

## Construction Law Update

### Building Safety Bill 2021: Retrospective extension of limitation period under the Defective Premises Act 1972

The Building Safety Bill 2021 (the “**Bill**”) proposes to expand the limitation period for property owners to bring a claim for defective works from six years to fifteen years. This legislation, if passed in its current form, would apply retrospectively, and would have substantial implications for the construction industry.

#### Background

Following the Grenfell Fire in June 2017 in which 72 people tragically lost their lives, the government pledged to make meaningful reforms within the construction industry a priority.

The government commissioned the Hackitt Report to make a range of recommendations regarding improvements to the current regulatory regime. The report concluded that the sanctions and enforcement regime in respect of non-compliance needed to be “*reinforced*”. The report did not recommend that the government should increase the limitation period for civil claims, nor was any such provision included when a Building Safety Bill was first introduced in July 2020.

Now, a year later, the Bill has been introduced and includes an additional “*Section 126 Limitation Periods*”. This new provision has garnered wide media coverage due to both the substantial increase of time allowed to bring a claim and the retrospective application of this proposed extended limitation period.

#### The current regime

Under Section 1 of the Defective Premises Act 1972 (the “**DPA**”), an eligible person may have a cause of action for breach of the duties imposed on a person taking on work for or in connection with a dwelling.

The type of claimants capable of making a claim under the DPA include:

- any person that orders the works to a dwelling; and

- any person who acquires a legal or equitable interest in the dwelling.

There are three duties imposed by the DPA that if breached could give rise to a cause of action:

- the work must be completed in a “*workmanlike or... professional manner*”;
- the work must be completed using “*proper materials*”; and
- the dwelling must on completion “*be fit for habitation*”.

The limitation period for a claim under Section 1 of the DPA is engaged “*at the time when the dwelling was completed*”. However, if additional work is completed on the dwelling, the DPA provides that the limitation period for that further work is to be engaged “*at the time when the further work was finished*”. The current limitation period in either case is six years from accrual of the cause of action.

#### How Section 126 of the Building Safety Bill 2021 operates

Section 126 of the Bill operates by amending the limitation period that applies to making a claim under Section 1 of the DPA. The new limitation is found at Section 126(1) and reads as follows:

*“Where by virtue of a relevant provision a person becomes entitled to bring an action against any other person, no action may be brought after the expiration of 15 years from the date on which the right of action accrued.”*

A “*relevant provision*” includes a claim under Section 1 of the DPA or Section 38 of the Building Act 1980.

The increase in time from six years to fifteen years is a substantial reform designed to protect property owners. Furthermore, the government has drafted the Bill to allow this new limitation period to apply

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retrospectively. This retrospective application can be found in Section 126(3), which states:

*“The amendment made... in relation to... section 1 of the Defective Premises Act 1972 is to be treated as always having been in force.”*

Therefore, breaches of the duties imposed under Section 1 of the DPA may soon be capable of being a cause of action for sub-standard construction works completed as long as fifteen years ago.

The application of legislation retrospectively is an unusual measure. The construction industry may find some relief in Section 126(6) which provides that no action may arise if the action was *“settled or finally determined... before this section came into force”*. This protects the construction industry from having to respond anew to a claim which had previously been made and settled.

### Analysis

The publication of the Bill is already making waves throughout the construction industry. This reform is designed to protect property owners who, in the aftermath of Grenfell, are acutely aware of the need for there to be effective recourse against contractors who fail to uphold building standards.

For property owners, this is an opportunity to challenge sub-standard construction work that may have only become apparent after the existing six-year limitation period had ended.

For the construction industry, understanding how the potential changes could affect your business is crucial. The potential scope of Section 126 is estimated to bring over a million homes within the new limitation period. Specifically, the new limitation period may lead to a substantial increase in claims regarding latent defects. For now, both property owners and the construction industry alike will be waiting on any amendments to Section 126 that may occur during the legislative process.

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