



AN BILLE UM FHORBAIRTÍ ILAONAD 2009
MULTI-UNIT DEVELOPMENTS BILL 2009

*Mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart, Cosaint agus
Cearta na mBan*

*As amended in the Select Committee on Justice, Defence and
Women's Rights*

ARRANGEMENT OF SECTIONS

Section

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2. Application of Act.
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4. Transfer of common areas in cases where *section 3* does not apply.
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SCHEDULE 1

PROVISIONS OF THIS ACT WHICH APPLY TO MULTI-UNIT DEVELOPMENTS
COMPRISING 2 OR MORE UNITS BUT LESS THAN 5 UNITS

SCHEDULE 2

PROVISIONS OF ACT WHICH APPLY TO MULTI-UNIT DEVELOPMENTS TO
WHICH *section 2(2)* refers

SCHEDULE 3

DOCUMENTATION TO BE HANDED OVER PURSUANT TO *section 28*

ACTS REFERRED TO

Building Control Acts 1990 and 2007	
Companies (Amendment) Act 1982	1982, No. 10
Companies Act 1963	1963, No. 33
Companies Acts	
Child Care Act 1991	1991, No. 17
Planning and Development Acts 2000 to 2009	



AN BILLE UM FHORBAIRTÍ ILAONAD 2009
MULTI-UNIT DEVELOPMENTS BILL 2009

BILL

entitled

5 AN ACT TO AMEND THE LAW RELATING TO THE
OWNERSHIP AND MANAGEMENT OF THE COMMON
AREAS OF MULTI-UNIT DEVELOPMENTS AND TO
FACILITATE THE FAIR, EFFICIENT AND EFFECTIVE
10 MANAGEMENT OF BODIES RESPONSIBLE FOR THE
MANAGEMENT OF SUCH COMMON AREAS, AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 1963” means the Companies Act 1963;

15 “Act of 1982” means the Companies (Amendment) Act 1982;

“childcare facility” means a building or structure which is in use for the purposes of providing—

(a) a pre-school service, or

20 (b) a pre-school service and a day care service or other service to cater for children other than pre-school children,

and in this definition “pre-school child” and “pre-school service” have the meanings respectively assigned to them by section 49 of the Child Care Act 1991;

25 “commercial unit” means a unit in a mixed use multi-unit development which is not a residential unit and is intended for commercial use;

“common areas” means all those parts of a multi-unit development designated, or which it is intended to designate, as common areas and including where relevant all structural parts of a building and shall include in particular—

30 (a) the external walls, foundations and roofs and internal load bearing walls;

- (b) the entrance halls, landings, lifts, lift shafts, staircases and passages; 5
- (c) the access roads, footpaths, kerbs, paved, planted and landscaped areas, and boundary walls;
- (d) architectural and water features; 5
- (e) such other areas which are from time to time provided for common use and enjoyment by the owners of the units their servants, agents, tenants and licensees;
- (f) all ducts and conduits, other than such ducts and conduits within and serving only one unit in the development; 10
- (g) cisterns, tanks, sewers, drains, pipes, wires, central heating boilers, other than such items within and serving only one unit in the development;

“developer” means the person who carries out or arranges for the development or construction of a multi-unit development; 15

“development stage” means the period which begins when the first unit to be made available for sale is so made available and ends after all construction works and ancillary works (including works on the common areas), for the multi-unit development have been completed in accordance with— 20

- (a) all relevant planning permissions under the Planning and Development Acts 2000 to 2009,
- (b) the requirements arising under the Building Control Acts 1990 and 2007, and
- (c) in a case where *section 3* applies, the contract referred to in *section 3(1)(c)*; 25

“member” means member of an owners’ management company;

“Minister” means Minister for Justice and Law Reform;

“mixed use multi-unit development” means a multi-unit development of which a commercial unit (other than a childcare facility) forms part of the development; 30

“multi-unit development” means a development being land on which there stands erected a building or buildings comprising a unit or units and that—

- (a) as respects such units it is intended that amenities, facilities and services are to be shared, and 35
- (b) subject to *section 2(1)*, the development contains not less than 5 residential units;

“owners’ management company” means, subject to *subsection (3)*, a company established for the purposes of becoming the owner of the common areas of a multi-unit development and the management, maintenance and repair of such areas and which is a company registered under the Companies Acts; 40

“relevant parts” means, in relation to a unit, those parts of the common areas of a multi-unit development necessary for the enjoyment of quiet and peaceful occupation of such unit;

5 “residential unit” means a unit in a multi-unit development which is—

(a) designed for—

(i) use and occupation as a house, apartment, flat or other dwelling, and

(ii) has self-contained facilities;

10 or

(b) designed and used as a childcare facility and such facility is not intended to primarily share amenities, services and facilities with commercial units in the development;

15 “reversion” means the residue of ownership (if any) which continues in the transferor after the grant of any leasehold estate in land;

“unit” means a residential unit in a multi-unit development;

“unit owner” means a person other than the owners’ management company who holds the highest freehold or leasehold estate or interest in respect of a unit in a multi-unit development.

20 (2) In this Act a unit shall not be treated as having self-contained facilities unless the unit has bathroom facilities and cooking facilities within it for the exclusive use of the occupants of the unit concerned.

25 (3) In this Act a reference to an owners’ management company shall be construed, other than in the case of an owners’ management company to which *section 3* or *section 14* applies, as including a reference to an industrial and provident society and to a partnership or unincorporated body or group of persons owning the common areas of a multi-unit development, and in the case where such ownership is held by a partnership or unincorporated body or group of persons
30 any of the persons in such partnership, body or group shall be entitled to enforce the covenants and house rules concerned.

(4) In this Act, save where the context otherwise requires, a reference to a transfer of ownership shall, subject to *sections 3(7)* and *4(2)*, be construed as a reference to a lease or a deed of transfer,
35 conveyance or assignment.

(5) For the purposes of this Act a member of an owners’ management company shall be considered—

40 (a) as being present at a meeting of members where he or she has validly appointed a proxy to attend and that proxy has attended the meeting,

(b) as having voted at a meeting of members where the member has validly appointed a proxy to vote at the meeting and the proxy (but not the member) has voted at the meeting,

45 where the appointment of proxies by members is permitted under the articles of association or other document which regulates the operation of the owners’ management company concerned.

