



Building Safety Act 2022

2022 CHAPTER 30

PART 5

OTHER PROVISION ABOUT SAFETY, STANDARDS ETC

Liability relating to construction products

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,

Status: This is the original version (as it was originally enacted).

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.
- (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.