete the provisions set out in the primary legislation to ensure that the protections operate effectively.

What are the policy objectives of the action or intervention and the intended effects?

The intended policy outcome of the regulations is to complete the provisions set out in primary legislation so that the leaseholder protections can operate effectively. The regulations will provide clarity for building owners and landlords as to what they will be liable to pay if their building requires remediation. They will also provide full clarity for leaseholders on when they may or may not be liable to pay for remediation costs. Providing these essential details in secondary legislation will ensure that the leaseholder protections operate in practice. They will provide a route through which the costs of remediation can be recovered to allow building works to take place without further delay. In addition, the regulations make provision for the sharing of information between leaseholders and landlords, and enforcement of the protections. The main indicator for success will be buildings becoming safer as a result of the required remediation taking place, without leaseholders facing unaffordable bills. In addition to this, we anticipate that uncertainty surrounding liability will reduce, thus providing assurance to the lending market.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – Do nothing

This would involve introducing no regulations on leaseholder protections meaning that the Government would not make secondary legislation under provisions contained within the Act.

Option 1 – Make secondary legislation for leaseholder protections provisions (preferred option)

This is the preferred option as it is the only way that the Government can properly implement the leaseholder protections measures contained within the Building Safety Act and to ensure leaseholders are sufficiently protected.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** June 2027				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Stuart Andrew Date: 20/06/2022

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year: N/A	PV Base Year: N/A	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: N/A**

COSTS (£0m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised costs by 'main affected groups'

The policy, set out in Part 5 of and Schedule 8 to the Building Safety Act 2022 and given effect to by these regulations, represents a transfer of liabilities from leaseholders to building owners and landlords. Understanding the full scale of impacts is challenging when the complete picture of non-cladding related remediation required remains largely unknown. For buildings above 11m that have historical non-cladding fire safety defects, there is no reliable data or even estimates of the prevalence, or extent, of these costs, but we know that they will vary significantly on a per building basis. In turn, it is hard to predict how market actors will assess this unknown and unquantified risk and translate it into their operations. As such, a macro-level assessment of impacts cannot be made. Therefore, the analysis in this document sets out a series of example case study scenarios, illustrating the way in which the protections are to be applied. It is worth noting that the policies referred to in this document will work in tandem with interventions already put in place by the Government such as the developers' pledge and the Building Safety Fund.

Other key non-monetised costs by 'main affected groups'

The transfer of liabilities may have consequential negative effects for housing supply, including social housing.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised benefits by 'main affected groups'

As with costs, a macro-level assessment of monetised impacts cannot be made.

Other key non-monetised benefits by 'main affected groups'

The policy represents a transfer of costs from leaseholders to building owners and landlords (as defined below). There are likely to be associated positive effects on the mortgage market, based on market intelligence received to date.

Key assumptions/sensitivities/risks	Discount rate	N/A

While the Department has a better understanding of the scale of cladding remediation required, the full picture of non-cladding costs remain largely unknown. For buildings above 11m that have non-cladding historical fire safety defects, there are no reliable estimates on the extent or prevalence of these costs, but we know that they will vary significantly on a per building basis; we also know that it is likely that some buildings with non-cladding defects will require remediation.

Knowing how market actors will assess the largely unquantified risk relating to non-cladding costs and translate it into their operations is hard to predict. To conduct a macro-level assessment, we would need to know the scale and prevalence of non-cladding costs, as well as have a very good understanding of the range and prevalence of different ownership structures of buildings above 11m. The Department, however, has limited data in both of these areas. As such, understanding the full scale of impacts is challenging.

The approach taken in this impact assessment is, therefore, to set out a series of case studies illustrating how the leaseholder protections will operate in practice. In addition, where possible, qualitative assessments of the likely impacts of the provisions have been provided. The Department has taken this approach due to limited available data with which to conduct a macro-level assessment.

BUSINESS ASSESSMENT (Option 1)

<table>
<tr><td colspan="3">Direct impact on business (Equivalent Annual) £m:</td><td rowspan="2">Score for Business Impact Target (qualifying provisions only) £m: N/A</td></tr>
<tr><td>Costs: N/A</td><td>Benefits: N/A</td><td>Net: N/A</td></tr>
<tr><td colspan="3"></td><td></td></tr>
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Problem under consideration and rationale for intervention

1. Since the Grenfell Tower fire in 2017, it has become apparent that a number of residential blocks of flats have serious historical building safety defects, often, but not always, associated with their original construction. This has included the use of unsafe cladding on the external walls of buildings as well as other non-cladding fire safety defects. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed. Costly interim safety measures such as waking watch patrols can also be required.

2. Most properties in multi-occupied residential buildings in England are owned as leaseholds, meaning that, in the simplest cases, the structure and common parts of the building and the land on which the building sits, are owned by a freeholder, and the individual residential units within the building are owned as long leases. The freeholder or building owner is responsible for the safety and maintenance of the building but the terms of most leases allow all such costs incurred by the freeholder to be passed to the leaseholders through the service charge.

3. Therefore, the pre-existing legal position was that leaseholders were liable in full to meet the costs associated with the remediation of historical building safety defects. Leaseholders were not responsible for creating these defects and did not know of their existence when purchasing their properties. They also have limited influence over the remedial work that takes place to their buildings. The costs associated with remediation have put significant financial strain on leaseholders who are often unable to meet them. The Government has brought forward a series of interventions to protect leaseholders from the costs associated with remediating historical building safety defects.

4. The Government's Building Safety Fund is funding the remediation of unsafe cladding in buildings above 18m tall.

5. The Government has also been clear that those responsible for creating historical building safety defects must pay to put them right and has delivered on this objective through its wide-ranging industry agreement that developers will fix buildings. The Government is also setting up a fund, funded by an industry levy, to meet the costs of remediation of unsafe cladding on buildings 11-18m in height.

6. The Government has agreed with 45 of the largest residential property developers that they will undertake all necessary life-critical fire-safety work on buildings above 11m tall that they had a role in developing or refurbishing over the past 30 years and is continuing to negotiate with others. Developers signing the Government's pledge will also refund money paid out by existing Government remediation schemes to fix buildings that they originally developed and will not apply for further funding, so that this money can be used for other building safety remediation.

7. The Building Safety Act 2022 sets out additional measures to address the issue of costs of remediation of historical building safety defects. The Act significantly expands the routes to redress available in respect of historical building safety defects, allowing those responsible to be held to account through the courts.

8. The Government has also protected leaseholders in law from the costs associated with remediating historical defects. This is to ensure that leaseholders can be reassured that they will no longer be subject to demands for excessive service charge amounts which they cannot afford, and to see that there is a comprehensive solution in place for the remediation of their building.

9. These measures in the Building Safety Act protect leaseholders from the costs of remediating historical building safety defects. The Act sets out significant detail about the operation of the protections. The primary legislation, as agreed by Parliament, also contains a number of powers which allow the Secretary of State to make secondary legislation. It is the secondary legislation made under the Act to which this impact assessment relates.