2.—(1) Notwithstanding the definition of multi-unit development in *section 1*, the provisions of this Act specified in *Schedule 1* shall apply to a multi-unit development comprising 2 or more units but less than 5 units.

(2) Where a multi-unit development is comprised only of residential units and those units and the structure or that part of the structure in which those units are situate do not form part and were never intended to form part of the common areas of the development, the provisions of *Schedule 2* shall apply as respects the common areas of the development.

(3) Subject to *subsection (4)*, in the case of a mixed use multi-unit development, this Act applies to—

- (a) units in the development, and
- (b) commercial units in the development, to the extent that amenities, facilities and services are shared by such commercial units and units.

(4) In the case of a mixed use multi-unit development the obligations imposed on an owners' management company by this Act shall as respects such a company in which membership is held otherwise than by reason of ownership of a residential unit, be considered as being complied with where—

- (a) as between different classes of units in such a development *sections 16 to 18* are complied with and a fair and equitable apportionment of the costs and expenses attributable to the different classes of units is applied, and
- (b) in place of the requirements set out in *section 14(1) and (2)*, the voting rights of the members in such an owners' management company are apportioned in a manner which is fair and equitable.

(5) Except where otherwise provided, this Act applies to every multi-unit development.

(6) In this section—

- (a) a reference to fair and equitable apportionment of the costs and expenses of the development shall mean that account is taken of all relevant matters including the respective level of use of any common areas by the owners of different classes of units and their servants, agents and invitees; and
- (b) a reference to costs and expenses shall be taken to be a reference to the matters referred to in *sections 16(3) and 17(1)*.

3.—(1) A person to whom this section applies shall not, after the coming into operation of this section, transfer his or her interest in a unit in a multi-unit development to which this section applies unless—

- (a) an owners' management company has been established at the expense of the developer of the multi-unit development concerned,
- 5 (b) ownership of the relevant parts of the common areas of the multi-unit development and of any reversion in the unit being transferred has, subject to *subsection (7)*, been validly transferred by deed (or otherwise) to the owners' management company relating to that unit, and
- 10 (c) a contract in writing is entered into between the developer and the owners' management company concerned prior to such transfer setting out the rights and obligations of each of those persons relating to the completion of the development and which includes particulars of the arrangements relating to—
- 15 (i) confirmation of compliance with all relevant statutory requirements, and
- (ii) completion of the work on the common areas concerned.
- (2) This section applies to—
- 20 (a) a multi-unit development in which a residential unit has not previously been sold; and
- (b) a person, other than the owners' management company concerned, who is the owner of relevant parts of the common areas of a multi-unit development.
- 25 (3) The obligation, under this section, to transfer ownership of the common areas of a multi-unit development includes an obligation—
- (a) to transfer any right of way or access and any other easements appurtenant to the land so transferred or necessary for the reasonable use and enjoyment of the said lands,
- 30 (b) to transfer all rights necessary to enable the unit owner or the owner of the transferred lands to enjoy the quiet and peaceful occupation of the unit in the multi-unit development,
- 35 (c) to transfer all necessary amenities intended to be available for use in conjunction with the ownership and occupation of the units in the multi-unit development.
- (4) Without prejudice to *subsection (3)*, the person to whom *subsection (2)(b)* refers shall do all things within his or her power which are reasonably necessary to ensure that the unit owner enjoys the
- 40 rights referred to in that subsection.
- (5) The developer shall ensure that the owners' management company established for the purposes of ownership and management of the common areas of a multi-unit development shall have all the powers necessary—
- 45 (a) to perform functions conferred or imposed on owners' management companies by this Act, and

(b) to exercise any powers conferred on such a company by this Act,

in relation to the multi-unit development concerned.

(6) As respects the negotiation of and entering into the contract referred to in *subsection (1)(c)* and the transfer of the common areas concerned, the owners' management company shall have legal representation and shall not be represented by the same solicitor or firm of solicitors as the developer or other person who is the owner of the common areas, and the reasonable costs of such representation shall be discharged by the developer or other person who is the owner of the common areas concerned.

(7) The transfer, in compliance with this section, of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of a charge affecting any such beneficial interest).

Transfer of common areas in cases where *section 3* does not apply.

4.—(1) Where, before the coming into operation of this section, the ownership of a unit in a multi-unit development has been the subject of a transfer by or on behalf of a developer to a purchaser, and the ownership of the relevant parts of the common areas and in the reversion relating to the units has not been transferred to the relevant owners' management company, the developer shall, subject to *subsection (2)*, arrange for the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned together with the reversion to the relevant owners' management company within 6 months of the coming into operation of this section.

(2) The transfer, in compliance with *subsection (1)*, of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units concerned shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of a charge affecting any such beneficial interest).

Obligation of developer to transfer ownership of common areas of completed developments to owners' management company.

5.—Where, before the coming into operation of *section 4*, a multi-unit development has been substantially completed by or on behalf of the developer, and the ownership of the relevant parts of the common areas or the reversion in the units concerned has not been transferred to the owners' management company concerned, the developer shall within 6 months of such coming into operation arrange for the transfer of such ownership to the owners' management company concerned of the lands referred to in *section 3(1)(b)*.

Owners' management company to join in transfer to purchasers.

6.—Each owners' management company concerned shall, where requested by the developer to do so, join in a deed of conveyance or transfer relating to a unit in the development and take such other steps as are reasonably requested of it to enable a good marketable title of a unit in a multi-unit development to vest in the purchaser of the unit concerned from the developer.

Obligations to complete development to remain with developer.

7.—The transfer of the ownership of an interest in the relevant parts of the common areas of a multi-unit development shall not

relieve the person who would otherwise have been responsible from the duty, obligation or responsibility to ensure completion of the development, including—

- 5 (a) compliance with the requirements or conditions of a planning permission under the Planning and Development Acts 2000 to 2009 which relates to the development concerned, and
- (b) compliance with the Building Control Acts 1990 and 2007.

