DRAFT STATUTORY INSTRUMENTS

2022 No.

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

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 and come into force on the day after the day on which they are signed.

(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;

"RMC" means a body corporate which is party to a lease of a building where—

(a) the body corporate is limited by guarantee and the members of that body are tenants under leases of dwellings in the building ("leaseholders"), or

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

"RTM company" has the same meaning as in the Commonhold and Leasehold Reform Act 2002(**1**).

Remediation orders

2.—(1) For the purposes of section 123 of the Act (remediation orders) the Secretary of State is prescribed as an interested person.

(2) The First-tier Tribunal may, on an application made by an interested person(**2**), make a remediation order under section 123 of the Act.

(3) An application for a remediation order must—

(a) state it is an application under section 123 of the Act;

(b) identify the building to which the application relates;

(c) identify the defects to the building for which a remediation order is sought;

(d) identify the landlord (as defined in section 123(3) and (4) of the Act) which the applicant considers is responsible for repairing or maintaining anything relating to the relevant defects.

(4) Where the First-tier Tribunal makes a remediation order it must as soon as is reasonably practicable send a copy of the order to—

(a) the person who made the application; and

(b) the relevant landlord(**3**).

(**1**) 2002 c. 15. See sections 71 to 74.
(**2**) See section 123(5) of the Act.
(**3**) See section 123(3) of the Act for the definition of "relevant landlord".

Recovery of amounts from other landlords: cases under paragraph 2 of Schedule 8

3.—(1) This regulation applies where, in relation to a lease of premises in a relevant building, a landlord (L) has paid or is liable to pay the cost of a relevant measure(**4**) relating to a relevant defect(**5**) ("the remediation amount") which, but for paragraph 2 of Schedule 8 to the Act, would have been payable as a service charge by a tenant under the lease.

(2) Where this regulation applies the responsible landlord is liable to pay L the remediation amount, and where, in relation to a particular relevant defect, two or more persons are responsible landlords, each person is liable to pay to L an equal share of that amount.

(3) Where paragraph (2) applies L must give a notice to the responsible landlord or landlords of the liability.

(4) The remediation amount may not include any amount which L is entitled to recover under regulations 4 or 5.

(5) A person who is notified by L of a requirement to pay all or part of the remediation amount referred to in paragraph (2) may appeal that notice to the First-tier Tribunal within 30 days of the notification, specifying the grounds of appeal.

(6) The grounds of appeal are—

(a) that the remediation amount does not represent the cost of the relevant measure; or

(b) that the person sent the notice is not a responsible landlord.

(7) For the purposes of this regulation, the reference to landlord (L) includes a RMC or a RTM company.

(8) In this regulation "the responsible landlord" means—

(a) the person who, at the beginning of 14th February 2022, was the landlord of the tenant referred to in paragraph (1) or any superior landlord and was on that date—

(i) responsible for(**6**) the particular relevant defect to which the relevant measure relates; or

(ii) associated with(**7**) a person responsible for that relevant defect; or

(b) the person who, on or after 14th February 2022, became the owner of that landlord's, or superior landlord's, interest.

Recovery of amounts from other landlords: cases under paragraph 3 of Schedule 8

4.—(1) This regulation applies where, in relation to a qualifying lease(**8**) of a dwelling in a relevant building, a landlord (L) has paid or is liable to pay the cost of a relevant measure relating to a relevant defect ("the remediation amount") which, but for paragraph 3 of Schedule 8 to the Act, would have been payable as a service charge by the tenant under the qualifying lease.

(2) Where this regulation applies the contributing landlord is liable to pay L the remediation amount, and L must give a notice to the contributing landlord of the liability.

(3) The remediation amount may not include any amount which L is entitled to recover under regulations 3 or 5.

(4) A person who is notified by L of a requirement to pay the remediation amount may appeal that notice to the First-tier Tribunal within 30 days of the notification, specifying the grounds of appeal.

