

EXPLANATORY NOTES

Defective Premises Act (Northern Ireland) 2024

Chapter 3

£5.78

DEFECTIVE PREMISES ACT (NORTHERN IRELAND) 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Defective Premises Act (Northern Ireland) 2024 which received Royal Assent on 20 September 2024. They have been prepared by the Department for Communities ("the Department") in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The outcome of a recent court case has highlighted the disparity between Northern Ireland and England & Wales in relation to limitation periods for legal action where a building is shown to be defective. Currently, the statutory limitation period in Northern Ireland remains at 6 years.

4. Following a meeting of the Communities, Finance and DAERA Ministers on 19th March, a joint statement was issued recognising that the current provisions place Northern Ireland citizens at a disadvantage when compared with England & Wales, and agreeing to introduce legislation to address this disparity at the earliest possible opportunity, subject to Executive and Assembly approval.

OVERVIEW

5. The Bill has 4 substantive clauses, the main thrust of which is to replicate for Northern Ireland the effects of sections 134 and 135 of the Building Safety Act 2022 ("the 2022 Act").

6. This involves amendment of the Defective Premises (NI) Order 1975 ("the DPO") and the Limitation (NI) Order 1989 ("the Limitation Order").

7. The DPO is a very close replication of the Defective Premises Act 1972 for England & Wales, and the necessary amendments to DPO in the Bill are likewise a close replication of the amendments in section 134 of the 2022 Act.

8. The Limitation Order is structured and worded somewhat differently to the Limitation Act 1980. While the new provisions reflect the purpose of s.135 of the 2022 Act, the wording has changed to reflect the content of the Limitation Order.

COMMENTARY ON CLAUSES

Clause 1: Duties relating to work to dwellings

Clause 1 is a very close replication of section 134 of the 2022 Act. Whereas the existing DPO applies only to works to "provide" a building, this clause extends the duty in the DPO to cover works done in relation to an existing building.

Clause 2: Limitation Periods

Subsection (1) amends the Limitation Order and deals with the limitation period for 3 types of action – (1) under existing Article 3 DPO; (2) under new Article 4A DPO; and (3) under Article 20 of the Building Regulations (NI) Order 1979. The limitation period for these actions is now to be 15 years. In the case of an action under Article 3DPO which arose before the Bill becomes law, the limitation period is increased to 30 years.

Subsection (2) of the clause provides for the amendments to the limitation period (so far as relating to an action under Article 3 DPO) to be retrospective.

Subsection (4) of the clause requires the court to dismiss a case brought by virtue of the retrospective effect of the amendments on limitation if satisfied that it is necessary to do so to avoid a breach of the defendant's Convention Rights.

Subsection (5) prevents the new limitation periods being used in relation to claims which have previously been settled by agreement or finally determined by a court (whether on the basis of limitation or otherwise).

Clause 3: Defective Premises – Transfer of Functions

Clause 3 makes provision to transfer the functions under the Defective Premises Order (NI) 1975 to the Department from the Department of Agriculture, Environment and Rural Affairs.

Subsection (1) effects the statutory transfer of functions.

Lastly an amendment has been made to the definition of "the Department" in Article 2. This presently refers to 1975 departmental structures and has been superseded by subsequent Departmental reorganisations.

Clause 4: Short title and commencement

This Act may be cited as the Defective Premises Act (Northern Ireland) 2024. Clause 4 provides for commencement immediately after Royal Assent.

HANSARD REPORTS

9. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was received.

STAGE	DATE
First Stage	20 May 2024
Second Stage	3 June 2024
Committee Stage Report	No Committee Stage held due to Accelerated Passage Procedure
Consideration Stage	11 June 2024
Further Consideration Stage	18 June 2024
Final Stage	2 July 2024
Royal Assent	20 September 2024

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