Title: Proposed Landlord and Tenant Act 1985 Regulations and Statutory Guidance (Alternative Cost Recovery for Remediation Works)	Impact Assessment (IA)
	Date: 02/02/2023
	Stage: Development/Options
RPC Reference No: N/A	**Source of intervention:** Domestic
Lead department or agency: Department for Levelling Up, Housing and Communities	**Type of measure:** Secondary Legislation
Other departments or agencies: N/A	**Contact for enquiries:** AlternativeCostRecovery.Remediation@levellingup.gov.uk

Summary: intervention and options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£m	£m	£m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

Following the Grenfell Tower fire in June 2017, it became apparent that a significant number of blocks of flats have serious historical fire safety defects, often, but not always, associated with their original construction or subsequent refurbishment. This has included the use of unsafe cladding on the external walls of these buildings, as well as other fire safety defects. Due to the risk to life posed by these defects, extensive and often costly remediation work can be needed to make buildings safe. The previous legal position was that, while building owners were responsible for carrying out that work, it was the leaseholders who were liable in full for these costs. This resulted in many leaseholders being faced with bills they could not afford, for problems they did not cause, to pay for work over which they have limited influence. The Government has been clear that this was unfair. The leaseholder protections contained within the Building Safety Act 2022 protect leaseholders from such unaffordable bills. As the final backstop of the leaseholder protections, the Building Safety Act 2022 amends the Landlord and Tenant Act 1985 to require that, where landlords are able to pass costs of remediating prescribed defects in prescribed buildings in England on to leaseholders, they must first take reasonable steps to pursue other cost recovery avenues. The Government must set out further detail in regulations to complete the provisions set out in the primary legislation - to ensure that the new duty operates effectively.

What are the policy objectives of the action or intervention and the intended effects?

The intended policy outcome of the regulations is to make the new duty for landlords to take reasonable steps to explore other cost recovery avenues before asking leaseholders to contribute to defined remediation works work in practice. The scope regulations (to be made shortly) make clear what buildings, works and defects this new duty applies to. Statutory guidance will give clarity on the practical details of the steps that landlords should take to comply with the new duty. The information provision regulations will specify the information that the landlord must provide to the leaseholders about what steps they have taken before they are able to pass costs onto leaseholders. This information will provide evidence should leaseholders wish to make an application to the prescribe court or tribunal where they feel their landlord has failed to comply with the duties (we expect this to be the First-tier Tribunal (Property Chamber).

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – Do nothing

This would involve introducing no regulations or statutory guidance, meaning that the new duty under new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 would not work in practice.

Option 1 – Make secondary legislation and statutory guidance (preferred option)

This is the preferred option as it is the only way that the Government can properly implement the provisions introduced by new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985, and ensure leaseholders are sufficiently protected.

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes

What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	**Traded:** N/A	**Non-traded:** N/A
Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** June 2027		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ..... Date: .....

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year: N/A	PV Base Year: N/A	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised costs by 'main affected groups'

The primary impact of the leaseholder protections legislation is the transfer of cost liabilities (an economic transfer). New sections 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 require that landlords take reasonable steps to ensure that they have explored all alternative cost recovery avenues and ascertain whether they can recover funds from these avenues, before they pass costs on to leaseholders. The works and buildings in scope of (covered by) this duty will be defined in regulations – the proposals for which can be found in paragraphs 31 and 32 below. This new requirement applies only to buildings in England.

The primary cost here is the cost to landlords of exploring these options. Understanding the full scale of impacts is challenging when the complete picture of non-cladding related remediation required remains largely unknown. For buildings above 11 metres that have historical non-cladding fire safety defects, there is no reliable data on the prevalence, or extent, of these costs, but we know that they will vary significantly on a per building basis. As such, a macro-level assessment of impacts cannot be made that considers both cladding and non-cladding defects. Therefore, the analysis in this document sets out a series of example case studies for buildings with either cladding or non-cladding defects, illustrating the routes that landlords will need to pursue before (potentially) passing costs on to leaseholders. It is worth noting that the policies referred to in this document will work in tandem with statutory and other interventions already put in place by the Government, such as the ACM funds, the Building Safety Fund and the new scheme for buildings between 11-18m in height (details on will be published in 2023).

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised benefits by 'main affected groups'

As with costs, a macro-level assessment of monetised benefits cannot be made.

Other key non-monetised benefits by 'main affected groups'

The primary leaseholder protections regulations represent a transfer of costs from leaseholders to building owners and landlords. There are not expected to be any further benefits as a direct result of the new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985. Related to this there are likely to be associated positive effects on the mortgage market, based on market intelligence received to date. The potential scale of this impact and the wider impacts of the leaseholder protections legislation were set out in the Leaseholder Protection Regulations Impact Assessment[1].

Key assumptions/sensitivities/risks	Discount	N/A

[1] https://www.legislation.gov.uk/ukdsi/2022/9780348235791/impacts.

Given that the interventions outlined in these proposals are an extension of the statutory leaseholder protections (as set out in sections 116-125 of, and Schedule 8 to, the Building Safety Act 2022), the key risks included as part of the leaseholder protections impact assessment extend to this impact assessment, namely that the full picture of non-cladding costs remain largely unknown. For buildings above 11 metres that have non-cladding historical fire safety defects, there are no reliable estimates on the extent or prevalence of these costs, but we know that they will vary significantly on a per building basis. We also know that some buildings with non-cladding defects will require remediation.

Knowing how market actors will assess the largely unquantified level of risk relating to non-cladding costs and translate it into their operations is hard to predict. To conduct a macro-level assessment, we would need to know the scale and prevalence of non-cladding costs, and we would need a very good understanding of the range and prevalence of different ownership structures of buildings above 11 metres. The Department, however, has limited data in both of these areas. As such, understanding the full scale of impacts for leaseholder protections is challenging.

The approach taken in this impact assessment is, therefore, to set out a series of case studies illustrating the steps landlords will need to take before passing costs on to leaseholders. The Department has taken this approach due to limited available data with which to conduct a macro-level assessment as described above.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	

Evidence Base

Problem under consideration and rationale for intervention

1. Since the Grenfell Tower fire in June 2017, it has become apparent that a number of residential blocks of flats have serious historical building safety defects, often, but not always, associated with their original construction or subsequent refurbishment. This has included the use of unsafe cladding on the external walls of buildings as well as other non-cladding fire safety defects. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed. Costly interim safety measures such as waking watch patrols can also be required.

2. Most properties in multi-occupied residential buildings in England are owned as leaseholds, meaning that, in the simplest cases, the structure and common parts of the building and the land on which the building sits are owned by a freeholder, and the individual residential units within the building are owned as long leases. The freeholder or building owner is usually responsible for the safety and maintenance of the building, but the terms of most leases allow all such costs incurred by the freeholder to be passed to the leaseholders through the service charge.