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

10. The approach taken in this impact assessment is to set out a series of case studies illustrating how the leaseholder protections will operate in practice. In addition, where possible, qualitative assessments of the likely impacts of the provisions have been provided. The Department has taken this approach due to limited available data with which to conduct a macro-level assessment.

11. While the Department has a comprehensive understanding of the scale of cladding remediation required, the full picture of non-cladding costs remain largely unknown. For buildings above 11m that have non-cladding historical fire safety defects, there are no reliable estimates on the extent or prevalence of these costs, but we know that they will vary significantly on a per building basis; we also know that it is likely that some buildings with non-cladding defects will require remediation.

12. The Department has a good understanding of the scale and prevalence of cladding defects; however, these are not covered in detail in this assessment, which focuses on the impact arising from the shift in liabilities relating to non-cladding costs. This is because, whilst the leaseholder protections do represent a shift in liabilities related to cladding, those liabilities will, in practice, be met either by developers fixing their own buildings or by previously committed grant funding.

13. Knowing how market actors will assess the largely unquantified risk relating to non-cladding costs and translate it into their operations is hard to predict. To conduct a macro-level assessment, we would need to know the scale and prevalence of non-cladding costs, as well as have a very good understanding of the range and prevalence of different ownership structures of buildings above 11m. However, the Department has limited data in both areas. As such, understanding the full scale of impacts is challenging.

Description of options considered

14. This impact assessment relates to the secondary legislation for the leaseholder protections provisions, made under powers contained within the Building Safety Act. While significant detail is set out in the Act itself, there are a number of powers contained within the Act which allow secondary legislation to be made to set out additional detail as to the operation of the protections. As the primary legislation which creates the leaseholder protections is now in place, there are only two possible options; these are set out below.

Option 0 – Do nothing

15. Option 0 is not to introduce any regulations on leaseholder protections, meaning that the Government would not make secondary legislation under the provisions contained within the Act. This option would mean that the primary legislation remains as it is, and no further detail would be set out in secondary legislation. If we were to take this approach, key

elements of the leaseholder protections would not have their intended effect and the route to allow building remediation works to take place would not be clear.

Option 1 – Make secondary legislation for leaseholder protections provisions (preferred option)

16. Option 1 is to set out further detail on the leaseholder protections through secondary legislation. This is the preferred option, as it is the only way that the Government can properly implement the leaseholder protections measures contained within the Building Safety Act, ensure leaseholders are sufficiently protected, and enable the necessary additional detail relating to the leaseholder protections provisions to be provided through regulations.

Policy background

17. This section contains a summary of the relevant provisions in the Act and an overview of the context to which the provisions relate.

Summary of relevant provisions in the Act

18. The provisions within the Act protect leaseholders from the costs associated with historical building safety remediation. Sections 116 to 121 set out key definitions relating to and the parameters of the protections; Schedule 8 (inserted by section 122) sets out the cost protections that apply to leaseholders; and sections 123 to 125 set out enforcement and cost recovery provisions. The regulations covered by this impact assessment expand on and provide further detail in relation to a number of provisions within the Act.

19. Section 117 defines a “relevant building” to which the protections apply as a multi-occupied residential building that is at least 11m tall or has at least five storeys, and which is not collectively owned by the residents. Section 118 sets out how the height of the building and the number of storeys it contains are to be determined.

20. Section 119 defines a “qualifying lease” to which the protections apply. A lease is qualifying if, on 14 February 2022, it was the leaseholder’s principal home, or if they owned no more than three residential properties in the United Kingdom in total. In this impact assessment, the owner of a qualifying lease is referred to as a “qualifying leaseholder”; similarly, the owner of a non-qualifying lease is referred to as a “non-qualifying leaseholder”.

21. Section 120 defines a “relevant defect” as one which has been created in the past 30 years and has arisen as a result of defective work to a building (which includes the provision of professional services, such as those of an architect), or the use of inappropriate or defective products, and which causes a building safety risk.

22. Section 121 defines “associated persons”, setting out where companies are considered to be connected for the purposes of the protections.

23. Section 123 makes provision for remediation orders, which allow the First-tier Tribunal to order a landlord to undertake specified works on their building. Where landlords are not fulfilling their legal obligations to make their building safe, remediation orders will allow action to be taken. Section 124 makes provision for remediation contribution orders, which allow the First-tier Tribunal to order landlords, developers, and their associates, to contribute to the costs of remediating buildings. Section 125 makes provision for the recovery of remediation costs when a company is being wound up.

24. Section 122 inserts Schedule 8. Paragraph 1 sets out key definitions for the purposes of the Schedule.

25. Paragraph 2 sets out that leaseholders are fully protected from all costs relating to defects for which the building's landlord, or a company associated with the landlord, are responsible. These protections apply to both qualifying and non-qualifying leaseholders; the remaining protections in the Schedule apply to qualifying leaseholders only.

26. Paragraph 3 sets out the cost protections that apply where the landlord meets the "contribution condition", which is defined as the landlord's group having a net worth of at least £2,000,000 per relevant building owned by the group. These protections apply to qualifying leaseholders only; contributions will be able to be sought from non-qualifying leaseholders as per the terms of their lease (although paragraph 11 provides that no leaseholder can be charged more than they would have been in the absence of the protections being brought into force).

27. Where no landlord for the building is – or is connected to – the developer, and the landlord under the lease does not meet the contribution condition, then the landlord will be entitled to recover some non-cladding costs from some qualifying leaseholders. This does not apply to cladding costs, as paragraph 8 sets out that qualifying leaseholders are fully protected from cladding costs.

28. Where the value of the lease, as determined in accordance with paragraphs 4 and 6 of the Schedule, is less than £175,000, or £325,000 in Greater London, qualifying leaseholders cannot be charged any non-cladding costs. Otherwise, paragraph 5 provides that the landlord can seek contributions from qualifying leaseholders up to a capped amount ("the permitted maximum"). Paragraph 6 states that, for most leaseholders, these caps are £10,000, or £15,000 in Greater London. For the highest value properties, the caps are higher; £50,000 for properties worth more than £1,000,000, and £100,000 for properties worth more than £2,000,000. Paragraph 7 provides that these costs are to be spread over a ten-year period by setting out that the maximum that can be charged in respect of safety defects in a 12-month period is one tenth of the permitted maximum.

29. Paragraph 9 provides that leaseholders cannot be charged for legal or professional services relating to liability for defects. Paragraph 10 makes provision in connection with reserve funds. Paragraph 11 provides that no leaseholder (whether qualifying or not) can be charged more than they would have been in the absence of the protections.

30. Paragraph 12 creates a power to make regulations setting out who is liable for costs that are not payable by leaseholders under the Schedule.

31. Paragraphs 13 to 17 make provision, and create powers, relating to the exchange of information between leaseholders and landlords. Paragraph 18 voids contracts or agreements which purport to limit the provisions in the Schedule.

Ownership structures of multi-occupied residential buildings

32. As discussed in the introduction, most properties in multi-occupied residential buildings in England are owned as leaseholds, meaning that the structure and common parts of the building and the land on which the building sits are owned by a freeholder, and the residential units within the building are owned by the leaseholders. The freeholder or building owner is responsible for the safety and maintenance of the building but the terms of most leases allow all costs incurred by the freeholder to be passed to the leaseholders through the service charge.