10 **8.—(1)** Where ownership of a unit in a multi-unit development is transferred, whether by conveyance, transfer, assignment, by operation of law or otherwise, membership of the owners' management company which arises by virtue of ownership of the unit shall, notwithstanding any provision to the contrary in the Companies Acts or
15 any other enactment, on such transfer stand transferred to the person becoming entitled to the freehold or leasehold interest in the unit concerned without the need to execute a transfer or have it approved by the directors of the company, and such person shall—

Automatic transfer of membership of owners' management company on sale of unit.

- (a) be entitled to exercise the powers, rights and entitlement of a member in the company concerned, and
- 20 (b) be obliged to perform all the obligations (including the payment of service charges) pertaining to the membership of such company concerned.

(2) Notwithstanding *subsection (1)* an owners' management company shall take all steps necessary to ensure—

- 25 (a) that the share certificate or membership certificate, as appropriate, is issued to the member concerned as soon as practicable following notification of the change of ownership of the unit,
- (b) that the register of members of the company is altered accordingly, and
- 30 (c) that there is compliance with all other relevant requirements under the Companies Acts.

(3) A unit owner shall be under an obligation to furnish to the relevant owners' management company—

- 35 (a) particulars of his or her name,
- (b) particulars of his or her address,
- (c) particulars of the names of the tenants in the unit,
- (d) particulars of any habitual occupiers of the unit other than tenants, and
- 40 (e) such other contact particulars as the owners' management company may reasonably request,

and shall promptly notify the owners' management company of any change in such particulars.

Consequences of transfer of common areas.

9.—(1) Where a transfer of the ownership of the relevant parts of the common areas of a multi-unit development is made in compliance with *sections 3, 4 or 5* then, notwithstanding any agreement, contract, deed, instrument or rule of law the developer shall retain the right to pass and re-pass and have access to such parts of the common areas as is reasonably necessary to enable the multi-unit development to be completed. 5

(2) The developer shall indemnify the owners' management company in respect of all claims made against the company of whatever nature or kind in respect of acts or omissions by the developer in the course of works connected with the completion of the multi-unit development. 10

(3) The developer shall, at its expense, effect and keep in force a policy of insurance with an authorised insurer providing adequate insurance in respect of all risks in respect of the developer's use or occupation of the multi-unit development. 15

(4) Subject to *subsection (2)*, in exercising any rights or in discharging any obligations in relation to the multi-unit development (whether those rights or obligations arise under this Act or otherwise), the developer shall take all reasonable steps necessary to minimise inconvenience to the owners of the units in the multi-unit development. 20

(5) The developer shall ensure that access to the transferred common areas by owners of the units in the transferred common areas and their servants, agents, tenants and licensees, is maintained at all reasonable times, and that such access is maintained in a clean and safe fashion. 25

(6) The owners' management company and unit owners shall not obstruct the developer—

(a) in exercising any rights in relation to the multi-unit development or adjacent land, or 30

(b) in discharging obligations pursuant to *section 7* in relation to the multi-unit development or adjacent land.

(7) References in this section to the developer shall be construed as including a reference to servants, agents and licensees of the developer. 35

(8) References in this section to a unit owner shall be construed as including a reference to servants, agents, tenants and licensees of the unit owner concerned.

Transfer of ownership of parts of a multi-unit development.

10.—(1) If ownership of an interest in or responsibility for the maintenance and management of a part of a multi-unit development is vested in or imposed on the unit owner in a multi-unit development and such part of the development is one the ownership of or responsibility for which is commonly held by an owners' management company, or comes within the definition of common areas in *section 1*— 40

(a) the unit owner concerned may by agreement transfer and the owners' management company concerned may by agreement accept, or 45

(b) the owners' management company concerned may by agreement transfer and the unit owner concerned may by agreement accept,

5 the transfer of the ownership of the interest in, or the transfer of responsibility for the maintenance and management of, the part concerned.

(2) Agreement by an owners' management company under *subsection (1)* shall not be given unless such agreement has been approved by a general meeting of the members of the company.

10 (3) Where a unit owner or an owners' management company of a multi-unit development considers that the other has, in relation to a matter referred to in *subsection (1)*, unreasonably withheld consent to such matter the aggrieved party may make an application to court under *section 21*.

15 **11.**—(1) Where in respect of a multi-unit development the development stage has ended and either *section 3(7)* or *4(2)* applies, the owner of every beneficial interest in the common areas and reversion in the units which is reserved by virtue of those provisions shall, subject to *subsection (2)*, as soon as practicable thereafter make a statutory declaration for the benefit of the owners' management company that the beneficial interest concerned stands transferred to the owners' management company concerned, and the effect of the making of such declaration is that the beneficial interest and legal interest stand merged.

Determination of certain beneficial interests on completion of development.

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25 (2) A declaration under *subsection (1)* shall be made with the consent of each mortgagee or owner of a charge in relation to the interest of the owner of the common areas and reversion in the units concerned which consent shall not be unreasonably withheld.

30 (3) Consent under *subsection (2)* shall not be treated as being unreasonably withheld where the mortgagee or owner of the charge makes the giving of such consent subject to a condition that the developer's interest in any unit which remains unsold be made subject to the granting of a mortgage or charge in favour of the mortgagee or owner of the charge.

35 **12.**—(1) Where in respect of a multi-unit development the development stage has not ended and either *section 3(7)* or *4(2)* applies, and the owners of 60 per cent of the units in a multi-unit development or a relevant part of the development request the owner of every beneficial interest in the common areas and reversion in the units which is reserved by virtue of those provisions to do so, such owner shall, subject to *subsection (2)*, or unless good and sufficient cause is shown, as soon as practicable thereafter make a statutory declaration for the benefit of the owners' management company that as respects the development or the relevant part of the development concerned the beneficial interest concerned stands transferred to the owners' management company concerned, and the effect of the making of such declaration is that the beneficial interest and legal interest in the common areas and in the reversion in the residential units concerned stand merged.

Determination of certain beneficial interests in common areas in certain cases.

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50 (2) A declaration under *subsection (1)* shall be made with the consent of each mortgagee or owner of a charge in relation to the interest of the beneficial owner of the common areas or reversion concerned which consent shall not be unreasonably withheld.

