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**An Bille um Theaghaisí Lochtacha, 2021**  
**Defective Dwellings Bill 2021**

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*Mar a tionscnaíodh*

*As initiated*

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ACTS REFERRED TO

Building Control Acts 1990 to 2014

Civil Liability Act 1961 (No. 41)

Multi-Unit Developments Act 2011 (No. 2)

Sale of Goods Act, 1893 (56 & 57 Vict., c. 71)

Statute of Limitations, 1957 (No. 6)



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AN BILLE UM THEAGHAISÍ LOCHTACHA, 2021  
DEFECTIVE DWELLINGS BILL 2021

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# Bill

*entitled*

An Act to make provision for the law relating to the liability of builders, developers and others involved in the carrying out of residential construction works; to specify certain requirements applicable to residential construction works; to provide for certain duties to apply to such works; to provide for a means of redress for persons affected by housing defects and to specify the limitation periods relating to claims for such redress and to provide for related matters. 5 10

**Be it enacted by the Oireachtas as follows:**

## **Interpretation and saving**

1. (1) In this Act—

“builder” means a person who undertakes or executes residential construction works, other than the owner or prospective owner of a dwelling; 15

“common areas” has the meaning assigned to it by the Multi-Unit Developments Act 2011;

“date of completion” in respect of residential construction works means—

(a) in the case of residential construction works for the construction of a new dwelling, the date on which the Certificate of Compliance on Completion in relation to the residential construction works was included on the register maintained by the relevant building control authority pursuant to Part IV of the Building Control Regulations 1997 to 2020, or if the dwelling was not subject to the requirements of Part IV of the said regulations, the date of the deed by which the owner of the dwelling acquired that interest, or 20 25

(b) in the case of all other residential construction works, the date on which the Certificate of Compliance on Completion in relation to the residential construction works was included on the register maintained by the relevant building control authority pursuant to Part IV of the Building Control Regulations, or if the residential construction works were not subject to the requirements of Part IV of the said regulations, the date of completion of the said residential construction works; 30

“developer” means a natural or legal person carrying on a trade which consists, wholly or partly, of the construction or refurbishment of buildings or structures with a

view to their sale or letting as dwellings;

“dwelling” includes—

- (a) a building or structure (or part of a building or structure) which is constructed or adapted for, or intended for, use as a dwelling,
- (b) any part of a building or structure which is constructed or adapted for, or intended for use as a dwelling (including a residential unit in a multi-unit development within the meaning of the Multi-Unit Developments Act 2011), and 5
- (c) the common areas in a multi-unit development within the meaning of the Multi-Unit Developments Act 2011;

“Minister” means the Minister for Housing, Local Government and Heritage; 10

“multi-unit development” shall have the meaning ascribed to that term in the Multi-Unit Developments Act 2011;

“owners’ management company” shall have the meaning ascribed to that term in the Multi-Unit Developments Act 2011;

“residential construction works” means any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal of or to a dwelling; 15

“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.

(2) In this Act— 20

- (a) a reference to a section is to a section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, 25
- (c) a reference to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(3) Nothing in this Act shall have effect in relation to residential construction works undertaken or executed before the commencement of this Act, whether or not the dwelling or residential construction works in question were completed on or after such commencement. 30

### **Duty owed when undertaking residential construction works**

2. (1) A person who undertakes or executes any residential construction works owes a duty— 35

- (a) to the person who commissioned the works, and
- (b) without prejudice to *paragraph (a)*, to every person who acquires an estate or interest in the dwelling,

to see to it that the works so undertaken or executed are executed in a good and

workmanlike manner with suitable and proper materials in compliance with all applicable law (including, without limitation, the requirements of the Building Control Acts 1990 to 2014, and all relevant regulations made pursuant to those enactments) and so that the dwelling will be fit for human habitation.

- (2) A person who undertakes or executes any residential construction works for another on terms that the works are to be executed in accordance with instructions given by or on behalf of that other shall, to the extent to which he or she performs the works properly and in all material respects in accordance with those instructions, be treated for the purposes of this section as discharging the duty imposed on him or her by this section except where she owes a duty to that other to warn him or her of any defects in the instructions and fails to discharge that duty. 5 10
- (3) A person shall not be treated for the purposes of *subsection (2)* as having given instructions for the execution of residential construction works merely because he or she has agreed to the works being executed in a specified manner, with specified materials or to a specified design. 15
- (4) For the purposes of *subsections (2) and (3)* “instructions” includes plans and specifications and references to the giving of instructions shall be construed accordingly.
- (5) Damages recoverable in an action for breach of the duty imposed by this section shall include an amount for economic loss (if any), anxiety, distress and inconvenience (if any) suffered by the plaintiff. 20
- (6) A person to whom the duty referred to in *subsection (1)* applies shall include, without limitation, a builder, a developer who carries out or arranges for the development or construction of the dwelling, and a sub-contractor engaged by a builder to carry out residential construction works. 25
- (7) Without prejudice to the generality of *subsection (1)*, the duty referred to in that subsection includes, in particular, the duty to see:
- (a) that the builder, any sub-contractor and any other person who undertakes or executes the works, and the servants or agents of any of the foregoing persons, have the necessary knowledge, skills and qualifications to carry out the works; 30
  - (b) that the works will be executed in a good and workmanlike manner, with due skill, care and diligence;
  - (c) that the residential construction works shall be carried out in accordance with all relevant statutory provisions;
  - (d) that materials used in the residential construction works will be sound, fit for the purpose of incorporation into a dwelling, and that all such materials comply with all relevant statutory provisions; 35
  - (e) that, where goods are supplied under the contract, they will be of merchantable quality within the meaning of section 14(3) of the Sale of Goods Act, 1893;
  - (f) that a record is furnished to the person who commissioned the residential construction works upon completion of such works of all sub-contractors and suppliers who have been retained by the builder or developer in connection with the residential construction works, specifying in each case the full name and 40

address of the sub-contractor and supplier and the services, materials or goods performed or supplied by that person;

(g) that, where no period is specified for completion in the residential construction contract, the works will be carried out with reasonable diligence and completed within a reasonable time; 5

(h) that the residential construction works shall be carried out in accordance with the plans, specifications, and any other requirements set out in the residential construction contract.