3. Therefore, the pre-existing legal position in most cases was that leaseholders were liable in full to meet the costs associated with the remediation of historical building safety defects. Leaseholders were not responsible for creating these defects and did not know of their existence when purchasing their properties. They also had limited influence over the remedial work that takes place to their buildings. The costs associated with remediation have in some cases exceeded the value of the flat and have put significant financial strain on leaseholders, who are often unable to meet them.

4. The Government has brought forward a series of interventions to protect leaseholders from the costs associated with remediating historical building safety defects in England. Firstly, the Building Safety Fund and ACM funds are funding the remediation of unsafe cladding in high-rise buildings in England that are above 18 metres.

5. The Government is clear that those who developed buildings with fire safety defects must pay to put them right. On 30 January, the government published a developer remediation contract that it expects major developers to sign by 13 March. Once signed, the contract will commit those developers to fixing life-critical fire safety defects in residential buildings they had a role in developing or refurbishing over 11 metres in England over the past 30 years, and to reimbursing the taxpayer where that work has already been undertaken through government funding schemes.

6. The Government has launched a new scheme to provide funding for the remediation or mitigation of the fire safety risks linked to external wall system defects on medium-rise buildings (11-18 metres) where a responsible developer cannot be identified, traced, or held responsible. The scheme will be delivered by Homes England. An initial pilot started in November 2022 which has targeted a small number of buildings that have interim measures or simultaneous evacuation measures in place.

7. The Government is clear that there is no systemic issue with buildings below 11 metres. Low-rise buildings are very unlikely to need costly remediation to make them safe; assessments following the principles of the new standard, PAS9980, are likely to make clear that lower-cost mitigations such as fire alarms are more appropriate.

8. The Building Safety Act 2022 ("the Act") sets out additional measures to address the issue of costs of remediation of historical building safety defects. The Act significantly expands the routes to redress available in respect of historical building safety defects, allowing those responsible to be held to account through the courts.

9. The Act (sections 116-125 and Schedule 8) also establishes a suite of statutory leaseholder protections, which came into force on 28 June 2022. The protections impose new legal obligations on building owners and landlords to protect qualifying leaseholders in buildings above 11 metres or 5 storeys from the costs associated with remediating relevant historical defects. This ensures that such leaseholders will no longer be subject to demands for excessive service charge amounts which they cannot afford.

10. As the final backstop to the leaseholder protections, new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 (inserted by Section 133 of the Building Safety Act) requires that, where landlords[1] are able to pass costs of remediating prescribed defects in prescribed buildings in England on to leaseholders, they have a duty to first take reasonable steps to pursue other cost recovery avenues. The Secretary of State has powers to make regulations and issue statutory guidance about this duty. It is these regulations and guidance to which this impact assessment applies.

Rationale and evidence to justify the level of analysis used in the Impact Assessment (proportionality approach)

11. The approach taken in this impact assessment is to set out a series of case studies illustrating the reasonable steps landlords would have to take to demonstrate that they have sufficiently explored all avenues. As set out above, the Department has taken this approach due to limited available data with which to conduct a macro-level assessment.

12. While the Department has a more developed understanding of the scale of cladding remediation required, the full picture of non-cladding costs remains largely unknown. For buildings above 11 metres that have non-cladding historical fire safety defects, there are no reliable estimates on the extent or prevalence of these costs, but we know that they will vary significantly on a per building basis. We also know that it is likely that some buildings with non-cladding defects will require remediation. Without data on the scale and prevalence of non-cladding defects, a full macro-level assessment cannot be conducted. If we were to conduct a full macro-level assessment, we would need to consider the fact that many of the activities would fall under the counterfactual, as we would expect some landlords to be attempting to pursue these avenues anyway. The requirement to demonstrate the routes pursued would, however, increase the number of claims.

13. Knowing how market actors will assess the largely unquantified risk relating to non-cladding costs and translate it into their operations is hard to predict. To conduct a macro-level assessment, we would need to know the scale and prevalence of non-cladding costs, as well as have a very good understanding of the range and prevalence of different ownership structures of buildings above 11 metres. However, the Department has limited data in both areas. As such, understanding the full scale of impacts is challenging.

Policy background

14. This section contains a summary of the relevant provisions in the Building Safety Act 2022, and an overview of the context to which the provisions relate.

[1] Landlord here refers to landlords as defined in section 30 of the Landlord and Tenant Act 1985: "'landlord" includes any person who has a right to enforce payment of a service charge".

Overview of the Leaseholder Protections

15. The leaseholder protections mean that where a building owner or landlord is, or is connected to, the developer responsible for a relevant defect in a building above 11 metres or five storeys, they cannot legally pass on any remediation costs to their leaseholders. This is regardless of whether the leaseholders have a qualifying or non-qualifying lease[2].

16. The protections also mean that, where a leaseholder has a qualifying lease, their building owner or landlord cannot pass on any costs associated with remediation of historical safety defects in circumstances where at least one of the following is the case:

    a. the costs are associated with the remediation of unsafe cladding[3];
    b. their landlord meets a certain wealth threshold (with the exception of housing associations, local authorities and arms-length management organisations); or
    c. the value of the lease on 14 February 2022 was less than £325,000 in Greater London or £175,000 elsewhere in England.

17. If none of the conditions outlined in paragraph 15, 16a, 16b or 16c are met, then the non-cladding and interim measure remediation costs a building owner or landlord can pass on to qualifying leaseholders are firmly capped and spread over 10 years. The majority of qualifying leaseholders will have to pay no more than £10,000 (£15,000 in Greater London). Qualifying leaseholders with property worth more than £1 million or £2 million will be required to contribute up to £50,000 or £100,000, respectively. Costs already paid since 28 June 2017 will count towards the remediation caps.

Summary of relevant provisions in the Building Safety Act

18. Section 133 of the Building Safety Act 2022 amends the existing section 20 consultation process in the Landlord and Tenant Act 1985. It inserts Section 20D and 20E, and amending section 20ZA, to create additional steps that a landlord must take before asking leaseholders to contribute to works of a prescribed description on a building of a prescribed description. This duty applies only to buildings in England. Proposals relating to scope can be found in paragraphs 31-32, below.

19. The new duty requires that, where landlords can pass any remediation costs onto leaseholders (whether or not the leaseholder qualifies for the contribution caps under the leaseholder protections), they can only do so if they have taken reasonable steps to ensure that they have explored all alternative cost recovery avenues. Specifically, the landlord must:

    a. take reasonable steps to determine whether any grant is payable in respect of the remediation works and, if so, to obtain the grant;
    b. take reasonable steps to determine whether funds can be obtained from a third-party in connection with the undertaking of the remediation works and, if so, to obtain monies from the third-party (this includes insurance, indemnity and litigation against a developer);
    c. reflect any money recouped through these cost recovery avenues via a reduction in the remediation costs passed on via the service charge; and
    d. provide evidence to leaseholders that they have taken these steps.