(3) Consent under *subsection (2)* shall not be treated as being unreasonably withheld where the mortgagee or owner of the charge makes the giving of such consent subject to a condition that the developer's interest in any unit in the development which remains unsold be made subject to the granting of a mortgage or charge in favour of the mortgagee or owner of the charge. 5

(4) For the purposes of *subsection (1)* good and sufficient cause includes the reason that to do so would interfere in a material manner with the completion of the entire multi-unit development and that the interference could not be removed, overcome or resolved in any other effective manner than by the beneficial interest in the development or relevant part of the development continuing to be retained by the developer. 10

(5) Where the unit owners in the development or a relevant part of the development do not accept that good and sufficient cause has been shown as to why a declaration should not be made under *subsection (1)* the owners concerned may make application to the Circuit Court under *section 21* for an order directing that a declaration be made as respects the development or part of the development in respect of which the request was made under *subsection (1)* or such other part of the development as the Court considers appropriate. 15 20

Right of management company to effect essential repairs.

13.—(1) Subject to *subsection (2)*, where the effective maintenance or management of the common areas of a multi-unit development so require, the owners' management company shall have a right to carry out repairs or maintenance on a part of a relevant multi-unit development which is not in their ownership or control where such repairs are reasonably necessary to ensure the safe and effective occupation or the peaceful enjoyment of occupation of any unit or units in the development, and such right shall include the right of access for such purposes to or through any part of the multi-unit development not in common ownership. 25 30

(2) An owners' management company shall not carry out repairs or maintenance pursuant to *subsection (1)* unless it has—

(a) requested the person who had responsibility for carrying out such repairs or maintenance to do so, and 35

(b) afforded such person a reasonable opportunity to carry out the repairs or maintenance.

(3) *Subsection (2)* shall not apply where it is essential that the repairs or maintenance concerned be carried out in the shortest possible period, so as to reduce or minimise any loss to the owners' management company or the owner or occupier of a unit in the development. 40

(4) Where expenditure is incurred pursuant to *subsection (1)* the owners' management company may recover such expenditure from any person (including the developer) who had responsibility for incurring such expenditure or carrying out the repairs and maintenance concerned. 45

Structure of certain owners' management companies.

14.—(1) The voting rights of members in an owners' management company to which this section applies shall be structured in such a manner that in the determination of any matter by the members of the company one vote shall attach to each unit in a multi-unit 50

development to which the owners' management company relates, and that no other person has such a vote.

(2) Each vote referred to in *subsection (1)* shall be of equal value.

5 (3) The words "owners' management company" shall be included in the name of every owners' management company to which this section applies which words may be abbreviated to "OMC".

(4) This section applies to multi-unit developments in respect of which no contract for the sale of a unit has been entered into prior to the enactment of this Act.

10 (5) This section applies to the owners' management company of a mixed use multi-unit development subject to *section 2(4)*.

15.—(1) An owners' management company shall—

Annual meetings and reports of owners' management companies.

(a) prepare and furnish to each member an annual report which complies with *subsection (2)*,

15 (b) hold a meeting at least once in each year for purposes which include the consideration of the annual report referred to in *paragraph (a)*.

(2) An annual report of an owners' management company shall include:

20 (a) a statement of income and expenditure relating to the period covered by the report;

(b) a statement of the assets and liabilities of the company;

25 (c) where the owners' management company is required to establish and maintain a sinking fund, a statement of the funds standing to the credit of that fund;

(d) a statement of the amount of the annual service charge and the basis of such charge in respect of the period covered by the report;

30 (e) a statement of the projected or agreed annual service charge relating to the current period;

(f) a statement of any planned expenditure on the refurbishment, improvement or maintenance of a non-recurring nature which it is intended to carry out in the current period;

35 (g) a statement of the insured value of the multi-unit development, the amount of the premium charged, the name of the insurance company with which the policy of insurance is held and a summary of the principal risks covered;

40 (h) a statement setting out, in general terms, the fire safety equipment installed in the development and the arrangements in place for the maintenance of such equipment; and

45 (i) a statement fully disclosing any contracts entered into or in force between the owners' management company and a director or shadow director of the company or a person

who is a connected person as respects that director or shadow director.

(3) At least 21 days notice of the meeting referred to in *subsection (1)(b)* shall be given to each member.

(4) A copy of the annual report referred to in *subsection (1)(a)* shall be furnished to each member at least 10 days before the meeting referred to in *subsection (1)(b)*. 5

(5) The meeting referred to in *subsection (1)(b)* shall take place within reasonable proximity to the multi-unit development and at a reasonable time (unless otherwise agreed in writing by a 75 per cent majority vote of the members). 10

(6) The obligations of an owners' management company under this section are in addition to any other obligation or duty of such company whether arising under an Act, statutory instrument, by rule of law or otherwise. 15

Annual service charges.

16.—(1) An owners' management company shall, as soon as practicable, establish and maintain a scheme in respect of annual service charges from which the owners' management company may discharge ongoing expenditure reasonably incurred on the insurance, maintenance (including cleaning and waste management services) and repair of the common areas of the multi-unit development concerned and on the provision of common or shared services to the owners and occupiers of the development. 20

(2) The annual service charge in respect of a multi-unit development relating to a particular period shall not be levied unless it has been considered by a general meeting of the members concerned called for purposes which include the consideration of an estimate of the expenditure it is anticipated will be incurred by the company in that period and the meeting shall take place within reasonable proximity to the multi-unit development and at a reasonable time (unless otherwise agreed in writing by a 75 per cent majority vote of the members). 25 30

(3) The estimate referred to in *subsection (2)* shall be broken down into the following categories:

(a) insurance; 35

(b) general maintenance;

(c) repairs;

(d) waste management;

(e) cleaning;

(f) gardening and landscaping; 40

(g) concierge and security services;

(h) legal services and accounts preparation; and

(i) other expenditure arising in connection with the maintenance, repair and management of the common areas anticipated to arise. 45

