



AN BILLE UM LÁITHREÁIN THRÉIGTHE, 1989
DERELICT SITES BILL, 1989

EXPLANATORY AND FINANCIAL MEMORANDUM

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

PART I

General

The main purpose of the Bill is to provide more effective arrangements against land dereliction. The Bill also repeals the Derelict Sites Act, 1961, and re-states its relevant provisions, thus consolidating the law on derelict sites, and provides for an annual levy on certain derelict sites in urban areas.

The main new provisions of the Bill are:

- to widen the definition of “derelict site” so as to include structures which are dwellings and so as to extend somewhat the criteria for dereliction of structures (*section 3*);
- to require local authorities to maintain a register of all derelict sites (*section 8*);
- to place a general duty on owners and occupiers of land, including statutory bodies and State authorities, to prevent land from becoming, or from continuing to be, a derelict site (*section 9*);
- to place a duty on local authorities to take all reasonable steps to ensure that land in their functional area does not become or continue to be a derelict site (*section 10*);
- to provide improved enforcement powers for local authorities against dereliction, including powers to prevent land from becoming derelict (under existing legislation local authorities can only act in face of actual dereliction) (*section 11*);
- to give the Minister for the Environment (hereinafter called “the Minister”) reserve powers to direct enforcement action by a local authority or remedial action in relation to land owned by the local authority (*section 12*);
- to enable the Minister, after consultation with the appropriate Minister, to direct any statutory body to dispose of land in their possession which is derelict and not necessary for the performance of their statutory functions (*section 13*);
- to provide an improved procedure for compulsory acquisition of derelict land by local authorities (*sections 15 to 19*);

—to provide for an annual levy (based on market value) on certain derelict sites in urban areas (*sections 21 to 26*); and

—to increase penalties (*section 28*).

Staffing and financial implications

Minor costs only will arise for the Department of the Environment in implementing the Bill. Operation of the Bill's new powers and duties will entail additional staffing/administrative costs for particular local authorities and for the Valuation Tribunal. It is not possible to quantify these, but they will be offset in the case of the Tribunal by fees for valuation appeals, and in the case of urban local authorities by income from the derelict sites levy. It is not possible to estimate the likely yield of the derelict sites levy. Its primary purpose is that of an efficiency tax to promote better use of land, rather than that of revenue raising. The yield of the levy will tend to decline as measures are taken to render land non-derelict.

PART I

PRELIMINARY AND GENERAL

Section 1 sets out the short title of the Bill.

Section 2 is the interpretation section, and includes definitions of most of the key terms of the Bill. The local authorities responsible for administering the Bill in their areas will be the 27 county councils, the 5 county and 6 non-county borough corporations, and the 49 urban district councils.

Section 3 defines "derelict site". Under the 1961 Act, the concept of "derelict site" applied only to structures which were actually in a ruinous, dilapidated or dangerous condition; it also excluded structures which were dwellings. This section's definition of "derelict site" makes no exclusion for dwellings, and it adds to the previous criteria for dereliction considerations such as the neglected, unsightly or objectionable condition of structures. This wider definition, in conjunction with the provisions of *sections 10* and *11* about land becoming derelict, is intended to allow action to be taken earlier against incipient dereliction.

Section 4 provides for the making of regulations by the Minister and for the laying of regulations before each House of the Oireachtas. Regulations under *section 23 (4)* are subject to affirmative regulation of both Houses of the Oireachtas.

Section 5 repeals the Derelict Sites Act, 1961, subject to a saver for certain procedures or actions commenced under that Act before the coming into operation of this Bill.

Section 6 provides for the service of notices. It will be an offence (under *section 28*) to interfere unlawfully with a notice which is affixed on or near a derelict site.

Section 7 is a standard provision providing for payment of the expenses incurred by the Minister in the administration of the Bill and for the charging of the expenses of a county council on the county area only, i.e. net of any borough or urban district.

