

**APPENDIX TO APPELLANTS' SKELETON ARGUMENT DATED 12 NOVEMBER
2025**

BUILDING SAFETY ACT 2022

116 Remediation of certain defects

(1) Sections 117 to 125 and Schedule 8 make provision in connection with the remediation of relevant defects in relevant buildings.

(2) In those sections-

(a) sections 117 to 121 define “relevant building”, “qualifying lease”, “the qualifying time”, “relevant defect” and “associate”;

(b) section 122 and Schedule 8 contain protections for tenants in respect of costs connected with relevant defects, and impose liabilities on certain landlords;

(c) section 123 makes provision about remediation orders, under which a landlord in a relevant building is required to remedy certain relevant defects;

(d) section 124 makes provision about remediation contribution orders, under which an associate of a landlord in a relevant building is required to contribute towards the costs of remedying certain relevant defects; section 125 makes provision about cases where a company that is a landlord in a relevant building is being wound up, and confers on the court powers in respect of persons associated with the company.”

120 Meaning of “relevant defect” and “relevant steps”

(1) This section applies for the purposes of sections 122 to 125 and Schedule 8.

(2) “Relevant defect”, in relation to a building, means a defect as regards the building that—

(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and

(b) causes a building safety risk.

*(3) In subsection (2) “**relevant works**” means any of the following—*

*(a) works relating to the construction or conversion of the building, **if the construction or conversion was completed in the relevant period**;*

(b)works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c)works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

“The relevant period” here means the period of 30 years ending with the time this section comes into force.

(4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.

*[F3(4A) “**Relevant steps**”, in relation to a relevant defect, means steps which have as their purpose—*

*(a)preventing or reducing the likelihood of a fire or collapse of the building (or any part of it) **occurring as a result of the relevant defect**,*

(b)reducing the severity of any such incident, or

(c)preventing or reducing harm to people in or about the building that could result from such an incident.]

(5) For the purposes of this section—

“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from—

(a) the spread of fire, or (b) the collapse of the building or any part of it’

122 Remediation costs under qualifying leases etc

Schedule 8-

*(a) Provides that certain service charge amounts **relating to relevant defects** in a relevant building are not payable, and*

(b) Makes provision for the recovery of those amounts from persons who are landlords under leases of the building (or any part of it).

Schedule 8, paragraph 8

(1) No service charge is payable under a qualifying lease in respect of cladding remediation.

(2) In this paragraph "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.

EXPLANATORY NOTES:

Pre-Act Explanatory Notes

Lords Amendment 184 inserts a new schedule which outlines the conditions under which the service charge is not payable in respect of relevant defects. No service charge is payable under a qualifying lease in relation to relevant defects for which landlord or associate is responsible or if a landlord meets the contribution condition. No service charge is payable for cladding remediation.¹

Post-Act Explanatory Notes:

Extracts relating to Part 5:

*“915 Since the Grenfell Tower fire in 2017, it has become apparent that a number of residential blocks of flats have serious historical fire safety defects, often, but not always, associated with their original construction. Most notably this has included the use of **unsafe cladding on the external walls** of these buildings. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed.*

916 The terms of most leases...will allow the costs associated with this remediation work to be passed on to individual leaseholders through the service charge. The costs per lease to remediate historical building safety defects have sometimes been high...

918 The leaseholder protections measures further protect certain leaseholders in law by preventing altogether, or otherwise limiting, the costs that can be passed through the service charge to the leaseholder in respect of certain historical building safety defects.”

¹ Cited in *Adriatic* at §30(iii).

[Note ‘historical building safety defects’ is an expression used in the Notes to refer to ‘relevant measures’, as, inter alia, §1750 of the Notes (below) makes clear]

Extracts relating to s.120:

“956 *The leaseholder protections provisions protect leaseholders by preventing or otherwise limiting the costs associated with historical building safety defects being passed through the service charge. Section 120 defines the defects which fall within the scope of the leaseholder protections.*

‘957 *The leaseholder protections deal **only with historical building safety defects**; they are backward looking only. They are a one-off intervention designed to deal with the current serious problems with historical building safety defects in medium and high-rise buildings. **The protections only apply to defects created in the 30-year period prior to commencement of the provision, so in practice between mid-1992 and mid-2022. A 30 year period has been chosen as evidence shows that this period captures all buildings affected by the relevant safety issues.** It aligns with changes to the Act made to the limitation period under section 1 of the Defective Premises Act 1972...and the relevant limitation periods under the new cause of action relating to cladding products...”*

“984 [which is a paragraph explaining s.122] *Schedule 8 makes provision for service charge payments in respect of relevant defects not to be payable by leaseholders in certain circumstances. By limiting or preventing altogether the amounts that are payable in respect of **these defects**...leaseholders are protected from the costs associated with their remediation”*

Extracts dealing with Paragraph 8 specifically:

“1748 Sub-paragraph (2) defines “cladding remediation”. Cladding remediation means the removal or replacement of unsafe cladding **from the outer part of an external wall.**

...

1750 *The provisions in Schedule 8 protect leaseholders from the costs associated with historical building safety defects, defined in paragraph 1 as relevant measures. Paragraphs 5 to 7 make provision for qualifying leaseholder contributions towards relevant measures to be subject to a cap.....This paragraph [8] provides for qualifying leaseholders to be fully protected from the costs associated with cladding remediation. This means that the qualifying leaseholder*

contribution caps only apply in respect of relevant measures which are not related to cladding remediation costs in other words, applying to non-cladding costs, ...

1751 Although this paragraph provides that no cladding costs be charged to leaseholders going forward (i.e. after commencement), any leaseholder contributions towards cladding remediation that have been incurred prior to commencement do count towards the leaseholder contribution caps”

“1758.[Dealing with Paragraph 9 of Schedule 8] The purpose of Schedule 8 is to protect leaseholders from costs associated with historical building safety defects. Where landlords incur costs in connection with their new liabilities under the Act, this paragraph prevents these costs.....from being passed to leaseholders. Without these protections, it would be possible for landlords to pursue spurious or unrealistic legal claims and charge these costs to leaseholders; this paragraph [9] mitigates against that and ensures incentives are aligned by requiring building owners and landlords to absorb the costs of their own legal and other professional advice.”