[2] Section 119 of the Building Safety Act 2022 defines a "qualifying lease" as that which the leaseholder protections apply. A lease is qualifying if, on 14 February 2022, it was the leaseholder's principal home, or if they owned no more than three residential properties in the United Kingdom in total. In this impact assessment, the owner of a qualifying lease is referred to as a "qualifying leaseholder"; similarly, the owner of a non-qualifying lease is referred to as a "non-qualifying leaseholder".

[3] For the purpose of the leaseholder protections in the Act, cladding remediation is defined as the removal of or replacement of any part of a cladding system that meets both of the following conditions:

    a. it forms the outer wall of an external wall system
    b. it is unsafe.

20. The landlord is not required to comply with their duty to pursue other cost recovery avenues before carrying out remediation works. The expectation is that landlords will commence remediation works even if the monies are not guaranteed from alternative cost recovery avenues. Where the landlord successfully recovers funds via any of these avenues, they must reduce the remediation costs passed on to leaseholders accordingly.

21. The new provisions provide leaseholders with the right to challenge landlords at the prescribed court or tribunal if they feel that reasonable steps have not been taken to recover funds to remediate defective work from alternative cost recovery avenues. We expect this to be the First-Tier Tribunal (Property Chamber).

22. The Secretary of State has delegated powers to:

    - define the buildings and defects that are in scope of this new duty; and
    - specify in regulations the minimum information that landlords will need to provide to demonstrate that they have taken these reasonable steps.

23. The Secretary of State also has powers to issue guidance about the reasonable steps that a landlord should take to ensure that they have complied with this duty. Any failure to follow this guidance may be relied upon (for example, in tribunal or court proceedings) as tending to establish proof of failure to comply with the duty.

Policy objectives

24. The purpose of the regulations and guidance is to complete the provisions set out in primary legislation, so that the new duty can be commenced, and to provide further detail to fully operationalise the new duty.

25. The overarching policy objective of the regulations is to ensure that, in the limited circumstances where landlords can pass on certain remediation costs to leaseholders, they must still take reasonable steps to recover costs from other avenues before asking leaseholders to contribute. This aims to protect leaseholders from avoidable payments to remediate defects in their homes.

26. Without this intervention, we are concerned about misaligned incentives - the landlord would be responsible for making the building safe, but not for paying for the works, and so they may charge leaseholders the maximum amount they are liable for by default, rather than pursuing available options to protect leaseholders from costs they were not responsible for.

27. The scope regulations which will define the buildings and remediation works that are in scope of the duty must be made before the duty can come into force. Without these, the duty would not work, since Section 20D only applies to prescribed works and buildings. These regulations differ from the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations which will complete the definition of higher-risk building for the new building safety regime.

28. The information provision regulations will make requirements as to the minimum information landlords must provide leaseholders when passing on costs. This is to give leaseholders accurate, up to date information, to enable them to make informed choices and, where appropriate, to challenge when they feel their landlord has not taken reasonable steps.

29. The statutory guidance is intended to give clarity to landlords, leaseholders, and the prescribed court or tribunal (which we expect to be the First-tier Tribunal (Property Chamber) on the practical details of the steps that should be taken by landlords to show that they have complied with the new duty. Landlords must have regard to the guidance, since failure to follow it may be used as evidence of a lack of compliance with the duty. The First-tier Tribunal may also have regard to the guidance when determining whether a landlord has complied with, or breached, their duty. The intention is also for leaseholders to use the guidance as a

point of reference – to clarify their landlord's requirements, and to provide evidence should they wish to make an application to the prescribed court or tribunal, in instances where they feel their landlord has failed to meet their duties.

30. The guidance will also set an expectation about when landlords would update leaseholders on the progress of this cost recovery. Landlords would need to be able to demonstrate a compelling reason for failing to meet the timelines set out in the guidance (for example, in some cases, an annual update might not align with the terms of the lease).

Summary of the proposed requirements in the regulations and guidance

Buildings in scope

31. The Secretary of State has powers to define the buildings in England that are in scope of (covered by) the new duty for landlords to take reasonable steps to ensure that all alternative cost recovery avenues have been explored before asking leaseholders to contribute to defined remediation works. We propose that, for the building to be in scope of the new duty, it must be a multi-occupied residential building which is at least 11 metres tall or has at least five storeys, which is not on commonhold land, and which is not leaseholder-owned or leaseholder-managed. These regulations differ from the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations which will complete the definition of higher-risk building for the new building safety regime.

Defects and works in scope

32. The Secretary of State has powers to define the building defects and remediation works that are in scope of this new duty. We are proposing to effectively mirror the definition used for the leaseholder protections. This means that for a defect to be in scope of this duty, it must be one that puts people's safety at risk from spread of fire or from structural collapse. The defect must also have been created in the past 30 years and have arisen as a result of defective work to a building, including the use of inappropriate or defective products, during its construction or any later works (this includes the provision of professional services, such as those of an architect).

Reasonable steps

33. The Secretary of State has the power to produce guidance about the reasonable steps that a landlord should take before they are able to pass remediation costs on to leaseholders. The guidance will provide further detail on the steps landlords should take to recover costs from insurance, warranties, third-party litigation, and Government grants or funds. A draft of this guidance has been published alongside this impact assessment and can be accessed via the GOV.UK consultation page.

Information provision

34. The Secretary of State has powers to specify in regulations the minimum information that landlords need to provide, to demonstrate that they have taken reasonable steps to explore alternative routes of cost recovery before they are able to pass remediation costs onto leaseholders. We intend to use these powers to specify what information landlords will have to provide for each in scope defect, namely:

    - information about the defect (for example, the date of installation/creation of the defect, and the building control body which gave approval for its installation);
    - insurance information related to the installation of the defect (for example, the name of the insurer, length of cover and whether the policy may cover the defect);

- warranty information related to the installation of the defect (for example, the name of the warrantor, length of cover and whether the policy may cover the defect);
- information about the companies involved in the installation of the defect (for example, the names of the developer, the installer of the defect and whether the companies are still solvent);
- information about Government grants or funding (for example, the name of each fund which may cover the defect, and whether eligibility has been confirmed); and
- information about the cost recovery steps taken (for example, details about action taken to pursue the alternative avenues, details of the stages/outcomes and monies recovered through any relevant claim).

35. We also intend to use the statutory guidance to establish the expectation about when the information is to be provided. We intend to establish best practise as being a minimum of an annual summary, so that leaseholders are aware of the progress made in pursuing claims for each in-scope defect. The landlord will then have a legal obligation to provide a final summary with the most up-to-date information immediately before passing on remediation costs.

