



AN BILLE RÉITEACH PIRÍTE, 2013
PYRITE RESOLUTION BILL 2013

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Pyrite Resolution Bill provides for the establishment of the Pyrite Resolution Board and the arrangements for the operation of a pyrite remediation scheme. While the Board will have overall responsibility for the operation of the scheme it will be supported by the Housing Agency in delivering the scheme to affected homeowners.

Financial implications

The Bill provides that moneys, sanctioned by the Minister for Public Expenditure and Reform, may be advanced to the Housing Agency for the purpose of implementing the pyrite remediation scheme under the auspices of the Pyrite Resolution Board.

PART 1 — PRELIMINARY AND GENERAL

Section 1

Short title and commencement

This sets out the short title of the Bill and provision for its commencement.

Section 2

Interpretation

This is a standard provision to define the terms used in the Bill.

Section 3

Application of Act

This sets out the class of buildings that the Bill applies to. The Bill will apply to certain classes of dwellings which are suitable as a place to live but it will not apply to multi-occupancy accommodation such as nursing homes, hotels, hostels or boarding schools. It will not apply to dwellings owned by the State including dwellings owned by local authorities, nor will it apply to dwellings built and owned by a builder/developer. A provision is included which will allow the Minister, following consultation with the Board and where it is considered necessary, to prescribe other classes of dwellings to be added to those set out in this section.

Section 4

Significant pyritic damage

This provides a definition for significant pyritic damage.

Section 5

Regulations

This section enables the Minister to make regulations and requires such regulations to be laid before each House of the Oireachtas.

Section 6

Expenses of Minister

This is a standard provision enabling the expenses of the Minister, with the consent of the Minister for Public Expenditure and Reform, to be met from moneys provided by the Oireachtas.

Section 7

Advances to Housing Agency

This section provides for moneys, sanctioned by the Minister for Public Expenditure and Reform, to be advanced to the Housing Agency for the purpose of implementing the pyrite remediation scheme.

PART 2 — PYRITE RESOLUTION BOARD

Section 8

Establishment of Pyrite Resolution Board

This section provides that the Minister will by order appoint a day as the day when the Pyrite Resolution Board (“the Board”) will be established. It establishes the Board as a statutory body to perform the functions assigned to it. It also provides that the Board will be independent in the performance of its functions.

Section 9

Functions of Board

This section sets out the functions of the Board. The Board will:

- make a pyrite remediation scheme, consider and determine applications for inclusion in the scheme, direct and oversee the implementation of a pyrite remediation scheme, give directions to the Housing Agency on matters in relation to the implementation of the scheme,
- make information available on pyrite,
- consider and determine certain appeals under the pyrite remediation scheme,
- have all such powers as are necessary or expedient for the performance of its functions,
- submit quarterly reports to the Minister setting out progress on the implementation of the scheme in the previous three months, and submit annual reports to the Minister by 30 June each year on the performance of its functions in the preceding year which shall be laid before each House of the Oireachtas.

Section 10

Staffing

This section sets out the details in relation to staffing for the Board. The Board will not directly employ staff; staff will be assigned or seconded to the Board from the Department of Environment, Community and Local Government or the Housing Agency with the

consent of the Board and the Minister for Public Expenditure and Reform.

Provision is made to enable the Board to perform any of its functions through or by any member of staff of the Board.

Section 11

Membership of Board and related matters

This section sets out the provisions in relation to membership of the Board. The Board will consist of a minimum of 4 members and a maximum of 7 who will be appointed by the Minister. The maximum term of office of a member of the Board will be 3 years and members may be reappointed subject to the requirement that a member may not serve more than 2 consecutive terms.

Section 12

Gifts

This section allows the Board, with the consent of the Minister and the Minister for Public Expenditure and Reform, to accept a gift of moneys, land or other property upon such trusts or conditions as may be specified by the donor provided such trusts or conditions are not inconsistent with the Board's operational independence or effective performance of its functions.

PART 3 — MAKING OF PYRITE REMEDIATION SCHEME

Section 13

Making of pyrite remediation scheme

This section provides for the Pyrite Resolution Board to submit a draft pyrite remediation scheme to the Minister for approval and for the scheme to be laid before each House of the Oireachtas when it is made. Provision is made for the scheme to be amended or revoked subject to the approval of the Minister. Any amendment to, or replacement of, the scheme should be published.

