

THE BUILDING SAFETY BILL AND THE DEFECTIVE PREMISES ACT 1972

A BRIEFING ON THE PROPOSED CHANGES

By Daniel Crowley & David Thomas

December 2021

1. The Building Safety Bill ("the Bill") is a wide-ranging Bill intended to address some of the issues arising out of the Grenfell Tower tragedy,¹ including proposed amendments to the Defective Premises Act 1972 ("DPA 1972"). The Bill will introduce the most significant amendments to the DPA 1972 since its enactment.
2. This guide aims to provide you with an outline of those proposed amendments.

The Existing Duty

3. The existing duty under s.1 DPA 1972 is:-

A person taking on work for or in connection with the provision of a dwelling (whether the dwelling is provided by the erection or by the conversion or enlargement of a building) owes a duty—

- (a) *if the dwelling is provided to the order of any person, to that person; and*
- (b) *without prejudice to paragraph (a) above, to every person who acquires an interest (whether legal or equitable) in the dwelling to see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.*

The Proposed Amendments

4. Sections 127 and 128 of the Bill² propose to amend the DPA 1972 by:-
 - i) Imposing a new duty; and
 - ii) Extending the limitation period for the existing and new duties.

¹ See: <https://www.grenfelltowerinquiry.org.uk/>

² As amended in Public Bill Committee.



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A New Duty – Section 2A DPA 1972

The Proposed Legislation

5. S.127 of the Bill inserts a new section 2A into the DPA 1972.
6. The proposed new s.2A extends the existing s.1 DPA 1972 duty as follows:-

2A Duties relating to work to dwellings etc...

- (1) *This section applies where a person, in the course of a business, takes on work in relation to any part of a relevant building.*
- (2) *In this section "relevant building" means a building consisting of or containing one or more dwellings.*
- (3) *The person owes a duty to-*

(a) the person for whom the work is done, and

(b) each person who holds or acquires an interest (whether legal or equitable) in a dwelling in the building,

to see that the work is done in a workmanlike or (as the case may be) professional manner, with proper materials and so that as regards the work the dwelling is fit for habitation when the work is completed.

- (4) *The duty under this section does not apply in relation to a dwelling if:-*

(a) the work taken on is work for or in connection with the provision of the dwelling (as to which see section 1), or

(b) it is expected that, on completion of the work, it will have ceased to be a dwelling or will otherwise have ceased to exist.

Existing dwellings

7. Unlike s.1 DPA 1972, which only applies to work in connection with the provision of a new dwelling,³ proposed s.2A extends the duty to work in relation to an existing dwelling,⁴ defined in proposed s.2A(2) as a "relevant building" (see below).
8. So, the new duty will apply to renovation works to existing dwellings.

Relevant building

9. The proposed section 2A DPA 1972 extends the duty to "work in relation to any part of a relevant building."⁵
10. In turn, "relevant building" is defined in s.2A(2) as "a building consisting of or containing one or more dwellings".⁶
11. This is wider than s.1 DPA 1972. S.1 DPA 1972 applies only to the "provision of a dwelling (whether the dwelling is provided by the erection or by the conversion or enlargement of a building)" (emphasis added).
12. The duty in s.1 DPA 1972 has been interpreted to apply to a block of flats.⁷ However, the duty in proposed s.2A will likely also apply to:-

³ See s.1 DPA 1972, proposed s.2A(4)(a) DPA 1972 and *Jenson v Faux* [2011] 1 WLR 3038; [2011] EWCA Civ 423.

⁴ See proposed s.2A(1) and s.2A(2) DPA 1972.

⁵ Proposed s.2A(1) DPA 1972.

⁶ Proposed s.2A(2) DPA 1972.

⁷ See *Rendlesham v Barr* [2014] EWHC 3968, [2015] WLR 3663

- i) A building which consists of or contains one or more dwellings (for example, an industrial or commercial building with a caretaker's flat).
 - ii) Work to any part of a relevant building, not just work to the dwelling in the building.
13. The proposed s.2A duty does not apply in relation to a dwelling "if it is expected that, on completion of the work, it will have ceased to be a dwelling or will have otherwise ceased to exist."⁸ This would exclude conversion works converting a part of a building from a dwelling to something else and/or to demolition works.
14. The proposed s.2A DPA 1972 duty only "applies in relation to work completed after the coming into force of this section."⁹ So, the proposed duty is not retrospective.

Proposed Extension of the Limitation Period

15. S.128 of the Building Safety Bill proposes to:
- i) Extend the limitation period under s.1(5) DPA 1972 from six years to 15 years for the s.1 and proposed s.2A duties; and
 - ii) Makes the extension of time retrospective in respect of the s.1 DPA 1972 duty.¹⁰

S 1(5) DPA

16. The proposed extension of the limitation period to 15 years for the s.1 DPA 1972 duty is retrospective. It will be treated as always having been in force.¹¹

17. However, where the 15 year period would expire within 90 days of s.128 of the Bill coming into force, no action may be brought after the end of that 90 day period.¹²
18. Further, if an action is brought that, but for the extension of the limitation period to 15 years, would have been barred by the Limitation Act 1980, a court hearing the action must dismiss it against any defendant if it is satisfied that it is necessary to do so to avoid breach of that defendant's rights pursuant to the European Convention on Human Rights,¹³ in particular human rights against retrospective legislation.¹⁴

Settlement/Final determination

19. The extension of the limitation period does not permit a new action to be brought when a prior action was settled or finally determined (whether on the basis of limitation or otherwise) before s.128 of the Bill comes into force.¹⁵

Responses to the Building Safety Bill

20. While the proposed amendments to the DPA 1972 will provide extended remedies to owners of dwellings for defective works, it was pointed out by both sides on the Second Reading debate of the Bill, and at the Committee stage, that this will not in itself provide immediate remedies for the 'Grenfell' type cladding problems.
21. Potential claimants will still need the financial resources to sue potentially well-resourced developers and builders for breach of the

⁸ Proposed s.2A(4) DPA 1972.

⁹ S.127(2) Building Safety Bill.

¹⁰ See s.128(1) Building Safety Bill and proposed new s.4B Limitation Act 1980.

¹¹ S.128(3) Building Safety Bill. The 15 year limitation period also applies to the proposed s.2A duty. The s.2A duty is not retrospective. See s.127(2) Building Safety Bill.

¹² S.128(4) and (7) Building Safety Bill.

¹³ S.128(3), 128(4) and 128(7) Building Safety Bill.

¹⁴ Article 6(1) European Convention on Human Rights and Human Rights Act 1998.

¹⁵ S.128(6) Building Safety Bill.

amended DPA 1972 in contested, potentially complex, litigation. Alternatively, some developers may become insolvent, or have limited assets with which to carry out remedial work.¹⁶

22. The amendments to the limitation period are likely to give rise to litigation to establish how they apply in practice (especially their retrospective effect).
23. On the other hand, even though the extension of the limitation period, especially its retrospective effect, is controversial, some MPs argued that the extension does not go far enough. Many dwellings with cladding problems were completed more than 15 years ago.
24. Nevertheless, the proposed amendments to the DPA 1972 would constitute a significant strengthening of a property owner's rights to recover for defective premises.

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¹⁶ For example, 'Single Purpose Vehicle' companies set up for a particular development and wound up when the development is completed.

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