33. The ownership structures of many buildings will be more complex than this simple scenario. In some situations, the freeholder will own the land on which the building sits, but the ownership of the building itself will have been demised to another party, such as a head lessee. In more complex scenarios, head lessees can then demise the building or parts of it to other superior landlords. In turn these superior landlords can further demise leases to other superior landlords. The leaseholder of the individual unit will have a lease agreement with the superior landlord at the bottom of such a lease chain. Different parts of the building (e.g., different floors of a block of flats) can have different superior landlords.

34. Paragraph 2 of Schedule 8 defines these landlords as "relevant landlords". A relevant landlord is a landlord under a lease or any superior landlord; this term includes head lessees and freeholders. The term does not include management companies.

35. The ownership structures of multi-occupied residential buildings can be complex and will vary significantly from building to building. The leaseholder protections apply equally to simple and complex ownership structures. This impact assessment addresses some simple and some more complex examples of the variety of possible ownership structures.

Policy objective

36. The policy objective of the regulations is to allow the leaseholder protections to work effectively in practice. The regulations are needed to provide further detail in relation to the provisions contained within the Act.

37. The overarching policy objective of the leaseholder protection regulations is to provide a clear route for remediation works to take place which takes an equitable approach to the allocation of costs and protects leaseholders from unaffordable bills; this will give certainty to all parties affected by the legislation.

38. There are two statutory instruments in connection with the leaseholder protections. There are two separate instruments because they are subject to different Parliamentary procedures: one instrument is subject to the affirmative procedure (The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022), and the other to the negative procedure (The Building Safety (Leaseholder Protections) (England) Regulations 2022).

Summary of provisions in the regulations

The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022

39. These regulations ("the Leaseholder Protections (Information etc.) Regulations") are subject to the affirmative Parliamentary procedure. Regulation 1 contains introductory provisions.

40. Section 123 of the Act makes provision for remediation orders and includes a power for the Secretary of State to make regulations in connection with remediation orders. Regulation 2 sets out that further detail about remediation orders. The regulation sets out the information that must be contained in an application to the First-tier Tribunal for a remediation order and the procedure that the Tribunal must follow when making a remediation order. It also provides that the Secretary of State can apply to the Tribunal for a remediation order.

41. Schedule 8 to the Act sets out that service charges are not payable in certain circumstances. Paragraph 12 of that Schedule provides a power to make regulations which provide for the recovery of amounts that are not recoverable under leases.

42. Regulations 3 to 5 of this instrument make clear who is liable to meet the costs that would otherwise have been attributable to leaseholders. Regulations 3 and 4 are technical provisions. Regulation 3 sets out that, where a landlord is responsible for the defect (e.g., is, or is connected to, the developer), then it is that landlord that is liable to meet remediation costs. Regulation 4 sets out that, where the landlord under the lease meets the contribution condition, then it is that landlord that is liable to meet remediation costs. Both regulations make clear that any liability is transferred to future purchasers should the interest in the building be sold.

43. Regulation 5 sets out that, where no landlord is responsible for the defect or meets the contribution condition, that the costs that are not recoverable under qualifying leases are split equitably, or apportioned, between all relevant landlords for the building. The amount which each relevant landlord is liable to pay is weighted depending on their level of interest in the building. As set out earlier in this impact assessment, not all landlords will have an interest in the entire building; they might only have a superior lease over part of it. In these regulations, a relevant landlord's level of "interest" in a building is defined according to the proportion of storeys in a building over which they hold the superior lease.

44. Under regulation 5, a landlord is classified as a "type 1 owner" if it has a freehold interest in the building, or an interest in more than 90% of the storeys of the building. For example, a landlord with a lease over 19 floors of a 20-storey building would be a type 1 owner, as they would have a 95% interest. A "type 2 owner" has an interest in between 40% and 90% of the storeys in the building. For example, a landlord with a lease over 15 floors of a 20-storey building would be a type 2 owner as they would have a 75% interest. A "type 3 owner" has an interest in less than 40% of the storeys in the building. For example, a landlord with a lease over five floors of a 20-storey building would be a type 3 owner as they would have a 25% interest.

45. The formulae in regulation 5 set out how much each landlord of each type is liable to pay in respect of amounts that are not recoverable from qualifying leaseholders. Type 1 owners pay a greater proportion than type 2 owners, who pay a greater proportion than type 3 owners.

46. Paragraph 13 of Schedule 8 makes provision about presumptions relating to qualifying leases, such that a lease is treated to be qualifying unless the landlord has taken all reasonable steps to obtain a qualifying lease certificate. Paragraph 13 contains a power to prescribe details about the qualifying lease certificate. Paragraph 15 contains a power to require leaseholders to provide landlords with prescribed information. Regulations 6 and 7 set out the requirement for leaseholders to provide their landlords with a qualifying lease certificate alongside evidence in support of the certificate. This certificate will be used to assess the amount which can be charged to the leaseholders. The regulations make clear that failure to provide the certificate will result in the leaseholder being treated as non-qualifying. The regulations provide that the certificate is to be executed as a deed and the Schedule to the instrument sets out the form of the certificate and the information it is to contain.

47. Regulation 8 sets out an obligation on the Secretary of State to carry out a review of the regulations in the instrument and to publish a report setting out the conclusions of the review. The first review is to be carried out before the end of the period of five years from the date at which the regulations come into force. Following the first review, subsequent

reviews must be undertaken at intervals no greater than five years. The regulation also sets out what must be included as a part of the reports which are to accompany each review.

The Building Safety (Leaseholder Protections) (England) Regulations 2022

48. These regulations ("the Leaseholder Protections Regulations") are subject to the negative Parliamentary procedure. Regulation 1 contains introductory provisions and sets out to key definitions for the purposes of the instrument.

49. Section 117(3) exempts buildings which are owned by residents from the leaseholder protection provisions. Subsections (3)(a) and (3)(b) capture the statutory routes by which a building can be owned by the leaseholders. Regulation 2, made under the power at subsection (3)(c), sets out the other routes by which a building can be leaseholder owned and which will also be outside the leaseholder protections.

50. Regulation 3, made under the power at section 121(12), modifies the definition of "associated" in paragraph 3 of Schedule 8 to set out further detail on the circumstances in which companies are considered to be associated when determining the net worth of the company group.

51. Regulation 4, made under the power at section 124(6), expands the scope of buildings that a remediation contribution order can be made in respect of to include buildings that are leaseholder owned, but does not permit a remediation contribution order to be sought against the landlord of a leaseholder owned building.

52. Paragraph 3 of Schedule 8 sets out the contribution condition, which is where a landlord group has a net worth of at least £2,000,000 per relevant building it owns. Regulation 5, made under the power at paragraph 3(4)(b), sets out how the net worth of the landlord group is to be determined.

53. Regulation 6, made under the power at paragraph 14 of Schedule 8, sets out the information (including details of the landlord's net worth) which should be included in a certificate provided to leaseholders. Regulation 7, made under the power at paragraph 16, sets out the information which other landlords in the building must provide to the current landlord in order for the current landlord to be able to provide a certificate to the tenant.

