

**EXPLANATORY MEMORANDUM TO**  
**THE BUILDING SAFETY (LEASEHOLDER PROTECTIONS) (ENGLAND)**  
**REGULATIONS 2022**

**2022 No. 711**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument uses powers in the Building Safety Act 2022 to make provision for and in connection with the determination of the net worth of the landlord group and the landlord's connection to the developer in relation to relevant works, in order to determine their liability for the remediation of historical safety defects. It also makes provision requiring landlords to give prescribed information on this to the leaseholder.
- 2.2 The instrument makes provision for the determination of the value of a qualifying lease, based on the information provided by the leaseholder in their deed of certificate and the uprating multipliers in the Schedule. It provides for applications to the First-tier Tribunal for a remediation contribution order and to the High Court for an information order in connection with a building liability order. It also makes provision for the application of service charge restrictions to non-residential leases. Finally, it provides definitions for leaseholder owned buildings, associated persons and prescribed persons, and allows for a review of the Regulations within 5 years of the Regulations coming into force and therefore periodically.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument is the first use of the powers in sections 117, 121, 124 and 132 of, and paragraphs 3, 6, 10, 14 and 16 of the Schedule 8 to, the Building Safety Act 2022.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Part 5 of, and Schedule 8 to, the Building Safety Act 2022 provide that, in certain cases relating to remediation of building safety defects in relation to a relevant building (defined in section 117 of the Act), a leaseholder may not be required to pay a service charge. It also gives the Secretary of State the power, in paragraph 3 of Schedule 8, to make regulations to determine whether the landlord group met the contribution

condition based on the net wealth of the landlord group and for the landlord to calculate the value of a qualifying lease under paragraph 6 of Schedule 8.

- 6.2 Under the power in paragraph 16 of Schedule 8 to the Act, Regulation 7 provides for relevant landlords to share information on their ownership under the lease with the current landlord. Regulation 6 (made under the power in paragraph 14 of Schedule 8) requires the current landlord to complete and share the landlord certificate with the leaseholder, including information on whether the relevant landlord (being the landlord of the qualifying lease and not including any superior landlord) meets the net wealth threshold, whether any of the relevant landlords (being the landlord of the qualifying lease and including any superior landlord) are responsible under the Act, whether any relevant remediation works have been completed in the five years prior to commencement and the remaining maximum liability for any leaseholder.
- 6.3 Under the powers in sections 124 and 132 of the Act, Regulations 4 and 11 of the instrument provide for applications to the First-tier Tribunal and High Court for remediation contribution orders and building liability orders. Regulation 10 provides for the application of service charge restrictions to non-residential leases under the power in paragraph 10 of Schedule 8 to the Act. Finally, Regulations 2, 3 and 8 set out the definitions of leaseholder owned buildings, associated persons and prescribed persons under the powers in sections 117 and 121 of, and paragraph 3 of Schedule 8 to, the Building Safety Act 2022.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument introduces a requirement for landlords to provide information in relation to their group net worth, whether they are the developer or if they have any connection to the developer and their liability under the leaseholder protections provisions. It introduces the detail needed for landlords to determine the value of a qualifying lease, and a leaseholder's maximum liability under the Building Safety Act 2022. It also provides for applications to the First-tier Tribunal and the High Court. Finally, it provides consequential definitions.

### *Explanations*

#### *What did any law do before the changes to be made by this instrument?*

- 7.2 The provisions on protection of leaseholders from remediation costs in the Building Safety Act 2022 are new. There was no law in this area before these provisions, other than general service charge provisions in the various landlord and tenant acts. The new statutory provisions come into force on 28th June 2022. Where the landlord meets the contribution requirement in paragraph 3 of Schedule 8 to the Act on 14th February 2022, qualifying leaseholders are protected from the cost of remediating historical safety defects in buildings above 11m or five storeys. Qualifying leaseholders are fully protected in respect of cladding-related remediation costs and protected by capped remediation costs for non-cladding defects and interim measures. Those whose property is worth below £325,000 (in Greater London) or £175,000 (elsewhere in England) are protected from all historical safety remediation costs. Specified persons may apply for a remediation order via the First-tier Tribunal and a building liability order via the High Court.

Why is it being changed?

- 7.3 The instrument implements the new provisions in Part 5 of and Schedule 8 to the Building Safety Act 2022. Information is needed from landlords to determine whether they are fully responsible for the remediation of historical safety defects and, if not, the extent of leaseholders' liability under the protections. Provision is needed to enable the landlord to calculate the value of a qualifying lease and for relevant persons to make applications to the First-tier Tribunal and the High Court, where necessary. Definitions are needed to set out the meaning of leaseholder owned buildings, associated persons and prescribed persons under Part 5 of and Schedule 8 to the Building Safety Act 2022.

What will it now do?

- 7.4 This instrument will deliver the detail needed for landlords to determine whether they are liable to pay for all remediation of historical safety defects and for landlords to be obliged to pass that information on to leaseholders. This instrument will provide detail for the landlord to calculate the value of a qualifying lease, and the leaseholder's maximum liability under the protections. This instrument also provides for applications to the First-tier Tribunal in relation to remediation contribution orders and the High Court in relation to building liability orders. Finally, it provides consequential definitions under the Building Safety Act 2022.

**8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

**9. Consolidation**

- 9.1 Not applicable.

**10. Consultation outcome**

- 10.1 We did not undertake a consultation for these regulations as it was important to bring in the leaseholder protections provisions as quickly as possible to protect leaseholders under the Building Safety Act 2022.

**11. Guidance**

- 11.1 The Department will publish guidance relating to Part 5 of and Schedule 8 to the Building Safety Act 2022 and these regulations in Summer 2022.

**12. Impact**

- 12.1 The majority of the impact on business, charities or voluntary bodies in respect of the leaseholder protections is in relation to Part 5 of the Building Safety Act 2022 rather than these regulations. The policy transfers liabilities from leaseholders to businesses which operate as building owners and landlords. We expect that the leaseholder protections will drive enhanced proportionality, as landlords will be likely to consider much more carefully what works are essential and proportionate to make the building safer, once they are liable for some or all of the associated costs. We anticipate that this will result in reduced costs for remediation going forward.
- 12.2 The impact on the public sector is similar to that for the private sector, however, the Building Safety Act 2022 does not require social housing providers to meet the contribution condition, therefore they will only be required to pay for relevant works

where they are, or are connected to, the developer, or where remediation costs exceed the leaseholder cap.

- 12.3 An impact assessment (covering both this instrument and the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022) is submitted with this memorandum and published alongside this Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses. To minimise the impact on small businesses, landlords with a net worth of below £2 million per relevant building will only be liable for an apportioned share of costs after the leaseholder has paid up to their cap, unless they are (or are connected to) the developer.

### **14. Monitoring & review**

- 14.1 Regulation 13 of this SI requires the Secretary of State, from time to time, to carry out a review of the regulatory provision contained in these Regulations, and publish a report setting out the conclusions of the review within five years of the Regulations coming into force.
- 14.2 Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular, set out the objectives to be achieved by the regulatory provision, assess the extent to which those objectives are achieved, assess whether those objectives remain appropriate and, if so, assess the extent to which they could be achieved in another way.

### **15. Contact**

- 15.1 Kate Pickering at the Department for Levelling Up, Housing and Communities. Telephone: +44 (0) 303 444 8916 or email: [kate.pickering@levellingup.gov.uk](mailto:kate.pickering@levellingup.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Camilla Sheldon, Deputy Director for the Building Safety Programme, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Greenhalgh at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.