- (4) (a) The proposal in relation to the setting of an annual service charge may be amended at the meeting referred to in *subsection (2)* with the approval of 60 per cent of those present and voting at the meeting.
- 5 (b) Where the service charge proposed to the general meeting is disapproved by not less than 75 per cent of the persons attending and entitled to vote, the proposed service charge shall not take effect but the charge applying to the previous period shall continue to apply pending the adoption of a service charge in respect of the period concerned.
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- (5) Where the proposed service charge is disapproved pursuant to *subsection (4)* and no service charge applied in the previous period the directors of the owners' management company may determine a scheme to operate for a period of 4 months from the date of the meeting, and such charges may be levied and recovered as if such scheme had been approved by the members.
- 15
- (6) Service charges levied under this section may not be used to defray expense on matters which are or were the responsibility of the developer or builder of the multi-unit development concerned unless such expenditure is approved by a general meeting of the owners' management company concerned where 75 per cent of those attending and entitled to vote have voted in favour of such expenditure being incurred.
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- (7) An approval under *subsection (6)* shall not have effect unless—
- 25
- (a) at least 65 per cent of the units in the development have been transferred to a person who is not a connected person as respects the person who was—
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- (i) the developer or builder of the multi-unit development concerned, or
- (ii) a director or shadow director of a company which was the developer or builder of the development,
- and
- 35
- (b) at least 3 years have elapsed since the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned.
- (8) (a) Notwithstanding *subsection (2)* an owners' management company may, prior to the completion of the sale of the first unit in a multi-unit development, set the annual service charge to be levied on the owners of units in the development without holding a meeting in accordance with *subsection (2)* and such charge may be levied and recovered in accordance with this section.
- 40
- (b) Prior to the annual service charge pursuant to *paragraph (a)* the owners' management company shall prepare an estimate and have regard to the items of expenditure specified in *subsection (3)*.
- 45
- (9) Where expenditure is incurred following an approval under *subsection (6)* the owners' management company may recover such expenditure from any person (including the developer) who had
- 50

responsibility for incurring such expenditure or carrying out the works concerned.

(10) The owner of each unit in a multi-unit development (including a person who is the developer or building contractor of the development) shall be under an obligation to pay all service charges levied under this section. 5

(11) For the purposes of this section a developer or building contractor, as the case may be, shall be considered to be the owner of a unit in a multi-unit development the first sale of which unit has not been completed, as and from the day of the completion of the sale of the first unit in the relevant part of the development. 10

(12) Nothing in this section shall operate to prevent a unit owner from seeking and recovering reimbursement of service charges levied under this section from a tenant of that owner where so provided by agreement. 15

(13) The annual service charge shall be calculated on a transparent basis and shall be equitably apportioned between unit owners.

(14) (a) The owners' management company in setting the annual service charge shall do so by reference to the actual or projected expenditure for the year in respect of which the same is levied. 20

(b) To the extent that any part of the service charge levied is not required for the year concerned any excess shall be taken account of in setting the service charge for the following year. 25

(c) To the extent that the service charge is inadequate for the expenditure in the year concerned the extent of such inadequacy may be added to the service charge otherwise payable in respect of the following year.

(15) An owners' management company shall maintain sufficient and proper records of expenditure incurred by it to enable appropriate verification and audits to be undertaken. 30

(16) Service charges levied pursuant to this section shall be applied for the purposes specified in *subsection (1)* but any excess may, notwithstanding *subsection (14)*, be applied on expenditure which may be incurred by the sinking fund established pursuant to *section 17*. 35

(17) The Minister may, for the purpose of advancing the objective of the fair, effective and efficient operation of owners' management companies and the fair, efficient and effective management of the common areas of multi-unit developments, make regulations prescribing the class or classes of items of expenditure which may be the subject of annual service charges, the procedures to be followed in setting such charges and matters to be taken into account in the setting of such charges, and arrangements for the levying and payment of such charges. 40 45

Sinking fund.

17.—(1) An owners' management company shall establish a building investment fund (in this section referred to as a "sinking fund") for the purpose of discharging expenditure reasonably incurred on—

(a) the refurbishment, 50

- (b) improvement,
- (c) maintenance of a non-recurring nature, or
- (d) advice from a suitably qualified person relating to *paragraphs (a) to (c)*,

5 of the multi-unit development in respect of which the owners' management company stands established.

(2) Expenditure shall be considered as being expenditure on maintenance of a non-recurring nature where—

- 10 (a) the expenditure relates to a matter in respect of which expenditure is not generally incurred in each year,
- (b) it is certified by the directors of the owners' management company as being expenditure on maintenance of a non-recurring nature, and
- 15 (c) the expenditure is approved by a meeting of the members of the owners management company as being expenditure of a non-recurring nature.

(3) Each unit owner in a multi-unit development (including a person who is the developer or building contractor of the development) shall be obliged to make payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with this section.

(4) For the purposes of this section a developer or building contractor, as the case may be, shall be considered to be the owner of a unit in a multi-unit development the first sale of which unit has not been completed, as and from the day of the completion of the sale of the first unit in the relevant part of the development.

(5) Subject to *subsection (6)* the amount of the contribution to be paid as respects a unit by each unit owner of such a unit to the sinking fund in respect of a particular year shall be the amount of €200 or such other amount as may be agreed by a meeting of the members as the contribution in respect of the year concerned.

(6) The obligation to establish a sinking fund and to make contributions to such fund shall apply on the happening of the later of—

- 35 (a) the passing of a period of 3 years since the first transfer of the ownership of a unit in the multi-unit development concerned, or
- (b) the expiry of 18 months from the coming into operation of this section.

(7) The contributions made to the sinking fund shall be held in a separate account and in a manner which identifies these funds as belonging to the sinking fund and such funds shall not be used or expended on matters other than expenditure of a type referred to in *subsection (1)*.

(8) Where a dispute arises in relation to whether assets of an owners' management company should properly be applied to the sinking fund account or the annual service charges account the dispute may be the subject of an application under *section 21*.

(9) The Minister may, for the purpose of advancing the objective of the fair, prudent, effective and efficient operation of owners' management companies and the fair, prudent, efficient and effective management of the common areas of multi-unit developments, make regulations prescribing—

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(a) a class or classes of expenditure which may be incurred by a sinking fund,

(b) the procedures to be followed in setting such charges,

(c) the matters to be taken into account in the setting of such charges,

10

(d) the arrangements for the levying and payment of such charges, and

(e) the thresholds of expenditure (by reference to amounts of expenditure or by reference to the proportion of the sinking fund) which necessitate approval of the members of the owners' management company.

