
STATUTORY INSTRUMENTS

2022 No. 711

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

Citation, commencement, extent and application, and interpretation

1.—(1) These Regulations may be cited as the Building Safety (Leaseholder Protections) (England) Regulations 2022 and come into force on 20th July 2022.

(2) These Regulations extend to England and Wales and apply in England only.

(3) In these Regulations—

“the Act” means the Building Safety Act 2022;

“current landlord” of a building means a person who is the landlord under a qualifying lease⁽¹⁾ of that building;

“leaseholder” means a tenant under a lease of a dwelling in a building;

“remediation service charge” means a service charge⁽²⁾ which includes a charge in respect of a relevant measure⁽³⁾ relating to any relevant defect⁽⁴⁾;

“RMC” means a body corporate limited by guarantee which is party to a lease of a building where—

(a) the members of that body are leaseholders, or

(b) the majority of the shares of that body are held by leaseholders; and

“RTM company” has the same meaning as in the Commonhold and Leasehold Reform Act 2002⁽⁵⁾.

Buildings which are not relevant buildings: leaseholder owned buildings

2. For the purposes of section 117(3)(c) of the Act the freehold estate in the building or part of the building is leaseholder owned where—

(a) the freehold estate is solely owned by tenants in the building, whether through a corporate structure or otherwise; and

(b) paragraphs (a), (b) and (d) of section 117(3) of the Act do not apply in relation to the building.

Modification of section 121(2) to (5) of the Act for certain associated persons

3.—(1) In the definition of “the landlord group” in paragraph 3(4)(a) of Schedule 8 to the Act, the reference to a person associated with the relevant landlord is modified in accordance with paragraph (2).

(1) See section 119 of the Building Safety Act 2022 (“the Act”) for the definition of “qualifying lease”.

(2) See (by virtue of paragraph 1 of Schedule 8 to the Act) the meaning of “service charge” given by section 18 of the Landlord and Tenant Act 1985 (c. 70).

(3) See paragraph 1 of Schedule 8 to the Act for the definition of “relevant measure”.

(4) See section 120 of the Act for the definition of “relevant defect”.

(5) 2002 c. 15. See sections 71 to 74.

(2) For the purposes of paragraph 3 of Schedule 8 to the Act, a person is not to be considered associated with the relevant landlord where they would only be associated by virtue of section 121(4), (5) or (6)(a) of the Act.

Application of section 124 of the Act (remediation contribution orders) to other buildings

4.—(1) Section 124 of the Act applies in relation to a building that would, but for section 117(3) of the Act, be a relevant building⁽⁶⁾, with the modifications set out in paragraphs (2) and (3).

(2) The following may not be specified as a body corporate or partnership for the purposes of section 124(3) —

- (a) a landlord under a lease of the relevant building or any part of it where that landlord is a company owned in part or in full by a majority of residential leaseholders of the building;
- (b) a person who was such a landlord at the qualifying time; or
- (c) a commonhold association, within the meaning of section 34 of the Commonhold and Leasehold Reform Act 2002.

(3) Section 124(5) applies as if, in the definition of “interested person”, after sub-paragraph (d) there were inserted—

- “(da) a special measures manager, within the meaning of paragraph 4(2) of Schedule 7;”.

Determination of net worth of landlord group

5.—(1) For the purposes of paragraph 3 of Schedule 8 to the Act, the net worth of the landlord group at the qualifying time is determined in accordance with this regulation.

(2) Where the relevant landlord⁽⁷⁾ is a private or public limited company⁽⁸⁾ the net worth is calculated according to the following formula—

Net Worth = Total Assets – Total Liabilities – Intangible Assets

(3) In determining net worth of a landlord group⁽⁹⁾ in accordance with paragraph (2)—

