Falcon Chambers

"LIMITATION PERIODS? WHERE WE'RE GOING, WE DON'T NEED LIMITATION PERIODS".

BUILDING SAFETY (REMEDIATION OF UNSAFE CLADDING ETC) BILL 2026

1. Earlier this month, the government published the Building Safety (Remediation of Unsafe Cladding Etc Bill) 2026. The Bill seeks to accomplish several things, and these are summarised below. Amongst the Bill's provisions is clause 89, which inserts into s.124 Building Safety Act 2022 a provision expressly disapplying the Limitation Act 1980.

2. The exact wording of the proposed amendment is as follows: "*No time limit under the Limitation Act 1980 applies to the ability to apply for a remediation contribution order*."

3. Eagle eyed readers will remember that s.124's lack of any reference to limitation was remarked upon by Lord Justice Newey in *Triathlon Homes LLP v Stratford Village Development Partnership & Ors* [2025] EWCA Civ 846. Specifically, Newey LJ noted that s.124 does "*not expressly impose any other temporal limitation*" and that, taken together with s.120(2)'s definition of "*relevant defect*", *"nothing said in section 124, therefore, prevents the provision from having retrospective effect*". Though, he noted that given the presumption against retrospectivity, s.124's silence may point away from the conclusion that was reached by the FTT (and, ultimately, the Court of Appeal) in that case. The Court of Appeal concluded in that case that s.124 applied to costs incurred before that provision of the BSA 2022 was brought into force on 28 June 2022. The appeal of this decision, and of this issue, is being heard in the Supreme Court next month.

4. So why include this proposed amendment in the draft Bill? The explanatory notes at 637-639 state that even though it is unlikely that an RCO, RO, or BLO (in respect of which similar amendments are proposed) is subject to a limitation period, this amendment "*puts beyond doubt that applications for these orders have no limitation periods under the Limitation Act 1980*". Be that as it may, one wonders if the government may simply have taken a somewhat more direct course and amended s.124 to more explicitly reflect the *ratio* of the Court of Appeal in *Triathlon*. Theoretically it would be at least arguable, that there could be no limitation period in respect of an RCO, but that it should not apply with retrospective effect (i.e. to costs incurred before 28 June 2022). One also wonders whether it would be possible, if perhaps not very likely

to be successful depending on what happens in the UKSC next month, at some point in the future to argue that this new addition (when it is brought into force) merits re-consideration of the meaning of s.124.

5. Now to the other 115 sections (plus three schedules) of the 2026 Bill. These accomplish, or seek to accomplish, broadly speaking seven things: First, the Bill introduces a legal duty to remediate. Second, it creates a "remediation backstop". Third, it seeks to encourage further co-operation between regulators. Fourth, it tries to strengthen measures which can be taken against construction project manufacturers. Fifth, it provides for the creation of a medium-rise buildings register. Sixth, it empowers some authorities to require information as to beneficial ownership of buildings. Seventh and finally, it makes a number of amendments to previous legislation.

6. The duty to remediate imposes such a new duty (along with those to assess and mitigate) on "responsible entities" (parties with relevant repairing obligations) in respect of buildings greater than 11m high or with at least 5 stories. Failure to comply with the steps required by the duty could result in criminal penalties or fines. These include an offence for obstructing a party lawfully assessing or fixing a building, and group accountability provisions which seek to get around corporate structures which might otherwise impede enforcement.

7. The remediation backstop is designed such that, where current mechanisms do not result in a building being fixed by the duty-holder, the local authority or Homes England may carry out the required works instead and later recover the funds from the duty-holder.

8. The Bill seeks to foster greater co-operation between local authorities, fire and rescue authorities and the Building Safety Regulator. It provides that after commencement the BSR will publish, following consultation with the other two authorities, a Regulatory Co-Operation Statement. Thereafter, local authorities and fire and rescue authorities in the same areas will be required to put in place partnership working agreements.

9. As for construction product manufacturers, the Bill seeks to address what is the perceived weakness of s.149 BSA 2022. This is the process by which, for example, an owner or leaseholder may claim against manufacturers for defective products which have contributed to a building requiring remediation. The Bill enables developers to make such claims and, more generally, simplifies the s.149 conditions such that it is more difficult for manufacturers to, in effect, refuse to contribute to the costs of remediation in which their products have necessitated.

10. While the BSA 2022 provided for a register of buildings greater than 18m in height, it did not provide for such a register in respect of medium rise buildings, those greater than 11m in height. The 2026 Bill seeks to change that by providing for such a register.

11. As to beneficial ownership, the Bill gives certain public authorities the power to require building ownership information for residential blocks in England. This would enable the authorities to discover who the legal owner is, whether there is a beneficial owner connected with that owner, and identifying connected people with the legal/beneficial owner and their relationship with the building.

12. Further amendments, in addition to the limitation provisions mentioned above, relate to decants, remediation order enforcement, protection of RCO funds in trust, matters to do with notifying regulators and other such matters.

13. This Bill, and its progress through Parliament, will be something to keep an eye on over the coming months. In the meantime, keep a look out for the UKSC hearing of *Triathlon* and *Adriatic v Long Leaseholders of Hippersley Point* next month.

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