PART II

MEASURES TO PREVENT AND CONTROL DERELICT SITES

Section 8 (1) obliges local authorities, within one year of the

commencement of the Act, to establish and maintain a register of the derelict sites in their functional area. Particulars to be included in the register are specified. Under *subsection (2)*, a local authority must give notice of their intention to enter land in the register of derelict sites to the owner and occupier of the land. These are then entitled to make representations to the local authority, who as a result may either re-consider the entry or confirm it. Under *subsection (3)*, a local authority may remove an entry from the register where they consider it to be no longer appropriate. Under *subsection (4)*, a local authority shall remove an entry from the register where the land has ceased to be a derelict site. *Subsection (5)* requires the register to be available for public inspection at the offices of the local authority. Under *subsection (6)*, a copy of the register or an entry in it must be sent to the Minister for the Environment on request. Notice of an entry on the register will, under *subsection (7)*, be served by the local authority on the owner and occupier concerned. *Subsections (8) and (9)* are technical provisions relating to the evidential status of copies of entries in the register.

Section 9 places a duty on every owner and occupier of land (including a statutory body and a State authority) to ensure that their land does not become or continue to be a derelict site.

Section 10 places a duty on the local authority to take all reasonable steps to ensure that land within its functional area does not become or continue to be a derelict site.

Section 11 enables a local authority to serve a notice requiring measures to be taken by the owner or occupier to ensure that land does not become or continue to be a derelict site. Representations in relation to a notice may be made to the local authority within 14 days, under *subsection (3)*, by a person on whom it has been served, and the local authority may, after considering such representations, amend or revoke the notice. Under *subsection (4)*, a person on whom the notice had been served must comply with the requirements of the notice or the notice as amended. If the specified measures are not taken within the period mentioned in the notice, the local authority may, under *subsection (5)*, carry out the measures themselves and recover the costs incurred from the owner. Under *subsection (6)*, works specified in the notice will be exempted development and will not therefore require planning permission. Under *subsection (7)*, any person served with a notice may enter on the land and carry out the measures required to be done.

Section 12 empowers the Minister to direct a local authority to take steps to deal with derelict sites which are included in the register of derelict sites, to take action to enforce a notice already issued by the authority under *section 11 (1)*, or to take specified steps to prevent any land owned or occupied by themselves from becoming or continuing to be a derelict site.

Section 13 enables the Minister to direct any statutory body, after consultation with the appropriate Minister, and where he is satisfied that the land is not necessary for the performance of its functions by the statutory body, to dispose of its interest in any derelict site which is included in the derelict sites register. The Minister must, under *subsection (2)*, give notice of a proposed direction to the statutory body concerned so that any objections of the latter can be considered in deciding whether to finalise a direction.

Sections 14 to 19 are largely a restatement of provisions of the Derelict Sites Act, 1961, which is being repealed.

Section 14 enables a local authority to acquire any derelict site within their functional area by agreement or compulsorily.

Section 15 requires a local authority to publish notice of their intention to acquire land compulsorily under this legislation, to serve a notice on owners and occupiers and to specify in the notice the manner in which objections to the acquisition may be made.

Section 16 provides that persons served with notice of the local authority's intention to acquire the derelict site may object to the acquisition. If the objection is not withdrawn, the local authority must under *subsection (3)* apply to the Minister, who may grant or refuse to grant his consent to the compulsory acquisition of all or part of the land, as he thinks fit.

Section 17 provides that a local authority may acquire land by vesting order where the Minister has consented to a compulsory acquisition proposed, or where no objection has been submitted to it or any objection has been withdrawn. Notice of the making of the vesting order must, within fourteen days after the making of the order, be published in one or more newspapers circulating in the area and be served on every person with an interest in the land.

Section 18 contains provisions relating to the form and effect of the vesting order.

Section 19 provides for payment by a local authority of compensation to persons whose land has been acquired under this Act. Under *subsection (1)*, a person must make a claim for compensation within 12 months after the local authority make a vesting order. *Subsection (2)* provides for arbitration in the event of disagreement between the parties.