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Owners' management company annual charges.

18.—(1) An owners' management company may issue a single request for payment of the aggregate of the charges arising under *section 16* and the contributions fixed under *section 17*, and every request for payment, whether in reliance on this section or on *section 16* or *17* shall set out the basis of the calculation of the charge and contribution, a breakdown of how it is calculated and the amount payable in respect of the unit concerned.

20

(2) Where payment of charges arising under *sections 16* and *17* are requested or collected together such charges may collectively be referred to as "owners' management company annual charges".

25

Recovery of charges and contributions.

19.—Charges arising under *section 16* and contributions fixed under *section 17*, whether requested or sought to be collected separately or together may be recovered by the owners' management company concerned as a simple contract debt in a court of competent jurisdiction.

30

House rules.

20.—(1) An owners' management company may, as respects the multi-unit development for which that company has responsibility, make house rules as respects the development relating to the effective operation and maintenance of the development and with the objective of enhancing the quiet and peaceable occupation of units generally in the development, and such house rules shall be binding on—

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(a) unit owners,

(b) tenants of unit owners, and

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(c) servants, agents and licensees of persons referred to in *paragraphs (a)* and *(b)*.

(2) House rules made pursuant to *subsection (1)* shall be consistent with the covenants and conditions contained in—

(a) the documents of title under which unit owners in the multi-unit development concerned have title to the units concerned, and

5 (b) the documents of title under which the owners' management company concerned has title to the multi-unit development concerned.

(3) House rules made under *subsection (1)* shall be made in a manner consistent with the objective of advancing the quiet enjoyment of the property by the owners of units in the development.

10 (4) Subject to *subsection (8)*, house rules shall not be made under this section unless the rules have been considered and approved by a meeting of the unit owners in the development.

(5) Notice of a meeting referred to in *subsection (4)* shall be given to each unit owner not less than 21 days prior to the meeting.

15 (6) The notice of the meeting to consider the making of house rules under this section shall be accompanied by a draft of the proposed rules.

(7) Following the approval of rules under this section the owners' management company shall furnish a copy of the rules to each owner and shall also send a copy to each unit in the development.

20 (8) Notwithstanding *subsections (4) to (6)*, in the case of a multi-unit development to which *section 3* applies, house rules may be made by the owners' management company before the completion of the sale of the first unit in the relevant part of the development, and in such event the first purchaser of each unit in the relevant part of the development shall be given a copy of such house rules on or prior to the completion of the sale of the unit unless prior to that day other house rules have been made in accordance with this section.

30 (9) House rules made pursuant to this section may be amended from time to time in the same manner as house rules may be made.

(10) It shall be a term of every letting of a unit in a multi-unit development that the letting is subject to the observance by all those occupying the property (including their licensees, servants or agents), in whatever capacity, of—

35 (a) the conditions and covenants in the title documents relating to the use and enjoyment of the property, and

(b) house rules made under this section,

40 and a summary of such relevant conditions and covenants together with a copy of any house rules shall be incorporated into the letting agreement relating to the unit concerned.

(11) Where a person, who by reason of *subsection (1)* is obliged to comply with house rules, commits a material breach of such rules, the owners' management company of the development concerned may recover the reasonable costs of remedying such breach from such person which costs may be recovered as a simple contract debt in a court of competent jurisdiction.

(12) The Minister may make regulations relating to—

- (a) the making of house rules, and
- (b) the matters to which they may relate.

Dispute resolution
and rehabilitation
of multi-unit
developments.

21.—(1) A person specified in *section 22* may make, in respect of a multi-unit development, an application to the court for an order under this section to enforce any rights conferred, or obligation imposed, by this Act or any rule of law. 5

(2) An application under this section shall state the circumstances giving rise to the application and the order or orders that the applicant invites the court to make and whether or not mediation or other dispute resolution process has been attempted. 10

(3) Where the court is satisfied that a right has been infringed or an obligation has not been discharged, it shall make such remedial order as it deems appropriate in the circumstances with a view to ensuring the effective enforcement of a right or the effective discharge of an obligation relating to the multi-unit development. 15

(4) Notwithstanding the generality of *subsection (3)*, an order under that subsection may include an order:

(a) that the legal documentation relating to the owners' management company be amended; 20

(b) in the case of a multi-unit development consisting of more than one structure, to provide that, where an issue relating to one structure only in the multi-unit development arises, only the unit owners in that structure shall have the right to be consulted and vote on the issue; 25

(c) in the case of a multi-unit development with more than one owners' management company, that a single owners' management company be formed to replace the existing owners' management companies;

(d) directing the establishment of an additional owners' management company in respect of a multi-unit development where— 30

(i) there are separate blocks or buildings in the development,

(ii) there are units of a different character in the development, or 35

(iii) there are units which are used for different purposes within the development;

(e) apportioning the funds of an owners' management company as between its sinking fund and its service charges; 40

(f) determining the extent to which a part of the common areas of a development forms part of the relevant parts of the common areas of the development;

- (g) amending the covenants contained in an agreement (including a lease) between the developer, owners' management company and the unit owners;
- 5 (h) approving a proposal to enable an owners' management company—
- (i) deal with a debt, whether caused by an inadequacy in, or the absence of, a sinking fund, and
- (ii) any issues arising therefrom in relation to the future management of the owners' management company;
- 10 (i) transferring control of an owners' management company from a developer to the unit owners, where the court is satisfied the developer has unreasonably refused to effect such transfer, or the unit owners have unreasonably refused to accept such transfer;
- 15 (j) determining whether the management structure of an owners' management company in a mixed use multi-unit development complies with the provisions of this Act, and if not the order may direct that such steps as the court considers necessary to ensure that the arrangements concerned do so comply, be taken;
- 20 (k) determining whether a proposal to materially alter the physical character of a multi-unit development would disproportionately or inequitably affect any class of unit owners;
- 25 (l) directing the developer of a multi-unit development to complete the multi-unit development in accordance with—
- (i) the terms of any contract,
- (ii) the conditions of a relevant planning permission under the Planning and Development Acts 2000 to 30 2009, or
- (iii) the Building Control Acts 1990 and 2007;
- (m) directing a unit owner or a minority of unit owners to co-operate with decisions made by a majority of the unit owners in the development.
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(5) Before making an order pursuant to this section the court shall be satisfied that all parties likely to be affected by the making of the order have received notice of the making of the application (unless the court has dispensed with the giving of such notice or deemed 40 service of the notice good) and the court shall be satisfied that in all the circumstances, it is just to do so.

