



Clause 128 of the Building Safety Bill proposes that a new section, 4B, be inserted into the Limitation Act 1980, to include an extended “time limit for certain actions in respect of damage or defects in relation to buildings”.

The new time limit of 15 years – which “is to be treated as always having been in force” – applies to actions under:

- (a) section 1 or 2A, Defective Premises Act 1972 or
- (b) section 38, Building Act 1984.

There are however qualifications:

- By subclause (5), “a court hearing an 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”;
- If a claim has been settled or finally determined, even on the ground of limitation, no further action can be taken.

If the 15 year time limit expires within 90 days of the day on which the new section comes into force, the time limit is extended to the end of that 90 day period. As I read that clause, in some cases the time limit might be 15 years and 89 days.

Section 1(1) of the Human Rights Act defines “Convention rights” as:

“(a) Articles 2 to 12 and 14 of the “Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom”;

“(b) Articles 1 to 3 of the First Protocol, and

“(c) Article 1 of the Thirteenth Protocol,

“as read with Articles 16 to 18 of the Convention.

For many, the fifteen-year window will still be too small for claims connected with defective buildings – even at today’s date the new section would only catch claims arising from 2006; for others, the potential defendant may be a company, long since liquidated or wound up. For those for whom the new law might indeed open the door of the court, the cost of litigating – both financially and in terms of stress – may have a significant and dissuasive impact.

