

A hand holding a magnifying glass over paper house models. The background is a blurred green and white bokeh. A blue diagonal stripe runs across the image from the top left to the bottom right.

B2: Building Safety Act: Implications for Housing Management

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10.30 – 11.30

What will we be looking at?

- Restrictions on Service Charges
- Resident Engagement Strategies
- Resident Duties
- Leaseholder Certificates
- Landlord Certificates

Leaseholder Protections / Service Charge Restrictions

- Schedule 8, Building Safety Act 2022 (28 June 2022)
<https://www.legislation.gov.uk/ukpga/2022/30/schedule/8/enacted>
- Section 133, Building Safety Act 2022 (NYIF)
<https://www.legislation.gov.uk/ukpga/2022/30/section/133/enacted>
- The Building Safety (Leaseholder Protections) (England) Regulations 2022/711 (20 July 2022)
<https://www.legislation.gov.uk/uksi/2022/711/made>

Leaseholder Protections / Service Charge Restrictions

- The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 (21 July 2022)

<https://www.legislation.gov.uk/ukdsi/2022/9780348235791>

Key Terms

- **‘relevant building’** - self-contained building, or self-contained part of a building that contains at least two dwellings and is at least 11 metres high or has at least five storeys
- **‘relevant defect’** - a defect (anything done or not done or anything used or not used) arising out of works carried out in the last 30 years which “causes a building safety risk”. This encompasses a risk to the safety of people in or about the building arising from either: (a) the spread of fire; or (b) the collapse of the building or any part of it
- **‘relevant measure’** - a measure taken to remedy a ‘relevant defect’ or for the purpose of preventing a building safety risk from materialising or reducing the severity of any incident resulting from a building safety risk materialising

Key Terms

- **‘relevant landlord’** - the landlord under the lease on 14 February 2022 or any superior landlord at that time
- **‘qualifying leaseholder’** - a leaseholder who meets the following criteria:
 - the property is in a building above 11 meters or 5 storeys;
 - the property is the leaseholder's main home (as at 14 February 2022); or
 - the leaseholder owned no more than 3 UK residential properties in total (including the property in question) as at 14 February 2022;
- A leaseholder is also a ‘qualifying leaseholder’ if they have purchased their property since 14 February 2022 but the criteria outlined above was met on 14 February 2022.

Restrictions on Service Charges: Cladding

- ‘Qualifying Leaseholders’ (and in some cases all leaseholders) liability to pay for the remediation of historical building safety defects or interim measures in relation to the same are no longer uncapped, and in some cases prohibited entirely.
- ‘Qualifying Leaseholders’ will not have to pay anything towards cladding remediation.
- 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.

Restrictions on Service Charges: Non Cladding

- All non cladding related fire safety service charges (i.e. any service charge relating to a 'relevant measure' relating to a 'relevant defect') will be subject to further restrictions:
 1. The landlord or associate was responsible;
 2. The landlord meets the contribution condition;
 3. The lease is below a certain value;
 4. Limit on service charges in all other cases.

Responsible?

- No service charge is payable in respect of a lease of any premises in a **'relevant building'** (note not tied to a 'qualifying lease') in respect of a **'relevant measure'** relating to a **'relevant defect'** if the **'relevant landlord'** is responsible for the relevant defect or associated with the person responsible for the relevant defect.
- A person is “responsible for” a relevant defect if:
 - 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;
 - in any other case, the person undertook or commissioned works relating to the defect.

“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.

Note definition of ‘associated’ – very wide application.

Contribution Condition and Value

- No service charge if the landlord meets the contribution condition. The contribution condition is where the landlord group's net worth was more than $N \times £2,000,000$.
- N is the number of 'relevant buildings'.
- A relevant building is, 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.
- Net worth determined in accordance with the formula outlined in the Regulations. **Note exceptions: RPs, LA or other prescribed persons.**
- No service charge if the value of the '**qualifying lease**' at the '**qualifying time**' was less than:
 - £325,000 (Greater London); or
 - £175,000 (anywhere else).
- The value is determined in accordance with the formula outlined in the Regulations.

Limits

- Otherwise service charges can not be more than £15,000 in Greater London or £10,000 elsewhere in relation to 'relevant measures' relating to 'relevant defects'.
- No service charges in relation to legal or other professional services relating to the liability (or potential liability).
- Includes service charges paid in the last 5 years.
- A higher limit of up to £50,000 for properties worth between £1 million and £2 million. A higher limit of £100,000 for properties worth more than £2 million.
- Shared Ownership Leases – value of 'qualifying lease' only if less than 100%.

Further Considerations

- Section 133, Building Safety Act:
 - Take reasonable steps to ascertain whether any grant is payable and, if so, to obtain the grant;
 - Take reasonable steps to ascertain whether monies may be obtained from a third party and, if so, to obtain monies from the third party;
- The reference to obtaining monies from a third party includes:
 - under a insurance policy;
 - under a guarantee or indemnity;
 - pursuant to a claim made against a developer, a person involved in the design, works or carrying out works in relation to the building.