- (a) the “total assets”, “total liabilities” and “intangible assets” of the relevant landlord and landlord group are to be determined from the most recent audited or filed accounts for that group audited or filed after 14 February 2017 but before 14 February 2022;
- (b) subject to paragraph (3)(c) below, a copy of the accounts as set out in paragraph (3)(a) above must be provided to the leaseholder under regulation 6(5)(b);
- (c) where audited accounts are not available, the landlord may produce as evidence for the landlord’s certificate according to regulation 6 the accounts which have most recently been filed at the relevant companies’ registry for the country in which the company is registered;
- (d) where the accounts referred to in this paragraph are not prepared in pounds sterling, the value of any asset or liabilities must be converted using the Bank of England daily spot rate for the respective currency on 14 February 2022;

(4) Where the relevant landlord itself comprises more than one person—

- (i) Those persons jointly shall be the relevant landlord;
- (ii) The total net worth of the relevant landlord should be taken as the sum of the net worth of each person and their associates; and

⁽⁶⁾ See section 117(2) of the Act for the definition of “relevant building”.

⁽⁷⁾ See paragraph 3 of Schedule 8 to the Act for the definition of “relevant landlord” in relation to meeting the contribution condition

⁽⁸⁾ See Part 1 (sections 3 and 4) of the Companies Act 2006 for definitions of “private”, “public”, and “limited” companies.

⁽⁹⁾ See paragraph 3(4)(a) for the definition of “the landlord group”.

(iii) The number of relevant buildings(10) is the total number of relevant buildings owned either leasehold or freehold by each person and their associates.

(5) Where the relevant landlord is an individual, the net worth is calculated according to the following formula—

Net worth = Assets - Liabilities

(6) In determining the net worth of a landlord group in accordance with paragraph (5), the “assets” and “liabilities” of a landlord includes those of the landlord’s spouse or civil partner at the qualifying time(11).

Landlord’s certificate

6.—(1) A current landlord must provide a certificate (a “landlord’s certificate”) to a leaseholder in each of the following circumstances—

- (a) when the current landlord makes a demand to a leaseholder for the payment of a remediation service charge;
- (b) within four weeks of receipt of notification from the leaseholder that the leasehold interest is to be sold;
- (c) within four weeks of becoming aware (either themselves or by notification from another person) of a relevant defect not covered by a previous landlord’s certificate; or
- (d) within four weeks of being requested to do so by the leaseholder.

(2) The landlord’s certificate under paragraph (1) must—

- (a) be in the form set out in Schedule 1,
- (b) confirm whether or not the relevant landlord (as defined in paragraph 3(1) to Schedule 8 of the Act) met the contribution condition under paragraph 3 of that Schedule,
- (c) confirm whether or not the relevant landlord (as defined in paragraph 2(4) to Schedule 8 of the Act), met the condition in paragraph 2(2) of that Schedule 8 and was responsible for(12) the relevant defect or was associated with a person responsible for a relevant defect,
- (d) contain the information referred to in paragraph (3),
- (e) be accompanied by the evidence set out in paragraph (4),
- (f) be signed by the person who is the current landlord on the date the certificate is completed.

(3) The evidence is—

- (a) where the relevant landlord is part of a landlord group(13), details of the corporate structure of the group, setting out—
 - (i) the companies which make up the landlord group,
 - (ii) the beneficial owner of each company in the group, and
 - (iii) if the beneficial owner of the group or any company comprised in the group is, or includes, a trust foundation or arrangement of a similar character, details of the trust and the trustees;
- (b) the names of all the directors of each company in that group and directors of each corporate trustee, including in each case nominee and shadow directors or any person occupying the position of director by whatever name called;

(10) See section 117 of the Act for the definition of “relevant building”.

(11) See section 119(2)(d) for the definition of “the qualifying time”.

(12) See paragraph 2(3) of Schedule 8 to the Act for the definition of “responsible for”.

(13) See paragraph 3(4) of Schedule 8 to the Act for the definition of “the landlord group”.

