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Disrepair, Service Charges and Building Safety in Commercial and Long Residential Leases

3rd June 2026

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ABOUT RICHARD SNAPE

Richard has been the Head of Legal Training at Davitt Jones Bould (DJB) since 2002. He speaks at numerous courses for law societies all over the country, various public courses, in-house seminars within solicitors' firms and has also talked extensively to local authorities and central government bodies. His areas of specialism include both commercial and residential property, in particular in relation to local government law, conveyancing issues, development land, commercial property and incumbrances in relation to land.

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Lecture is aimed at: Property professionals and fee earners involved in both contentious and non-contentious property work

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Satisfying Competency Statement Section: B – Technical Legal Practice

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CONTENTS

REPAIRING COVENANTS

INTERPRETATION OF REPAIRING COVENANTS

Repair and Inherent Defects

This is a particular problem in relation to relatively new properties. A repairing covenant will not involve a liability to remedy inherent defects in the absence on express wording. (As an evidential point, surveyors should be encouraged not to describe defects as disrepair). However, the tenant (or landlord) may be liable to remedy the defect if this is the best way of remedying disrepair which arises as a consequence of the defect.

Quick v Taff-Ely B.C. [1985] 3 All ER 3

The landlord was not obliged to replace metal window frames which sweated, causing major condensation, with wooden or UPVC ones. This condensation did not cause any disrepair for which the landlord was liable.

Post Office v Aquarius Properties [1987] 1 All ER 105

The basement of the demised premises was composed of porous material and flooded frequently. At the time of the action the water table had subsided and there was no actual disrepair. The tenant was not obliged to spend substantial sums of money remedying the defect (between £86,000 and £175,000).

Elmcroft v Tankersley-Sawyer [1984] 270 EG 140, CA

A badly situated damp proof course resulted in water penetration and damage to plaster work. The landlord was liable for the disrepair to the plaster and was required to remedy the defect in the course of this repair.

Stent v Monmouth D.C. [1987] 1 EGLR 59, CA

A badly designed wooden door let in water. This caused the door to warp. As there was disrepair to the door, the landlord was required to remedy the design defect.

Ravenseft v Davstone (Holdings) Ltd [1980] QB 12

Here the premises, valued at £3 million, suffered from rusting to the metal framework and damage caused by the fact that expansion joints had not been used in the original construction. Remedial work costing £55,000, including the provision of expansion joints, not common practice at the date of the original building, and costing £5,000, amounted to repair. See also Re ***Davstone 1969*** where the landlord having replaced the inherent defective flat roof could not collect the service charge as this only allowed collection for repairs.

City of London v Various Leaseholders of Great Arthur House [2021] EWCA 431

The Landlord could charge for specified repairs. There was water penetration for a number of years due to faulty construction works. The Court stated that there would be liability if the inherent defect gave rise to disrepair but not otherwise. The fact that work would also remedy damage or deterioration of the building over time did not give rise to liability for structural defects and the tenants did not have to pay via service charge.

Tower Hamlets London Borough Council v Long Leaseholders of Brewster House and Maltings House [2024] UKUT 193 The case concerned two blocks of flats originally constructed as council housing in the early 1960's. Some of the council tenants had purchased long leases under the right to buy provisions. The blocks had been constructed with a Large Panel System which subsequently was found to be defective and remedial works was done over the years. After Grenfell inspection of the blocks showed more defects and remedial work would cost over £9 million. The service charge allowed the Landlord to charge for repair and maintenance and there was also a sweeper provision. The other tribunal held that repair and maintenance did not cover structural defects and the Leaseholders did not have to pay.
On December 9th 2025 this decision was confirmed by the Court of Appeal **[2025] EWCA 1591**. A specific clause that allowed the landlord charge "*as in the absolute discretion of the lessor may be considered necessary or viable for the safety of the building*" did not cover pre-existing structural defects. Such an interpretation was incompatible with the right to buy legislation.

It should be noted that short-term leases of dwellings of less than 7 years, the Landlord cannot charge for repair to the structure and exterior under **S.11 Landlord and Tenant Act 1985** but by buying under right to buy the Leaseholders may be charged depending on the wording of the service charge.

Inherent Defects and Actions against Third Parties

The tenant will not have an action in tort against the building contractor, or architect for any inherent defect in the absence of injury to the person or physical damage to other property. Damages in tort are not available for pure economic loss, i.e. the cost of putting right the defect.

