EXPLANATORY MEMORANDUM TO

THE BUILDING SAFETY (LEASEHOLDER PROTECTIONS) (INFORMATION ETC.) (ENGLAND) REGULATIONS 2022

2022 No. [XXXX]

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 recovery, from a relevant landlord, of any amount that is not recoverable under a lease as a result of the leaseholder protections. It also makes provision requiring leaseholders to give prescribed information on their qualifying status, property value and shared ownership status, in order for their landlord to determine their liabilities under their self-declared qualifying lease. Finally, it also makes provision regarding the detail of the application for a remediation order via the First-tier Tribunal.

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 123 of, and paragraphs 12, 13 and 15 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 Lord Greenhalgh, the Minister of State for Building Safety and Fire for the Department for Levelling Up, Housing and Communities, has made the following statement regarding Human Rights:

"In my view the provisions of the Building Safety Bill (Leaseholder Protections) (Information etc.) (England) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 122 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 12, to make regulations as to the recovery from landlords in a building of amounts that could not have been charged to leaseholders.

6.2 In particular this instrument provides, under section 123, for the Secretary of State to be an interested person for the purposes of remediation orders and sets out the procedure for applying to the First-tier Tribunal for such an order. In regulations 3 to 5 the instrument sets out the rules under paragraph 12 of Schedule 8 to the Act on recovery of amounts from landlords in a building (NB. a right to manage company or a residents' management company is not a landlord under a lease for the purposes of Schedule 8 to the Act and is not therefore liable to pay such amounts).

6.3 Regulation 6 sets out the steps a landlord must take to determine whether a lease is a qualifying lease (as defined in section 119 of the Act), including notifying the leaseholder and providing a blank form for them to fill in (the form is set out in the Schedule to the Regulations). If the leaseholder does not complete or return the form after the landlord has undertaken the prescribed steps, then the landlord is permitted under regulations to treat the lease as if it is not a qualifying lease, and to make assumptions pursuant to regulations to be made under paragraph 6(6) of Schedule 8 to the Act as to the value of the lease for the purpose of the Schedule.

7. Policy background

What is being done and why?

7.1 This instrument introduces a requirement for leaseholders to provide one-time information in relation to their qualifying lease status and their liability under the leaseholder protections provisions. It introduces details for landlords to calculate liability for and recover any amount that is not recoverable from leaseholders. It also provides information which relevant persons must follow to make an application for a remediation order to the First-tier Tribunal.

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. The new statutory provisions will come into force on 28th June 2022. Where the lease met the requirements in section 119(2) on 14th February 2022, the leaseholder is protected by fixed caps, which are dependent on the property's value and their shared ownership status. The remainder of remediation costs will be apportioned between the relevant landlords. Specified persons may apply for a remediation order via the First-tier Tribunal.

Why is it being changed?

7.3 The instrument implements the new provision in the Building Safety Act 2022. Information is needed from leaseholders to determine whether a lease qualified for protections on 14th February 2022 and, if so, what the leaseholder's liability is under the protections. Provisions are needed to enable the landlord to calculate what costs each landlord is liable for, and recover them, where remediation costs are above the cap. Information is required to be provided as part of the application to the First-Tier Tribunal for a remediation order.

What will it now do?

7.4 This instrument will deliver the detail needed for landlords to identify who is liable to pay for the remediation of historical safety defects, how much they are liable for and

enable them to recover these amounts under the Building Safety Act 2022. The instrument will also provide detail on what the person making an application to the First-tier Tribunal must provide as part of their application for a remediation order.

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 Not applicable, a consultation was not required for these regulations.

11. Guidance

11.1 The Department will publish guidance relating 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 need to consider much more carefully what works are essential and proportionate to make the building safer, due to now being 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 A full impact assessment has not yet been finalised for this instrument. The Government will publish an impact assessment on the legislation.gov.uk website shortly, ahead of the debates on the draft affirmative regulations.

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 The approach to the monitoring of this SI is that the Secretary of State must, from time to time, 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 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 Minister Andrew at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.