

Construction Law Update

The Building Safety Act – what could it mean for you?

Background

On 28 April 2022, after much deliberation and anticipation, the Building Safety Bill (the “**Bill**”) received Royal Assent as the next “*key step in an extensive overhaul to building safety legislation*”. Now known as the Building Safety Act 2022 (the “**Act**”), the new regime is set to have a profound impact on the construction industry. Read on to find out more about what the new regime might mean for you.

The New Regime

The Act imposes significant new duties designed to improve the transparency and accountability of participants in the design and construction of higher-risk buildings, and protect the rights of leaseholders. Some sections of the Act are already in force; further key measures are set to come into force by 28 June 2022; and the balance within 12 - 18 months according to the Government’s [full transition plan](#).

Central to the new regime is the role of the Building Safety Regulator (the “**Regulator**”), who will oversee the “*safety and performance of all buildings*” and is responsible for approving higher risk residential projects (buildings over 18m in height) at both the planning application and the initial building control stage. The Regulator will also be responsible for implementing specific ‘gateway’ points at the design, construction and completion phases of a given project to ensure safety risks are considered and minimised throughout. The Regulator will also have the power to freeze a project where safety is deemed inadequate.

New rights of recourse introduced by the Act also include: -

- Enhanced rights for homeowners under the Defective Premises Act 1972 (the “**DPA**”) including significantly increased limitation periods for building defects and cladding.
- A strict obligation on developers to provide new home warranties lasting 15 years.

- Section 38 of the Building Act 1984 (the “**BA**”) finally coming into force.
- Creation of new rights to sue construction products manufacturers for defects.
- Empowering the courts to make building liability orders to prevent parties from evading liability by using shell companies and special purpose vehicles (“**SPVs**”).
- A New Homes Ombudsman to help resolve defect-related complaints from homebuyers.

Of the above, the changes to the DPA and the BA are set to come into force by 28 June 2022. It is, therefore, vital that individuals and businesses alike fully understand the implications of these changes.

Enhanced rights under the DPA

The Act seeks to enhance homeowners’ rights under the DPA by extending the time homeowners have to sue another party for defects in their dwelling. This applies where the design, workmanship and/or use of materials renders a dwelling unfit for habitation.

For work done after this part of the Act comes into force, the new limitation period will be 15 years. For claims that accrued before this time, there will be a 30-year retrospective limitation period. This is a marked change from the previous regime, which required that claims under the DPA be brought within 6 years of a dwelling being completed.

The Act also broadens the scope of the DPA more generally so that it applies to all work undertaken on an existing dwelling, including renovation works. Previously, the DPA only applied to new builds and conversions.

A buffer period of one year after the respective limitation periods will also come into force to help protect potential claimants from being precluded from asserting a claim where the new limitation deadlines are imminent.

Construction Law Update

New Home Warranties

The Act also requires developers to provide purchasers of new builds with a new home warranty lasting at least 15 years (as opposed to the current typical coverage length of 10 years). Failure to procure the same will now also attract penalties.

Section 38 of the BA

Section 38 of the BA will finally be brought into force. It will provide a general right of action to those suffering damage caused by a breach of the Building Regulations, regardless of their position in the 'contractual chain' and even extending to third parties who were not involved in the original construction.

The limitation period for claims under section 38 will be extended to 15 years. In contrast to the changes to the DPA, however, this will not be retrospective in effect so this part of the legislation will only apply to work done after section 38 comes into force (by 28 June 2022).

Right to Sue Construction Product Manufacturers

The Act gives those with a legal or equitable interest in an unfit dwelling a new standalone right to sue construction product manufacturers for damages. This will apply where a product has been mis-sold, is found to be inherently defective or if there has been a breach of existing construction product regulations, which causes a building or dwelling to become unfit for habitation. In the case of mis-selling, liability will extend to anyone who markets or supplies a construction product.

The limitation period for such recourse will be 15 years and applies prospectively.

Enhanced protection applies to claims relating to defective cladding products, which will have a retrospective limitation period of 30 years. As with the DPA, a buffer period of one year will apply to allow every opportunity for potential claimants to avail themselves of the new, extended limitation period.

Building Liability Orders

The Act also allows claimants with claims under the DPA and BA, or any other claims arising from a building safety risk to apply to the High Court for a building liability order. A successful application (i.e. one that is considered "just and equitable" by the court) will result in an order extending the specific liabilities of one corporate entity to any of its associated entities, including those who have been associated at any time after commencement of the relevant works. These associates will be held jointly and severally liable for the same defect and the resulting loss and/or damage. This is a marked departure from the law's previous reluctance to lift the corporate veil and is designed to prevent parties from escaping long-term civil liability by ensuring the original developer can be located and required to fund remediation work.

Analysis

In its far-reaching provisions, the Act disturbs many existing legal tenets. Long-held principles of company and contract law are cast aside and vastly extended limitation periods introduced, some with retrospective effect.

Given the next wave of key provisions are set to come into force by 28 June 2022, developers, consultants and contractors should make time to assess their potential exposure to new claims, some of which might conceivably date back to July 1992.

This article contains information of general interest about current legal issues but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.

© Hawkswell Kilvington Limited 2022