Resident Engagement Strategies

The provisions relating to resident engagement appear at section 91 of the Act and provide as follows:

- The principal accountable person ('PAP') for an occupied higher-risk building must prepare a resident engagement strategy ('RES');
- The primary function of the RES is to promote participation of residents in making building safety decisions;
- A building safety decision is a decision by an Accountable Person ('AP') about the management of the building and which is in connection with the duties of an AP under the Act.

Resident Engagement Strategies

The RES must include information about:

- The information which will be provided to residents about decisions relating to the management of the building;
- When residents can be expect to be consulted about those decisions;
- Arrangements for consultation and obtaining views from residents;
- Means for measuring and keeping under review appropriateness of methods used by the AP.

Once produced, a copy of the RES must be given to each resident aged 16 or over (where the AP is aware of the resident and has taken all reasonable steps to be aware of the residents in the building), each owner of a residential unit and any other prescribed person.

Resident Engagement Strategies

- The Secretary of State may make regulations about the content of a RES and the way in which an RES is to be given to residents.
- Sections 92 - 94 do not directly relate to the RES but might be usefully and properly included in an effective RES. They provide for:
 - The right of residents to request prescribed information from an AP;
 - The PAP must establish a complaints system to deal with complaints relating to building safety risks or compliance of any AP with their duties.
- The SoS can issue Regulations in connection with the establishment and operation of complaints systems which may take into account:
 - How to make a complaint;
 - Timescales for dealing with complaints;
 - When a complaint must be referred to the Building Safety Regulator.

Residents' Duties

- Section 95 of the Act - residents (or owners) of properties in higher-risk buildings over the age of 16 must:
 - not act in a way that creates a significant risk of a building safety risk materialising;
 - not interfere with a relevant safety item. A 'relevant safety item' means anything in the common parts of a building that is intended to improve the safety of anyone in the building; and;
 - Comply with a request from an appropriate AP to provide information reasonably required for the 'Appropriate Accountable Person' to perform their duties to carry out an assessment of building safety risks and take steps to reduce those risks.
- Contravention Notices

Access

- Section 96 of the Act – access to premises
- Upon an application by an AP, the County Court may make an order:
 - Requiring the resident or owner of a premises to allow the AP, or a person authorised by them, enter the premises at a reasonable time on a specified date or within a specified period; and
 - May, if it appears to the court necessary, permit the taking of measurements, photographs, recordings or samples.

Landlord Certificates

- The Building Safety (Leaseholder Protections) (England) Regulations 2022/711

Leaseholder protections on building safety costs in England: frequently asked questions, Government Guidance, 28 June 2022

- **“Outstanding invoices for historical cladding or non-cladding building safety costs caused during construction or refurbishment are void and should be disregarded, even where they were issued before the Act came into force. Any landlord or agent who seeks to enforce them could be committing a criminal offence.**
- **Before a landlord can charge any historical non-cladding costs, they must fulfil a series of transparency and financial reporting requirements that will be set out in regulations during July. If they do not, the law requires them to pay all building safety costs in full, with no charges at all for leaseholders.**
- Leaseholders will be able to confirm their new legal rights through a short form that will be available on GOV.UK once new regulations become law during July. **They should not pay any historical cladding or non-cladding costs before landlords can provide a formal legal certificate that shows they have met their transparency and financial reporting requirements, or can demonstrate that the costs do not relate to works covered by the Act.”**

Landlord Certificates

- Regulation 6(1) - a current landlord must provide a certificate:
 - When the current landlord makes a demand to a leaseholder for the payment of a remediation service charge;
 - within four weeks of receipt of notification from the leaseholder that the leasehold interest is to be sold;
 - 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
 - within four weeks of being requested to do so by the leaseholder.

Landlord Certificates

- Regulation 6(2) – (4) – requirements of a certificate:
 - Statutory prescribed form;
 - Confirmations and information;
 - Evidence;
 - Accompanying documents;
 - Signature requirements?

Landlord Certificates

- What if a Landlord is unable to provide any of the information required?
- What happens if a landlord fails to provide a valid certificate?

Leaseholder Certificates

- Regulation 6 - Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022
- The Leaseholder's Deed of Certificate will:
 - Determine a leaseholder's qualifying status; and
 - Calculate the remediation cap where appropriate.
- Leaseholders can provide a certificate at any time or when requested by a Landlord.

Leaseholder Certificates

- Onerous process on the Landlord to ensure validity:
 - Prescribed requirements;
 - Service;
 - Prescribed form;
 - Reply dates;
 - Reminder provisions.

- What if a leaseholder does not complete a Leaseholder Certificate?

Questions?

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