- (c) the name of any other person or persons who has the right to exercise or does exercise significant control or influence directly or indirectly over the group;
 - (d) details of the type of trust if any, the law to which it is subject and where it is tax resident; and
 - (e) in relation to trusts with an interest in the shares of any company comprised in the group—
 - (i) details of the economic settlor,
 - (ii) the named beneficiaries or class of beneficiaries and protector, and
 - (iii) any other person who has the right to exercise or does exercise significant influence or control directly or indirectly over the trust.
- (4) The landlord certificate must be accompanied by—
- (a) the set of company accounts for the relevant landlord (in accordance with regulation 5) and, where the relevant landlord is part of a landlord group, for each company in the landlord group;
 - (b) a statement from a chartered accountant or finance director of the landlord company—
 - (i) setting out the net worth of the relevant landlord and, where the relevant landlord is part of a landlord group, of each company in the landlord group;
 - (ii) confirming the net worth is calculated in accordance with regulation 5 and paragraph 3 of Schedule 8 to the Act (the “net worth calculation”);
 - (iii) confirming the net worth calculations accurately represents the net worth of the relevant landlord (and, where the relevant landlord is part of a landlord group, of each of the companies in the landlord group);
 - (c) documents or receipts that demonstrate that the relevant building was constructed or converted before the relevant period⁽¹⁴⁾ and details of any relevant works⁽¹⁵⁾ which were carried out in the relevant period;
 - (d) evidence (where applicable) that—
 - (i) the person who undertook works relating to the relevant defect or commissioned those works was not the relevant landlord and was not associated with the relevant landlord (as defined in paragraph 2(4) of Schedule 8 to the Act) together with confirmation of the identity of the person who did undertake such works, and
 - (ii) where those works were commissioned or undertaken by a joint venture, proof the relevant landlord was not party to that joint venture, together with details of the persons who were parties to the joint venture;
 - (e) details of any relevant defects and any works carried out to the relevant building since 28 June 2017 to remedy relevant defects; and
 - (f) details of any costs paid or due to be paid in relation to any works carried out to remedy any relevant defects in the relevant building since 28 June 2017, including—
 - (i) the total sum of any such costs;
 - (ii) details of the number of flats between which the costs should be divided; and
 - (iii) the leaseholder’s maximum remaining liability.

(5) In paragraph (4)(f)(iii), the “leaseholder’s maximum remaining liability” is the maximum capped amount payable by the leaseholder in respect of a relevant measure⁽¹⁶⁾ deducting any payments made by the leaseholder in respect of any relevant measure since 28 June 2017.

⁽¹⁴⁾ See section 120(3) of the Act for the definition of “relevant period”.

⁽¹⁵⁾ See section 120(3) of the Act for the definition of “relevant works”.

⁽¹⁶⁾ See paragraph 1 of Schedule 8 to the Act for the definition of “relevant measure”.

(6) Where the current landlord is unable to provide any of the information required for the landlord's certificate in paragraphs (3) and (4) the current landlord must apply to other persons who are relevant landlords requesting the information in accordance with regulation 7 which those persons must provide within 3 weeks of having been asked.

(7) If any person who is a relevant landlord under paragraph 2(4) of Schedule 8 to the Act does not provide a certificate which complies with this regulation in the form outlined in Schedule 2 to the leaseholder, the condition in paragraph 2(2) of Schedule 8 to the Act is to be treated as met in accordance with paragraph 14(2) of Schedule 8 to the Act.

(8) In this regulation, "relevant landlord"—

- (a) in paragraphs (2)(b) and (4)(a) and (b), has the meaning given in paragraph 3(1) of Schedule 8 to the Act;
- (b) otherwise, has the meaning given in paragraph 2(4) of Schedule 8 to the Act.

Landlord's certificate to other landlords in the building

7. A relevant landlord within the meaning of paragraph 2(4) of Schedule 8 to the Act must, within 3 weeks of a request from the current landlord, provide the current landlord with the following information—

- (a) the percentage of the storeys in the relevant building for which they were the relevant landlord at the qualifying time;
- (b) where the relevant landlord was part of a landlord group at the qualifying time, details of the corporate structure of that landlord's group⁽¹⁷⁾ and including—
 - (i) the names of all the directors of each company in that group and directors of each corporate trustee, including in each case nominee and shadow directors or any person occupying the position of director by whatever name called;
 - (ii) the name of any other person or persons who has the right to exercise or does exercise significant control or influence directly or indirectly over the group;
 - (iii) details of the type of trust if any, the law to which it is subject and where it is tax resident; and
 - (iv) in relation to trusts with an interest in the shares of any company comprised in the group, details of the economic settlor, the named beneficiaries or class of beneficiaries and protector and any other person who has the right to exercise or does exercise significant influence or control directly or indirectly over the trust.