Summary and preferred option with description of implementation plan

Description of the options considered

36. The preferred option is to set out further detail in regulations and statutory guidance so that provisions set out in new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 can be commenced. These provisions are an essential part of the Government's commitment to protecting leaseholders from unreasonable remediation.
37. While some detail is set out in the primary legislation itself, there are a number of powers contained within the Act which allow secondary legislation and statutory guidance to be made, to set out additional detail as to the operation of the provisions.
38. As the primary legislation which creates the relevant provisions is now in place, there are only two possible options; these are set out below.

Option 0 – Do nothing

39. Option 0 is not to introduce any regulations or statutory guidance, meaning that we could not commence these new duties (under new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985), and the protections that the duties provide would not work in practice.
40. Without the scope regulations, key elements of the new duties would not work, and the route to passing remediation costs onto leaseholders would not be clear. By not providing the scope regulations, the legislation would not be able to be brought into force and landlords would be able to pass remediation costs onto leaseholders without having to take reasonable steps to recover costs from other avenues first.
41. Without the statutory guidance, landlords, leaseholders and the prescribed court or tribunal (which we expect to be the First-tier Tribunal (Property Chamber) would not have clarity on the practical details of the steps that should be taken to comply with the new duty. This would cause confusion, expensive and time-consuming litigation and would risk increased non-compliance.
42. Without the information provision regulations, landlords would not be obliged to provide leaseholders with relevant information about the cost recovery progress, and so leaseholders would not have the information they need to understand whether their landlord has complied with their duties. As such, we have discounted this option.

Option 1 – Make secondary legislation and statutory guidance for the new duties (preferred option)

43. Option 1 is to set out the proposed further detail in regulations and statutory guidance so that the requirements under new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 can be commenced. These provisions are a core part of the Government's commitment to protecting leaseholders from unreasonable remediation.

44. This is the preferred option, as it is the only way that the Government can properly implement the duties contained within new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985. As a result, this is the only way that Government can achieve the primary legislation's intentions of ensuring that, where remediation costs are passed on, leaseholders are not charged by default and that leaseholders are empowered to challenge unreasonable costs.

Implementation

45. The Building Safety Act 2022 received Royal Assent on 28 April 2022. The secondary legislation and statutory guidance associated with section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 are intended to come into force in accordance with the published implementation plan.

46. Landlords will have to comply with the regulations and will need to have due regard to the statutory guidance. Failure to comply with the guidance will tend to establish negative liability with the new duties.

47. Leaseholders can make an application to the prescribed court or tribunal if they feel their landlord has failed to meet these new duties (we expect this to be the (First-tier Tribunal (Property Chamber). The prescribed court or tribunal will determine whether the landlord has complied with - or breached - their new duties.

48. As the preferred option is implemented via secondary legislation and statutory guidance, there is scope to revisit the regulations and guidance in the future in response to operational experience.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

49. New section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 states that landlords must take reasonable steps to pursue all funding alternatives before passing costs on to leaseholders, so the primary cost here is the cost to landlords of exploring these options. These costs will likely include both administrative and legal costs (amongst others). The landlord might be able to pass on some costs to leaseholders (for example, the administrative time of pursuing alternative routes to redress, as per the terms of their leases). However, other costs will be a cost burden solely on landlords (such as legal fees, which cannot be passed onto qualifying leaseholders, as per paragraph 9, schedule 8 to the Building Safety Act 2022) will be a cost burden solely on landlords. These impacts are illustrated at the individual building level in the form of case studies in the following section.

50. The primary impact of the leaseholder protections legislation is the transfer of cost liabilities (economic transfer). The potential scale of this impact and the wider impacts of the leaseholder protections legislation were set out in the Leaseholder Protections Regulations Impact Assessment[4].

[4] https://www.legislation.gov.uk/ukdsi/2022/9780348235791/impacts.

Hypothetical case studies

51. For the purposes of this impact assessment, we are presenting nine illustrative examples in the form of case studies. These examples are provided to demonstrate the routes through which landlords will be required to go through to prove that they have explored all avenues of redress before passing costs on to leaseholders, and the associated estimated costs.

52. The case studies below present situations where the liability relates to cladding or non-cladding remediation. The case studies are split in such a way, with the first 4 being related to non-cladding defects and the following 5 being related to cladding defects.

53. The costs that can and cannot be passed on to qualifying and non-qualifying leaseholders, and the way these are apportioned is outlined in paragraphs 54-66 (below).

Cladding costs

54. The Building Safety Act fully protects qualifying leaseholders from cladding remediation, as well as non-qualifying residential leaseholders in buildings associated with developers.

55. Non-qualifying leaseholders in buildings not associated with developers may be liable to pay towards cladding remediation and interim measures (such as waking watch[5]). In practice, non-qualifying leaseholders should also be protected from the costs of cladding remediation since, in most circumstances, these costs should be covered by the developer test, the developer remediation contracts, the Social and Private Sector ACM Cladding Remediation Funds, the Building Safety Fund and the and the new scheme for buildings between 11-18 metres in height (details on will be published in 2023)

56. Where any funding is recovered via the exploration of alternative cost recovery routes, this amount of the funding is to be deducted from the remediation costs to be passed onto leaseholders.

Non-cladding costs

57. Qualifying leaseholders can only be asked to contribute towards non-cladding remediation works and interim measures in instances where the criteria outlined in paragraphs 15, 16a, 16b or 16c (above) are not met. The amount that can be passed onto qualifying leaseholders must be firmly capped and spread over 10 years. The cap for most qualifying leaseholders is £10,000 (or £15,000 in Greater London). Qualifying leaseholders with property worth more than £1 million or £2 million will be required to contribute up to £50,000 or £100,000, respectively.

58. Non-qualifying leaseholders may be liable to pay towards non-cladding remediation and interim measures if their landlord does not meet the developer test. Their contributions are not subject to caps but are subject to the terms of their individual lease.

59. Where any funding is recovered via the pursuit of alternative cost recovery avenues, this amount of the funding is to be deducted from the remediation costs being passed onto leaseholders (whether qualifying or non-qualifying).

Legal expenses

60. For this purpose, “legal expenses” means any costs relating to the liability (or potential liability) incurred (or to be incurred) as a result of needing to remedy a relevant defect. This includes obtaining legal advice, any proceedings before a court or tribunal, arbitration, and mediation.

[5] The Waking Watch Relief Fund and the Waking Watch Replacement Fund have protected leaseholders from expensive Waking Watch measures in buildings in England where a Waking Watch was in place at cost to leaseholders. These funds have covered the cost of installing alarms which reduce the need for these measures.

61. Qualifying leaseholders cannot be charged for any legal expenses relating to the liability - or potential liability - incurred as a result of a relevant defect. This covers cladding and non-cladding defects.