(6) (a) The court may make such ancillary orders as it considers necessary in order to give effect to any order or orders made by it under *subsection (3)*, including an order directing—

45

(i) the registration in the appropriate manner of any deed required to be executed in compliance with the order, and

(ii) compliance with *subsection (7)*.

(b) Where— 5

(i) a person is directed by an order under *subsection (3)* or this subsection to execute a deed or other instrument in relation to land, and

(ii) such person refuses or neglects to comply with the direction, or 10

(iii) for any other reason, the court considers it necessary to do so,

the court may order another person to execute the deed or instrument in the name of the first-mentioned person and a deed or other instrument executed by a person in the name of another person pursuant to such an order shall be as valid as if it had been executed by that other person. 15

(7) When any deed required to be executed by reason of an order under this section and such order has been registered in the appropriate manner, each unit owner in the development shall without charge to such unit owner be furnished with a duly certified copy of such deed. 20

(8) Notwithstanding *subsection (1)*, and subject to *subsections (2)* and *(5)*, where the court is satisfied that the structure of the voting rights of members in an owners' management company is not established on a fair and equitable basis, the court may, where it is satisfied that it is necessary in the interests of justice to do so, make an order altering the voting rights of members in the owners' management company concerned. 25 30

Persons who may apply under *section 21*.

22.—(1) The following persons may apply for, or appear and be heard at an application for, an order under *section 21*:

(a) the owners' management company relating to the relevant multi-unit development or a part of the relevant multi-unit development; 35

(b) any member of such an owners' management company;

(c) any trustee under a will, settlement or other disposition of land by such member;

(d) the personal representative of a member of such an owners' management company; 40

(e) the developer of the multi-unit development;

(f) with the permission of the court, such other person as the court sees fit.

(2) A person referred to in *paragraph (f)* of *subsection (1)* shall apply for permission to make an application, or to appear and be 45

heard at an application, for an order under *section 21*, as the case may be, in a summary manner and shall include in such application for permission the reasons why such permission should be granted.

5 **23.—**(1) The Circuit Court shall have exclusive jurisdiction to hear and determine applications under *section 21* and such applications shall not be made to the High Court. Jurisdiction and venue of Circuit Court.

(2) The jurisdiction conferred on the Circuit Court by this Act may be exercised by the judge of the circuit in which the relevant multi-unit development or any part thereof is situated.

10 **24.—**(1) (a) Upon its own motion or upon the request of any party to an application under *section 21*, the court may at any stage during the course of the proceedings (including immediately after the issue of the proceedings), if it considers that the holding of a meeting pursuant to a direction under this subsection would assist in reaching a settlement of the matter, direct that the parties to the application meet to discuss and attempt to settle the matter. Mediation conferences.

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20 (b) A meeting held pursuant to a direction under this subsection is in this Act referred to as a “mediation conference”.

(2) Where the court gives a direction under *subsection (1)*, each party to the application concerned shall comply with that direction.

(3) A mediation conference shall take place—

25 (a) at a time and place agreed by the parties to the application concerned, or

(b) where the parties do not agree a time and place, at a time and place specified by the court.

30 (4) There shall be a chairperson of a mediation conference who shall—

(a) be a person appointed by agreement of all the parties to the application concerned, or

(b) where no such agreement is reached—

(i) be a person appointed by the court, and

35 (ii) (I) be a practising barrister or practising solicitor of not less than 5 years standing, or

(II) a person nominated by a body prescribed, for the purpose of this section, by order of the Minister.

40 (5) The notes of the chairperson of a mediation conference and all communications during a mediation conference or any records or other evidence thereof shall be confidential and shall not be used in evidence in any proceedings whether civil or criminal.

45 (6) The costs incurred in the holding and conducting of a mediation conference shall be paid by such party to the application concerned as the court hearing the action shall direct.

Report of
chairperson of
mediation
conference.

25.—(1) A person appointed under *section 24(4)* to be the chairperson of a mediation conference shall prepare and submit to the court hearing the application under *section 21* a report, which shall set out—

(a) where the mediation conference did not take place, a statement of the reasons as to why it did not take place, or 5

(b) where the mediation conference did take place—

(i) a statement as to whether or not a settlement has been reached in respect of the application, and 10

(ii) where a settlement has been entered into, a statement of the terms of the settlement signed by the parties thereto.

(2) A copy of a report prepared under *subsection (1)* shall be given to each party to the application at the same time as it is submitted to the court under that subsection. 15

(3) At the conclusion of the hearing of an application under *section 21*, the court may—

(a) after hearing submissions by or on behalf of the parties to the application, and 20

(b) if satisfied that a party to the application failed to comply with a direction under *section 24(1)*,

make an order directing that party to pay the costs of the application, or such part of the costs of the application as the court directs, incurred after the giving of the direction under *section 24(1)*. 25

Saver for existing
jurisdictions.

26.—Nothing in this Act shall be taken to derogate from any power which may, whether before or after the passing of this Act, be vested in any person or court, by statute or otherwise, and the powers conferred by this Act shall be in addition to, and not in substitution for, such other powers. 30

Restoration of
certain companies
to register.

27.—(1) Where a company to which this section applies has been struck off the register in accordance with—

(a) section 311 of the Act of 1963, or

(b) section 12 of the Act of 1982,

then, without prejudice to the provisions of section 311(8) or 311A(1) of the Act of 1963 or subsection (3) or (7) of section 12B of the Act of 1982, if a member or officer of a company is aggrieved by the fact of the company having been struck off the register under section 311 of the Act of 1963 or section 12 of the Act of 1982 the registrar of companies, on an application made in the prescribed form by the member or officer before the expiration of 6 years from the publication in *Iris Oifigiúil* of the notice that the company was struck off the register, provided that the registrar has received all annual returns outstanding, if any, from the company, may restore the name of the company to the register. 35
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(2) Upon the registration of an application under *subsection (1)* and on payment of such fees as may be prescribed, the company shall be deemed to have continued in existence as if its name had not been struck off.