Section 20 provides that a local authority may use any land acquired by them under this Act or previous derelict sites legislation for any purpose connected with their functions and may sell, let or exchange the land, or part of it, if at any time it is not required by them.

PART III

LEVY ON DERELICT SITES

This Part provides for an annual levy by local authorities on all urban land. Urban land is defined in *section 2* as a derelict site in an urban area which has been entered on the register, other than land owned by a State authority or by a local authority within its own functional area, or occupied dwellings or land affected by a compulsory purchase order or a planning reservation. The levy will be a percentage (not greater than 10 per cent) of the market value of the derelict site as assessed by the local authority; this valuation will be appealable to the Valuation Tribunal established by the Valuation Act, 1988. In the first year in which the levy operates, its amount in all areas will be 3 per cent of the market value of urban land. In subsequent years, this amount may be varied by the Minister.

Section 21 empowers the Minister to prescribe any area within a county health district to be an urban area for the purpose of the Act. This would be in addition to the county boroughs, boroughs, urban

districts and towns already embraced in the definition of "urban area" under *section 2*.

Section 22 provides for the determination of the market value of urban land. Under *subsection (1)* this market value is to be determined by the local authority as soon as may be after the land is entered on the register and at least once every 5 years thereafter. Particulars of the determination must, under *subsection (3)*, be entered on the register and the owner notified that he may appeal to the Valuation Tribunal within 28 days. The Valuation Tribunal will hear and determine appeals and, subject to any appeal to the High Court on a question of law, its determination will be final. Appeals to the Tribunal must under *subsection (7)* contain a statement of the grounds for the appeal and, under *subsection (8)*, copies of every appeal must be transmitted to the local authority and any other affected party who shall also be entitled to be heard at the appeal. Any amendments to the market value of land following the determination of the Tribunal or a decision of the Court shall be carried into the register by the local authority (*subsection 9*). *Subsection (10)* applies appropriate provisions of the Valuation Act, 1988 (including fees for appeals) to appeals to be dealt with by the Valuation Tribunal arising from this section.

Section 23 (1) provides that the derelict sites levy shall be applied in each local financial year in respect of all urban land which stands valued in the register on the 1st January of that year. Under *subsection (2)*, the levy will be payable by the owner of the urban land to the local authority concerned. *Subsection (3)* provides that the amount of the levy in its first year will be 3 per cent of the market value of the urban land; in any subsequent year, the amount of the levy for any urban area will be either the same 3 per cent, or such other amount not exceeding 10 per cent as the Minister may prescribe by regulations. *Subsection (4)* provides that where the Minister proposes to increase the amount of the levy by more than 2 per cent of the market value of the land, the relevant regulations will be subject to affirmative resolution of both Houses of the Oireachtas. Under *subsection (5)*, the levy will be payable on demand, and if it is not paid within two months it will be recoverable as a simple contract debt. The local authority may, under *subsection (6)*, provide for the payment of the levy by instalments. Where the land is rendered non-derelict any amounts paid for the year in question will under *subsection (7)* be refunded, and any amounts owing will be waived. Under *subsections (9) and (10)*, where the market value of the urban land is changed by a determination of the Tribunal on appeal, the excess levy will be refundable or the additional levy demandable, as the case may be. However, the levy will be charged and payable pending an appeal.

Section 24 provides, in general, that the derelict sites levy will be a charge on land until paid.

Section 25 provides that where derelict land is part of a proposed development scheme, the local authority may waive payment of the levy, and instead accept a bond from the developer guaranteeing completion of the development within a period of up to 5 years or, in default, payment of the full amount of the levy for that period.

Section 26 provides that the levy may be waived by a local authority in cases of hardship.

PART IV

PROSECUTION

Section 27 provides that offences under the Bill may be prosecuted by the local authority in whose functional area the offence is committed.

