

*Changes to legislation: There are currently no known outstanding effects for the Building Safety Act 2022, Schedule 8. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 8 **E+W**

Section 122

#### REMEDIATION COSTS UNDER QUALIFYING LEASES ETC

##### *Interpretation*

1 (1) In [this Schedule](#)—

- “associated”: see section 121;
- “building safety risk” has the meaning given by section 120;
- “joint venture” includes a partnership (as defined by section 121);
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “qualifying lease”: see section 119;
- “the qualifying time” has the same meaning as in section 119;
- “relevant building”: see section 117;
- “relevant defect”: see section 120;
- “relevant measure”, in relation to a relevant defect, means a measure taken—
  - (a) to remedy the relevant defect, or
  - (b) for the purpose of—
    - (i) preventing a relevant risk from materialising, or
    - (ii) reducing the severity of any incident resulting from a relevant risk materialising;
- “relevant risk” here means a building safety risk that arises as a result of the relevant defect;
- “service charge” has the meaning given by section 18 of the Landlord and Tenant Act 1985.

- (2) The definition of “service charge” applies in relation to a lease of premises that do not include a dwelling as it applies in relation to a lease of a dwelling.

##### **Commencement Information**

**II** [Sch. 8 para. 1](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

##### *No service charge payable for defect for which landlord or associate responsible*

- 2 (1) [This paragraph](#) applies in relation to a lease of any premises in a relevant building.
- (2) No service charge is payable under the lease in respect of a relevant measure relating to a relevant defect if a relevant landlord—
  - (a) is responsible for the relevant defect, or
  - (b) is associated with a person responsible for a relevant defect.

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- (3) For the purposes of [this paragraph](#) a person is “responsible for” a relevant defect if—
- (a) in the case of an initial defect, the person was, or was in a joint venture with, the developer or undertook or commissioned works relating to the defect;
  - (b) in any other case, the person undertook or commissioned works relating to the defect.
- (4) In [this paragraph](#)—
- “developer” means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;
- “initial defect” means a defect which is a relevant defect by virtue of section 120(3)(a);
- “relevant landlord” means the landlord under the lease at the qualifying time or any superior landlord at that time.

**Modifications etc. (not altering text)**

**C1** [Sch. 8 para. 2](#) modified (20.7.2022) by [The Building Safety \(Leaseholder Protections\) \(England\) Regulations 2022 \(S.I. 2022/711\)](#), regs. 1(1), **10**

**Commencement Information**

**I2** [Sch. 8 para. 2](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*No service charge payable if landlord meets contribution condition*

- 3
- (1) No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the landlord under the lease at the qualifying time (“the relevant landlord”) met the contribution condition.
  - (2) The contribution condition is that the landlord group’s net worth at the qualifying time was more than  $N \times \pounds 2,000,000$ ,  
 where  $N$  is the number of relevant buildings within sub-paragraph (3).
  - (3) A relevant building is within this sub-paragraph if a member of the landlord group was, at the qualifying time, a landlord under a lease of the relevant building or any part of it.
  - (4) For the purposes of [this paragraph](#)—
    - (a) “the landlord group” means the relevant landlord and any person associated with the relevant landlord;
    - (b) the net worth of the landlord group at the qualifying time is to be determined in accordance with regulations made by the Secretary of State.
  - (5) The Secretary of State may by regulations amend the amount for the time being specified in sub-paragraph (2).
  - (6) [This paragraph](#) does not apply if, at the qualifying time, the relevant landlord was—
    - (a) a private registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008),
    - (b) a local authority (as defined by section 30), or
    - (c) a prescribed person.

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#### Commencement Information

**I3** Sch. 8 para. 3 in force at 28.6.2022, see s. 170(3)(a)

#### *No service charge payable where lease below certain value*

- 4 (1) No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the value of the qualifying lease at the qualifying time was less than—
- (a) £325,000, if the premises demised by the qualifying lease are in Greater London;
  - (b) £175,000, in any other case.
- (2) For the purposes of [this paragraph](#) the value of a qualifying lease at the qualifying time is its value determined in accordance with [paragraph 6](#) and regulations made under it.