62. Non-qualifying leaseholders may be liable for legal expenses relating to the liability - or potential liability - incurred as a result of a relevant defect as per the terms of their individual lease.

Administrative costs of complying with the new duty

63. Costs which can be lawfully passed on to leaseholders via the service charge are defined as 'Relevant costs' by section 18 of the Landlord and Tenant Act 1985. [6] 'Relevant costs' that are not covered by the leaseholder protections, or section 20D of the Landlord and Tenant Act 1985, can be passed on to both qualifying and non-qualifying leaseholders, as per their individual leases. Such costs may include the administrative time of pursuing alternative routes for cost recovery and the administrative cost of drawing up the information provision summary. Administrative costs associated with complying with the duty can be passed on to both qualifying and non-qualifying leaseholders, as per the terms of their individual leases.

Apportionment when passing costs on to leaseholders

64. Any monies recovered via the cost recovery avenues must be reflected via a reduction in the service charge.

65. As above, qualifying leaseholders are now protected from certain costs. The amount each leaseholder would have otherwise been liable to pay (if the leaseholder protections were not in place) will be governed by the terms of their lease. This amount will vary from lease to lease and from building to building. Where a landlord incurs costs associated with remediation that cannot be recovered from a qualifying leaseholder, the landlord will be responsible for covering the cost themselves[7].

66. Non-qualifying leaseholders cannot be charged more than they would have been in the absence of the leaseholder protections – in other words, they cannot be charged more because qualifying leaseholders are paying less.[8] The amount each non-qualifying leaseholder is liable to pay will also be governed by the terms of their lease.

Case studies

67. The case studies are for hypothetical buildings that require remediation work and to which the leaseholder protections apply. Each case study sets out variable levels of detail that landlords may hypothetically need to go through to pursue alternative routes of redress before passing costs on to leaseholders. Each case study presents costs for hypothetical scenarios, which the Department has formed based on assumptions generated with assistance from external expertise and working groups. Every building and case is unique, so in practice the costs may look substantially different from the costs presented here.

68. For the purposes of these case studies, the assumption is made that the terms of the lease provide for an even split of costs (including remediation costs, legal expenses and 'relevant costs') among all leaseholders. In practice, for a given building, some leases (for example,

[6] The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.: https://www.legislation.gov.uk/ukpga/1985/70/section/18/2015-05-26.

[7] The landlord may pursue other avenues to help them gather the necessary funds, rather than paying for the whole cost of the works themselves.

[8] For example: cladding remediation work required on a block containing 100 units will cost £600,000. 90 of the units are qualifying leases and 10 are non-qualifying leases. The terms of the leases provide for an even split of costs among leaseholders. Qualifying leaseholders are protected from the costs, whilst leaseholders are liable to pay for their share (if the landlord does not meet the developer test). Since other tenants cannot be charged more than they would have been in the absence of the leaseholder protections, each non-qualifying leaseholder will be liable for one-hundredth of the cost, which is £6,000 each.

for larger or more valuable flats) could be liable for a greater share and others for a smaller share.

69. If the landlord(s) can demonstrate that they are allowed to pass costs on to leaseholders, these will be subject to the criteria described at paragraphs 15, 16a, 16b or 16c (above), including property value and lease type. For more detail on this, see the Leaseholder Protections Regulations Impact Assessment[9].

70. As explained in paragraph 18, landlords will be required to take reasonable steps to ensure that they have explored all alternative cost recovery avenues and ascertain whether they can recover funds from these avenues (such as insurance and third-party claims).

71. The hypothetical examples present these to varying degrees of depth, ranging from some landlords swiftly realising they have no case for a claim to protracted litigation taking many months and being very expensive to solve. For each route of redress, we have broadly defined three scenarios, representing how resource intensive the claim may be to pursue. Some routes to redress have less than three defined scenarios. The scenarios are:

    - No claim/no feasible claim – After assessing the relevant contracts and agreements, it is clear that there are no grounds for a claim.
    - Standard claim/regular litigation – The landlord will progress through a standard procedure of fielding a claim/making an application against their provider (warranty, insurance), a third-party (third-party claim) or for Government funding.
    - Dispute resolution/lengthy litigation – Where a claim is not easily resolved/settled initially, it could result in dispute resolution and/or lengthy litigation, potentially being quite costly.

72. All landlords impacted by the changes set out in these regulations (with relevant defects and looking to recover the costs of remediation) will incur a familiarisation cost in respect of the first case they deal with. We estimate that landlords (or the managing agents they employ) will need to spend an average of three hours reading the statutory guidance, and any other available guidance, at a cost of £77.

73. The more in-depth scenarios will include the processes and checks conducted under the simpler scenarios (for example, a warranty claim requiring dispute resolution will include the initial application or scoping conducted under no claim and the steps required under a regular warranty claim).

74. Although the claims presented in these examples are laid out in a linear structure, landlords should pursue insurance, warranties and third parties simultaneously, dependant on the specific circumstances of a case. Government grants (such as the Building Safety Fund) may also require applicants to demonstrate that similar reasonable steps have been taken to recover the costs through insurance claims, warranties, legal action etc.

Insurance

75. No feasible claim – Under the ‘no feasible claim’ scenario, upon discovering an issue or defect, the landlord should notify their insurance company in accordance with the terms of their insurance policy. In this scenario, we are assuming the insurance does not cover the issue or defect identified, which they landlord will realise after reading up on their cover or after being informed by the insurance provider. The time and resource required under this scenario is minimal, but the landlord will still need to undertake required steps to rule out this as an option.

76. Standard claim – Following on from notifying their insurance provider, the landlord should follow any reasonable instructions from the insurance company whilst taking the instructions

[9] https://www.legislation.gov.uk/ukdsi/2022/9780348235791/impacts.

of the fire and rescue service, local authority, the building safety regulator etc. into account. They should provide information to the insurance company as required and ensure that they have complied with all requirements under the policy. Their claim will be progressed by the insurance company and depending on the nature of the claim, may require a full building inspection.

77. Dispute resolution – If the outcome of the claim is not in the landlord's favour, they should follow the appeals process set by the insurance provider – this includes arbitration/mediation where available. If the outcome of the appeal is that there is no agreement, or mediation/arbitration is not a viable option, there are additional options that the landlord may wish to consider, including (but not limited to), the New Homes Ombudsman scheme and the Financial Ombudsman Service. The landlord may wish to seek legal advice throughout the dispute resolution process. Dispute resolution can vary substantially in time and cost, and to represent this we have three different costs depending on the scenario. We understand that, in practice, the majority of insurance claims are simple cases, and it is highly unlikely that any will require extensive dispute resolution. As such none of our case studies contain this as a scenario.