Section 14

Pyrite remediation scheme

This section provides that the scheme will contain eligibility criteria and terms and conditions and sets out the matters which may be included in each. In drawing up the terms and conditions of the scheme, the Board shall have regard to—

- limits on the amounts that can be expended on remediation works to a dwelling, limits on the amounts to be recouped to homeowners in respect of a Building Condition Assessment, accommodation expenses or expenses in respect of the removal and storage of furniture,
- requirements for compliance with the standards for testing and remediation, criteria to be applied in determining priorities for remediation works, scope of works to be carried out and certification of such works,
- arrangements for payment, oversight and audit of expenditure,
- the form and manner of application, the information to be furnished with the application and the conditions to be complied with by the applicant for inclusion in the scheme.

The Board will be required to set out the criteria by reference to which it will make decisions in relation to applications to it and shall have regard to—

- the number and geographic spread of incidences of significant pyritic damage,
- the overall severity of damage attributable to pyritic heave in dwellings,
- the availability of alternative options for persons affected by significant pyritic damage,
- the resources (including financial resources) available to the Board for the purpose of implementing the pyrite remediation scheme,
- the need to prioritise dwellings most severely affected by significant pyritic damage, and
- the need to have regard to such other matters as the Board considers appropriate, having regard to the functions of the Board.

Provision is made to enable the Board, having regard to the need to secure the most beneficial, effective and efficient use of available resources, to group dwellings together for remediation. Provision is also made to enable the Board to give priority to the remediation of a dwelling where it has been included in the scheme and where it is established that it is affected by an emergency. For the avoidance of doubt, the costs of remediation and any associated costs to a dwelling affected by pyritic heave will not be refundable where the dwelling has been remediated other than in accordance with the pyrite remediation scheme.

Section 15

Applications for inclusion in pyrite remediation scheme

This section sets out—

- who can apply under the pyrite remediation scheme,
- the format for application,
- the information that will be required from the applicant,
- the decision process, and
- the information that will be considered by the decision maker.

Provision is made to restrict the scheme to one dwelling per homeowner, or joint owner as the case may be, with the exception of dwellings owned by Voluntary Housing Bodies who are involved in the provision of social housing. A dwelling purchased after the publication date of the Bill may be included in the pyrite remediation scheme, subject to the overarching restriction of one dwelling per homeowner, unless the purchaser knew or should have known that it was affected by pyritic heave. Where a decision maker considers that an application fulfils the eligibility criteria for inclusion in the scheme the application will be referred to the Housing Agency for further assessment.

Section 16

Assessments

Section 16 sets out the assessment process to be followed by the Housing Agency in considering an application for inclusion in the scheme. It may arrange for the dwelling to be tested; testing will be carried out by a competent person in accordance with the standard for testing. Provision is made to enable the Housing Agency, having considered the report of the competent person, to recommend to the Pyrite Resolution Board whether the dwelling should be included in a remediation programme and to recommend the priority to be afforded to the dwelling. This section also provides that the Housing Agency may make a report to the Board with regard to the existence of a dwelling which it considers should be considered under the exceptional circumstances provisions provided for in section 17.

Section 17

Exceptional circumstances

This section provides that in exceptional circumstances a dwelling may be included in the remediation scheme where such dwelling does not meet the eligibility criteria for inclusion in the scheme with regard to either the severity of damage or the ownership of the dwelling if it adjoins a dwelling being remediated and where it can be shown that its exclusion from the scheme may cause it damage or damage to the adjoining dwelling.

Section 18

Inclusion in pyrite remediation scheme

This section sets out the process involved in considering a recommendation from the Housing Agency on whether a dwelling should or should not be included in the pyrite remediation scheme. A decision of a decision maker to exclude a dwelling from the scheme may be appealed to the Board while a decision of the Board under *subsection (3)(b)* to exclude a dwelling from the pyrite remediation scheme may be appealed to an appeals officer. The time limits applicable to appeals are set in *subsections (2) and (4)*.

Section 19

Refund of compensation

This section provides that where a homeowner receives payment in respect of pyrite damage to his or her dwelling other than provided for in this Bill and where the Pyrite Resolution Board has commenced or completed remediation works to the dwelling concerned that the homeowner will be required to refund the Pyrite Resolution Board the cost of the remediation or the amount of the payment if that is the lesser amount. Where a dwelling has been included in the pyrite remediation scheme but the work has not commenced and the scheme participant receives a payment other than provided for in this Bill, the Board will advise the scheme participant that the dwelling is no longer included in the scheme or as a condition for continued inclusion in the scheme he/she will be required to make a payment to the Board within a specified time period. In the event that such payment is not made, the Board will be entitled to exclude the dwelling from the scheme. Provision is made to enable the Board to recover any amount due under this section as a simple contract debt in a court of competent jurisdiction.