#### Commencement Information

**I4** Sch. 8 para. 4 in force at 28.6.2022, see s. 170(3)(a)

#### *Limit on service charge in other cases*

- 5 (1) A service charge which would otherwise be payable under a qualifying lease in respect of a relevant measure relating to any relevant defect is payable only if (and so far as) the sum of—
- (a) the amount of the service charge, and
  - (b) the total amount of relevant service charges which fell due before the service charge fell due,
- does not exceed the permitted maximum.
- (2) In [this paragraph](#) “relevant service charge” means a service charge under the lease in respect of a relevant measure relating to any relevant defect that—
- (a) fell due in the pre-commencement period, or
  - (b) falls due after commencement.
- (3) In [sub-paragraph \(2\)](#) “the pre-commencement period” means the period—
- (a) beginning 5 years before commencement or, if later, on the day the relevant person became the tenant under the qualifying lease, and
  - (b) ending with commencement.
- “The relevant person” means the person who was the tenant under the qualifying lease at commencement.
- (4) In [this paragraph](#)—
- “commencement” means the time [this paragraph](#) comes into force;
  - “the permitted maximum”: see [paragraph 6](#).

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**Commencement Information**

**I5** Sch. 8 para. 5 in force at 28.6.2022, see s. 170(3)(a)

*Paragraph 5: the permitted maximum*

- 6 (1) In [paragraph 5](#) “the permitted maximum”, in relation to a qualifying lease, has the following meaning.
- (2) The permitted maximum is (subject to [sub-paragraphs \(3\) to \(5\)](#))—
- (a) if the premises demised by the qualifying lease are in Greater London, £15,000;
  - (b) otherwise, £10,000.
- (3) Where the value of the qualifying lease at the qualifying time exceeded £1,000,000 but did not exceed £2,000,000, the permitted maximum is £50,000.
- (4) Where the value of the qualifying lease at the qualifying time exceeded £2,000,000, the permitted maximum is £100,000.
- (5) Where the qualifying lease is a shared ownership lease and the tenant’s total share was less than 100% at the qualifying time—
- (a) the value of the qualifying lease at that time is to be determined as if the tenant’s total share at that time was 100%;
  - (b) the permitted maximum is the tenant’s total share (as at that time) of what would otherwise be the permitted maximum.
- (6) The Secretary of State may by regulations make provision about the determination of the value of a qualifying lease for the purposes of [paragraph 4](#) and [this paragraph](#).
- (7) The regulations may in particular provide that, except in prescribed cases, the value of a qualifying lease at the qualifying time is to be determined by—
- (a) ascertaining the consideration given on the latest disposal of the qualifying lease on the open market to have been made before that time, and
  - (b) if that disposal occurred before 2022, uprating the consideration in accordance with the regulations.
- (8) In [this paragraph](#) “shared ownership lease” and “total share” have the meaning given by section 7 of the Leasehold Reform, Housing and Urban Development Act 1993.

**Commencement Information**

**I6** Sch. 8 para. 6 in force at 28.6.2022, see s. 170(3)(a)

*Annual limit on service charges*

- 7 (1) A relevant service charge which would otherwise be payable under a qualifying lease is payable only if (and so far as) the sum of—
- (a) the amount of the service charge, and
  - (b) the total amount of relevant service charges which fell due in the period of 12 months ending with the day on which the service charge fell due,
- does not exceed one tenth of the permitted maximum.

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(2) In [this paragraph](#)—

“the permitted maximum” means the permitted maximum as defined by [paragraph 6](#) in relation to the lease;

“relevant service charge” means a service charge under a qualifying lease in respect of a relevant measure relating to any relevant defect.

**Commencement Information**

**17** [Sch. 8 para. 7](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*No service charge payable for cladding remediation*

8 (1) No service charge is payable under a qualifying lease in respect of cladding remediation.