54. Regulation 8, made under the power at paragraph 3(6)(c) prescribes additional persons to whom the contribution at paragraph 3 does not apply.

55. Paragraphs 4 and 6 of Schedule 8 refer to the value of the qualifying lease at the qualifying time. Regulation 9, made under powers at paragraph 6(7) sets out that the value of a lease is to be determined by uprating the most recent sale price of the property. Schedule 1 to the instrument sets out the uprating values, which depend on the year in which the property was last sold, and are based on the House Price Index, which is published by the Office for National Statistics.

56. Regulation 10, made under the power at paragraph 10(4) of Schedule 8, makes provision in connection with cost protections for non-residential leases.

57. Regulation 11, made under the power at paragraph 16(5) of Schedule 8, make provision allowing an application to the First-tier Tribunal if a landlord has not provided the correct information required.

58. Regulation 12, made under powers in section 130, allows anyone applying to the High Court for a Building Liability Order to also be able to apply for information on the corporate structure of person against whom they are applying for the order.

59. Regulation 13 requires a periodic review of the regulations.

Summary and preferred option with description of implementation plan

60. The preferred option is to set out further detail in regulations to complete the provisions set out in the Building Safety Act. These provisions are an essential part of the leaseholder protections package and, by not providing such details, the provisions in the primary legislation would not have the intended effect, resulting in delays to essential remediation works taking place.

61. The Building Safety Act received Royal Assent on 28 April 2022 and the leaseholder protections provisions within the Act are due to come into force two months after Royal Assent (i.e., on 28 June 2022). There are two sets of regulations which are intended to come into force in July 2022.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

62. The primary impact of the leaseholder protections legislation is a transfer of cost liabilities (economic transfer). This will be a cost to building owners and landlords and a benefit to leaseholders, as leaseholders will no longer bear most (or in some cases any) of the building safety remediation liabilities. These impacts are illustrated at the individual building level in the form of case studies in the following section.

63. The “Wider impacts” section contains an assessment of additional impacts of the policy.

Hypothetical case studies

64. For the purposes of this impact assessment, we are presenting nine illustrative examples in the form of case studies. These examples are provided to demonstrate how the leaseholder protections will operate in practice and their impact. In the below examples, reference is made both to provisions set out in the Building Safety Act and to provisions contained within the regulations which this impact assessment accompanies.

65. The case studies focus primarily on scenarios where the liability relates to non-cladding remediation; only case study 1 deals with the costs associated with cladding remediation. Paragraph 8 of Schedule 8 to the Act sets out that qualifying leaseholders cannot be charged for costs associated with cladding remediation, meaning that these liabilities move to the landlord. However, in practice, landlords will not need to meet the costs associated with cladding remediation, and so there will not be a material transfer of liabilities in respect of cladding costs. This is because either the developer responsible for installing the cladding will step in and pay for it to be remediated; or if this does not happen (for example if the developer no longer exists) then grant funding will be made available to remediate the cladding. Accordingly, building owners will draw on these sources of funding rather than their own resources.

66. The case studies describe hypothetical buildings which require remediation work and to which the leaseholder protections apply. Each case study sets out the amount of liability that would be allocated in respect of each leaseholder and landlord for the building. It should be noted that the total cost amounts for remediation set out in these case studies

are purely hypothetical. They do not represent any assessment the Department has made of the costs associated with cladding or non-cladding defects. A wide range of costs has been chosen to produce an appropriate breadth of case study scenarios. As discussed earlier in this impact assessment, the Department does not have reliable estimates on the extent or prevalence of non-cladding costs.

67. Units in the building will be allocated liability to different degrees according to the Act. A "unit" can be a residential unit (e.g., flats, apartments, maisonettes) or, in a mixed-use building, a commercial unit (e.g., shops, offices, supermarkets).

68. The Act makes a distinction between qualifying and non-qualifying leases. A lease is qualifying if, at the start of 14 February 2022, it was the leaseholder's principal home, or if they owned no more than three UK residential properties in total. Commercial leaseholders will always be non-qualifying leaseholders, as the qualifying lease status only applies to residential properties.

69. Non-qualifying leaseholders do not qualify for most leaseholder protections under the Act. The exception to this, as discussed above, is where the building's landlord is responsible for the defects; in this situation the landlord that is responsible must meet the costs for their building in full.

70. Paragraph 11 of the Schedule makes provision for there to be no service charge increases for other tenants; this means that non-qualifying leaseholders cannot be charged more than they would have been in the absence of the protections. The amount each leaseholder would have otherwise been liable to pay will be governed by the terms of their lease; this will vary from lease to lease and from building to building. For the purposes of these case studies, the assumption is made that the terms of the lease provide for an even split of costs among all leaseholders. In practice, for a given building, some leases could be liable for a greater share and others for a smaller share.

71. As discussed above, qualifying leaseholders cannot be charged anything for cladding remediation. Some qualifying leaseholders can be charged for non-cladding costs and the maximum amount that they can be charged depends on the value of their property. Leaseholders in properties worth less than £175,000, or £325,000 in Greater London, cannot be charged for either cladding or non-cladding costs. The maximum amount that can be charged (for non-cladding costs only) to leaseholders in properties worth more than this is £10,000, or £15,000 in Greater London. For the highest value properties, leaseholders can be charged more; up to £50,000 for properties worth above £1,000,000 and £100,000 for properties worth above £2,000,000.

72. As discussed above, the ownership structures of multi-occupied residential buildings vary considerably and can be complex. The case studies consider both simple scenarios, such as where there is a freeholder who owns the building and the land on which the building sits, and they have demised leases directly to leaseholders; and more complex scenarios, where there are multiple superior landlords for the building.

73. Where service charge amounts cannot be recovered under leases, the building's landlord or landlords become liable for the amounts that are not recoverable. The landlords that are liable to meet these costs, and how much they will be required to pay, are set out in the Act and regulations made under paragraph 12 of Schedule 8. Each case study sets out how much each landlord is liable to pay where costs cannot be recovered from leaseholders.

Case study 1 – Cladding remediation

74. An eight-storey block in Greater London contains 64 units; 60 of these are residential units with a value greater than £325,000 but less than £1,000,000 and a further four are non-qualifying residential leases (Table 1).

75. The building and the land on which it sits are owned by the freeholder, who has demised leases to each of the leaseholders. There are no superior landlords. The freeholder is not connected to the original developer. The contribution condition is not relevant for the purposes of cladding remediation.

76. Cladding remediation work required on the block has been estimated to cost £600,000. The cladding was attached to the building as part of the building's initial construction. The terms of the leases provide for an even split of costs among leaseholders, so in the absence of the leaseholder protections provisions contained in the Act, the remediation bill for each leaseholder as per the terms of their lease would be £9,375 each.

77. For cladding remediation, paragraph 8 of Schedule 8 states that no service charge can be recovered from qualifying leaseholders in relation to the remediation of unsafe cladding. The Act does not legally prevent non-qualifying leaseholders from being charged for cladding remediation, so their legal liability would be £9,375 each.

