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

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*Meabhrán Miniúcháin*  
*Explanatory Memorandum*

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**AN BILLE UM THEAGHAISÍ LOCHTACHA, 2021**  
**DEFECTIVE DWELLINGS BILL 2021**

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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The purpose of the Bill is 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.

*Section 1*

This section outlines the relevant definitions pertaining to the Bill.

*Section 2*

This section incorporates the main duties created by the Bill, and incorporates one of the recommendations of the Joint Oireachtas Committee on Housing ‘Safe as Houses’ Report, as follows:

- ‘transmissible warranties of quality from developers/builders and those involved in the building process in favour of first and subsequent purchasers should be introduced via primary legislation’ [Report, Recommendation 3 (ii)].

In its Working Paper No 1 – 1977, the Law Reform Commission made various recommendations designed to render vendors and builders more amenable to current notions of civil liability for defects in building work and the core duties outlined in Section 2 of this Bill reflect the Recommendations in the Law Reform Commission Working Paper.

The creation of a statutory duty allows the duty to apply to persons with whom a home buyer might have separate contracts (the builder, with whom the buyer would usually have a construction contract, and the developer, with whom the buyer might enter into a contract for the sale of the land on which the works are to be built). The duty also applies to sub-contractors, with whom the buyer typically would have no contract, but whose work could constitute a significant part of the residential construction works.

The *section 2* duties incorporate the terms implied into services contracts pursuant to section 39 of the Sale of Goods and Supply of Services Act 1980, as well as providing certain other duties such as the duty to comply with the law in carrying out the residential construction works. This creates a statutory duty on builders and developers to ensure that dwellings comply with Building Regulations and, as such, provides a remedy for owners

for breach of Building Regulations that will not be subject to the limited criteria applicable to an action for breach of statutory duty.

The duty applies to ‘residential construction works’ in order to cover both works to construct a new dwelling and works to existing dwellings.

*Section 2* specifically permits the owners’ management company of a multi-unit development to bring an action in relation to the common areas of a multi-unit development and in relation to any other parts of a multi-unit development that do not consist of dwellings, and allows an owner of a unit to bring an action in relation to her dwelling.

### *Section 3*

This section provides that the cause of action in respect of the new statutory duty will accrue on the date of completion of the dwelling or the residential construction works.

### *Section 4*

This section makes clear that the duty imposed by the Act is in addition to any other duty (for example, arising by virtue of the law of contract or tort) that a person may owe independently of the Act.

*Section 5 (2)* provides for a special limitation period of 2 years from the date when an owner of the dwelling to which the residential construction works relates, knew or ought reasonably to have known that loss or damage had arisen from the residential construction works. This is consistent with the recommendation of the Committee Report, which recommended ‘a new statute of limitations of two years from discovery of defect rather than six years from purchase of property should be introduced via primary legislation’ (Report, recommendation 3 (iii)).

In addition, the Law Reform Commission Report on the Statutes of Limitations: Claims in Contract and Tort in respect of Latent Damage (other than Personal Injury) (LRC 64 – 2001) drew attention to the common law rule that, where property is transferred subsequent to the accrual of a cause of action in tort (which, under Irish law, accrues when the damage is caused to the building by the defect), that cause of action will not transfer without a specific assignment. This provision deals with this point by treating the cause of action as having accrued based on the state of knowledge of the first or subsequent owner of the dwelling.

### *Section 6*

This section provides for a limitation period of 6 years from the date on which the cause of action accrued unless the parties have provided for a longer period by contract.

There is an ultimate limitation period of 15 years after the date on which the cause of action accrued. The inclusion of an ultimate limitation period here is designed to balance the different interests involved – those of the *section 2* duty holder and those of the first and subsequent owners.

### *Section 7*

This section makes clear that parties cannot contract out of the Bill as enacted.

### *Section 8*

This section makes clear that the regime established by the Civil Liability Act 1961 applies to breaches of the duty imposed by *section 2* of the Bill as enacted.

*Section 9*

This is a standard section setting out the Short Title and commencement arrangements.

*Francis Noel Duffy, TD,  
Meán Fómhair, 2021.*