See ***D and F Estates v Church Commissions for England and Wales [1989] AC 177, Murphy v Brentwood D.C. [1991] 1 AC 398, Department of Environment v Thomas Bates [1991] 1 AC 499***. There may however be a contractual claim by the landlord.

Collateral Warranties

Alternatives to the above are collateral warranties between tenant and contractor, whereby the contractor warrants that they have not been and will not be negligent in carrying out the work. An alternative is course is perhaps for the landlord to accept liability for inherent defects through the lease, or at least during the first years of the lease. Defects still need to be defined, however, preferably by reference to whether the landlord has a cause of action against the builder or professional team.

See for instance, ***Smedley v Chumley and Hawke Ltd [1981] 261 EG 775***. The landlord was expressly liable for defects due to faulty materials and workmanship. He was responsible for substantial repair when the raft on which the premises was supported tilted. An argument that there was no mention of repair to foundations but merely to the exterior failed.

Repair as Opposed to Renewal

For older buildings the major issue tends to be whether works can be said to constitute repair or renewal. The tenant may be required to renew subsidiary parts of premises (as in ***Ravenseft*** above) as part of a repairing obligation. However, repair does not involve renewal of the whole or substantially the whole, and giving back something more than originally let.

In ***Lurcott v Wakeley and Wheeler [1911] 1KB 905***, repair was defined as restoration or replacement of subsidiary parts. A dangerous front wall which needed to be rebuilt came within the repairing covenant. The fact that it had deteriorated through time was irrelevant.

Brew Bros v Snax (Ross) Ltd [1975] 1 QB 612

Works to prevent tilting of premises would cost £8,000. After completion the premises would be worth between £7,500 and £9,500. The works constituted renewal for which the tenant was not liable.

Mullaney v Maybourne Grange [1986] 1 EGLR 70

Replacement of old wooden window frames with double glazing at twice the cost amounted to an improvement beyond repair which the landlord could not pass on to the tenant by means of a service charge.

Craighead v Homes for Islington Ltd [2010] UKUT 47

Where windows were not replaced like for like, due to intervening changes in Part L of the Building Regulations, it was implied that the landlord could improve the windows to modern standards under the repairing obligation and add the cost to the service charge. This, in spite of the fact that the building was listed and potentially exempt from Part L.

Contrast this with ***Mullaney v Maybourne Grange Ltd*** where service charges which allowed repairs, but not improvements, to be charged for did not cover replacement of wooden single glazed window frames with UPVC double glazing. The difference between the two cases seems to be due to the intervening statutory provisions. If correct, this may be an extremely useful argument for landlords, e.g. in relation to increased energy performance of buildings.

Another example of statute rendering repairs impossible occurred in relation to R22s, a type of CFC. These were banned in new air conditioning systems in 2004 but not in existing systems until 1 January 2015. Presumably, according to the above the landlord could improve the air conditioning system and add the cost to service charge regardless of what the lease says. A tenant who is responsible for the air conditioning system may find themselves having to improve or be sued for terminal dilapidations.

Peverel OM Ltd v Peverel Freeholds Ltd [2010] UKUT 137

There is nothing particularly new in this case. However, it is a timely reminder, as the service charge allowed charging for inherent defects, the tenants had to pay for the cost of rectifying structural defects. Moreover, they could not claim against the builder who was responsible as they had no contract with him for negligence. The claim amounted to one for pure economic loss: see ***Murphy v Brentwood District Council [1991] 1 AC 398.***

ACT Constructions Ltd v Customs and Excise Commissioners [1982] 1 All ER 84

Underpinning a building to correct subsidence and comply with modern building regulations thus increasing life expectancy fell beyond repair and maintenance.

Likewise, in ***Elite Investments v TI Bainbridge Silencers Ltd [1986] 2 EGLR 43*** replacement of the roof of an industrial unit (as being the only way to repair) at a cost of £84,000 compared to a re-instatement value of £140,000 for the building amounted to repair.

See also **Ravenseft** above, the provision of new expansion joints constituted a fraction of the value of the premises.

Note: Effect on rent review. Where there is a long lease, of greater duration than the life expectancy of the building, it may be legitimate for the landlord to expressly expand on the normal repairing obligation. This may have a detrimental effect on rent on review however.

