

Building Safety in Brief

Defects claims and liability



Background

The building safety regime has been changing for a number of years now, with the most substantial changes ushered in under the Building Safety Act 2022 (BSA) and various subsequent regulations stemming from it. This factsheet gives a high-level overview of some of the key changes around defects claims and liability under the BSA and these subsequent regulations. This factsheet applies to England only.

New claims and longer limitation periods

The following new causes of action have been introduced, with extended limitation periods for bringing a claim:

Defective Premises Act 1972 (DPA, s1 and new s2A)

In force – 28 June 2022

Broadly what it covers – both sections impose a duty to carry out work on a dwelling in a workmanlike and professional manner to ensure that the dwelling is fit for habitation.

- S1 applies to the original construction/conversion works.
- S2A applies to any subsequent works and any common parts (like hallways) relating to the dwelling.

Liability may extend to architects, designers, consultants, developers and contractors.

Extended liability period – s1 now has a 30 year retrospective limitation period (going backwards from June 2022) and a 15 year prospective limitation period (going forward with effect from June 2022). S2A has a 15 year prospective limitation period.

Defective construction and cladding products

In force – 28 June 2022

Broadly what it covers – parties are liable for failing to comply with product requirements, making misleading statements about products, and manufacturing inherently defective products. Claims for damages can be brought against product manufacturers and suppliers – for personal injury, damage to property, and economic loss – by anyone with an interest in the dwelling who has suffered a loss due to the dwelling being “unfit for habitation”.

Extended liability period – there is a 30 year retrospective limitation period and a 15 year prospective limitation period for cladding product claims (s149 BSA) (similar to s1 DPA claims, June 2022 marks the end of the 30 year retrospective period and the point from which the 15 year prospective limitation period has effect). There is also a 15 year prospective period for construction product claims (s148 BSA).

(More information available [here](#).)

Building Liability Orders

In force – 28 June 2022

Broadly what it covers – The High Court can make this order, if it is just and equitable to do so.

The order makes a business’s liability (where that business originally carried out defective works) the liability of one of its associated businesses (s130 BSA).

The liability in question could be one incurred under the DPA 1972, under s38 BA 1984 (although this is not yet in force), or as a result of a building safety risk.

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Remediation Orders

In force – 28 June 2022

Broadly what it covers – if granted by the First-tier Tribunal, Remediation Orders (s123 BSA) require a landlord to remedy relevant defects on a building by a specified time. Remediation Contribution Orders (s124 BSA) can also be granted by the First-tier Tribunal, under which landlords and “associated” persons contribute towards the cost of remedying these relevant defects. “Relevant defects” are defined in the BSA.

Building Act 1984

In force – not yet in force

Broadly what it covers – a right to bring a claim by anyone for damage (including physical and mental damage) suffered due to misapplication or failure to apply the relevant Building Regulations to building works (s38 Building Act). Applies to all buildings, not just residential ones.

Extended liability period – the BSA has extended the limitation period to be 15 years prospectively (once in force).

You can find out more about Building Safety on our [Building Safety Hub](#).

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Difficulties with historic claims

While the extended liability periods mentioned above mean that previously time-barred claims can now be brought, there are challenges to bringing very old claims, such as:

- paper trails and documents being lost or incomplete
- memories of witnesses being inaccurate
- the cost of bringing and proving such a claim, particularly for residents
- this being an untested area of law with potential creative defences eg under the European Convention on Human Rights.

That said, while bringing 30 year old claims will not be easy, it is not impossible, and we will need to see whether there is any appetite for this.

In the meantime, claims in the 15 year limitation period still seem very feasible, and stakeholders in the industry will be reviewing the risks as to whether a claim (including claims for a contribution to the cost of remedial works) are possible.