

Building Safety Briefing: Remediation Orders & Remediation Contribution Orders



Mishcon de Reya

It's business. But it's personal.

The Building Safety Act 2022 (BSA) is intended to protect the safety of people in or around buildings, and to improve the standards of buildings. The BSA contains provisions about remediation and redress for fire and structural safety defects.

The BSA gives the courts significant new powers to grant Remediation Orders and Remediation Contribution Orders. This note provides a high-level summary of the new provisions. Please get in touch for specific advice.

What are the new orders?

A Remediation Order is an order requiring a landlord to carry out works to remedy certain building safety defects.

A Remediation Contribution Order is an order that a specified party contributes towards the cost of works to remedy building safety defects.

We set out further details of these terms below.

Which buildings can be subject to a Remediation Order and a Remediation Contribution Order?

Broadly, the orders can be made in relation to any building in England that contains at least two dwellings and is at least 11 metres high, or has at least 5 storeys.

Who can seek a Remediation Order and a Remediation Contribution Order?

An "interested person" can apply for such an order. This includes anyone with a legal interest in the property (such as a tenant) and certain other interested parties, such as the local fire and rescue authority. In the case of a Remediation Contribution Order, a residents' management company or a right to manage company may apply for the order.

Who can the orders be made against?

A Remediation Order can be made against a landlord under a lease of the building, or any part of it, who is required to maintain anything relating to a relevant defect.

The scope of a Remediation Contribution Order is much broader and may be made against a landlord, a previous landlord (as at 14 February 2022) or the developer. It may also be made against any person "associated" with such a party (which includes parent and sister companies).

How easy is it to seek the orders?

Applications for the orders are to be made to First Tier Tribunal. The process is intended to be straightforward and cost effective. The Tribunal has said "the Act must work and be made to work for leaseholders in a straightforward way". The Tribunal's exercise is evidence based, led by inspection reports and expert evidence, but also informed by the Tribunal's own experience and expertise in building matters.

Just and equitable

A Remediation Contribution Order will only be made where the First Tier Tribunal considers it "just and equitable" to do so. There is no statutory guidance on the relevant factors for this test.

The just and equitable requirement does not apply to Remediation Orders.

Costs

The Tribunal is a "no costs jurisdiction". Therefore, the Tribunal cannot award either party its costs. In limited circumstances, the landlord may be able recover some of its costs through the service charge. Funding the claims is therefore a significant issue for tenants.

Contacts

Please get in touch with us if you have any queries about how the BSA may affect your business.



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Remediation Orders

An order made by the First Tier Tribunal, on the application of an **interested person**, requiring a **relevant landlord** to remedy specified **relevant defects** in a specified **relevant building** by a specified time.



Interested person

- a person with a legal or equitable interest in the **relevant building** (e.g. a leaseholder);
- the Building Safety Regulator;
- a local authority or fire and rescue authority for the relevant area;
- the Secretary of State; and
- the Homes and Community Agency.



Relevant landlord

A landlord under a lease of the building, or any part of it, who is required to maintain anything relating to a **relevant defect**.



Relevant building

A self-contained building, or self-contained part of a building, in England that contains at least two dwellings and:

- is at least 11 metres high; or
- has at least 5 storeys.

There are certain exceptions where the freehold is leaseholder owned, and for commonhold land.



Relevant defect

A defect that:

- arises as a result of anything done (or not done), or anything used (or not used), in connection with **relevant works**; and
- causes a **building safety risk**.



Relevant works

- works relating to the construction or conversion of the building, which were completed between 28 June 1992 and 28 June 2022;
- works undertaken or commissioned by or on behalf of a relevant landlord or management company, which were completed between 28 June 1992 and 28 June 2022; or
- works undertaken after 28 June 2022 to remedy a relevant defect.



Building safety risk

A risk to the safety of people in or about the building arising from:

- the spread of fire; or
- the collapse of the building or any part of it.



Remedial works

The FTT will specify the remedial works to be carried out. Any Remediation Order should be sufficiently precise so that the respondent can know what it must do to remedy the relevant defects and for enforcement purposes. However, the extent of precision will vary from case to case.

Remediation Contribution Order

An order made by the First Tier Tribunal, on the application of an **interested person**, requiring a **specified body corporate or partnership** to make payments to a person specified in the order for the purpose of meeting costs incurred or to be incurred in remedying **relevant defects** relating to a **relevant building**.



Interested person

- a person with a legal or equitable interest in the **relevant building** (e.g. a leaseholder or freeholder);
- The Building Safety Regulator;
- a local authority or fire and rescue authority for the relevant area;
- The Homes and Community Agency;
- a named manager, a Residents Management Company and a Right to Manage company in relation to a relevant building.



Specified body corporate or partnership

- a landlord under a lease of the **relevant building** or any part of it;
- a person who was such a landlord on 14 February 2022;
- a developer of the **relevant building**;
- a **person associated** with any of the above.



Relevant defect

A defect that:

- arises as a result of anything done (or not done), or anything used (or not used), in connection with **relevant works**, and
- causes a **building safety risk**.



Relevant works

- works relating to the construction or conversion of the building, which were completed between 28 June 1992 and 28 June 2022;
- works undertaken or commissioned by or on behalf of a relevant landlord or management company, which were completed between 28 June 1992 and 28 June 2022;
- works undertaken after 28 June 2022 to remedy a relevant defect.



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Person associated

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Associated Persons

A Remediation Contribution Order may be made against a body corporate or partnership associated with a relevant landlord or developer.

 Specified Person	 Associates
Partnership	Any person who was a partner in the partnership (other than a limited partner) during the period from 14 February 2018 to 14 February 2022 (the " relevant period ").
Body corporate	Any director in the relevant period .
Body corporate	Another body corporate if: — At any time in the relevant period a person was a director of both of them; or — As at 14 February 2022, one of them controlled the other or a third party controlled both of them (i.e. group companies)
A person whose interest in a relevant building was held on trust as at 14 February 2022.	Any partnership or body corporate which was a beneficiary of the trust at that time.

Notes:

- The legislation contains specific provisions about when a body corporate controls another body corporate. There is a catch-all provision that a body corporate controls another body corporate if one has the power, directly or indirectly, to secure that the other's affairs are conducted in accordance with its wishes.
- A Remediation Contribution Order can only be made against a body corporate or a partnership (not an individual).

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