Warranties

78. No feasible claim – Under the 'no feasible claim' scenario, the landlord should make every effort to make a warranty claim immediately after the identification of the defect, where appropriate. This is to ensure that the claim is submitted within the warranty period. In this scenario, we are assuming that the warranty does not cover the issue or defect identified, which the landlord will realise after reading up on their cover or after being informed by the warrantor. This may be due to it being outside of the warranty time window, or because the defect falls outside of the warranty coverage.

79. Standard claim – Following on from notifying the warrantor, and depending on the warrantor's requirements, the landlord may need to collate evidence body to support their claim. The additional support of technical advisors may also be required. Depending on the warrantor's requirements, the issue or defect may need to be assessed by a relevant competent professional under the warranty to understand the scope of the problem and suggest a proportionate path to remediation. The landlord should follow any reasonable instructions from the warrantor, whilst taking the instructions of the fire and rescue service, local authority, and any other relevant body (for example, the building safety regulator) into account. They should provide information to the warrantor as required and ensure that they have complied with all requirements under the policy. Under this scenario, we are assuming that the landlord will seek legal advice throughout the process to support their claim.

80. Dispute resolution – If the landlord has pursued cost recovery via a warranty and the outcome of the claim is not in their favour, or if the builder/developer and/or warranty provide do not take action, then where possible, they should follow the appeals process set by the warrantor. This includes arbitration/mediation. If the landlord has not received a satisfactory resolution, the landlord may raise a complaint to (but not limited to) the New Homes Ombudsman scheme or the Financial Ombudsman Service and seek legal advice as to whether a claim should be challenged through the courts. Dispute resolution can vary substantially in time and cost, and to represent this we have three different costs depending on the scenario[10].

Third-party claim

[10] Low - £20,000, mid - £60,000 and high - £100,000

81. No claim – Under the 'no claim' scenario, a landlord should take reasonable steps to ascertain whether they can recover funds from a third-party (for example, a developer or contractor) in connection with the undertaking of the remediation works. The landlord should firstly seek legal advice regarding the likelihood of successfully recovering costs or partial costs of remediation works from the third-party. This should be carefully considered to determine whether it is feasible to recover costs. Lawyers will be able to advise on the material which should be collected, the identification of witnesses of fact, and the identification and instruction of expert witnesses. This will allow the lawyers to assess any potential claim more thoroughly, so they can effectively advise on the merits. Landlords should carry out this process and collect information in a thorough and timely manner. In the no claim scenario, the landlord has decided not to pursue a third-party/parties because they have received strong legal advice against doing so (for example, due to the timescales, merits, costs etc.) In the no claim scenario, the legal advice is that there are no grounds for a claim.

82. Standard claim – If legal advice is that there is a feasible case to pursue a third-party/parties, where appropriate, the landlord should consider pursuing the pre-action protocol with a view to reaching a settlement and/or litigation. At any time during the proceedings, the parties can engage in settlement discussions and litigation should be a last resort. Under a standard claim scenario, we expect extended settlement discussions and (depending on situation) some degree of litigation.

83. Dispute resolution/lengthy litigation – If the litigation/dispute resolution is taking a considerable amount of time, or the outcome of litigation is unsuccessful and the landlord decides to appeal, the scenario then becomes a protracted process. This will result in additional costs to landlords, through both administrative and legal fees. Based on discussions with stakeholders and working groups, the expectation is that the third-party claims will take the longest and be the most involved of all the routes to redress.

Government funding/grants

84. Once a landlord has taken reasonable steps to ascertain whether some or all of the costs of remediation can be recovered through insurance, warranties, or the pursuance of third-parties (including pre-action or litigation), they should then determine whether there is any funding available to them through an appropriate Government scheme to meet remaining costs, such as the Building Safety Fund, the Social and Private Sector ACM Cladding Remediation Funds, other future Government funds including the new scheme for buildings between 11-18 metres in height (details on will be published in 2023), and any available local authority schemes).

85. No claim – Under the 'no claim' scenario, the landlord should take reasonable steps to verify whether they are eligible for funding or a grant from the Government. To do this, they should familiarise themselves with any application guidance related to the relevant fund or grant to ensure eligibility and avoid causing unnecessary delays to the process. In this scenario, the landlord realises that they are not eligible for funding and so they do not pursue a claim. For example, they may not be able to apply for the Building Safety Fund because their building is under 18 metres, or the defect in question is a non-cladding defect.

86. Standard claim – If the landlord identifies that their building is eligible for Government funding or grants[11], they should apply for that funding or grant once they have pursued the other avenues described above and comply with any requirements set out by the Department in a timely manner. For example, during the Building Safety Fund application process, landlords will be asked to demonstrate that all reasonable steps have been taken to recover costs from

[11] Government funding and grants can currently only be pursued for cladding defects.

other parties. The process will take time and will incur a cost since any Government funding or grant is subject to provision of accurate information, legal due diligence, and Departmental assessment.

Assumptions and information provision

87. In all the following case studies, we are assuming that the work required in exploring the routes to redress (such as checking building insurance or establishing whether there is a case for Government funding) will be conducted either in-house (for all social owned buildings and some private owned), or via a managing agent (for some private buildings). In all instances, we have assumed that the wage of the individual conducting these activities will be akin to that of a 'Property, housing and estate manager', as taken from the Office for National Statistics Annual Survey of Hours and Earnings[12]. This is £25.54 per hour. Included in the figure is a 20.6% uplift to reflect non-wage contributions[13].

88. Where dispute resolution is required, we expect that it will cost a varying amount dependant on how protracted the case is. We have set out our assumptions in footnote 10. Dispute resolution for warranty and third-party claims follow a broadly similar process, and the actions required for each are also very similar. We therefore expect that these costs will be grouped where dispute resolution for warranties and third-party claims is pursued simultaneously. There may be scenarios where this is additionally more costly on top of the standard assumptions (see case study 9).

89. If a landlord pursues any sort of claim (any route of redress past the 'no claim' scenario), they may need to carry out an investigation to understand the defect(s). We have assumed this will cost on average in the region of £5,000 - £8,000, and for the purposes of this analysis we have assumed £6,500. Therefore, all of the case studies below (with the exception of case study 1) have this cost included in the total.

90. In the case studies, we do not assume whether the claim is successful or not, except for the 'no claim'/'no feasible claim' scenarios. In these scenarios, it is apparent early on in the process that there are no grounds for a claim, and as such we have included only a small amount of time for landlords to record the outcome (that they will later communicate to leaseholders – see paragraphs 34-35 for more on the information provision proposals). Where the landlord is successful in their claim, they may need to recalculate leaseholder apportionment and contributions. We have included an assumption in table 1 (below) of this cost.

91. Where the landlord does recover some costs, these savings must be deducted from the remediation costs passed onto leaseholders via the service charge. This is not reflected in the below case studies (as we are not making assumptions on the success rate of claims), but we have provided an illustrative example of how this would work in paragraph 106 (below).

