

## Insights

# PROPOSED CHANGES TO THE DEFECTIVE PREMISES ACT

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Many changes have been introduced since *Grenfell* to address the cladding crisis including the establishment of various loans, funds, plans for new regulators, new taxes, levies and new rules to govern building safety throughout the lifetime of a building.

Last weekend, news broke of the latest initiative: extending the limitation period for homeowners to claim compensation for defective work under the *Defective Premises Act 1972* (DPA) from 6 to 15 years, and extending the application of the DPA. The proposed changes are set out in the *Building Safety Bill*.

This blog takes a closer look at the proposed changes.

## The DPA – a quick recap

First, let's start with a recap of how the DPA works.

The DPA is a short piece of legislation that came into force on 1 January 1974. It is described in its preamble as:

*"An Act to impose duties in connection with the provision of dwellings and otherwise to amend the law of England and Wales as to liability for injury or damage caused to persons through defects in the state of premises."*

It *imposes a duty* (which cannot be excluded or restricted) on a person "taking on work" in connection with the provision of a dwelling to see that the work which it takes on is done in a workmanlike, professional manner with proper materials so that the dwelling will be fit for habitation when completed.

This means that where a dwelling has not been built with proper materials that make it fit for habitation, those "taking on work" can face compensation claims from homeowners. Those "taking on work" includes building contractors and developers.

Currently the *limitation period for actions under the DPA* is 6 years from completion of the dwelling. Although if remedial work is carried out, then in relation to such further work, the limitation period is

6 years from completion of that work.

So far, so straightforward.

However, now let's look at the exclusions to the DPA and the inroads to its application made by case law over the years. All of a sudden it becomes clear why it is not so easy to bring an action under the DPA even if you are within the limitation period.

Hurdles include:

**“Not fit for habitation”?** To bring a successful action, the claimant homeowner must first show that inadequate work or materials has led to the defect which in turn means the dwelling is not fit for habitation.

The DPA therefore does not cover all “defects” in a building, just those that render it unfit for habitation.

In *Rendlesdham Estates Plc v Barr Ltd*, the judge held:

*“If, at the time of completion, the state of an apartment is such that a local authority with knowledge of its condition would not approve it as fit for occupation under the building regulations (for example, for lack of suitable means of escape in the case of fire), it is probably unfit for habitation...”*

So, a failure to comply with building regulations may render a building unfit for habitation within the meaning of the DPA, but the relevant regulations are those at the time of completion (not later, such as when the claim is brought).

**Only new/enlarged dwellings:** The DPA as currently enacted only applies to the provision of a new dwelling, including the conversion or enlargement of a building to create a dwelling. So, it currently does not extend to the enlargement of, or repairs to, an **existing** dwelling.

**Narrow net of liability:** Perhaps the biggest hurdle, particularly in the building safety context, is that not every party involved in the construction of the dwelling will fall within the DPA ambit. For example:

- A party who takes on work for another on terms that it has to do it **in accordance with instructions given by or on behalf of that other** is excluded from the ambit of the Act as long as it:
  - carries out such work **properly**; and
  - has **no duty to warn** the other of defects in the instructions; or
  - has a duty to warn the other, but discharges the duty.

- **The DPA does not apply to approved inspectors (AIs):** in *Lessees and Management Company of Herons Court v Heronslea Ltd and others*, the Court of Appeal concluded that AIs do not owe a duty under section 1 of the Defective Premises Act 1972 in the exercise of their building control functions. Without *collateral warranties or third party rights*, third parties therefore have little or no recourse against negligent AIs.

## How will the DPA change?

The government plans to *amend the DPA* by introducing changes in the Building Safety Bill as follows:

**Longer limitation period:** The main change is that the limitation period will change from 6 to 15 years from completion of the dwelling (or in the case of remediation work to rectify the work already done, 15 years from completion of that further work). This means homeowners will have a longer period in which to make claims.

According to the government, “most of the cladded buildings were built in the period from 2000-17” so this change will mean that “not all, but the lions’ share” of buildings that are facing this particular issue will now be helped by the extended limitation period.

**DPA scope extended to apply to work to existing buildings:** A new section 2A will be inserted in the DPA to extend its scope to any works to any part of a building which contains one or more dwellings. This change increases the scope of liability to include not just those who build new dwellings, but also those who undertake any works to existing dwellings. However, the exclusions mentioned above regarding a party that takes on work for another in accordance with that other’s instructions remain the same.

**Retrospective effect:** the extended limitation period will apply retrospectively (as well as prospectively) to claims under section 1 (only) of the DPA. However, where a claim is made retrospectively, the Building Safety Bill provides that the extended limitation period will not apply to claims that have already been settled or finally determined, and that a claim must be dismissed if it breaches a defendant’s human rights.

## Final thoughts

Absent a collateral warranty or third party rights, subsequent homeowners have very limited recourse for defects against the original contractor/developer outside of the DPA. Often defects can take some time to manifest themselves, so the change to the DPA limitation period does give some additional protection to homeowners. However, as discussed above, bringing a claim under the DPA is not a straightforward exercise. Evidential burdens aside, the uncertain nature of litigation coupled with the cost and time it takes, means that this new avenue will not be for all potential claimants.

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