PART 4 — HOUSING AGENCY

Section 20

Functions of Housing Agency under this Act

This section outlines the functions of the Housing Agency in relation to the implementation of the pyrite remediation scheme. The Housing Agency will implement the scheme under the direction of the Board and will—

- engage competent persons to carry out remediation works and ancillary services,
- ensure that such persons are appropriately qualified, and
- pay such persons.

The Housing Agency will be required to make recommendations to the Board under *section 16* and furnish reports to the Board at intervals of not greater than three months. The Agency may also—

- arrange for testing,
- provide verification reports to the Board,
- liaise and make arrangements with scheme participants, and
- pay Board members appropriate allowances and expenses.

Section 21

Compliance with directions of Board

This section requires the Housing Agency to comply with directions of the Board issued in accordance with *section 9(1)(c)* and *section 14(5)* of this Bill.

Section 22

Expenditure of Housing Agency

This section sets out how the Housing Agency and the Board will deal with expenditure as it relates to overall budgets and budgets for projects.

Section 23

Reports of Housing Agency

This section provides that the Housing Agency will be required to furnish the Minister with such information on the performance, or proposals for performance, of its functions as the Minister may specify.

Section 24

Accountability of chief executive of Housing Agency to Oireachtas Committees

This section provides for—

- the keeping of accounts by the Housing Agency,
- the submission of those accounts to the Comptroller and Auditor General,
- the presentation of audited accounts and the report of the Comptroller and Auditor General to the Minister, and

- the laying of those accounts and that report before each House of the Oireachtas.

PART 5 — APPEALS

Section 25

Appeals officer

This section provides for the appointment by the Minister of a suitably qualified person to be known as an “appeals officer” whose function will be to consider an appeal under *section 27*. An appeals officer will be independent in the performance of his or her functions. Provision is made for the payment of remuneration and allowances to an appeals officer with the consent of the Minister for Public Expenditure and Reform. An appeals officer will be required to submit reports to the Minister, as required, which shall be laid before each House of the Oireachtas.

Section 26

Appeals to Board

This section provides that an applicant under the scheme may appeal a decision made by a decision maker under *section 15(6)(b)* or *section 18(1)(a)(ii)* to the Board. Appeals must be made within 28 days of notification of the decision. Provision is made to enable the Board to prescribe procedures for the hearing and determining of appeals. An applicant must be notified of the decision of the Board within 21 days and the right of the applicant to appeal the Board’s decision to the High Court on a point of law.

Section 27

Appeals to appeals officer

This section provides for a decision of the Board under *section 18(3)(b)* to be appealed to an appeals officer within 28 days although the appeals officer may extend this period by a further 14 days and for a further period of 30 days, if the appeals officer is satisfied that the appellant gives reasonable cause therefor. Provision is made to enable the Minister to prescribe the procedures for the hearing and determination of appeals. Provision is made for the decision to be appealed to the High Court on a point of law.

Section 28

Appeals to High Court

This section provides that a person affected by a decision under *section 26(4)(b)* or *section 27(6)(c)* can to appeal to the High Court within 28 days of receiving the decision on a point of law. A decision of the High Court on an appeal is final.

Section 29

Giving effect to decisions on appeal

This section makes provision for the Board to give effect to a decision on an appeal made by an appeals officer and by a decision of the High Court.

PART 6 — MISCELLANEOUS

Section 30

Offences and penalties

This section provides that it will be an offence to furnish a false document or information to the Board or an appeals officer, for the purpose of inclusion of a dwelling in the pyrite remediation scheme

and that a person guilty of such an offence will be liable to a class
A fine.

Section 31

Indemnity

This section provides that each member of the Board and members of staff will be indemnified in the performance or the purported performance of his or her functions unless the act or omission was done in bad faith.

SCHEDULE

The *Schedule* sets out the particulars of membership and meetings of the Board. Provision is made for—

- the disqualification of members in certain situations,
- the removal of members from office by the Minister in certain situations,
- the quorum for meetings,
- the disclosure of interests by Board members.

Nollaig, 2013.