78. The developer of the building has signed up to the Government's pledge, meaning that they will remediate all life-critical fire safety defects that they had a role in developing or refurbishing in the past 30 years. This means that, in practice, neither qualifying nor non-qualifying leaseholders, nor the freeholder, will need to meet these costs.

Table 1: Contribution amounts for Case study 1.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (£325,000 < property value < £1,000,000)	60	£0	£0
Residential qualifying leaseholder (property value < £325,000)	-	-	-
Residential non-qualifying leaseholder	4	£0	£0
Commercial leaseholder	-	-	-
Freeholder	1	£0	£0
Total	64 leaseholders 1 landlord	-	£0

Case study 2 – Connection to the developer, Greater London

79. A six-storey mixed-use block in Greater London contains 30 units. There are three commercial leaseholders; the rest are residential. Of the residential leases, two are non-qualifying leases, eight of the qualifying leases have a value of less than £325,000 and the other 17 have a value of more than £325,000 but less than £1,000,000 (Table 2).

80. The building and the land on which it sits are owned by the freeholder who has demised leases to each of the leaseholders. There are no superior landlords. The freeholder is a subsidiary of the original developer of the building.

81. The cost of remediation of non-cladding defects, all of which relate to the original construction of the building, will cost £2,000,000. The terms of the leases provide for an even split of costs among leaseholders, so in the absence of the leaseholder protections provisions contained in the Act, the remediation bill for each leaseholder as per the terms of their lease would be £66,667.

82. As the freeholder is a subsidiary of the original developer, under paragraph 2 of Schedule 8 they are deemed to be responsible for the defects associated with the building's original construction. Under paragraph 2, no leaseholder can be charged for non-cladding (or cladding) remediation costs that are associated with the building's construction. Regulation 2 of the Leaseholder Protections (Information etc.) Regulations makes clear that it is the freeholder who is liable to meet these costs in full.

Table 2: Contribution amounts for Case study 2.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (£325,000 < property value < £1,000,000)	17	£0	£0
Residential qualifying leaseholder (property value < £325,000)	8	£0	£0
Residential non-qualifying leaseholder	2	£0	£0
Commercial leaseholder	3	£0	£0
Freeholder	1	£2,000,000	£2,000,000
Total	30 leaseholders 1 landlord	-	£2,000,000

Case study 3 – Freeholder net worth above £2,000,000 per relevant building, Greater London

83. A five-storey block in Greater London contains 20 units (Table 3). Non-cladding remediation work required on the block will cost £1,400,000. In the absence of the leaseholder protections, the remediation bill for each leaseholder would be £70,000.

84. The building is owned by the freeholder and there are no superior landlords. The freeholder is not connected to the developer of the building. However, the freeholder and its wider group has a net worth of more than £2,000,000 per relevant building owned by it. The freeholder, therefore, meets the contribution condition according to paragraph 3 to Schedule 8.

85. Of the 20 units in the building, 15 are qualifying leases because, on 14 February 2022, they were the leaseholders' principal homes. These leaseholders are fully protected from the non-cladding remediation costs as the contribution condition has been met by the freeholder.

86. Five units in the building are non-qualifying leases; three are non-qualifying residential leases and two are commercial leases. As they are not qualifying leases, they do not qualify for protections. The terms of their leases provide that remediation costs are to be split equally among leaseholders. These non-qualifying leaseholders are therefore liable to pay up to their equal share of the costs, which in this instance would be one twentieth of the total costs (as there are 20 units in the building), or £70,000.

87. The freeholder may recoup a total of £350,000 from the five non-qualifying leaseholders. Regulation 4 of the Leaseholder Protections (Information etc.) Regulations provides that it

is the freeholder who must meet the costs that are not recoverable from qualifying leaseholders, meaning that the freeholder must pay the remaining £1,050,000.

Table 3: Contribution amounts for Case study 3.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (£325,000 < property value < £1,000,000)	15	£0	£0
Residential qualifying leaseholder (property value < £325,000)	2	£0	£0
Residential non-qualifying leaseholder	3	£70,000	£210,000
Commercial leaseholder	2	£70,000	£140,000
Freeholder	1	£1,050,000	£1,050,000
Total	20 leaseholders 1 landlord	-	£1,400,000

Case study 4 – Freeholder net worth above £2,000,000 per relevant building, outside Greater London

88. A mixed-use building in Newcastle contains 25 units (Table 4) and is 13m tall. Non-cladding remediation work required on the block will cost £1,000,000. In the absence of the leaseholder protections, the remediation bill for each leaseholder would be £40,000.

89. The building is owned by the freeholder and there are no superior landlords. The freeholder has no connections to the developer who caused the defects, but the freeholder does have a net worth of more than £2,000,000 per relevant building owned. Therefore, the freeholder meets the contribution condition. This means that qualifying leaseholders cannot be charged for non-cladding costs, and the freeholder is instead liable to meet these costs.

90. There are a total of 19 qualifying leases in the building. As the landlord meets the contribution condition, none of these leaseholders need to contribute to costs, irrespective of how much their property is worth.

91. There are a total of six non-qualifying leases in the building (three residential, three commercial), meaning that they do not qualify for the protections. The terms of their leases provide that remediation costs are to be split equally among leaseholders. These non-qualifying leaseholders are therefore liable to pay up to their equal share of the costs, which in this instance would be one twenty-fifth of the total costs, or £40,000. Paragraph 11 sets out that the freeholder cannot increase service charge for them. Therefore, the non-qualifying leaseholders will be liable to pay £40,000 each towards the cost of remediation.

92. In total, the freeholder will be able to recoup a total of £240,000 from the six non-qualifying leaseholders. Regulation 4 of the Leaseholder Protections (Information etc.) Regulations provides that it is the freeholder who must meet the costs that are not recoverable from qualifying leaseholders, meaning that the freeholder must pay the remaining £760,000.

Table 4: Contribution amounts for Case study 4.

Type of leaseholder / landlord	Number of leaseholders / landlords	Contribution per leaseholder / landlord	Total contributions
Residential qualifying leaseholder (£175,000 < property value <£1,000,000)	15	£0	£0
Residential qualifying leaseholder (property value < £175,000)	4	£0	£0
Residential non-qualifying leaseholder	3	£40,000	£120,000
Commercial leaseholder	3	£40,000	£120,000
Freeholder	1	£760,000	£760,000
Total	25 leaseholders 1 landlord	-	£1,000,000

Case study 5 – Costs passed on to qualifying leaseholders (apportionment required), Greater London

93. A 12-storey block in Greater London contains 70 units (Table 5). Non-cladding remediation work required on the block will cost £4,200,000. In the absence of the leaseholder protections, the remediation bill for each leaseholder would have been £60,000, based on the terms of the leases.

94. The building has a freeholder who owns the building and the land on which it sits. The freeholder has also demised the top six storeys of the building to three superior landlords – two storeys per landlord. The freeholder is responsible for organising the non-cladding remediation work.

95. The freeholder and landlords are not – and are not connected to – the developer who caused the defects, and do not have a net worth of more than £2,000,000 per relevant building. Therefore, costs can be passed on to qualifying leaseholders, but these will be subject to the relevant caps and thresholds set out in Schedule 8.