Norwich Union Life Insurance Society v British Railways Board [1987] 2 EGLR 137

A 125-year lease of premises provided for repair and "when necessary to rebuild, reconstruct and replace the same." The tenant successfully argued for a 27.5% reduction of rent on review.

For old buildings there may be various possible methods of avoiding problems. Primarily, use of a surveyor is important prior to the lease. In the event of major potential problems the tenant will require a reduction in liability. There are various ways in which this may be done:-

- Limiting extent of liability, e.g. only for internal decorative repairs.
- Preparing a Schedule of Condition. Make sure that defects are clearly spelt out and that the tenant is not liable to rectify the consequences of disrepair.
- The Law Society Short Form Commercial Lease. This provides a covenant "to maintain the state and condition of the property" but "not to alter and improve it".

Presumably surveyors would have to be used to agree the state of the premises on commencements. Moreover, maintaining to a large extent involves repair, although not requiring the tenant to put the premises in repair. Lack of an obligation to improve may cause fundamental problems of interpretation.

Fire Damage

The tenant will be liable to rebuild the whole property if damaged by fire: ***Matthey v Curling [1922] 2 AC 180***. Thus, where the landlord is bound to insure, the tenant should ensure that he is exempt from liability caused by peril against which the landlord has insured unless the insurance is vitiated by the tenant.

Exemptions should only be available to the extent that the landlord recovers costs from the insurance company.

Note: If the tenant has not had a satisfactory fire safety risk assessment for the demised premises, or if they have not implemented it they are in danger of vitiating the insurance. Under the **Fire Safety Act 2021**, if there are at least two sets of dwellings in the premises the landlord must have a risk assessment in relation to common parts including the structure and exterior, external doors and windows and any external attachments. The provisions came into force in Wales on 1 October 2021 and in England 16 May 2022.

The Premises Subject to Repair

Here there may be major problems of definition. There are various possibilities.

The Demised Premises

This is a frequently used term. Beware of situations where the draft lease does not with certainty define the extent of the premises, in particular as to whether shared walls, ceilings etc. fall within the demise.

There may also need to be clarification with respect to future constructed buildings and whether these fall within the definition, likewise similar problems arise with respect to repair of landlord's fixtures.

Where the premises form part only of a building and the tenant's liability is not limited to the interior of the premises, precision is required.

In ***Tanya Grand v Param Gill [2011] EWCA 554***, the Court of Appeal found that plasterwork in the nature of a smooth constructural finish to walls and ceilings to which decoration could then be added was part of the structure.

The Interior of the Premises

Problems arise with respect to layered floors and walls. Interior of the premises should be clearly spelt out as to whether including e.g. interior structural and load bearing walls or merely decorative finish.

Structural Repairs

It the landlord accepts repairing obligations in return for a reimbursement covenant or service charge, there must be further expansion of the definition of structure as various possible interpretations exist.

Granada Theatres Ltd v Freehold Investment (Leytonstone) Ltd [1958] 2 All ER 551

Structural repairs were defined as repairs to the structure as opposed to decorative repairs. Thus, the landlord would be required to carry out all repairs other than decorative repairs. Here, slates on the roof constituted a part of the structure.

Alternatively, structure may be interpreted as including only load bearing elements which give strength and stability.

Finally, a midway position may be met where serious disrepair is the responsibility of the landlord. In particular, external windows seem to cause major problems of interpretation.

Boswell v Crucible Steel Co. [1925] 1 KB 119

Sheet glass windows which could not be opened and which formed part of the fabric were within the definition of structure.

Fivaz v Marlborough Knightsbridge [2021] EWCA 989

Here in the absence of a contrary expression, a front door to a flat was held not to be part of the structure and thus was the tenant's. There was no breach when the tenant replaced the front door. Compare this with ***Holiday Fellowship v Hereford [1959] 1WLR 211*** here external doors and windows were held not to be part of the structure and exterior.

Definition of Exterior

This needs to be clearly defined where the landlord is liable for the exterior.

Exterior includes inner-party walls unless the covenant is expressed as one with respect to repair of "structure and exterior of the building of which the demised premises forms a part."

Campden Hill Towers Ltd v Gardner [1977] 1 All ER 739. In the absence of contrary provision, in ***Kumarasamy v Edwards [2016] 40***, the exterior did not include the front path.