(5) The grounds of appeal are—

(**4**) See paragraph 1 of Schedule 8 to the Act for the definition of "relevant measure".
(**5**) See section 120 of the Act for the definition of "relevant defect".
(**6**) See paragraph 2(3) of Schedule 8 to the Act for the definition of "responsible for".
(**7**) See section 121 of the Act for the definition of "associated with".
(**8**) See section 119 of the Act for the definition of "qualifying lease".

(a) that the remediation amount does not represent the cost of the relevant measure; or

(b) that the person sent the notice is not the contributing landlord.

(6) For the purposes of this regulation, the reference to landlord (L) includes a RMC or a RTM company.

(7) In this regulation "the contributing landlord" means the person who is the landlord under the qualifying lease referred to in paragraph (1) provided that they met the contribution condition in paragraph 3 of Schedule 8 to the Act on the 14th February 2022.

Recovery of amounts from other landlords: other cases under Schedule 8

5.—(1) This regulation applies where, in relation to a relevant building, a landlord (L) under any lease has paid or is liable to pay the cost of a relevant measure relating to a relevant defect ("the remediation amount") which, but for paragraphs 4 to 9 and 11 of Schedule 8 to the Act, would have been payable as a service charge by the tenant under the lease.

(2) Where this regulation applies, each landlord under any lease in the building is liable to pay L a share of the remediation amount and that share is to be calculated in accordance with paragraphs (4) to (6).

(3) The amount referred to in paragraph (2) may not include any amount which L is entitled to recover under regulations 3 or 4.

(4) Where the landlord is a type 1 owner, the share of the remediation amount for each such landlord is—

$$\frac{3A}{(3N_1 + 2N_2 + N_3)}$$

where—

A = the remediation amount for the relevant measure paid (or liable to be paid) by L;

N_1 = the total number of type 1 owners of the building;

N_2 = the total number of type 2 owners of the building;

N_3 = the total number of type 3 owners of the building.

(5) Where the landlord is a type 2 owner, the share of the remediation amount for each such landlord is—

$$\frac{2A}{(3N_1 + 2N_2 + N_3)}$$

where A, N_1,N_2 and N_3 have the same meaning as in paragraph (4).

(6) Where the landlord is a type 3 owner, the share of the remediation amount for each such landlord is—

$$\frac{A}{(3N_1 + 2N_2 + N_3)}$$

where A, N_1,N_2 and N_3 have the same meaning as in paragraph (4).

(7) Where paragraph (2) applies L must give a notice to the landlord or landlords of the liability.

(8) A person who is notified by L of a requirement to pay a share of the remediation amount referred to in paragraph (2) may appeal that notice to the First-tier Tribunal within 30 days of the notification, specifying the grounds of appeal.

(9) The grounds of appeal are—

(a) that the remediation amount does not represent the cost of the relevant measure;

(b) that the person is not a relevant landlord within the meaning of paragraph 12(2) of Schedule 8 to the Act; or

(c) that the share of the remediation amount determined for the landlord is incorrect.

(10) For the purposes of this regulation, the reference to landlord (L) includes a RMC or a RTM company.

(11) In this regulation—

"leasehold interest" means a long lease (which has the same meaning as in section 119 of the Act);

"type 1 owner" means a landlord who has a freehold interest in the building or a landlord who has or is treated as having a leasehold interest in respect of 90% or more of the storeys in the building as at the date of the notice under paragraph (7);

"type 2 owner" means a landlord who has or is treated as having a leasehold interest in respect of more than 40% but less than 90% of the storeys in the building as at the date of the notice under paragraph (7);

"type 3 owner" means a landlord who has or is treated as having a leasehold interest in respect of 40% or less of the storeys in the building as at the date of the notice under paragraph (7),

and where a person owns a leasehold interest in premises which form part only of a storey in the building in question they are, for the purposes of the calculations under this paragraph, to be treated as having an interest in respect of the whole storey.

Leaseholder deed of certificate: landlord's steps and requirements for leaseholders

6.—(1) A tenant under a lease ("the leaseholder") in respect of a dwelling in a relevant building(**9**) may send the landlord under the lease a certificate which complies with regulation 7 ("a leaseholder deed of certificate") together with the evidence referred to in paragraph (7).

