

# Building Safety Bill

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## Limitations to the Building Safety Bill

On 4 July 2021, the Housing Secretary Robert Jenrick announced that neither the taxpayer nor a leaseholder should have to fund works to remediate “*shoddy workmanship*”. In the context of dangerous cladding, he announced an “*unusual change in the law*” to retrospectively change the law to “*give every homeowner 15 years in which to take action against the people who built their building*”.

This change is being introduced via the Building Safety Bill introduced to Parliament on 5 July 2021. The Bill is extensive and covers a multitude of issues. It contains many laudable and beneficial aspects which ought to improve the standard of construction work undertaken in the UK. However, two of its 145 sections, appear to go further than Mr Jenrick suggested because they will significantly extend the potential liability for construction claims and those who insure them (not just in a cladding context).

### The Defective Premises Act 1972 (“DPA”)

The DPA imposes a duty on anyone involved in the construction of a dwelling to ensure it is completed in a workmanlike or professional manner, using proper materials to ensure it is fit for habitation when completed. **The duty is owed to every person who acquires a legal or equitable interest in the dwelling, and if a dwelling is provided to the order of a person, to that person**

The limitation period for bringing an action is currently six years from completion (generally speaking, that will be interpreted as being practical completion). The benefit provided by S14A of the Limitation Act 1980 to extend time for claims in tort where knowledge of defects is acquired later, does not apply.

### The Bill

Sections 125 and 126 of the Bill propose a number of important changes.

- Section 125 broadens the scope of the DPA which currently only applies to the “provision” of a dwelling where work is carried out on new builds or conversions (e.g. from offices to flats). The changes will now apply to all building work in connection with the construction of a dwelling, thus ensuring the DPA will apply to work undertaken on an existing building which makes it unfit for habitation (which it does not presently cover).
- Nothing in the Bill would limit its changes to only cover cladding or fire safety related liabilities, which is what Mr Jenrick appeared to suggest. Cladding may be the primary focus of this initiative but the Bill will amend the DPA to impact on any building work in connection with the construction of a dwelling.

- Section 38 of the Building Act 1984 imposes a civil liability for a breach of the building regulations which causes damage. However, it has never come into force. The Bill will establish such a breach as a cause of action, the effect of which appears to be an attempt to make the building regulations stronger and more effective.
- Section 126 amends the Limitation Act 1980 to extend the limitation period for claims under the DPA and section 38 of the Building Act from 6 years to 15 years. Of critical importance, this extension will apply retrospectively. This potentially creates a liability on projects for an additional nine years.
- This retrospective action will not apply to claims that have been finally determined or settled prior to the Bill coming into force. They cannot be reopened.
- While a 15 year limitation period will apply to the newly created rights under the DPA to bring claims in relation to work on existing buildings, that is only of prospective effect, i.e. it will not retrospectively give rights to make claims on projects completed before the Bill comes into force (which is likely to be some time in 2022 or possibly even 2023).

## Get in touch

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**Ben Hardiman**

Partner

T: +44 (0) 161 235 5437

E: [ben.hardiman@mills-reeve.com](mailto:ben.hardiman@mills-reeve.com)

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