92. Under the proposed information provision requirements, landlords will be required to demonstrate to leaseholders that they are pursuing all the appropriate routes to redress. They will need to do this no later than the time they pass on remediation costs to leaseholders. The landlord should also provide an annual update on the progress of their claims to leaseholders. If a claim is protracted over a number of years, they will have to do this multiple times. We do not propose to prescribe a particular way of communicating this to leaseholders, but we expect that it will be via email - the time and cost assumption to do this is found in table 1 below. This cost will be in addition to every case study below.

[12] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14.

[13] Non-wage contributions include elements such as national insurance and pension contributions.

Table 1: Information provision and apportionment cost

	Cost
Time taken to recalculate apportionment	£51
Communicate outcome to leaseholders	£26

Case study structure

93. Each case study includes a table which sets out the total cost accrued by the landlord in **pursuing** the alternative avenues of cost recovery, and the amount that can be passed on to leaseholders, individually and collectively. For a more detailed breakdown of the costs that make up individual leaseholder contributions, see table 20. These tables do not include remediation costs, and do not show the resulting deduction in the remediation costs passed on to leaseholders. For an illustrative example of how remediation costs could be reduced, see table 21.

Non-cladding defects

(All the costs presented in the case studies below are in today's prices. Figures in tables may not sum due to rounding)

Case study 1

94. The first case study represents a base scenario where the landlord pursues all routes to redress but establishes that they do not have a claim under any route. There are 43 leaseholders in the buildings, 40 qualifying and 3 non-qualifying.

Table 2: Case study 1

	Insurance	**Warranty**	**Third-Party**	**Government Funding**
No claim / no feasible claim (not eligible/covered)	£121	£217	£7,153	£102
Easy claim made/easy litigation				
Lengthy process required				
Total Cost	£7,593			

Table 3: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	**Total Leaseholder Contributions**	**Total Costs Accrued by Landlord**	**Leaseholder Contributions as a % of Total**
Qualifying Leaseholders	£13	£523	£7,593	14%
Non-Qualifying Leaseholders	£177	£530		

Case study 2

95. The second scenario is largely similar to the first, but with the landlord engaging in more detail to make a claim on their warranty. The building contains 40 leaseholders, 38 qualifying and 2 non-qualifying.

Table 4: Case study 2

	Insurance	**Warranty**	**Third-Party**	**Government Funding**
No claim / no feasible claim (not eligible/covered)	£121		£7,153	£102
Easy claim made/easy litigation		£12,092		
Lengthy process required				
Investigation	£6,500			
Total Cost	£25,968			

Table 5: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	**Total Leaseholder Contributions**	**Total Costs Accrued by Landlord**	**Leaseholder Contributions as a % of Total**
Qualifying Leaseholders	£176	£6,685	£25,968	31%
Non-Qualifying Leaseholders	£649	£1,298		

Case study 3

96. The third scenario is similar to the second, except the landlord pursues an insurance claim. There are 62 leaseholders in this building, all of which are qualifying leaseholders.

Table 6: Case study 3

	Insurance	**Warranty**	**Third-Party**	**Government Funding**
No claim / no feasible claim (not eligible/covered)			£7,153	£102
Easy claim made/easy litigation	£147	£12,092		
Lengthy process required				
Investigation	£6,500			
Total Cost	£25,993			

Table 7: Total Cost Contributions towards pursuing alternative avenues of costs recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying Leaseholders	£114	£7,062	£25,993	27%
Non-Qualifying Leaseholders	-	-		

Case study 4

97. In case study 4, the landlord enters dispute resolution on a third-party claim, and this dispute resolution is assumed to be high cost. The building contains 50 leaseholders, 46 qualifying and 4 non-qualifying.

Table 8: Case study 4

	Insurance	Warranty	Third-Party	Government Funding
No claim / no feasible claim (not eligible/covered)	£121	£217		£102
Easy claim made/easy litigation				
Lengthy process required			£118,602	
Investigation	£6,500			
Total Cost	£125,543			

Table 9: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying Leaseholders	£281	£12,942	£125,543	18%
Non-Qualifying Leaseholders	£2,511	£10,043		

Cladding defects

(All the costs presented in the case studies below are in today's prices. Figures in tables may not sum due to rounding)

Case study 5

98. Under case study 5, the landlord pursues routes to redress, engaging in dispute resolution on their warranty claim. Dispute resolution for the warranty claim is assumed to be mid cost. There are 48 leaseholders in the building, 40 qualifying and 8 non-qualifying.

Table 10: Case study 5

	Insurance	Warranty	Third-Party	Government Funding
No claim / no feasible claim (not eligible/covered)				
Easy claim made/easy litigation	£147		£18,602	£6,602
Lengthy process required		£72,092		
Investigation	£6,500			
Total Cost	£103,943			

Table 11: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying Leaseholders	£428	£17,140	£103,943	33%
Non-Qualifying Leaseholders	£2,165	£17,324		

Case study 6

99. Case study 6 is the same as case study 5, except the dispute resolution for warranties is assumed to be high cost. The building contains 80 leaseholders, 75 qualifying and 5 non-qualifying.

Table 12: Case study 6

	Insurance	Warranty	Third-Party	Government Funding
No claim / no feasible claim (not eligible/covered)				
Easy claim made/easy litigation	£147		£18,602	£6,602
Lengthy process required		£112,092		
Investigation	£6,500			
Total Cost	£143,943			

Table 13: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying	£257	£19,882	£143,943	20%
Non-Qualifying	£1,799	£8,996		

Case study 7

100. In case study 7, the landlord pursues all routes to redress, with none of them reaching a stage requiring dispute resolution. There are 60 leaseholders in the building, 58 qualifying and 2 non-qualifying.

Table 14: Case study 7

	Insurance	Warranty	Third-Party	Government Funding
No claim / no feasible claim (not eligible/covered)				
Easy claim made/easy litigation	£147	£12,092	£18,602	£6,602
Lengthy process required				
Investigation	£6,500			
Total Cost	£43,943			

Table 15: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying	£343	£19,882	£43,943	49%
Non-Qualifying	£732	£1,465		

Case study 8

101. Similar to case study 6, case study 8 has the same level of detail for each route to redress, however the warranty dispute resolution is assumed to be low cost. There are 52 leaseholders in this building, 50 qualifying and 2 non-qualifying.