96. Of the 70 units in the building, 15 units are non-qualifying leases. The terms of the leases provide that the cost of any remediation is to be split equally among all leaseholders. These non-qualifying leaseholders are therefore liable to pay up to their equal share of the costs, which is one seventieth of the total, or £60,000 each. As leaseholders cannot be charged more than they would have been in the absence of the protections, the non-qualifying leaseholders will be liable to pay £60,000 each towards the cost of remediation, contributing a combined total of £900,000.

97. Ten qualifying leases in the building are valued at less than £325,000, according to the valuation method set out in regulation 9 of the Leaseholder Protections Regulations. As they fall below the lower threshold for properties within Greater London set out in paragraph 4 of Schedule 8 (as per the provisions in the Act) these leaseholders cannot be charged for any non-cladding remediation costs.

98. A further 45 qualifying leases in the building have values greater than £325,000 threshold but less than £1,000,000. They have not made any payments in the past five years towards building safety costs. The maximum that these leaseholders can be charged is therefore £15,000 each, and these costs must be spread over the course a ten-year period. The total which they will have to contribute it £675,000.

99. After the leaseholder contributions have been netted off there are £2,625,000 of remediation costs remaining. This amount must be apportioned as per the mechanism set out in regulation 5 of the Leaseholder Protections (Information etc.) Regulations.

100. According to regulation 5, the freeholder will be classified as a type 1 owner. Each of the other landlords has two storeys each out of 12, meaning that they each have a 17% interest and are classified as being a type 3 owner. Applying the formulae in regulation 5 results in the freeholder's liability being £1,312,500, and each of the other landlords' liabilities being £375,000. As it is the freeholder who has the responsibility for carrying out the works, each of the three superior landlords is liable to pay the freeholder £437,500 towards the cost of remediation.

Table 5: Contribution amounts for Case study 5.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (£325,000 < property value < £1,000,000)	45	£15,000	£675,000
Residential qualifying leaseholder (property value < £325,000)	10	£0	£0
Residential non-qualifying leaseholder	10	£60,000	£600,000
Commercial leaseholder	5	£60,000	£300,000
Type 1 owner (freeholder)	1	£1,312,500	£1,312,500
Type 3 owner	3	£437,500	£1,312,500
Total	70 leaseholders 4 landlords	-	£4,200,000

Case study 6 – Costs passed on to qualifying leaseholders (apportionment required), outside Greater London

101. A 20-storey block in Leeds contains 80 units. Non-cladding remediation work required on the block will cost £3,500,000. In the absence of the leaseholder protections provisions, the remediation bill for each leaseholder would have been £43,750, which is one eightieth of the total.

102. The building has a freeholder who owns the building and the land on which it sits. The freeholder has also demised the top eleven storeys of the building to a superior landlord and the nine lower storeys to three other landlords – three storeys per landlord. The freeholder is responsible for organising the non-cladding remediation work.

103. The freeholder and landlords are not – and are not connected to – the developer who caused the defects, and do not have a net worth of more than £2,000,000 per relevant building. Therefore, costs can be passed on to qualifying leaseholders, but these will be subject to the relevant caps and thresholds set out in Schedule 8.

104. Of the 80 units in the building, 22 units are non-qualifying leases of which four are commercial leaseholders. These non-qualifying leaseholders are liable to pay up to their equal share of the costs, which is one seventieth of the total, or £43,750 each. This results in a combined total of £962,500.

105. Of the 58 qualifying leases in the building, two are worth more than £1,000,000 but less than £2,000,000. According to paragraph 6 of Schedule 8, the maximum that these

leaseholders could be charged is £50,000. However, as the maximum these leaseholders would have otherwise been liable to pay in the absence of the protections is £43,750, these leaseholders cannot be charged more than this amount. These costs are to be spread over a ten-year period.

106. 50 qualifying leases are worth less than £1,000,000 but more than £175,000. These leaseholders can be charged £10,000 each by their landlord, spread over a ten-year period. A further 6 qualifying leases are worth less than £175,000; these leaseholders cannot be charged anything for non-cladding costs.

107. Once the leaseholder contributions have been netted off, there are £1,950,000 of non-cladding remediation costs remaining. This amount is apportioned between the building's landlords according to their ownership type – see paragraphs 43-45 above for further explanation. The freeholder is classified as a type 1 owner. The landlord for the top 11 of the building's 20 storeys has a 55% interest in the building and so is classified as a type 2 owner. The landlords for the lower nine storeys each have a 15% interest and so are classified as type 3 owners. Applying the formulae set out in regulation 5 of the Leaseholder Protections (Information etc.) Regulations produces the contribution amounts shown in Table 6. The type 2 and type 3 owners are liable to pay their contributions to the freeholder, as it is the freeholder who is responsible for organising the repairs.

Table 6: Contribution amounts for Case study 6.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (property value > £1,000,000)	2	£43,750	£87,500
Residential qualifying leaseholder (£175,000 < property value < £1,000,000)	50	£10,000	£500,000
Residential qualifying leaseholder (property value < £175,000)	6	£0	£0
Residential non-qualifying leaseholder	18	£43,750	£787,500
Commercial leaseholder	4	£43,750	£175,000
Type 1 owner (freeholder)	1	£731,250	£731,250
Type 2 owner	1	£487,500	£487,500
Type 3 owner	3	£234,750	£731,250
Total	80 leaseholders 5 landlords	-	£3,500,000

Case study 7 – Landlord meets contribution condition (but not freeholder), outside Greater London

108. A six-storey block in Bristol contains 24 units, all of which are qualifying leases (Table 7). Non-cladding remediation work required on the block will cost £1,000,000. In the absence of the leaseholder protections, the remediation bill as per the lease terms would be £41,667[1] for each leaseholder.

109. The building has a freeholder who owns the building and the land on which it sits. The freeholder has demised leases of the building to three superior landlords – two storeys to each. The freeholder is responsible for maintaining the building and organising repairs.

[1] Figures are rounded to the nearest pound.

110. The freeholder and landlords are not – and are not connected to – the developer. However, the landlord for the upper two storeys meets the contribution condition, as that landlord's group has a net worth of more than £2,000,000 per relevant building owned by the group. This landlord is the landlord for eight qualifying leaseholders. That landlord, therefore, cannot pass non-cladding costs on to the eight qualifying leaseholders for which it is the landlord under the lease and will be required to cover the costs which would have otherwise been attributed to those leaseholders.

111. As the terms of the lease provide that the costs of remediation are to be split equally among all leaseholders, the landlord meeting the contribution condition will be liable for the costs attributable to the 8 qualifying leaseholders for which it is the landlord. This means that the landlord would be liable to cover £333,333, and the qualifying leaseholders on the top two floors will not be required to pay anything.

112. Since the freeholder and other landlords are not connected to the developer and do not meet the contribution condition, they can recoup costs from their qualifying leaseholders up to the cap.

113. Four qualifying leases, which are on the lower four floors of the building are valued at less than the £175,000 and so these leaseholders do not need to contribute towards non-cladding costs.

