

*These notes refer to the Defective Premises (Landlord's Liability) (Northern Ireland) 2001 (c.10) which received Royal Assent on 2 July 2001*

# Defective Premises (Landlord's Liability) (Northern Ireland) 2001

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001. They have been prepared by the Department of Finance and Personnel 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 do 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 any explanation or comment, none is given.

### BACKGROUND AND POLICY OBJECTIVES

#### *Background to the proposals*

3. The Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001 represents a development of the existing law and implements the recommendations of the Law Reform Advisory Committee's report on the subject (Report no.7, 1998). In its report the Committee concluded that landlords enjoy a degree of immunity stemming from the House of Lords decision in *Cavalier -v- Pope* [1906] AC 428. It felt that whilst this "immunity" was limited by section 4(1) of the Occupiers' Liability Act (Northern Ireland) 1957, the law in Northern Ireland had not developed in the same manner as in England and Wales where the landlord's liability was extended to include those who might reasonably be expected to be affected by defects in the premises (section 4 of the Defective Premises Act 1972).
4. Although the Defective Premises Act 1972 was mirrored in Northern Ireland by the Defective Premises (Northern Ireland) Order 1975, the provision regarding a landlord's liability for failure to repair defective premises was omitted. The premier reason given at the time for this omission was due to the high number of bomb damaged

and derelict properties in Northern Ireland, the imposition of this further liability would be too onerous a burden for many landlords.

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5. The Law Reform Advisory Committee's consultations revealed that there had been a major improvement in the quality of housing stock in Northern Ireland and substantial redevelopment in poorer areas, principally undertaken by the Northern Ireland Housing Executive. This coupled with the greatly reduced threat of terrorist bombings and the continued availability of grants to improve housing led the Committee to recommend that legislation should be introduced along similar lines to that currently existing in England and Wales.

***Purpose of the Bill and summary of its main provisions***

6. The Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001 gives effect to the recommendations of the Law Reform Advisory Committee for Northern Ireland.
7. The main feature of the Act will be to impose a duty of care upon a landlord to all persons who might be reasonably expected to be affected by defects in the state of his premises. This provision will replace the existing limited statutory claim available against the landlord to the tenant's lawful visitors as expressed under section 4 of the Occupiers' Liability Act (Northern Ireland) 1957. It may thus cover lawful visitors, the tenant, passers-by, neighbouring occupiers and their families and guests.
8. The duty of care owed by the landlord will apply if the landlord knows of the defect or if he ought to know of it in all the circumstances. A relevant defect is one which arises due to the actions of the landlord which amounts to a breach of his obligation to a tenant for the maintenance or repair of the premises. The duty is extended further by the removal of the requirement of an obligation to repair by providing that the landlord is under a duty either where he has undertaken to do repairs or where he has a right, express or implied, to carry out maintenance and repair.
9. Several types of landlords will be exempt from the proposed reforms. The Law Reform Advisory Committee's consultations revealed that landlords holding restricted or regulated tenancies (within the meaning of the Rent (Northern Ireland) Order 1978) would face an onerous duty if the legislation was applied to them. The level of recoverable rents in relation to such tenancies led the Committee to recommend that they should be exempted from duty. In addition, it recommended that owners of ground rents or nominal rents be exempted, as they do not maintain the same degree of economic interest or control in the premises as in the usual landlord-tenant relationship.

**CONSULTATION**

10. The Law Reform Advisory Committee for Northern Ireland conducted a consultation exercise prior to its report in 1998. The responses received indicated a general level of support for the changes as eventually recommended by the Committee. The Office of Law Reform carried out a short consultation exercise with interested bodies subsequent to the report being published.

## **OPTIONS CONSIDERED**

11. Three options were considered: no change to the present law, abolition and repeal of the law in *Cavalier -v- Pope* or adopting the limited measure of reform which extends the liability of a landlord.
12. The first option was not recommended by the Committee or the majority of consultees who favoured reform; social conditions have evolved significantly in Northern Ireland since the decision was made in 1975 not to incorporate section 4 of the Defective Premises Act into our law. The second option was considered to be too radical a step and could have more serious cost implications. The third option was largely welcomed by consultees and was the preferred option of the Committee which considered it to represent a rational development of the existing law.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Landlord's duty of care by virtue of obligation to repair premises***

*Subsection (1)* provides that a duty of care is owed where premises are let under a tenancy and that the landlord has a contractual obligation to maintain or repair the premises.

*Subsection (2)* outlines the nature of the landlord's duty making it clear that it is to all persons who might be affected by defects. This may include the tenant himself, visitors, passers-by or neighbours.

*Subsection (3)* provides that the landlord's duty is owed if he knows of the defect or ought to have known of it in all the circumstances.

*Subsection (4)* provides that the duty is in addition to any other duty which may be owed.

### ***Section 2: Application of this Act where landlord has right of entry to carry out repairs***

*Subsection (1)* provides that the legislation will apply where the landlord has a right of entry to carry out maintenance or repairs which is either express or implicit in the tenancy agreement.

*Subsection (2)* provides that subsection (1) applies as soon as the landlord is in a position to carry out the relevant maintenance or repair.

*Subsection (3)* provides that the landlord does not owe a duty of care where the defect arises or continues because of a failure of the tenant to carry out his or her express tenancy obligations.

### ***Section 3: Tenancies to which this Act applies***

*Subsection (1)* provides that the Act applies to all tenancies apart from regulated or restricted tenancies (within the meaning of the Rent (Northern Ireland) Order), tenancies under a lease granted for more than 50 years (in effect, a type

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of ground rent), and tenancies under a lease under which the rent payable is less than £1 per annum or a peppercorn or other rent having no money value (in effect, a nominal rent).

*Subsection (2)* provides that section 4 of the Occupier's Liability Act (Northern Ireland) 1957 no longer applies except in relation to the above mentioned tenancies at subsection(1).

*Subsection (3)* prohibits the exclusion or restriction of liability under this Act.

#### ***Section 4: Interpretation***

This section provides definitions of key words and phrases used throughout the Act. These include the definitions of a tenancy, relevant defect and material time for the purposes of establishing liability under the Act, together with certain necessary technical provisions.

#### ***Section 5: Application to the Crown***

This section describes the application of the Act to the Crown.

#### ***Section 6: Short title and commencement***

The short title of the Act will be the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001. In order to give landlords a reasonable period of notice of the change to their liability and a reasonable time to effect any necessary work to their premises it will come into operation at the end of a period of 12 months from the day the Act receives the Royal Assent.