

## Building Safety Act 2022 – changing the liability landscape



The Building Safety Act 2022 (BSA) received Royal Assent on 28 April 2022 and on 28 June 2022 parts of the BSA came into force changing how long a party has to bring a claim for defective work.

### Extended liability periods

Historically claims under the Defective Premises Act 1972 (DPA) had to be brought within 6 years of the works reaching completion. Under the BSA the liability periods have been extended as follows:

- 15 years for all claims going forward for dwellings due to be completed after 28 June 2022; and
- 30 years for dwellings completed before 28 June 2022.

The BSA also introduced a new prospective right of action against any person who “*takes on work in relation to any part*” of a dwelling. This means that claims may now be brought in respect of any refurbishment or remedial works completed on an existing building after 28 June 2022, subject to the new 15-year limitation period.

### What does this mean?

The BSA has significantly widened the scope for potential liability, often [long after the right to bring an action under contract or in negligence has expired](#). This changes the liability landscape for prospective claimants seeking a remedy for their defective buildings.

Importantly, for dwellings completed as far back as June 1992, it opens up the possibility of a claim under the



DPA that prior to the introduction of the BSA would have been considered time-barred.

We are expecting to see an increased number of claims arising out of the DPA as a result of these changes, and we are advising clients to take steps now to protect their position, whether in bringing or defending such a claim.

## Steps to take now for projects completed before 28 June 2022

### Review existing portfolios

- Developers and contractors alike should review their residential portfolios and identify any buildings “at risk” of a claim being brought – in particular those projects where limitation periods under contract have already expired, but exposure to liability under the DPA has now re-appeared (i.e. any buildings with construction works carried out between 28 June 1992 and 28 June 2022).

### Reconsider claims

Developers, investors and building owners may wish to reconsider any claim considered to be time-barred (taking into consideration the one year buffering period for claims close to limitation in 2022 which allows until June 2023 to commence proceedings).

### Review record keeping procedures

For claims relating to developments completed up to 30 years ago, a particular challenge for claimants and defendants alike will be proving the condition of the property at completion. It is therefore important that in considering bringing or indeed defending a claim, any and all documentation that could be relevant needs to be identified, retrieved and retained. It is also worth noting that in light of this, record keeping and document retention policies and procedures may need to be reviewed and revised.

## Future contracts

Given that a prospective 15 year limitation period now applies for certain claims under the BSA it is important to ensure that there is sufficient warranty, guarantee and insurance protection in place to cover the extended limitation period for projects in the future. In particular, in the negotiation of project documentation, parties need to be considering:

- bespoke drafting of limitation of liability clauses;
- the extent of warranty packages available particularly from professional consultants, sub-consultants and sub-contractors;
- insurance cover;
- consultant appointment insurances and liability clauses;
- product guarantees and warranties; and
- defects liability.

## Records, records, records

To quote Max Abrahamson in his book ‘Engineering Law and The ICE Contract’:

*“A party to a dispute, particularly if there is an arbitration will learn three lessons (often too late) the importance of records, the importance of records and the importance of records”.*

For now, the best step those involved in the provision of dwellings can take, is to ensure they have good record



keeping measures in place to protect against the 15-year period for future claims and to review historic projects and records and consider which projects may present a risk.

Records should be retained for the duration of the relevant liability period (noting that the liability period may reset on completion of any remedial or refurbishment works). This may involve reviewing and reconsidering document retention policies and procedures.

The BSA represents a wholesale revision of the planning and construction approval process for developments with a residential angle, as well as introducing a more rigorous and stringent safety regime which takes effect once a building is occupied. It is arguably the most significant piece of legislation to affect the UK's built environment for decades however it is perhaps the change to the liability landscape that will have the most significant impact on stakeholders in the construction industry.

## How we can help

If you would like to discuss the implications of the Building Safety Act on your completed projects or need assistance considering the issues on a new project please do not hesitate to contact our expert [construction law team](#).

Written by



[Christobel Smales](#)

Professional Support Lawyer (Legal Director)