



Building Safety Act 2022

2022 CHAPTER 30

PART 5

OTHER PROVISION ABOUT SAFETY, STANDARDS ETC

Liability relating to construction products

147 Liability relating to construction products: general definitions

In this section, section 148 and section 149—

“the 1991 Regulations” means the Construction Products Regulations 1991 (S.I. 1991/1620);

“the 2011 Regulation” means Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products);

“the 2019 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465);

“construction products regulations” means regulations under paragraph 1 of Schedule 11;

“construction product requirement” means a requirement under—

- (a) construction products regulations,
- (b) the 2011 Regulation, or
- (c) the 2019 Regulations;

“relevant building” means—

- (a) a building which consists of a dwelling, or
- (b) a building which contains two or more dwellings;

“relevant interest”, in relation to a building in England and Wales, means—

- (a) in a case where the building consists of a dwelling, a legal or equitable interest in the building, and
- (b) in a case where the building contains one or more dwellings, a legal or equitable interest in—

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- (i) the building, or
 - (ii) any dwelling contained in the building;
- “relevant interest”, in relation to a building in Scotland, means—
- (a) in a case where the building consists of a dwelling, any right or interest (including a servitude or heritable security) in or over the building, and
 - (b) in a case where the building contains one or more dwellings, any right or interest (including a servitude or heritable security) in or over—
 - (i) the building, or
 - (ii) any dwelling contained in the building;
- “requirement” includes a prohibition or restriction.

148 Liability relating to construction products

- (1) This section applies where Conditions A to D are met.
- (2) Condition A is that, at any time after the coming into force of this section—
 - (a) a person fails to comply with a construction product requirement in relation to a construction product,
 - (b) a person who markets or supplies a construction product makes a misleading statement in relation to it, or
 - (c) a person manufactures a construction product that is inherently defective.
- (3) Condition B is that, after Condition A is met, the construction product referred to in subsection (2)(a), (b) or (c) is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (4) Condition C is that, when those works are completed—
 - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
 - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (5) Condition D is that the facts referred to in subsection (2)(a), (b) or (c) were the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (6) The person referred to in subsection (2)(a), (b) or (c) is liable to pay damages to a person with a relevant interest in relation to the relevant building for personal injury, damage to property or economic loss suffered by that person as a result of the facts referred to in subsection (4)(a) or (b).
- (7) A term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, any liability arising under this section is void.
- (8) For the purposes of section 10B(1) of the Limitation Act 1980 and section 18ZD(1) of the Prescription and Limitation (Scotland) Act 1973, the right of action that a person has by virtue of this section is to be regarded as having accrued—
 - (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
 - (b) in any other case, when the works are completed.
- (9) In subsection (2)(a) “construction product”—

- (a) in relation to a construction product requirement under construction products regulations, has the meaning specified in those regulations;
 - (b) in relation to a construction product requirement under the 2011 Regulation, has the meaning specified in the 2011 Regulation;
 - (c) in relation to a construction product requirement under the 2019 Regulations, has the meaning specified in the 2011 Regulation as it had effect immediately before IP completion day.
- (10) In subsection (2)(b) and (c) “construction product” has the meaning specified in the 2011 Regulation.

149 Liability for past defaults relating to cladding products

- (1) This section applies where Conditions A to D are met.
- (2) Condition A is that, at any time before the coming into force of this section—
 - (a) a person fails to comply with a cladding product requirement in relation to a cladding product,
 - (b) a person who markets or supplies a cladding product makes a misleading statement in relation to it, or
 - (c) a person manufactures a cladding product that is inherently defective.
- (3) Condition B is that, after Condition A has been met, the cladding product is attached to, or included in, the external wall of a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (4) Condition C is that, when those works are completed—
 - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
 - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (5) Condition D is that the facts referred to in subsection (2)(a), (b) or (c) were the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (6) The person referred to in subsection (2)(a), (b) or (c) is liable to pay damages to a person with a relevant interest in relation to the relevant building for personal injury, damage to property or economic loss suffered by that person as a result of the facts referred to in subsection (4)(a) or (b).
- (7) A term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, any liability arising under this section is void.
- (8) For the purposes of section 10B(2) of the Limitation Act 1980 and section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, the right of action that a person has by virtue of this section is to be regarded as having accrued—
 - (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
 - (b) in any other case, when the works are completed.
- (9) Where an action is brought under this section in England and Wales that, but for section 10B(2) of the Limitation Act 1980, would have been barred by that Act, a court hearing the action must dismiss it in relation to any defendant if satisfied that it is necessary to do so to avoid a breach of that defendant’s Convention rights.