Table 16: Case study 8

	Insurance	Warranty	Third-Party	Government Funding
No claim / no feasible claim (not eligible/covered)				
Easy claim made/easy litigation	£147		£18,602	£6,602
Lengthy process required		£32,092		
Investigation	£6,500			
Total Cost	£63,943			

Table 17: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying	£396	£19,777	£63,943	35%
Non-Qualifying	£1,230	£2,549		

Case study 9

102. The final case study has dispute resolution for both a warranty claim and a third-party claim. These will take place simultaneously, and some of the work required to progress both will likely be the same and not required to be duplicated across both. Despite this, there may be some cases where pursuing dispute resolution for both is more costly, and as such the combined cost for both warranties and third-party is more expensive in this case study. This building contains 80 leaseholders, 70 of which are qualifying and 10 non-qualifying.

Table 18: Case study 9

	Insurance	Warranty	Third-party	Government Funding
No claim / no feasible claim (not eligible/covered)				
Easy claim made/easy litigation	£147			£6,602
Lengthy process required		£165,694		
Investigation	£6,500			
Total Cost	£178,943			

Table 19: Total Cost Contributions towards pursuing alternative avenues of cost recovery

	Individual Leaseholder contributions	Total Leaseholder Contributions	Total Costs Accrued by Landlord	Leaseholder Contributions as a % of Total
Qualifying	£257	£17,997	£178,943	23%
Non-Qualifying	£2,237	£22,368		

Passing on costs to leaseholders via the service charge

103. As mentioned in paragraphs 54-66 (above), landlords can pass certain costs on to leaseholders, dependant on the type of costs and whether the leaseholders are qualifying or non-qualifying. Each case study includes a table which sets out the total cost of pursuing the alternative avenues of cost recovery, and the amount that can be passed on to leaseholders, individually and collectively. Table 20 (below) presents the estimated cost per leaseholder of pursing the alternative cost recovery avenues for each case study. The costs are split into admin, legal and other. In summary:

- administrative costs associated with complying with the duty can be passed on to both qualifying and non-qualifying leaseholders, as per the terms of their individual leases;
- qualifying leaseholders cannot be charged for any legal expenses relating to the liability - or potential liability - incurred as a result of a relevant defect. Non-qualifying leaseholders may be liable for legal expenses, as per the terms of their individual leases;
- 'other' costs have been separated here, as they are costs that can be passed on to all leaseholders, but which contribute towards qualifying leaseholder's caps (as set out in the leaseholder protections in the Building Safety Act). This includes items such as investigations to understand defects, set out in paragraph 89 (above). The amount individual leaseholders pay is also dependant on the number of leaseholders in the building (which can be found in each of the above case studies); and
- remediation costs are not included.

104. Once again, it is important to note that the figures in table 20 represent the maximum costs of pursing the alternative cost recovery avenues that could be passed on to leaseholders in these case studies.

105. Any savings the landlords recover through the cost recovery routes will be accordingly reflected via a reduction in the remediation costs passed on to leaseholders via the service charge, which would reduce these figures.

Table 20: Costs per leaseholder[14]

		CS1	CS2	CS3	CS4	CS5	CS6	CS7	CS8	CS9
Qualifying Leaseholders	Admin	£13	£13	£9	£11	£147	£88	£117	£135	£88
	Legal	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Other	£0	£163	£105	£271	£282	£169	£226	£260	£169
	Total	**£13**	**£176**	**£114**	**£281**	**£428**	**£257**	**£343**	**£396**	**£257**
Non-Qualifying Leaseholders	Admin	£13	£13	N/A	£11	£147	£88	£117	£135	£88
	Legal	£164	£473	N/A	£2,230	£1,737	£1,542	£390	£834	£1,980
	Other	£0	£163	N/A	£271	£282	£169	£226	£260	£169
	Total	**£177**	**£649**	**£0**	**£2,511**	**£2,165**	**£1,799**	**£732**	**£1,230**	**£2,237**

106. As outlined in paragraphs 54-66 (above), landlords can pass on some of the costs of remediation itself, and/or the some of the costs of pursuing routes to redress. We will use case study 4 as an illustrative set of assumptions to give an example of how these costs could be passed on:

- the non-cladding remediation work required on the block costs £400,000
- the property is outside of London and that all the flats are of a value between £175,000 and £1 million, so the contribution cap for qualifying leaseholders is £10,000
- none of the leaseholders have made a contribution to the remediation costs to date
- the terms of the leases stipulate that costs that can be passed onto leaseholders are split evenly between leaseholders. This would mean that all leaseholders (whether qualifying or non-qualifying) are liable to pay £8,000 each
- the landlord recovers £175,000 in total, after having explored all the alternative routes to cost recovery. As a result, the total remediation cost that can be passed onto leaseholders will be reduced by £175,000, reducing each leaseholder's contribution to £4,500 each (a reduction of £3,500 per leaseholder)
- as outlined in table 20 (above), the landlord is able to pass on £281 to qualifying leaseholders and £2,311 to non-qualifying leaseholders, for the administrative, legal and other costs associated with exploring the alternative routes. These can be passed on to the leaseholders in the block, as per the terms of their individual leases, and as per the leaseholder protections (and as explained in paragraphs 60-66)
- Table 21 (below) presents these costs

[14] Figures may not sum due to rounding.

Table 21: Case study 4 leaseholder contributions

	Costs passed onto leaseholder if the reasonable steps duty is not commenced	**Costs passed onto leaseholders once the reasonable steps duty is commenced**			
	Remediation costs passed onto leaseholders (pre cost recovery avenues explored)	Costs passed onto leaseholders in relation to exploring cost recovery avenues (admin, legal, 'other')	Remediation costs passed onto leaseholders (post cost recovery avenues explored)	Total costs passed onto each leaseholder	Total saving for each leaseholder
Qualifying leaseholders	£8,000	£281	£4,500	£4,781	£3,219
Non-qualifying leaseholders	£8,000	£2,511	£4,500	£7,011	£989

Impact on small and micro businesses

107. Small businesses are defined in the better regulation framework guidance as those with between 10 and 49 full-time equivalent (FTE) employees. Micro businesses are those with between one and nine employees.

108. The published Leaseholder Protection Regulations Impact Assessment[15] provides an assessment of the impact on small and micro businesses from the introduction of the leaseholder protections. That assessment extends to the impacts arising from the regulations and guidance introduced under new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985.

109. By extension, the Department consider that exemptions would be inappropriate. Any exemption for landlords would involve an unacceptable compromise of safety and would be at odds with the policy aim of ensuring buildings are made safe.

Wider impacts (consider the impacts of your proposals)

110. We do not consider the duties under new section 20D, 20E, and amended section 20ZA of the Landlord and Tenant Act 1985 to have any wider impacts, however the leaseholder protections regulations that are already in force may well do so. To see some discussion of these wider impacts, please see the published Leaseholder Protection Regulations Impact Assessment[16].

[15] https://www.legislation.gov.uk/uksi/2022/711/impacts/2022/57.

[16] https://www.legislation.gov.uk/uksi/2022/711/impacts/2022/57.