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WHEN IT MATTERS MOST

What impact do the service charge provisions of the Building Safety Act 2022 have on me as a leaseholder of a flat in England?

Introduction

The Building Safety Act 2022 was enacted on 28 April 2022 and many of its provisions came into force on 28 June 2022. It sets out a fairly complex procedure for dealing with the recovery of costs typically arising from costs associated with defective cladding.¹

We have set out below some basic bullet points to help guide you through the legislation.

Does the Act apply to all residential buildings?

- No - Only those that are at least 11 metres or at least 5 storeys above ground level (in calculating the number of storeys, those below ground level are disregarded for this purpose)
- No - It does not apply to buildings where the landlord/freeholder is a local authority, registered social housing provider or where the leaseholders collectively own the freehold e.g via enfranchisement

What works are covered by the provisions?

- Works to rectify a defect that is a building safety risk i.e. defect arises from the spread of fire or partial/complete collapse of the building e.g. cladding removal or replacement
- Works arising from non-cladding defects e.g. waking watch costs

Do all flat occupiers qualify for protection from costs?

- No. The leaseholder must fulfil the following conditions²:

That as at 14 February 2022*, they:

- hold long leases ie: leases granted for more than 21 years; and
 - they pay a service charge under the lease; and
 - EITHER they occupy the flat as their main home, OR if not, they do not own more than 3 UK properties in total.
- If the leaseholder does not fulfil the above conditions, it cannot take advantage of the cost protection measures introduced by the Act
- Any such service charge contributions that have fallen due and been paid since 28 June 2017 are taken into account when calculating the leaseholder's contribution
- Service charge contributions that are payable can be spread out over 5 years

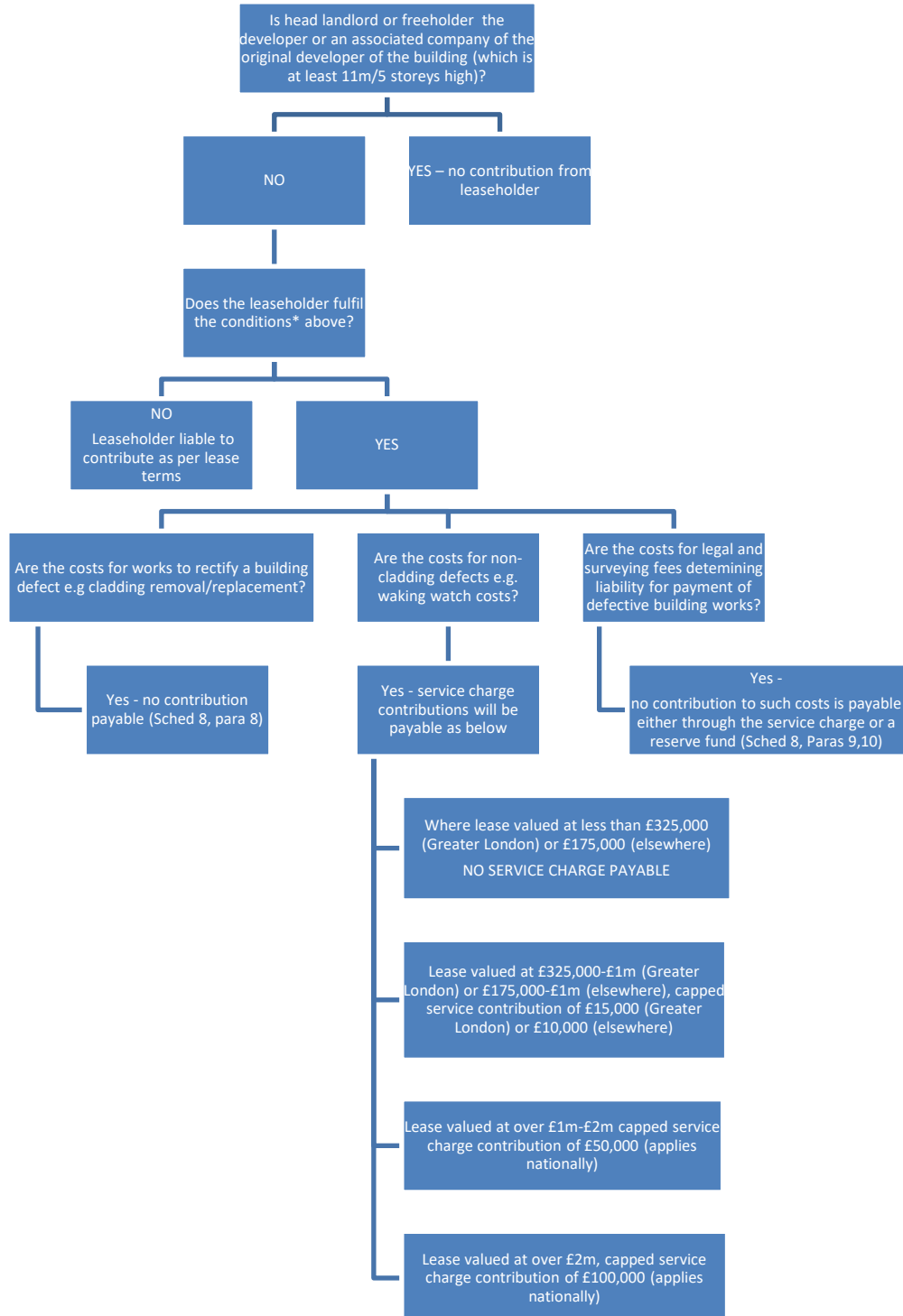
¹ It introduces amendments to the service charge provisions set out in the Landlord and Tenant Act 1985 and introduces new limitation periods for claims under the Defective Premises Act 1972 by amending provisions of the Limitation Act 1980.

² The Government has produced guidance on the practical application of the Act and in particular about the above conditions by introducing a Leaseholder Protections Checker: <https://www.gov.uk/check-building-safety-costs>

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Determining a leaseholder's contributions



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What if my landlord (a company) is required to pay the costs of remedying defects but does not pay or goes into liquidation?

- A leaseholder may be able to apply for a remediation contribution order against someone associated with the landlord, which includes a current director; someone who was a director in the 5 years up to 14 February 2022; another group company; a holding company; and even an unrelated company if it has a director who is also a director of the landlord
- The liquidator of the landlord can apply to the court for an order that an associated company contribute a “just and equitable” amount to the landlord company’s assets
- Or, the liquidator can ask the court to order an associated company to pay someone to remedy the defects
- But the above may not result in the defects being remedied, including because:
 - the liquidator is not obliged to make an application and incur the costs of doing so
 - the liquidator may not think it is within the liquidator’s role to apply for an order that an associated company pay someone to remedy the defects
 - if a contribution is made to the company’s assets, other costs (including the liquidator’s own) can be deducted first and other creditors may benefit from the contribution by way of dividend

What if I want to sell my flat?

- Position has to be assessed as at 14 February 2022
- Cost protections afforded to the selling leaseholder will transfer to the buyer even if the buyer does not intend to live in the flat itself or the buyer already owns more than 3 UK properties
- So if acting for buyers, it is important to establish if the seller is a qualifying leaseholder under the Act