Disapplication of paragraph 3 of Schedule 8 to the Act

8. The following persons are prescribed for the purposes of paragraph 3(6)(c) of Schedule 8 to the Act—

- (a) government departments and any arm's length bodies;
- (b) the Crown;
- (c) NHS Foundation trusts.

Determination of the value of a qualifying lease

9.—(1) Subject to paragraph (2), for the purposes of paragraph 4 and/or paragraph 6(6) of Schedule 8 to the Act the value of a qualifying lease is—

⁽¹⁷⁾ See paragraph 3(4) for the definition of "the landlord group".

- (a) where the leasehold interest of the dwelling (“D”) to which the qualifying lease relates was most recently disposed of after 31 December 2020, the price paid at completion (in pounds sterling to the nearest pound) for that leasehold interest;
- (b) where the most recent disposal of D took place on the open market on or before 31 December 2020, to be determined by applying the following formula—

$$V_y \times M_y$$

where—

V_y is the price paid at completion (in pounds sterling to the nearest pound) for D;

M_y is the multiplier for the year in which that disposal took place, as set out in the table in Schedule 2.

(2) Where it is not possible to identify the price paid on completion of the most recent disposal of D then the value of the qualifying leasehold interest is to be treated as equal to the value of the substitute qualifying lease.

(3) In this regulation—

- (a) “substitute qualifying lease” means a qualifying lease of the most recently disposed of dwelling in the same building, ignoring any dwellings which had an internal floorspace which is more than 15% larger or 15% smaller than D; and
- (b) any reference to a disposal means a disposal on the open market.

Application of service charge restrictions to non-residential leases

10.—(1) The reference in paragraph 2 of Schedule 8 to the Act which states that no service charge is payable under a qualifying lease in a relevant building in respect of a relevant measure relating to a relevant defect is modified in accordance with paragraphs (2) and (3).

(2) For the purposes of paragraph 2 of Schedule 8 to the Act—

- (a) no service charge is payable under a non-residential lease in a relevant building where the conditions set out in paragraph 2(2) of the Act are met; and
- (b) the reference in paragraph 10(2) of Schedule 8 to the Act applies to non-residential leases.

Application to First-tier Tribunal

11.—(1) This regulation applies where a leaseholder or relevant landlord (the “applicant”) wishes to apply to the First-tier Tribunal for an order under paragraph 16(5) of Schedule 8 to the Act.

(2) The applicant can make an application under paragraph (1) above where—

- (a) the applicant believes that a relevant landlord has made a false claim in the landlord’s certificate provided under regulation 6, including but not limited to—
 - (i) stating that the relevant landlord is not the developer⁽¹⁸⁾ of the relevant building or is not associated with the developer; or
 - (ii) stating the relevant landlord does not meet the contribution condition;
- (b) the relevant landlord or current landlord has not given the leaseholder sufficient time⁽¹⁹⁾ to provide information to prove they have a qualifying lease⁽²⁰⁾.

(3) In this regulation, “relevant landlord” has the meaning given in paragraph 16(8) of Schedule 8 to the Act.

⁽¹⁸⁾ See paragraph 2(4) of Schedule 8 to the Act for the definition of “developer”.

⁽¹⁹⁾ See The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022.

⁽²⁰⁾ See section 119 of the Act for the definition of “qualifying lease”.

Persons entitled to apply to the High Court for an information order in connection with a building liability order

12. For the purposes of section 132 of the Act, any person making, or intending to make, an application for a building liability order under section 130 of the Act may apply to the High Court for an information order.

Review

13.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report settling out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the date on which these Regulations come into force.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015⁽²¹⁾ requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involved less onerous regulatory provision.

Signed by the authority of the Secretary of State for Levelling Up, Housing and Communities

Greenhalgh
Minister for Building Safety and Fire
Department for Levelling Up, Housing and
Communities

28th June 2022

(21) 2015 c.26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12), and paragraph 36 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16).