

The Building Safety Act 2022

Introduction

The Building Safety Act 2022 (“BSA 2022”) was introduced in **England and Wales** in response to the Grenfell fire of June 2017. Providing a legislative response to the gaps and deficiencies in building and fire safety as identified in the Hackitt Report (the Independent Review of Building Regulations and Fire Safety) published in May 2018.

BSA 2022 introduces “duty holder regimes” akin to the CDM Regulations 2015 in relation to building safety, BUT as Scotland operates under its own legislative building safety system, primarily governed by the Building (Scotland) Act 2003 and supplemented by more recent measures such as the Housing (Cladding Remediation) (Scotland) Act 2024, the BSA 2022 has limited application under Scottish law. The duty holder regimes do not apply in Scotland.

The BSA 2022 has limited application under Scottish law, the principal provisions affecting Scotland are sections 148, 149, and 151, and the newly inserted Section 18ZD in the Prescription and Limitation (Scotland) Act 1973.

This guidance is intended to provide information only and concerns the regime in England. The details and information provided are up to date at the time of publication (April 2024). This guidance does not constitute advice. Please obtain appropriate professional advice if required.

Construction and Cladding Product Liability

Sections 148 and 149 introduce new rights of action where a residential building becomes “unfit for habitation” due to inherently defective construction or cladding products, failure to comply with construction/cladding product requirements, or misleading marketing or statements about such products. These sections provide provision for claims for personal injury, property damage and economic loss and are applicable even where no contractual relationship exists between the claimant and the manufacturer/supplier.

Section 148 – Liability for Construction Products

Section 148 applies in Scotland and creates statutory liability where a construction product:

- is inherently defective;
- fails to comply with product requirements; or
- is marketed with misleading statements; and
- where its installation renders a residential building “**unfit for habitation**”.

Liability extends to personal injury, property damage, and economic loss, and applies even absent a contractual relationship between the injured party and the manufacturer or supplier.

Section 149 — Liability for Cladding Products

Section 149 mirrors Section 148 but specifically covers cladding products. This section amends the law in both England and Wales and in Scotland by inserting new limitation and prescription provisions. In England and Wales, a new section 10B of the Limitation Act 1980 extends the period for bringing certain cladding product claims to thirty years

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where the right of action accrued prior to the commencement of the Building Safety Act, and to fifteen years where the right accrues after commencement. Similarly, in Scotland, section 149 inserts a new section 18ZD into the Prescription and Limitation (Scotland) Act 1973, providing equivalent extended prescription periods of thirty years for pre-commencement accrual and fifteen years for post-commencement accrual.

Notably, this section applies retrospectively, capturing products installed before the Act came into force. This retrospective applicability represents a substantial departure from traditional Scottish prescription principles.

Extended Prescription Periods

Section 151 amends the Prescription and Limitation (Scotland) Act 1973 by introducing a specific regime for claims brought under sections 148 and 149 of the Building Safety Act 2022. Under the 1973 Act, obligations in Scotland will generally prescribe after five years under the short negative prescription, subject to certain statutory exceptions. Section 151 modifies that position for certain construction and cladding product claims by introducing extended time limits and related statutory provisions.

These extended time limits apply only where specific statutory conditions are satisfied. First, Condition A requires that a person has either failed to comply with a cladding product requirement, made a misleading statement relating to a cladding product, or manufactured an inherently defective cladding product. Condition B requires that the cladding product in question was subsequently attached to or incorporated within the external wall of a relevant building. Condition C requires that the dwelling or building is rendered unfit for habitation. Finally, Condition D requires that the matters identified in Condition A were the cause, or one of the causes, of the building being rendered unfit for habitation. Only when all these conditions have been satisfied, can a claimant rely on the extended limitation or prescription periods introduced by the BSA 2022.

These extended time limits cannot be contracted out of, and any attempt in a contract to shorten these periods will unlikely be enforced. As this regime is relatively new, there is currently no known Scottish case law in which the extended limitation or prescription periods have been interpreted and applied in practice. It is likely that various issues will be clarified through future litigation.