Ceilings may also present problems. Where the exterior of demised premises are the subject of the clause, this will include an outer roof only if the ceiling and roof are inseparable: ***Douglas-Scott v Scorgie [1984] 1 All ER 1086.***

Rapid Results College and Angell [1986] 1EGLR 53

The cornice going around the roof was not a part of the structure and thus could not be collected via the service charge.

The Standard of Repair

Proudfoot v Hart [1890] 25 QBD 42, CA

Established that the standard of repair depends on the age, character and locality of the premises and the type of occupier. Quaere whether large and financially strong business tenants owe a greater duty. In ***Mason v TotalFinaelf*** **[2003] EWHC 1604** it was stated that where the tenant of a petrol station was a large multi-national then they may have a greater duty of repair. ***Proudfoot v Hart*** above also made clear that where there is an obligation *to keep in repair* this will require a tenant to put the premises in repair if they are not already.

Anstreuther – Gough – Calthorpe v McOscar [1924] 1 KB 716, CA

The criterion is that in existence when the lease commenced and not at the date of disrepair.

Ladbroke Hotels Ltd v Sandhu [1995] 39 EG 152

The bad construction of a hotel was irrelevant to the assumption that the tenant had complied with repairing covenants on rent review. To ensure its full life expectancy, the premises would require £500,000 worth of repairs. The tenant unsuccessfully argued for lesser repairs which would increase expectancy by 15 years and costs £60,000.

Postel Properties Ltd v Boots, the Chemist [1996] 41 EG 164

The landlord can rely on the report of a reasonable surveyor in determining whether to carry out patch up repairs or, in the short-term, more expensive major remedial work.

CASES ON SERVICE CHARGE LIABILITY

In ***Finchbourne v Rodriguez [1976] 1All ER 581***, it was stated that service charge liability was subject to a reasonableness test. This, however, related to a residential property and there is also statutory control of service charges in dwellings under the **Landlord and Tenant Act 1985**. In ***Havenridge Limited v Boston Dyers [1994] 2 EGLR 73***, there was no implied term that insurance rents must be reasonable. In the residential case of ***Redrow Homes v Hothi [2011] UKUT 268***, it was implied that the final service charge must be calculated within a reasonable time of the end of the service charge year. This did not, however, invalidate interim payments but might give rise to a damages claim.

In the case of ***Sara and Hossein Asset Holdings v Blacks Outdoor Retail [2020] EWCA 1521*** a landlord's certificate in relation to service charge was stated to be conclusive as to liability. The Court of Appeal held that this applied to both the itemised works and total amount. The clause was clear and unambiguous and could not be contested. The tenant would have to pay service charge and could not contest it in the absence of fraud, mathematical error or where manifestly wrong as stated in the lease.

The Supreme Court heard this case ***[2023] UKSC 2*.** The Tenant had to pay the service charge. If they objected to the amount they would have to bring a separate court action.

In ***Criterion Buildings v McKinsey & Co [2021] EWHC 256*** the landlord successfully claimed £2.2 million plus interest of service charge arrears. The lease stated that the tenant would pay a "due proportion" of the service charge as determined by the landlord. A due proportion was stated to be a fair proportion as determined by the Landlord or their surveyors. The court decided that as long as the lease covered the works done the landlord's determination would be conclusive in the absence of fraud, mathematical error or where manifestly wrong.

In light of the above, tenants should introduce a reasonableness test and have caps on service charge. Alternatives might include a provision whereby service charges must be reasonably incurred and of a reasonable standard or service charged liability based on floor area. Problems may arise on lease renewals where tenants would be well advised to object to existing wording of service charges. However, on a **Landlord and Tenant Act 1954** renewal the starting point is that the old lease is the basis of the new lease as regard should be had to the terms of the current tenancy: see ***O'May v City of London Real Property Company Limited*** below. Issue may also arise, as we have seen, in relation to service charge liability for statutory compliance where the cost of required energy efficiency works may be added to service charge.

Cloisters Business Centre Management Company Ltd v Anvari [2026] EWCA17 here the premises consisted of several rooms including a kitchen and shower room. It was held on a 999-year lease with a service charge. Use was stated to be for offices and ancillary residential use. It was currently being used for storage.

