



Building Safety Bill Receives Royal Assent

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INTRODUCTION

On 29 April 2022, the Building Safety Bill received Royal Assent and has become the **Building Safety Act 2022** (the “BSA”). The BSA gives effect to policies set out in the Government response to the ‘**Building a Safer Future**’ consultation, and Dame Judith Hackitt’s **interim** and **final report** undertaken as part of an independent review of building regulations and fire safety.

The BSA represents a momentous shift. Lord Greenhalgh described it as a landmark bill that “will bring forward the biggest changes to building safety legislation in our history” (Hansard, HL Deb vol. 821 col.201 (26 April 2022)).

Arguably the three most significant reforms are:

- The creation of the “Building Safety Regulator”;
- The creation of the “National Construction Product Regulator”; and
- The extension of the limitation period in the Defective Premises Act 1972 from six to thirty years.

The BSA amends, among others, the Defective Premises Act 1972, the Landlord & Tenant Act 1985, the Building Act 1984, the Health and Safety at Work etc. Act 1974, and the Regulatory Reform (Fire Safety) Order 2005.

The Building Safety Regulator

A new body called the “**Building Safety Regulator**” (the “BSR”) will be established within the Health and Safety Executive. It will have jurisdiction over residential buildings with seven or more storeys or 18 metres or higher. The BSR brings into effect Dame Judith’s recommendation that a “*single building safety regulator*” should be “*at the heart of our regulatory reforms*”. The BSR will have approval, enforcement, and prosecutorial powers.

The BSA sets out the objectives of the BSR as “*securing the safety of people in or about buildings in relation to risks arising from buildings, and improving the standard of buildings.*” The BSR is under a duty to keep the safety and standards of buildings under review and establishes a system for giving building safety information under a system of “*voluntary occurrence reporting*”. It will be a criminal offence to obstruct an authorised officer of the BSR or provide false or misleading information to the BSR.

The National Construction Product Regulator

The BSA establishes a new dedicated National Regulator for Construction Products (the “NRCs”) which will be established within the Office for Product Safety and Standards (the “OPSS”). The OPSS will be expanded and given £10m in additional funding. The NRCs will carry out its functions alongside the BSR and Trading Standards.

Retrospective Rights under the Defective Premises Act 1972

The Defective Premises Act 1972 (the “DPA 1972”) imposes a duty on a person taking on work for (or in connection with) the provision of a dwelling to see that work is done in a ‘workmanlike’ or ‘professional manner’ so that it is ‘fit for habitation’. Provision of a dwelling denotes ‘[...] work which positively contributes to the creation of the dwelling. That may include architects and engineers who prescribe how the dwelling is to be created, not just those who physically create it’; however, it does not apply to those who inspect buildings for the purposes of building control (*Lessees and Management Company of Herons Court v Heronslea Ltd and others* [2019] EWCA Civ 1423, [2019] All ER (D) 73 (Aug), at [40]) This duty applies to construction, but not a renovation or other alteration.

The BSA extends the limitation period in s 1, DPA 1972 from six to thirty years. This provision is intended to come into force within the next few months. As such, work completed up to the middle of 1992 will potentially become subject to a DPA 1972 claim, while other common law and tort claims retain a qualified six-year limitation period. This amendment will not start time running afresh for leaseholders whose claims have already been struck out on limitations grounds (for example, *Sportcity 4 Management Ltd and other companies v Countryside Properties (UK) Ltd* [2020] EWHC 1591 (TCC), [2020] All ER (D) 05 (Jul)). Those whose claims have been struck out will now have to attempt to seek permission to bring a second claim under CPR 38.7.

Conclusion

The reforms are significant and far reaching. Much of the BSA will take between 12 and 18 months to come into effect, and when it does, a significant amount of the detail has been left to secondary legislation.

We will be looking at the various parts of the BSA, including the important role of the new regulators, in a series of posts over the coming weeks.