114. Of the 20 qualifying leases in the building valued at more than £175,000, 12 are on the lower four floors. As their landlords do not meet the contribution condition, their landlords are entitled to recover some costs from these leaseholders. The maximum that can be recovered is £10,000 per leaseholder, spread over a ten-year period. This totals £120,000.

115. After the contributions from qualifying leaseholders (£120,000) and the amount payable by the landlord who has met the contribution condition (£333,333) have been netted off, there remains £546,667 worth of remediation to be paid for. This remaining amount is to be apportioned among all the relevant landlords for the building.

116. The freeholder is a type 1 landlord. The superior landlords each have two storeys and so have a 33% interest; this means they are classified as type 3 owners (including the landlord that passed the contribution test). Applying the formulae results in a liability for the freeholder of £273,333, and for each of the type 3 owners of £91,111. As the landlord for the top two floors met the contribution condition, their total liability will be £424,447, which is the result of summing the £91,111 they are liable to pay via the apportionment formula and the £333,333 they are liable to pay in respect of the leaseholders for which they are the landlord.

Table 7: Contribution amounts for Case study 7. Of the 20 qualifying leaseholders, 12 leaseholders are contributing £10,000 each and the remaining eight are fully protected from non-cladding costs as their landlord met the contribution condition.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (£175,000 < property value < £1,000,000)	20 (8)	£10,000 (£0)*	£120,000 (£0)*
Residential qualifying leaseholder (property value < £175,000)	4	£0	£0
Residential non-qualifying leaseholder	-	-	-
Commercial leaseholder	-	-	-
Type 1 owner (freeholder)	1	£273,333	£273,333
Type 3 owner (does not meet contribution condition)	2	£91,111	£182,222
Type 3 owner (meets contribution condition)	1	£424,444 *(£91,111 + £333,333)*	£424,444
Total	24 leaseholders 4 landlords	-	£1,000,000

**The bracketed figures are for the qualifying leaseholders whose landlord meets the contribution condition.*

Case study 8 – Waking watch contributions, Greater London

117. A ten-storey block in Greater London contains 52 units (Table 8). Non-cladding remediation work required on the block will cost £5,100,000. In the absence of the leaseholder protections provided in the Act, the remediation bill for each leaseholder would have been equally divided, as per the terms of their lease, and therefore £98,077[2].

118. The freeholder owns the building and the land on which it sits. The freeholder has demised the upper five and lower five storeys to two separate superior landlords so that each of these landlords has a lease over five different floors. Each of these landlords has further demised their interest in the building to other superior landlords; four landlords each have a superior lease over two floors; a further two landlords each have a superior lease over one floor.

119. The freeholder and landlords are not – and are not connected to – the developer, and none of them have a net worth of more than £2,000,000 per relevant building. Therefore, some costs can be passed on to qualifying leaseholders. All leaseholders have, in the past five years, each contributed £5,000 to the costs of a waking watch patrol. These contributions will count against any capped amounts that are payable by qualifying leaseholders.

120. There are four non-qualifying leases in the building. These non-qualifying leaseholders are liable to pay £98,077 each; a combined total of £392,308.

121. Two flats in the building have a value of greater than £1,000,000 but less than £2,000,000. According to paragraph 6 of Schedule 8, the maximum amount payable by these leaseholders is £50,000. However, as they have contributed £5,000 to waking watch costs, these leaseholders will have to contribute a further £45,000 each, a combined total of £90,000. According to paragraph 7 of Schedule 8, the maximum that the leaseholder can be charged in any given 12-month period is one tenth of the permitted maximum.

[2] Figures are rounded to the nearest pound.

Therefore, the landlord may recover a maximum of £5,000 from each leaseholder until the threshold is met – in this case a maximum of £5,000 per year could be recovered[3].

122. Two flats in the building have a value greater than £2,000,000. The permitted maximum for leaseholders of these flats is £100,000. However, as the terms of their lease would have required them to contribute £98,077 in the absence of the leaseholder protections, for these leaseholders their contribution is capped at £98,077 each. Due to the £5,000 waking watch contributions, the leaseholders of these flats will be liable to contribute £93,077 each, giving a combined total of £186,154.

123. The remaining 44 qualifying leases in the building have values greater than £325,000 but less than £1,000,000. Because this building is in Greater London, the permitted maximum for these leases is £15,000 each. However, as these leaseholders have also contributed £5,000 to a waking watch, their contributions are capped further at £10,000. These leaseholders can each be charged a maximum of £1,500 (one tenth of the permitted maximum for their property) in any given year, until the £10,000 cap is reached. The total contribution from the leaseholders of these 44 flats will be £440,000.

124. After these leaseholder contributions have been netted off there remains £3,991,538 of remediation to be paid for. The remaining amount is to be apportioned between the relevant landlords for the building. The freeholder is classified as type 1 owner. Each of the two landlords with a lease over five floors of the building is classified as a type 2 owner, as they each have a 50% interest in the building. Each of the landlords with a lease over one or two floors of the building is classified as a type 3 owner as they have 10% and 20% interests in the building, respectively. Applying the formulae results in a liability of £921,124 for the freeholder, £614,083 for each type 2 landlord, and £307,041 for each type 3 landlord.

Table 8: Contribution amounts for Case study 8. The bracketed calculations show how £5,000 in waking watch costs already incurred by leaseholders are subtracted from their maximum contribution to determine their future liability.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (property value > £2,000,000)	2	£93,077 *(£98,077 - £5,000)*	£186,154
Residential qualifying leaseholder (£1,000,000 property value < £2,000,000)	2	£45,000 *(£50,000 - £5,000)*	£90,000
Residential qualifying leaseholder (£325,000 < property value < £1,000,000)	44	£10,000 *(£15,000 - £5,000)*	£440,000
Residential qualifying leaseholder (property value < £325,000)	-	-	-
Residential non-qualifying leaseholder	3	£98,077	£294,231
Commercial leaseholder	1	£98,077	£98,077
Type 1 owner (freeholder)	1	£921,124	£921,124
Type 2 owner	2	£614,083	£1,228,166
Type 3 owner	6	£307,041	£1,842,248
Total	52 leaseholders 9 landlords	-	£5,100,000

[3] Paragraph 7 of Schedule 8 provides that the maximum amount that can be charged in a 12-month period is one tenth of the permitted maximum for that lease. The annual amount payable is expressed as a proportion of the maximum that could be charged to that lease according to paragraph 6 (and not as a proportion of the amount which is payable). In this case, the permitted maximum is £50,000, meaning that the leaseholder could be charged £5,000 per year over nine years (as opposed to £4,500 over 10 years).

Case study 9 – Leaseholder contributions entirely covering costs, Greater London

125. An eight-storey block in Greater London contains 64 units (Table 9). Non-cladding remediation work required on the block will cost £600,000. In the absence of the leaseholder protections provisions contained in the Act, the remediation bill for each leaseholder as per the terms of their lease and would be £9,375 each.

126. The freeholder is not – and is not connected to – the developer and does not have a net worth of more than £2,000,000 per relevant building. Therefore, costs can be passed to leaseholders, but these will be subject to caps for those leaseholders who qualify for the protections in Schedule 8 to the Act.