The landlord claimed for arrears of service charge. The tenant argued that the landlord had not complied with Ss.18-30 Landlord and Tenant Act 1985 and the requirement for service charge consultation in relations to dwellings. The Court of Appeal stated that the provisions would apply to mix-use premises even though they were not currently used for residential purposes. Some provisions in the Act specifically exclude leases to which the Landlord and Tenant Act 1954 apply. As this was not the case here the implication was that it would apply and the tenant won. In buildings with a possible mixed-used service charge consultation must be gone through even if there currently is no residential use.

SOME OTHER CONSIDERATIONS

Length of the Term

Tenants might be justified in arguing that they should be liable for repair under a 25-year lease, but this should not be the case under a shorter term. Repairs might then be more for the benefit of the landlord and not the tenant.

On the other hand, consider ***O'May v City of London Real Property Co [1983] 2 AC 726 and Wallis' Fashions v General Accident [2000] EGCS 45.*** A short-term lease may in fact last a comparatively long time period with a series of renewals under ***Part II LTA 1954*** and it is unlikely that the landlord will be able to insist on a change of the repairing obligation on such a renewal.

In ***Samuel Smiths v Howard de Walden [2007]*** a judge accepted the tenants' argument that user covenants in relation to a public house could not be changed on a renewal without the consent of the tenants. The landlords wished to allow the sale of food arguing that this was the industry norm. The tenants objected to this as he felt it would have the effect of increasing future rent on review.

Edwards and Walkden v Mayor of London [2012] EWHC 2527

In spite of ***O'May***, the judge held that a relevant circumstance on a lease renewal was a different tenant had a different service charge liability in the original leases. These were allowed to be standardised.

In the county court case of ***WH Smith v Commerz Real Investmentgesellschaft (2021)*** the judge refused to change terms on a renewal relating to the landlord passing the cost of energy performance certificates, energy audits and energy efficiency works to the tenant. They did, however, agree to a change of rent suspension provisions to cover pandemics.

The Nature of the Building

If the tenant leases out a detached building then a full repairing covenant may be appropriate. If there is multiple occupation, a service charge in relation to the common parts may be more desirable. Note, however, that the landlord will be liable for disrepair to the common parts as soon as it occurs. See ***BT v Sun Life [1995] 4 All ER 44***.

Where there are hybrid lettings to a small number of tenants, full repairing obligations on the tenants may prove unjust, e.g. the burden of repairing the roof may fall on just one tenant. In many situations a service charge may be more desirable.

Extensive Repairing Obligations

To remedy inherent defects during a long lease. See ***Norwich Union v BRB [1987] 2 EGLR 137*** above. This may have disastrous consequences on rent review.

Age of the Building

The tenant may be exonerated from anything but maintenance by a covenant in an old building, or may wish to exclude liability for fair wear and tear. Likewise, he may be exempted from curing inherent defects in a new building. However, it is quite possible that nobody is responsible for the dilapidation and either landlord (in a short lease) or tenant (in a long lease) will have to take steps in relation to the dilapidation.

BUILDING SAFTEY ACT 2022: HIGHER-RISK BUILDINGS

Higher-Risk Residential Buildings (England only)

The Act has also introduced the Building Safety Regulator who will be a part of the Health and Safety Executive. They will have a general role in relation to building safety, but will also be responsible for building control in high risk residential buildings. In England a high risk residential building is one with at least two dwellings which is at 18 metres or more in height or, if less than 18 metres, which has 7 or more storeys. Such a building will have an accountable person who has a legal estate in possession in the common parts or is responsible for repair of the common parts. This will include any Right to Manage Company and any Residents Management Company if there is more than one accountable person then there will be a principal accountable person. A residents' panel must be constituted and the accountable person must listen to health and safety complaints. They will have to produce reports to the Regulator and keep records in relation to health and safety and report any fire safety or structural safety problems that have occurred.

The accountable person will have access rights to individual flats on giving at least 48 hours' notice. If there is more than one accountable person, there will be a principal accountable person. They will have an interest in possession of the structure and exterior or be responsible for repair and maintenance of the structure or exterior of the building. There are also offences if anyone removes or disturbs a relevant safety item. Any high-risk buildings must be registered with the Building Safety Regulator. This came into force in England on April 6th 2023 and the principal accountable person will have to register the building with the Regulator by October 1st 2023. Guidance suggests that the registration must be approved by the Regulator and key building information provided by this date. The Regulator will then have to approve the registration.