(2) Subject to paragraph (3), before the notification date a landlord under a lease that meets the conditions in paragraphs (a) to (c) of section 119(2) of the Act must give a notice in writing to the leaseholder which complies with paragraph (4).

(3) The requirement in paragraph (2) does not apply where, before the notification date, the landlord under the lease has received a leaseholder deed of certificate in respect of the lease.

(4) The notice under paragraph (2) must—

(a) state it is a notice for the purposes of paragraphs 13 and 15 of Schedule 8 to the Act;

(b) include a copy of the form of the leaseholder deed of certificate referred to in regulation 7 (leaseholder deed of certificate);

(c) include a statement to the effect that failure to provide a completed leaseholder deed of certificate—

(i) will result in the lease being treated, for the purposes of sections 116 to 122 of the Act, as if it were not a qualifying lease;

(ii) where the lease is a shared ownership lease, may result in the landlord assuming the leaseholder owns a 100% share; and

(iii) may result in a higher value for the qualifying lease being used under or pursuant to any provision in Schedule 8 to the Act (remediation costs under qualifying leases etc); and

(**9**) See section 117 of the Act for the definition of "relevant building".

(d) provide the date (which must be no less than 8 weeks from the date of receipt of the notice under paragraph (5)(a)) by which a reply to the notice must be received ("the reply date") and the address of the landlord to which the reply must be sent.

(5) The landlord must give the leaseholder the notice under paragraph (2)—

(a) by leaving it at the address of the leaseholder or sending it to that address by prepaid first class letter; and

(b) where the leaseholder has provided the landlord with an email address, by transmitting it to that email address.

(6) Subject to paragraph (9), where a leaseholder receives a notice under paragraph (2) then by the reply date the leaseholder must—

(a) provide the landlord under the lease with a leaseholder deed of certificate which complies with the requirements of regulation 7 together with the evidence referred to in paragraph (7); or

(b) reply to the landlord in writing stating that the leaseholder will not provide a leaseholder deed of certificate.

(7) The evidence which must accompany a leaseholder deed of certificate is—

(a) where the dwelling to which the lease relates was disposed of on the open market before 14th February 2022—

(i) evidence of the most recent sale before that date, including an official copy of the register of title at HM Land Registry which shows the date of the sale in question; and

(ii) evidence of the price paid at completion (in pounds sterling to the nearest pound) in respect of that sale;

(b) additionally, where the dwelling was owned under a shared ownership lease at the beginning of 14th February 2022—

(i) a copy of the shared ownership lease; and

(ii) evidence of the percentage share under the shared ownership lease held on that date.

(8) If by the date which is 14 days before the reply date the landlord has not received a reply from the leaseholder, the landlord must—

(a) no later than 7 days before the reply date, give the leaseholder a further notice which, in addition to complying with sub-paragraphs (a), (b) and (c) of paragraph (4) and paragraph (5)—

(i) states that no reply to the notice under paragraph (2) has been received;

(ii) sets out the reply date; and

(iii) states that the leaseholder may make a request under paragraph (9);

(b) where the landlord has a telephone number for the leaseholder, telephone the leaseholder to draw the further notice to the leaseholder's attention.

(9) If requested by the leaseholder before the reply date, the landlord must allow the leaseholder an additional four weeks from the reply date to comply with the requirements under paragraph (6)(a) and (b).

(10) The landlord may not charge the leaseholder for sending any notice under this regulation.

(11) In this regulation "the notification date" means the day which is five days after the day on which the landlord becomes aware that—

(a) the interest in the property owned by the leaseholder is to be sold; or

(b) there is a relevant defect in relation to the building in question.

Leaseholder deed of certificate

7.—(1) A leaseholder deed of certificate in relation to a lease of a dwelling in a relevant building must be executed as a deed by the person who is the leaseholder under that lease.

(2) The Schedule to these Regulations sets out the information to be provided in the leaseholder deed of certificate and its form.

Review

8.—(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 setting 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(**10**) 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 involves less onerous regulatory provision.

(5) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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

Name
Minister of State
Department for Levelling Up, Housing and Communities

Date

(**10**) 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).