Section 28 identifies offences under the Bill. Under *subsection (1)*, the maximum penalties to apply on summary conviction for offences are a fine of £1,000 (together with £100 per day for a continuing offence), and/or six months imprisonment. Under *subsection (2)*, offences under *section 11 (4)* may also be prosecuted in the higher courts and, upon conviction on indictment, they will be punishable by a fine of up to £25,000 and/or 2 years imprisonment.

PART V

MISCELLANEOUS

Section 29 empowers a local authority for the purposes of this Act to require information regarding persons' interest in land and provides for a fine of up to £1,000 if a person fails to comply with the requirements of this section.

Section 30 provides for the powers of persons authorised by a local authority, the Valuation Tribunal or the Minister to enter on land for purposes connected with the Bill and to carry out all necessary examination of the land. If the owner refuses to permit the entry, entry must first, under *subsection (3)*, be authorised by order of the District Court and be subject to 24 hours notice. *Subsection (4)* forbids a person to obstruct an authorised person entering on land.

Section 31 provides that moneys received from the sale or lease of land acquired under the Act shall be applied by the local authority for the purpose of their functions in such manner as, with the consent of the Minister, they shall think proper.

Section 32 enables a person to apply for an order from the District Court where he is prevented by some other person from entering the land and carrying out measures required to be done under the Act. The District Court, at its discretion, may deem the consent of the other person to have been given and direct the person making the application to carry out the measures. Failure to carry out the measures directed by the District Court will be an offence. Where this person feels that the cost of measures he is required to carry out should be borne, or partially borne, by any other person with an interest in the land, he may apply to a competent court for an order as to the costs and the court may make such order as it considers just having regard to all the circumstances.

Section 33 is a saver in relation to national and historic monuments. It provides that nothing contained in the Bill shall affect or restrict the powers or duties of the Minister for Finance, the Office of Public Works or any local authority in relation to such monuments.

An Roinn Comhshaoil

Nollaig, 1989.

THE UNIVERSITY OF CHICAGO PRESS

PART IV

PROSECUTION

Section 27 provides that offences under the Bill may be prosecuted by the local authority in whose functional area the offence is committed.

Section 28 identifies offences under the Bill. Under *subsection (1)*, the maximum penalties to apply on summary conviction for offences are a fine of £1,000 (together with £100 per day for a continuing offence), and/or six months imprisonment. Under *subsection (2)*, offences under *section 11 (4)* may also be prosecuted in the higher courts and, upon conviction on indictment, they will be punishable by a fine of up to £25,000 and/or 2 years imprisonment.

PART V

MISCELLANEOUS

Section 29 empowers a local authority for the purposes of this Act to require information regarding persons' interest in land and provides for a fine of up to £1,000 if a person fails to comply with the requirements of this section.

Section 30 provides for the powers of persons authorised by a local authority, the Valuation Tribunal or the Minister to enter on land for purposes connected with the Bill and to carry out all necessary examination of the land. If the owner refuses to permit the entry, entry must first, under *subsection (3)*, be authorised by order of the District Court and be subject to 24 hours notice. *Subsection (4)* forbids a person to obstruct an authorised person entering on land.

Section 31 provides that moneys received from the sale or lease of land acquired under the Act shall be applied by the local authority for the purpose of their functions in such manner as, with the consent of the Minister, they shall think proper.

Section 32 enables a person to apply for an order from the District Court where he is prevented by some other person from entering the land and carrying out measures required to be done under the Act. The District Court, at its discretion, may deem the consent of the other person to have been given and direct the person making the application to carry out the measures. Failure to carry out the measures directed by the District Court will be an offence. Where this person feels that the cost of measures he is required to carry out should be borne, or partially borne, by any other person with an interest in the land, he may apply to a competent court for an order as to the costs and the court may make such order as it considers just having regard to all the circumstances.

Section 33 is a saver in relation to national and historic monuments. It provides that nothing contained in the Bill shall affect or restrict the powers or duties of the Minister for Finance, the Office of Public Works or any local authority in relation to such monuments.

An Roinn Comhshaoil
Nollaig, 1989.