127. Of the 64 flats in the building, 60 are qualifying leases with values greater than £325,000 but less than £1,000,000. Because the building is in Greater London, the maximum they could be charged is £15,000 each. However, as the remediation costs only amount to £9,375 per leaseholder, this is what leaseholders will be required to pay by their landlord. The landlord cannot charge the leaseholders more than one tenth of the permitted maximum (£15,000) in any 12-month period, meaning that the leaseholders would be charged £1,500 per year for six years (and £375 in the seventh year). Non-qualifying leaseholders will also be liable to pay £9,375, but their landlord will not be required to spread these costs.

128. In this case study, as the leaseholder contributions cover the entirety of the costs required for the non-cladding remediation, no costs will be transferred to the freeholder or landlords.

129. However, if additional remediation works are needed in the future, the £9,375 already allocated to qualifying leaseholders will count towards the £15,000 cap. This means that in future, qualifying leaseholders cannot be charged more than a further £5,625 for any historical non-cladding building safety costs.

Table 9: Contribution amounts for Case study 9.

Type of leaseholder / landlord	**Number of leaseholders / landlords**	**Contribution per leaseholder / landlord**	**Total contributions**
Residential qualifying leaseholder (£325,000 < property value < £1,000,000)	60	£9,375	£562,500
Residential qualifying leaseholder (property value < £325,000)	-	-	-
Residential non-qualifying leaseholder	4	£9,375	£37,500
Commercial leaseholder	-	-	-
Freeholder	1	£0	£0
Total	64 leaseholders 1 landlord	-	£600,000

Impact on small and micro businesses

130. Small businesses are defined in the better regulation framework guidance as those with between 10 and 49 full-time equivalent (FTE) employees. Micro businesses are those with between one and nine employees.

131. Most of the impact (transfer of liabilities) from the leaseholder protections provisions will fall on freeholders and landlords, of whom some will also be developers, or subsidiaries of developers. We expect that, while some freeholders and landlords will fall into the small and micro business category, many will be far larger. It is important to note, however, that while we consider that some freeholders and landlords affected by this legislation will be formally classified as small and micro businesses, we know that many corporate bodies in this sector are part of much wider groups of companies, and that they routinely use complex and opaque corporate structures such as special purpose vehicles to ringfence assets and shield the wider group from liability.

132. The Department considers that exemptions would be inappropriate. Any exemption for freeholders or landlords would involve an unacceptable compromise of safety and would be at odds with the policy aim of ensuring buildings are made safe. Exemptions could also lead to the complex structures described above continuing to avoid liability. Whilst there can be no blanket exemption given, the legislation takes a fair and proportionate approach to the allocation of liability.

133. Where the freeholder or landlord is responsible for constructing a building with safety defects, then it is right that they should meet the costs to remediate that building in full, irrespective of the size of the business. Where this is not the case, freeholders and landlords will only be required to meet qualifying leaseholders' costs in full where they meet the contribution condition of having a net worth of at least £2,000,000 per relevant building they own, meaning that they can likely afford to meet these costs. Where the contribution condition is met, contributions can still be recovered from non-qualifying leaseholders. Where the landlord is not linked to the developer and does not meet the contribution condition, the legislation takes a proportionate approach to allocation of liability, requiring contributions from most leaseholders and from all landlords with an interest in the building. This approach spreads the costs fairly, reducing the chance of any single business facing costs they cannot afford.

Wider impacts (consider the impacts of your proposals)

Leaseholder benefits

134. The benefits of this policy will be felt by leaseholders. The pre-existing legal position for most residential leases has been that leaseholders are legally liable for all costs relating to the remediation of historical building safety defects. Where complex and extensive remediation is needed, this has resulted in some leaseholders being faced with very large individual service charge demands being issued their landlords. Even where Government funding has been made available, some landlords have still issued interim bills for tens or even hundreds of thousands of pounds to leaseholders. This has caused significant and understandable distress to leaseholders.

135. Changing the law to remove or otherwise significantly limit leaseholders' financial liability will positively impact leaseholders. It will remove or reduce the financial burden they are facing from historical building safety defects and will provide greater certainty over the possible extent of any leaseholder liability even when buildings have not been

assessed. The changes should also mean greater assurance that unsafe buildings will be remediated, through setting out clearly how remediation will be paid for.

New supply and investment in housing

136. The approach set out in the leaseholder protections provisions results in a transfer of non-cladding liabilities from leaseholders to freeholders and landlords, including to social housing providers. Where the freeholder or landlord was directly responsible for the defects, it is expected that they will meet these costs themselves. Where the freeholder or landlord was not responsible for the defects, they may be able to pursue developers and other third parties through the courts, and the Building Safety Act contains robust new powers to facilitate this.

137. Developers and social housing providers that become liable for non-cladding remediation costs under the Act could have less operating capital and could become more risk averse. These factors could slow down housing supply, including social housing.

138. Where developers have already committed to fixing buildings that they developed, for example by signing up to the Government's pledge, the provisions themselves do not create new negative impacts for these companies beyond their existing commitments.

Impacts on remediation timing and quality

139. This approach is designed to bring certainty that will enable remediation work to be brought forward more rapidly. The leaseholder protections firmly allocate liability to pay for remediation works. The clear rules transferring liability and apportioning costs should ensure remediation can be completed.

140. It is possible that delays to remediation may occur if freeholders and landlords dispute the amounts that they are expected to pay. The clarity provided by these regulations, however, should reduce the chance that that will happen. It is worth noting in this context that, even where freeholders are not required to meet remediation costs in full under this policy, they will still need to provide upfront funding for the full costs, given that qualifying leaseholders' repayments are spread over 10 years.

141. We expect the leaseholder protections to drive a more proportionate approach to the remediation of historical building safety defects on the part of landlords. This is because landlords will now be liable for some, or all, of the costs associated with remediation. As such, landlords will likely consider more carefully what works are essential and proportionate to make the building safer. We anticipate that this will result in reduced costs for remediation going forward.

142. Should freeholders and landlords choose not to comply with the law, there are robust measures in the Act to hold them to account and ensure remediation takes place.

Mortgage lending

143. The lending market has been a significant problem affecting leaseholders living in buildings affected by building safety defects. To date, as leaseholders in affected buildings have been faced with uncapped liability for remediation costs, lenders have been unwilling to offer mortgages on these properties due to the potential for future purchasers to assume unlimited liabilities that they cannot meet. This has meant that leaseholders living in affected buildings have had challenges in selling their properties. The leaseholder protections provisions place a fixed cap on leaseholder liability and in some cases eliminate it altogether.

It is therefore expected that removing or vastly reducing this financial risk will facilitate lending and allow leaseholders to sell their properties.

144. Lenders can also require confidence that there is a plan in place for remediation before lending. Under the pre-existing position, many leaseholders were faced with bills that they could not afford, meaning that there was no route to remediation taking place. The leaseholder protections provisions reallocate most or all this liability and provide a route to remediation for the building. This should also facilitate lending by providing certainty to lenders.