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- (10) Where an action is brought under this section in Scotland that, but for section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, would have been barred by that Act, a court hearing the action must dismiss it in relation to any defender if satisfied that it is necessary to do so to avoid a breach of that defender’s Convention rights.
- (11) In this section “cladding product requirement” means—
- (a) in relation to a time before IP completion day, a requirement relating to a cladding product under—
 - (i) the 1991 Regulations, or
 - (ii) the 2011 Regulation as it had effect in EU law at that time, and
 - (b) in relation to a time after IP completion day, a requirement relating to a cladding product under—
 - (i) the 2011 Regulation, or
 - (ii) the 2019 Regulations.
- (12) In this section—
- “cladding product” means a cladding system or any component of a cladding system;
 - “Convention rights” has the same meaning as in the Human Rights Act 1998;
 - “external wall”, in relation to a building, includes any part of a roof pitched at an angle of more than 70 degrees to the horizontal if that part of the roof adjoins a space within the building to which persons have access otherwise than for the purpose of carrying out repairs or maintenance.

150 Liability relating to construction products: limitation in England and Wales

In the Limitation Act 1980, after section 10A insert—

“10B Special time limit for actions relating to construction products

- (1) An action under section 148 of the Building Safety Act 2022 shall not be brought after the expiration of 15 years from the date on which the right of action accrued.
- (2) An action under section 149 of the Building Safety Act 2022 shall not be brought after—
 - (a) if the right of action accrued before the commencement date, the expiration of the period of 30 years from the date on which it accrued, and
 - (b) if the right of action accrued on or after the commencement date, the expiration of the period of 15 years beginning with the date on which it accrued.
- (3) In a case where—
 - (a) a right of action under section 149 of the Building Safety Act 2022 accrued before the commencement date, and
 - (b) the expiration of the period of 30 years beginning with the date on which the right of action accrued falls in the year beginning with the commencement date,
 subsection (2)(a) has effect as if it referred to the expiration of that year.

- (4) In subsections (2) and (3) “the commencement date” is the day on which section 149 of the Building Safety Act 2022 came into force.
- (5) No other period of limitation prescribed by Part 1 of this Act applies in relation to an action referred to in subsections (1) and (2).
- (6) Sections 28, 32 and 35 of this Act apply in relation to an action referred to in subsections (1) and (2), but otherwise Parts 2 and 3 of this Act (except sections 37 and 38) do not apply for the purposes of this section.”

151 Liability relating to construction products: limitation in Scotland

- (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) After section 18ZC insert—

“18ZD Actions relating to construction products

- (1) An action under section 148 of the Building Safety Act 2022 may not be brought after the expiration of 15 years from the date on which the right of action accrued (see subsection (8) of that section).
- (2) An action under section 149 of the Building Safety Act 2022 may not be brought after—
 - (a) if the right of action accrued before the commencement date, the expiration of the period of 30 years from the date on which it accrued (see subsection (8) of that section), and
 - (b) if the right of action accrued on or after the commencement date, the expiration of the period of 15 years beginning with the date on which it accrued.
- (3) In a case where—
 - (a) a right of action under section 149 of the Building Safety Act 2022 accrued before the commencement date, and
 - (b) the expiration of the period of 30 years beginning with the date on which the right of action accrued falls in the year beginning with the commencement date,subsection (2)(a) has effect as if it referred to the expiration of that year.
- (4) In subsections (2) and (3) “the commencement date” is the day on which section 149 of the Building Safety Act 2022 came into force.
- (5) No other period of limitation specified by this Part of this Act applies in relation to an action referred to in subsection (1) or (2).
- (6) In the computation of a period of time specified in subsection (1) or (2), there is to be disregarded any time during which the person seeking to bring the action (P)—
 - (a) was under a legal disability by reason of nonage or unsoundness of mind, or
 - (b) failed to bring the action by reason of—

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- (i) fraud on the part of the person against whom the action is to be brought (D) or the part of any person acting on D's behalf, or
 - (ii) error induced by words or conduct of D or any person acting on D's behalf,
(but not including, for the purposes of paragraph (b), any time occurring after P could with reasonable diligence have discovered the fraud or error mentioned in that paragraph).
- (7) For the purposes of subsection (6)(b), it does not matter whether D, or the person acting on D's behalf, intended the fraud or the words or conduct to cause P to fail to bring the action."
- (3) In section 7(2) (extinction of obligations by prescriptive periods of twenty years), at the end insert "or any obligation to pay damages arising from liability under section 148 or section 149 of the Building Safety Act 2022 (see section 18ZD of this Act)."
- (4) In section 19CA(1) (interruption of limitation period: arbitration), after "18ZC(2)" insert ", 18ZD(1) or (2)".
- (5) In Schedule 1, in paragraph 2 (exceptions from the 5 year prescriptive period under section 6), after paragraph (ga) insert—
 - "(gb) to any obligation to pay damages arising from liability under section 148 or 149 of the Building Safety Act 2022;".