(2) In [this paragraph](#) “cladding remediation” means the removal or replacement of any part of a cladding system that—

- (a) forms the outer wall of an external wall system, and
- (b) is unsafe.

**Commencement Information**

**18** [Sch. 8 para. 8](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*No service charge payable for legal or professional services relating to liability for relevant defects*

9 (1) No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect.

(2) In [this paragraph](#) the reference to services includes services provided in connection with—

- (a) obtaining legal advice,
- (b) any proceedings before a court or tribunal,
- (c) arbitration, or
- (d) mediation.

**Commencement Information**

**19** [Sch. 8 para. 9](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*Paragraphs 2 to 4, 8 and 9: supplementary*

10 (1) [This paragraph](#) supplements paragraphs 2 to 4, 8 and 9 (the “relevant paragraphs”).

(2) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing—

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- (a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else)—
  - (i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or
  - (ii) are to be met from a relevant reserve fund;
- (b) any amount payable under the lease, or met from a relevant reserve fund, is limited accordingly (and any necessary adjustment must be made by repayment, reduction of subsequent charges or otherwise).

(3) In [this paragraph](#)—

“the relevant provisions” means sections 18 to 30 of the Landlord and Tenant Act 1985 (service charges) and section 42 of the Landlord and Tenant Act 1987 (service charge contributions to be held on trust);

“relevant reserve fund” means—

- (a) a trust fund within the meaning of section 42 of the Landlord and Tenant Act 1987,
- (b) an express trust of a kind mentioned in subsection (9) of that section, comprising payments made by the tenant under the lease and others, or
- (c) any other fund comprising payments made by the tenant under the lease and others, and held for the purposes of meeting costs incurred or to be incurred in respect of the relevant building in question or any part of it (or in respect of that building or part and anything else).

(4) The Secretary of State may by regulations modify the application of [this paragraph](#) as it applies in relation to a lease of premises that do not include a dwelling.

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**Commencement Information**

**I10** [Sch. 8 para. 10](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*No increase in service charge for other tenants*

11 Where—

- (a) an amount (“the original amount”) would, apart from [this Schedule](#), be payable by a tenant under a lease of premises in a relevant building, and
- (b) a greater amount would (apart from [this paragraph](#)) be payable under the lease as a result of [this Schedule](#),

the lease has effect as if the amount payable were the original amount.

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**Commencement Information**

**I11** [Sch. 8 para. 11](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*Recovery of service charge amounts from landlords*

- 12 (1) The Secretary of State may by regulations make provision for and in connection with the recovery, from a prescribed relevant landlord, of any amount that is not recoverable under a lease as a result of [this Schedule](#).

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- (2) In [this paragraph](#) “relevant landlord”, in relation to a lease, means the landlord under the lease or any superior landlord.

**Commencement Information**

**I12** [Sch. 8 para. 12](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*Presumption: qualifying lease*

- 13 (1) [This paragraph](#) applies in relation to a lease that meets the conditions in paragraphs [\(a\)](#) to [\(c\)](#) of section 119(2).
- (2) The lease is to be treated for the purposes of [this Schedule](#) as a qualifying lease unless—
- (a) the landlord under the lease has taken all reasonable steps (and any prescribed steps) to obtain a qualifying lease certificate from a tenant under the lease, and
  - (b) no such certificate has been provided to the landlord.
- (3) In [this paragraph](#) “qualifying lease certificate” means a certificate, complying with any prescribed requirements, that the condition in section 119(2)(d) was met in relation to the lease at the qualifying time.
- (4) The requirements that may be prescribed include requirements as to—
- (a) the information to be provided in the certificate,
  - (b) the form of the certificate, and
  - (c) the execution of the certificate.

