
EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 116 to 125 of, and Schedule 8 to, the Building Safety Act 2022 (c. 30) (“the Act”) make provision in relation to remediation of certain defects in buildings over 11 metres in height (or of at least 5 storeys). In particular, those provisions include protections from liability for leaseholders in specific circumstances.

These Regulations support those leaseholder protection provisions.

Regulation 2 defines “leaseholder owned” for the purpose of the definition of “relevant building” in section 117 of the Act, as leaseholder owned buildings are not ‘relevant buildings’ for the purposes of these provisions.

Regulation 3 modifies the definition of ‘associated’ in section 121 of the Act in relation that term as used in paragraph 3 of Schedule 8 to the Act, to limit the circumstances in which companies are considered to be associated when calculating the value of the company group.

Regulation 4 expands the list of people who can apply for a remediation contribution order under section 124 of the Act to include leaseholder owned buildings, but does not permit a remediation contribution order to be sought against the landlord of a leaseholder owned building or a commonhold association.

Regulation 5 sets out how a landlord or a landlord’s group should prove their net worth and, therefore, whether or not they fulfil the contribution condition in paragraph 3 of Schedule 8 to the Act. The regulation contains information on what the landlord needs to put into their certificate to demonstrate their worth to the leaseholder, whether the landlord is a company or an individual.

Regulation 6 sets out the further information (including details of the landlord’s net worth) which should be included in a certificate provided to the tenants known as the Landlord’s certificate. This certificate will also have details of the group structure of all the landlords at the relevant building, dates of when the building was built, converted or had works carried out on it, the cost of any remediation works, how much the tenant has already contributed to those works, and the maximum amount for which the tenant might still be liable.

Regulation 7 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 the Landlord’s certificate to the tenant.

Regulation 8 stipulates that government departments and any arms’ length bodies, the Crown, and NHS foundation trusts will not have to provide details of their net worth and do not fall within in the scope of paragraph 3 of Schedule 8 to the Act.

Regulation 9 sets out how the value of a leasehold interest is determined, as if a tenant has a lease under a certain value (see paragraph 4 of Schedule 8 to the Act) they will not pay any service charge and if the lease is over a certain value (paragraph 6 of Schedule 8 to the Act) they will pay more than the permitted maximum. It also sets out how to ascertain the value when the leasehold interest has not been sold on the open market recently.

Regulation 10 states that where the landlord is the developer and therefore, under paragraph 2 of Schedule 8 to the Act, has to pay for remediation of all of the building with no payments by any leaseholders whether qualifying or not, the landlord cannot take the monies to pay for the remediation out of any commercial service charge reserve fund.

Changes to legislation: There are currently no known outstanding effects for the The Building Safety (Leaseholder Protections) (England) Regulations 2022. (See end of Document for details)

Regulation 11 provides that tenants and other landlords in a building can apply to the First-tier Tribunal to appeal where they believe that any landlord in the building has not provided all the information required under these regulations.

Regulation 12 allows anyone applying to the High Court for a building liability order (see section 130 of the Act) to also be able to apply for information on the corporate structure of person against whom they are applying for the order.

Regulation 13 provides for a periodic review of regulatory provisions of these Regulations.

An impact assessment is available with the explanatory memorandum for these Regulations at www.legislation.gov.uk. A copy may be inspected at the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London SW1P 4DF.

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