



# Building Safety Act 2022

## 2022 CHAPTER 30

### PART 5

#### OTHER PROVISION ABOUT SAFETY, STANDARDS ETC

##### *Construction products: costs contribution orders*

#### **152 Costs contribution orders: general definitions**

In this section and sections 153 to 155—

“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](#));

“the 2020 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 ([S.I. 2020/1359](#));

“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 (or, in Northern Ireland, in the 2011 Regulation as having effect in EU law from time to time);
- (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;
- (d) in relation to a construction product requirement under the 2020 Regulations, has the meaning given by regulation 2 of those Regulations;

“construction products regulations” means regulations under paragraph 1 of [Schedule 11](#);

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“construction product requirement”, in England and Wales or Scotland, means a requirement under—

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

“construction product requirement”, in Northern Ireland, means a requirement under—

- (a) construction product regulations,
- (b) the 2011 Regulation as having effect from time to time in EU law,
- (c) the 2019 Regulations, or
- (d) the 2020 Regulations;

references to an “interest” in a building or dwelling include—

- (a) in England and Wales, any legal or equitable interest in the building or dwelling;
- (b) in Scotland, any right or interest (including a servitude or heritable security) in or over the building or dwelling;
- (c) in Northern Ireland, any estate within the meaning given by section 45(2) of the Interpretation Act (Northern Ireland) 1954 in the building or dwelling;

“relevant building” means—

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

“requirement” includes a prohibition or restriction.

#### **Commencement Information**

**II** [S. 152](#) in force at 28.6.2022, see [s. 170\(3\)\(e\)](#)

### **153 Costs contribution orders made by courts**

- (1) The Secretary of State may by regulations make provision for courts to make costs contribution orders on the application of the Secretary of State.
- (2) The regulations may only make provision for the making of costs contribution orders under this section in cases where—
  - (a) Conditions A to D are met, and
  - (b) any prescribed conditions are met.
- (3) Condition A is that a person (“the defaulter”) is convicted of an offence consisting of a failure to comply with a construction product requirement in relation to a construction product.
- (4) Condition B is that, after the failure to comply referred to in subsection (3), the construction product 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.
- (5) 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

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- (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (6) Condition D is that the failure to comply referred to in subsection (3) was the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (7) A “costs contribution order” under this section is an order requiring the defaulter to pay an amount to a person with a prescribed interest in the building or any dwelling contained in the building.
- (8) Regulations under this section must provide for the amount to be paid to a person under a costs contribution order under this section to be such amount as the court making the order considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the court is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation.
- (9) The regulations may make provision as to the matters which may or must be taken into account by a court in determining—
  - (a) whether, against whom and in favour of whom to make a costs contribution order under this section;
  - (b) the amount required to be paid by a person under a costs contribution order under this section.
- (10) The regulations may make provision in relation to—
  - (a) enforcement of a costs contribution order under this section;
  - (b) court powers to order the defaulter to pay—
    - (i) any costs incurred by the Secretary of State under regulations under section 155 (assessments) in respect of the application, and
    - (ii) any costs incurred by the Secretary of State in making the application.
- (11) The regulations may make provision about how a costs contribution order under this section relates to other remedies, including in particular—
  - (a) provision to secure that, taking a costs contribution order under this section together with other remedies—
    - (i) a person does not incur liability more than once in respect of the same costs;
    - (ii) a person is not entitled to be reimbursed more than once for the same costs;
  - (b) provision preventing a person to whom any amount is payable under a costs contribution order under this section from pursuing any other legal remedy for the recovery of such an amount.
- (12) In this section “prescribed” means prescribed by regulations under this section.

**Commencement Information**

**12** S. 153 in force at 28.6.2022, see s. 170(3)(e)

**154 Costs contribution orders made by the Secretary of State**

- (1) The Secretary of State may by regulations make provision for the Secretary of State to make costs contribution orders.

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- (2) The regulations may only make provision for the making of costs contribution orders in cases where—
  - (a) Conditions A to D are met, and
  - (b) any prescribed conditions are met.
- (3) Condition A is that a person (“the defaulter”) is convicted of an offence consisting of a failure to comply with a construction product requirement in relation to a construction product.
- (4) Condition B is that, after the failure to comply referred to in subsection (3), the construction product 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.
- (5) 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.
- (6) Condition D is that the failure to comply referred to in subsection (3) was the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (7) A “costs contribution order” under this section is an order requiring the defaulter to make a payment to a person with a prescribed interest in the building or any dwelling contained in the building.
- (8) Regulations under this section must provide for the amount to be paid to a person under a costs contribution order under this section to be such amount as the Secretary of State considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the Secretary of State is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation.
- (9) The regulations may make provision as to the matters which may or must be taken into account by the Secretary of State in determining—
  - (a) whether, against whom, and in favour of whom, to make a costs contribution order under this section;
  - (b) the amount required to be paid by a person under a costs contribution order under this section.
- (10) The regulations may make provision for the Secretary of State to issue a warning notice to a person before determining whether to make a costs contribution order under this section against that person.
- (11) The regulations may make provision requiring that a costs contribution order under this section—
  - (a) be made in a prescribed form;
  - (b) contain prescribed information.
- (12) The regulations may make provision about service of a costs contribution order under this section including—
  - (a) how an order is to be served;
  - (b) when an order is to be taken as having been served;
  - (c) the persons on whom an order must be served.