5 (3) This section applies to a company—

(a) which is an owners' management company, and

10 (b) which immediately prior to the name of the company having been struck off the register pursuant to section 311 of the Act of 1963 or section 12 of the Act of 1982 had vested in it ownership of the common areas or a part thereof of the multi-unit development in respect of which the company was incorporated.

15 (4) Each application pursuant to *subsection (1)* shall be accompanied by a certificate from a solicitor or an accountant certifying that the company is an owners' management company operating as such.

(5) In this section "prescribed" means prescribed by regulations made by the Minister with the consent of the Minister for Enterprise, Trade and Innovation.

20 **28.**—(1) Notwithstanding any agreement to the contrary, where a person develops a multi-unit development the benefit of any warranty or guarantee relating to any materials used in the construction, repair or improvement of a multi-unit development or plant, machinery or equipment installed in the multi-unit development shall stand
25 transferred to the owners' management company concerned without any requirement for the giving of a notice of assignment to any person for the benefit of the unit owners in the development.

Transfer of benefit of guarantees and warranties.

(2) Where the development stage of a multi-unit development has ended, a developer shall furnish to each owners' management company concerned the documentation specified in *Schedule 3*.

29.—An owners' management company shall not, after enactment of this Act, enter into a contract for the provision of a service or the purchase of goods—

Restriction on entering into certain contracts.

35 (a) which is expressed to run for a period in excess of 3 years from the date the contract is entered into by the owners' management company, or

40 (b) which provides for a penalty to be imposed on or damages to be paid by the owners' management company if the contract is terminated by it after a period of 3 years from the date the contract is entered into by the owners' management company.

30.—Before making regulations under *sections 16, 17 or 20*, the Minister shall consult with the Minister for Enterprise, Trade and Innovation and the Minister for the Environment, Heritage and
45 Local Government.

Exercise of power to make regulations.

31.—(1) This Act may be referred to as the Multi-Unit Developments Act 2010.

Short title and commencement.

(2) This Act, other than *sections 14* and *29* shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

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SCHEDULE 1

Section 2(1)

PROVISIONS OF THIS ACT WHICH APPLY TO MULTI-UNIT DEVELOPMENTS
COMPRISING 2 OR MORE UNITS BUT LESS THAN 5 UNITS

- 5 1. *Section 15* (Annual meetings and reports of owners' management companies).
2. *Section 16* (Annual service charges).
3. *Section 17* (Sinking fund).
4. *Section 20* (House rules).
- 10 5. *Section 21* (Dispute resolution and rehabilitation of multi-unit developments).
6. *Section 22* (Persons who may apply under *section 21*).
7. *Section 23* (Jurisdiction and venue of Circuit Court).
8. *Section 24* (Mediation conferences).
9. *Section 25* (Report of chairperson of mediation conference).

SCHEDULE 2

PROVISIONS OF ACT WHICH APPLY TO MULTI-UNIT DEVELOPMENTS TO WHICH *section 2(2)* REFERS

1. *Section 5* — (Obligation of developer to transfer ownership of common areas of completed developments to owners' management company). 5
2. *Section 7* — (Obligations to complete development to remain with developer).
3. *Section 8* — (Automatic transfer of membership of owners' management company on sale of unit). 10
4. *Section 15* — (Annual meetings and reports of owners' management companies) — other than —
 - (a) *section 15(2)(c)* (unless a sinking fund exists in respect of the development),
 - (b) *section 15(2)(g)* (to the extent that that provision related to the relevant part of the development), and 15
 - (c) *section 15(2)(h)*.
5. *Section 16* — (Annual service charges).
6. *Section 21* — (Dispute resolution and rehabilitation of multi-unit developments) (other than *subsections (4)(b)* and *(4)(g)* of that section). 20
7. *Section 22* — (Persons who may apply under *section 21*).
8. *Section 23* — (Jurisdiction and venue of Circuit Court).
9. *Section 24* — (Mediation conferences).
10. *Section 25* — (Report of chairperson of mediation conference). 25
11. *Section 26* — (Saver for existing jurisdictions).
12. *Section 27* — (Restoration of certain companies to register).
13. *Section 28* — (Transfer of benefit of guarantees and warranties). 30
14. *Section 29* — (Restriction on entering into certain contracts).
15. *Section 30* — (Exercise of power to make regulations).
16. *Schedule 3*.

DOCUMENTATION TO BE HANDED OVER PURSUANT TO *section 28*

1. Confirmation that the development has been completed—
 - 5 (i) in accordance with all relevant planning permissions under the Planning and Development Acts 2000 to 2009, (other than in relation to a condition of such permission relating to the making of financial contribution,
 - (ii) in accordance with the Building Control Acts 1990 and 2007.
- 10 2. Certificates confirming that any financial contributions required by virtue of a condition in a relevant planning permission under the Planning and Development Acts 2000 to 2009 or pursuant to any other statutory enactment have been paid.
- 15 3. Any safety file required by or under any enactment to be maintained by the developer.
4. Professionally prepared drawings of the development together with the latest revisions of the drawings of the structure or structures prepared by the design team.
- 20 5. Professionally prepared drawings showing the services relating to the development, as built.
6. Operational and maintenance manuals relating to plant and equipment in the development.
7. Documentation relating to warranties and guarantees as respects plant and equipment in the development.
- 25 8. Maintenance contracts and contracts for the provision of services relating to the development.
9. Test records relating to drainage, water pipe work and heating pipe work.
- 30 10. Schedule of plant and equipment setting out the expected useful life of such plant and equipment.
11. Title documents relating to the development including, as respects the common areas and the reversion, the original stamped deeds (including the declaration made pursuant to *section 11* or *12*).
- 35 12. Stamped and registered counterpart leases or other deeds relating to each unit in the development or relevant part of the development.
- 40 13. Documentation relating to the owners' management company including such documents and records as the company is required by law to maintain together with financial and management accounts and records relating to service charges as respects the development.