**Commencement Information**

**I13** [Sch. 8 para. 13](#) in force at 28.6.2022, see [s. 170\(3\)\(a\)](#)

*Presumptions relating to landlord under qualifying lease*

- 14 (1) The person who was the landlord under a qualifying lease at the qualifying time (“the relevant landlord”) is to be treated for the purposes of [this Schedule](#) as having met the contribution condition (as defined by paragraph [3](#)) unless the landlord under the lease provides to the tenant under the lease a certificate, complying with any prescribed requirements, that the relevant landlord did not meet that condition.
- (2) The Secretary of State may by regulations provide that (in some or all cases) the condition in paragraph [2\(2\)](#) is to be treated for the purposes of [this Schedule](#) as met in relation to a lease to which paragraph [2](#) applies unless the landlord under the lease provides to the tenant under the lease a certificate that complies with any prescribed requirements.
- (3) The requirements that may be prescribed include requirements as to—
- (a) the information to be provided in the certificate,
  - (b) the form of the certificate, and
  - (c) the execution of the certificate.

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**Commencement Information**

**I14** Sch. 8 para. 14 in force at 28.6.2022, see s. 170(3)(a)

*Information from tenants*

- 15 (1) The Secretary of State may by regulations make provision requiring a tenant under a qualifying lease to give prescribed information or documents to the landlord under the lease or any superior landlord.
- (2) The regulations may provide that the information or documents are to be given in a prescribed way.

**Commencement Information**

**I15** Sch. 8 para. 15 in force at 28.6.2022, see s. 170(3)(a)

*Information from landlords*

- 16 (1) The Secretary of State may by regulations make provision requiring a relevant landlord to give prescribed information or documents to a relevant tenant or other prescribed person.
- (2) Information or documents may be prescribed if they relate to any matter with which [this Schedule](#) is concerned.
- (3) The regulations may require the information or documents to be given in a prescribed way.
- (4) The regulations may provide that where a relevant landlord fails to comply with the regulations, prescribed costs—
- (a) are not to be regarded as relevant costs to be taken into account in determining the amount of a service charge payable under a relevant lease, and
  - (b) must not be met from a relevant reserve fund.
- (5) The regulations may make provision for and in connection with an application to the First-tier Tribunal for an order—
- (a) determining whether a relevant landlord has failed to comply with the regulations, and
  - (b) if so, requiring the relevant landlord to provide specified information or documents to a specified person by a specified time.
- “Specified” here means specified in the order.
- (6) Nothing in sub-paragraph (5) limits the effect of regulations made by virtue of sub-paragraph (4).
- (7) Information or documents may be specified in an order under sub-paragraph (5) only if the regulations require them to be provided to the specified person.
- (8) In [this paragraph](#)—



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“relevant costs” has the meaning given by section 18 of the Landlord and Tenant Act 1985 (and this applies in relation to a lease of premises that does not include a dwelling as it applies in relation to a lease of a dwelling);

“relevant landlord” means a landlord under a relevant lease;

“relevant lease” means a lease of premises in a relevant building;

“relevant reserve fund” has the meaning given by paragraph 10;

“relevant tenant” means a tenant under a relevant lease.

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**Commencement Information**

**I16** Sch. 8 para. 16 in force at 28.6.2022, see s. 170(3)(a)

17 In section 21 of the Landlord and Tenant Act 1985 (service charge information), in subsection (6A) (inserted by section 112), after “2022” insert “or relevant buildings (as defined by section 117 of that Act)”.

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**Commencement Information**

**I17** Sch. 8 para. 17 in force at 28.6.2022, see s. 170(3)(a)

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**Commencement Information**

**I16** Sch. 8 para. 16 in force at 28.6.2022, see s. 170(3)(a)

**I17** Sch. 8 para. 17 in force at 28.6.2022, see s. 170(3)(a)

*Anti-avoidance*

18 A covenant or agreement (whenever made) is void insofar as it purports to exclude or limit any provision made under [this Schedule](#).

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**Commencement Information**

**I18** Sch. 8 para. 18 in force at 28.6.2022, see s. 170(3)(a)

**Changes to legislation:**

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