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- (13) The regulations may make provision in relation to—
- (a) enforcement of a costs contribution order made under this section (including enforcement by the Secretary of State);
  - (b) powers of the Secretary of State to order the defaulter to pay any costs incurred by the Secretary of State under section 155 in respect of a costs contribution order under this section.
- (14) The regulations may make provision about how a costs contribution order under this section relates to other remedies, including in particular—
- (a) provision to secure that, taking a costs contribution order under this section together with other remedies—
    - (i) a person does not incur liability more than once in respect of the same costs;
    - (ii) a person is not entitled to be reimbursed more than once for the same costs;
  - (b) provision preventing a person to whom any amount is payable under a costs contribution order under this section from pursuing any other legal remedy for the recovery of such an amount.
- (15) The regulations may make provision for persons to apply to the Secretary of State for a review of a costs contribution order under this section.
- (16) The regulations may make provision for appeals to a court or tribunal in relation to—
- (a) a decision of the Secretary of State to make or not make a costs contribution order under this section;
  - (b) a refusal by the Secretary of State to review a costs contribution order under this section;
  - (c) the outcome of a review by the Secretary of State of a costs contribution order under this section.
- (17) The regulations may in particular include provision suspending a requirement to pay an amount due under a costs contribution order under this section pending the determination or withdrawal of an appeal or the determination of a review.
- (18) In this section “prescribed” means prescribed by regulations under this section.

#### Commencement Information

**I3** S. 154 in force at 28.6.2022, see s. 170(3)(e)

### 155 Costs contribution orders: assessments

- (1) For the purposes of sections 153 and 154, the Secretary of State may by regulations make provision for the Secretary of State to appoint persons to assess—
- (a) whether the conditions for the imposition of a costs contribution order under either of those sections are met;
  - (b) the works required to make a building or dwelling fit for habitation;
  - (c) what interest a person has in a building or dwelling;
  - (d) the costs that a person has reasonably incurred or is likely to reasonably incur in respect of works referred to in paragraph (b);

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- (e) the amount that a person should be required to pay under a costs contribution order.
- (2) The regulations may include provision about the criteria to be met by a person before they may be appointed as an assessor.
  - (3) The regulations may make provision about assessments, including provision—
    - (a) conferring power on an assessor to require that persons provide such information as the assessor may reasonably require for the purposes of an assessment;
    - (b) for the provision of information by an assessor to the Secretary of State (including any information provided under paragraph (a)).
  - (4) Regulations under subsection (3)(a) may include provision for criminal offences relating to a failure to provide information, or to the provision of false or misleading information.
  - (5) Regulations under subsection (3)(a) creating a criminal offence must have the effect that—
    - (a) the offence is—
      - (i) triable summarily only, or
      - (ii) triable summarily or on indictment,
    - (b) the offence is punishable only—
      - (i) with a fine, or
      - (ii) with a term of imprisonment or a fine (or both),
    - (c) where the offence is triable summarily only, any fine with which the offence is punishable in Scotland or Northern Ireland does not exceed level 5 on the standard scale,
    - (d) where the offence is triable summarily or on indictment, any fine with which the offence is punishable on summary conviction in Scotland or Northern Ireland does not exceed the statutory maximum, and
    - (e) any term of imprisonment with which the offence is punishable on summary conviction does not exceed—
      - (i) in England and Wales, the relevant period,
      - (ii) in Scotland, 12 months, and
      - (iii) in Northern Ireland, 6 months.
  - (6) In subsection (5)(e)(i), “the relevant period” means—
    - (a) in relation to an offence that is triable summarily only—
      - (i) where the offence is committed before the coming into force of section 281 of the Criminal Justice Act 2003, 6 months, and
      - (ii) where the offence is committed after that time, 51 weeks;
    - (b) in relation to an offence that is triable summarily or on indictment—
      - (i) where the offence is committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, 6 months, and
      - (ii) where the offence is committed after that time, 12 months.
  - (7) Regulations under subsection (3)(b) may make provision for the purpose of securing that there is (taking into account any power or duty to provide information under the regulations) no contravention of the data protection legislation.

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(8) In subsection (7), “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

**Commencement Information**

**I4** S. 155 in force at 28.6.2022, see s. 170(3)(e)

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