Safety case report summarising major fire and structural hazards and risk management is mandatory for higher-risk buildings. Organisations must also establish a mandatory occurrence reporting system detailing communications with other accountable persons, arrangements for reporting to the Regulator and summaries of incidents.

There are also **Higher-Risk Buildings (Descriptions and Supplementary Provisions) (England) Regulations 2023** which were laid in front of Parliament on March 6th 2023. A Higher-Risk Building is one which is 18 metres or more in height or has seven or more storeys. Any floor where the ceiling is below ground level will not be included, nor will any top floor which only includes rooftop plant and machinery. The measurement will be from the lowest part of the ground floor to the finished floor of the top floor. A mezzanine floor will be ignored if it is less than 50% in size of the largest storey vertically above or below it. A separate structure will be treated as being the same building if it can be accessed to another part which has a residential unit. This will not apply if the access is only intended for exceptional use for emergencies or maintenance. In the case of ***Waite v Kedai (2023)***, the first measurement of the building was stated to be 17.57 metres, the second measurement was 17.97 metres with a margin of error of 30 centimetres. It was later decided that a roof terrace was the top of the building. This caused it to be well beyond 18 metres in height. As a consequence of this case the RICS told members not to state the height of the building. In the first-tier tribunal decision of ***Smoke House and Curing House, 18 Remus Road, London E3 2NF***, it was decided that a roof terrace constituted a storey thus making the property a higher-risk building which would need to be registered and also have the regulator oversee any building work. This conflicts with the Government guidance which states that a storey must be fully enclosed although this seems to be wrong. On October 4th 2024 the Ministry of Housing and the Building Safety Regulator stated that the guidance should still be followed unless they say otherwise. On May 28th 2025 they confirmed this statement but also announced that they were in consultation to introducing amending Regulations to clarify the issue. On June 5th 2025 the Upper Tribunal gave their judgment on Smoke House in the case of ***Monier Road Limited v Blomfield***. They stated that the tribunal had no jurisdiction to decide on the height but did not say whether the tribunal was right or wrong.

S.112 of the Act implies various terms into a residential lease. The Landlord must co-operate in relation to building safety and the Tenant must also co-operate, allow access at a reasonable time on giving 48 hours notice, allow works to be done on the premises, and any building safety costs can be added to the service charge. Law Society Guidance suggests that this should be made clear to the leaseholders and also the fact that they will be liable in relation to a residents management company. It is suggested that these should be included as a express terms in a commercial building in a higher-risk development.

LEASEHOLDER PROTECTIONS

Qualifying Leaseholders

To qualify the following requirements must be met on February the 14th 2022:
The lease must be of a flat in a block which is at least 11 metres or five storeys in height.

1. The lease must be in existence prior to February the 14th 2022. This causes problems in relation to lease extensions which constitute a surrender and regrant on a new post February 14th 2022 Lease.

2. The leaseholder at the beginning of February 14th 2022 can always claim for their principal home. They can claim for other properties but only if they own three or less dwellings anywhere in the UK. The Act refers to the relevant tenant at the qualifying time or any other tenants.

3. The value of the property is determined on February 14th 2022. If the flat has been sold since December 31st 2020 then if the sale was on the open market the sale price will be deemed to be the price of the flat. If prior to this date then there is a statutory formula for determining the price.

4. A service charge must be payable.

5. If a Lease is not in existence on February 13th 2022 then the leaseholder protections will not apply. This has the unforeseen consequence of taking away leaseholder protections on a lease extension as this amount to a surrender and regrant. On April 21st 2023, the Government changed their guidance on both Remediation Costs and Qualifying Date, Qualifying Lease and Extent. They aim to legislate when Parliamentary time permits. In the meantime conveyancers should attempt to include contractual terms on a extension giving the same rights as if the leaseholder protections still applied. If the Landlord does not agree then leaseholders are encouraged to report them to the Department of Levelling-Up. On October 26th 2023 S.243 of the **Levelling-Up and Regeneration Act 2023** received the Royal Assent. There is provision that on a Lease extension this will give rise to a connected replacement lease. This will apply to an extension of the lease, a variation of the lease, a surrender and regrant, and a surrender and grant of a totally new lease. It will apply if the premises are the same both before and after the extension but also if part is added or removed. Implementation is backdated to June 28th 2022 and the Provisions will be retrospective to February 14th 2022.