(8) For the avoidance of doubt—

(a) the owners' management company of a multi-unit development may bring an action under this section in relation to the common areas of that development and in relation to any other parts of a multi-unit development that do not consist of dwellings, and 10

(b) a unit owner of a multi-unit development may bring an action under this section in relation to his or her dwelling. 15

#### **Date of accrual of cause of action under *section 2***

3. (1) Subject to *subsection (2)*, any cause of action in respect of the breach of the duty imposed by *section 2* shall be deemed, for the purposes of the Statute of Limitations, 1957 or any other limitation enactment, to have accrued on—

(a) the date of completion of the dwelling (in the case of a new-build dwelling), or 20

(b) the date of completion of the residential construction works (in the case of residential construction works to an existing building or dwelling).

(2) Where after the completion of any residential construction works a person does further work to rectify the work already done, any cause of action in respect of that further work shall be deemed, for the purposes referred to in *subsection (1)*, to have accrued on the date on which the further work was completed. 25

#### **Duty imposed by this Act to be additional to duty otherwise owed**

4. Any duty imposed by any provision of this Act shall be in addition to any duty a person may owe to another independently of this Act.

#### **Recovery of contribution under Civil Liability Act 1961**

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5. (1) In an action for damages for breach of duty imposed by *section 2*, if the defendant can show that the damage was caused by the breach by another of the duty imposed by that section or partly by that breach and partly by the breach by the defendant, then, subject to *subsection (2)*, that other person shall for the purposes of the recovery of contribution under the Civil Liability Act 1961 be deemed to be a concurrent wrongdoer. 35

(2) Notwithstanding anything contained in section 31 of the Civil Liability Act 1961, an action against a person deemed under *subsection (1)* to be a concurrent wrongdoer shall not be brought after the expiration of two years from the date on which the

liability of the claimant for contribution is ascertained or from the date on which the injured person's damages are paid, whichever is the later.

### Limitation of Actions

6. The Statute of Limitations, 1957 is amended by the insertion after section 11A of the following section: 5

#### “Limitation of actions

11B. (1) An action claiming for loss or damage for breach of the duty under section 2(1) of the *Defective Dwellings Act 2021* shall not be brought after the expiration of six years from the later of—

(a) the date on which the cause of action accrued, or 10

(b) the date on which the person alleging to have suffered the loss or damage (or that person's personal representative or dependant) first had knowledge of the following facts:

(i) that the loss or damage had occurred;

(ii) that the loss or damage in question warranted the bringing of proceedings against one or more defendants; 15

(iii) that the loss or damage was attributable in whole or in part to the act(s) or omission(s) of one or more defendant(s) which were alleged to constitute the breach of the duty under section 2(1) of the *Defective Dwellings Act 2021*; 20

(iv) the identity of one or more defendant(s); and

(v) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, involve a breach of duty under section 2(1) of the *Defective Dwellings Act 2021* is irrelevant. 25

(2) The right to initiate a claim for a breach of duty under section 2(1) of the *Defective Dwellings Act 2021* shall be extinguished on the expiration of the ultimate limitation period, that is, 15 years from the date of completion of the residential construction works in question.”. 30

### Term of agreement excluding operation of any provision of this Act to be void

7. Any term (whether express or implied) contained in an agreement that purports to exclude or restrict, or has the effect of excluding or restricting, the operation of any provision of this Act, or any liability arising by virtue of any such provision, shall be void. 35

### Application of Civil Liability Act 1961

8. A breach of the duty imposed by section 2 shall be a wrong, within the meaning of the

Civil Liability Act 1961, and the provisions of that Act relating to breach of statutory duty shall apply accordingly.

**Short title and commencement**

9. (1) This Act may be cited as the Defective Dwellings Act 2021.
- (2) This Act applies to residential construction contracts (whether or not in writing) entered into, and residential construction works commenced, on or after the passing of this Act. 5



# BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú maidir leis an dlí a bhaineann le dliteanas tógálaithe, forbróirí agus daoine eile atá ag gabháil d'oibreacha foirgníochta cónaithe a dhéanamh; do shonrú ceanglais áirithe is infheidhme maidir le hoibreacha foirgníochta cónaithe; do dhéanamh socrú maidir le dualgais áirithe ag a mbeidh feidhm maidir le hoibreacha den sórt sin; do dhéanamh socrú maidir le modh sásaimh do dhaoine dá ndéanann lochtanna tithíochta difear agus do shonrú na dtréimhsí teorann a bhaineann le héilimh ar shásamh den sórt sin agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An Teachta Proinsias Ó Dufaigh a thug isteach,*  
30 Meán Fómhair, 2021

# BILL

(as initiated)

entitled

An Act to make provision for the law relating to the liability of builders, developers and others involved in the carrying out of residential construction works; to specify certain requirements applicable to residential construction works; to provide for certain duties to apply to such works; to provide for a means of redress for persons affected by housing defects and to specify the limitation periods relating to claims for such redress and to provide for related matters.

*Introduced by Deputy Francis Noel Duffy,*  
30th September, 2021

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