Note also the status of an executor holding the lease may cause problems. A company can not hold the lease as their principal home and the status of flats which are held on trust is unclear. The new TA7 (5th edition) has dropped the question as to whether there is a qualifying leasehold as this should be able to be found out from the Leaseholder Deed of Certificate

Relevant Buildings (England only)

To qualify the building must be at least 11 metres or five storeys in height and have at least two dwellings. This will apply to a self-contained building or part of a building which would be able to be developed separately. Mezzanine floor will only count as a storey if it is at least half the size of the largest storey. The legislation does not apply to enfranchised buildings or Resident Management Companies who own the freehold. The proposal from the Welsh Government is that this provision will not be introduced and leaseholders will rely on remediation orders and remediation contribution orders in relation to defects. This is problematic as the rest of the provisions came into force in Wales on June 28th 2022. The new TA7, 5th Edition which was published on October 13th 2025 has a question as to whether the flat is in a relevant building.

Relevant Defects

The legislation applies if a persons safety is at risk from fire or structural collapse and arises from work done to a building including inappropriate or defective products during construction or later work. The defect in construction work must have occurred in the thirty years prior to June 28th 2022 or the remedial work before or after June 28th 2022. It does not apply to wear or tear or routine maintenance. Defects in relation to professional services are covered, for example where the designer specified flammable materials. In ***Almacantar Centre Point Nominees v Penelope de Valk [2025] UKUT 298*** the first instance decision has been confirmed by the Upper Tribunal. Qualifying Leaseholders do not have to pay for unsafe external cladding remediation regardless of the fact that there were no relevant defects as the defect occurred in 1963. This is not limited to fire risks. What is unsafe and what is external cladding is a question of factThis is on the basis that Schedule 8 paragraph 8 states that no service charge is payable under a qualifying lease in respect of cladding remediation for removal or replacement of any part that forms the outer wall of the external wall system and is unsafe. In ***Lehner v Lant Street Management Company [2024] UKUT 0135*** insulation behind the cladding and cavity barriers were held to be part of the exterior. The Landlord cannot charge for work to external cladding. This case also stated that if a landlord in a relevant building does not comply with the requirements for a Landlord's Certificate then they cannot charge non-qualifying leaseholders as well as qualifying leaseholders for relevant defects.

BUILDING SAFETY (WALES) ACT 2026

This received Royal Assent on April 27th 2026.

The Bill was introduced on July 7th, 2025. It adopted a definition of regulated building, which are buildings of any height but contain two or more residential units. There will be three categories:

- Category 1 – At least 18 metres in height or at least 7 storeys
- Category 2 – Less than 18 metres in height and fewer than 7 storeys, and at least 11 metres in height or 5 storeys
- Category 3 – Less than 11 metres in height or fewer than 5 storeys

Such buildings will have an accountable person and principal accountable person. The definitions seem to be similar to those in England. The principal accountable person will be required to assess and manage fire and safety risk, including ensuring another fire and risk assessment is carried out by a competent person. A fire and safety risk is a risk to the safety of people in or about the building arising from the outbreak of a fire in the building or the spread of fire in, to or from, any part of the building.

The accountable person must take all reasonable steps to prevent a fire risk materialising in relation to the person's part of the building and to reduce the severity of any incident that results from such a risk.

It will be a criminal offence to commission a fire risk assessment from a person that is not competent to undertake it.

Register of Buildings

The principal accountable person will have to register Category 1 and 2 buildings with the local authority. The register will contain details of a principal accountable person with key information about the building. Occupying a building before it is registered, and failing to notify the local authority of any changes to information, will be a criminal offence. In addition, accountable persons for occupied Category 1 and 2 buildings will be required to assess and manage structural safety risks for the part of the building in which they are responsible. They must also take all reasonable steps, including carrying out works, to prevent structural safety risks from materialising and reduce the severity of any incidents that result from such risks materialising.

In occupying Category One buildings, the principal accountable person must prepare, review, and revise a safety case report, establish and operate an occurrence reporting system, prepare and review a resident engagement strategy, and give a copy to all residents and owners. They must also apply to the local authority for a building certificate within 28 days of being directed to do so.

The Act will place duties on landlords of Houses in Multiple Occupation, including the performance of HMO fire risk assessments, although they will not be subject to registration.

Published January 2025

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