

APARTMENT and DUPLEX DEFECTS REMEDIATION

ACT 2024

Note: Sections of the following Acts have been used to inform this draft:

- Remediation of Dwellings Damaged by the Use of Defective Concrete Blocks 2022
- Pyrite Resolution Act 2013
- Multi-Unit Developments Act 2011

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AN ACT TO PROVIDE FOR THE PAYMENT OF GRANTS FOR THE REMEDIATION OF FIRE SAFETY, STRUCTURAL SAFETY AND WATER INGRESS DEFECTS IN PURPOSE-BUILT APARTMENT BUILDINGS, INCLUDING DUPLEXES, CONSTRUCTED BETWEEN 1991 AND 2013 AND TO PROVIDE FOR RELATED MATTERS TO BE ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1: PRELIMINARY AND GENERAL

Head 1: Short Title and Commencement

(1) This Act may be cited as the Apartment and Duplex Defects Remediation Act 2024

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

Explanatory Note:

This is a standard provision containing the title and commencement date. Subhead (2) is included on the assumption that not all provisions of the Act will not come into force on enactment.

Head 2: Interpretation

(1) In this Act—

“Additional Works” means

“Agreement” means

“Ancillary Grant” means

“Apartment” has the same meaning as “flat” which is a separate and self-contained premises constructed or adapted for residential use and forming part of a building from some other part of which it is divided horizontally;

“Applicant” means the applicant to the Scheme being an Owners’ Management Company and shall include all of its servants, contractors, agents, and invitees and for the avoidance of doubt shall include any property management agent of the Applicant;

“Authorised Officer” means....

“Authorised Person” means.....

“Builder” means

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

“Drawdown Notice” means a drawdown notice as set out in [Schedule X to the Grant Agreement] for the drawdown of portion of the Grant by the Applicant from The Housing Agency;

“Duplex” means a building with two dwellings on any storey other than the entrance storey and with no dwelling having an entrance level more than 6500mm above or below the main entrance level as per Technical Guidance Document M - Access and Use (2010) - Building Control Officer Training Manual;

“Dwelling” means ~~a purpose-built apartment or duplex~~ a house or flat forming a separate unit of residential accommodation;

“Certificate of Remediation” shall be construed in accordance with section 14;

“Code of Practice” means the Code of Practice for the Remediation of Fire Safety Defects Guidance for Owners’ Management Companies, Building Professionals and Local Authority Staff in the context of the Fire Services Acts 1981 and 2003 - December 2023;

“Commenced” means

“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—

- (a) the external walls, foundations and roofs and internal load bearing walls;
- (b) the entrance halls, landings, lifts, lift shafts, staircases and passages;
- (c) the access roads, footpaths, kerbs, paved, planted and landscaped areas, and boundary walls;
- (d) architectural and water features;

- (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;
- (g) cisterns, tanks, sewers, drains, pipes, wires, central heating boilers, other than such items within and serving only one unit in the development;

“Competent Builder” means a competent builder or any of its sub-contractors or agents registered with the Construction Industry Federation and regulated by the Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022.

“Competent Professional” means a person that holds one of the following qualifications: an Architect on the register maintained by The Royal Institute of Architects of Ireland pursuant to Part 3 of the Building Control Act; or a Building Surveyor on the register maintained by the Society of Chartered Surveyors Ireland pursuant to Part 5 of the Building Control Act; or a Chartered Engineer on the register maintained by Engineers Ireland pursuant to Section 7 of The Institution of Civil Engineers of Ireland (Charter Amendment) Act, 1969 as amended or altered;

“Eligible Costs” means

“Fire Safety Defect” means a defect that is attributable to defective design, defective or faulty workmanship, defective materials (or any combination of these), that is in contravention of the requirements of Part B of the Building Regulations at the time of construction;

“Grant” means the financial grant to be contributed by The Housing Agency subject to, and in accordance with, the Grant Agreement, towards the eligible costs of the remedial works to be undertaken;

“Grant Agreement” means

“Interim Remediation Scheme” means the Interim Remediation Scheme for Fire Safety Defects in Eligible Apartments and Duplexes 2023

“Investment Company” means

“Owners’ Management Company” means 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;

“MUD Act” means Multi-Unit Developments Act 2011;

“Property Management Agent” means.....

“Relevant Defects” shall be construed in accordance with section 8;

“Relevant Dwelling” shall be construed in accordance with section 6;

“Relevant Owner” shall be construed in accordance with section 7;

“Remedial Works” means any works that address relevant defects as defined in section 8, to be undertaken by the Applicant in accordance with the Grant Agreement and the Remedial Works Plan;

“Remedial Works Plan” means the specification for the Remedial Works as prepared by the Competent Professional;

“Scheme” means

“Structural Safety Defect” means a defect in a structural or load-bearing element of a building — foundations, walls, floors, roofs, balconies, etc. — that is attributable to defective design, defective or faulty workmanship, defective materials (or any combination of these), that is in contravention of Part A of the Building Regulations at the time of construction;

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

“Water Ingress Defect” means a defect where the passage of moisture to the inside of the home or common area is attributable to defective design, defective or faulty workmanship, defective materials (or any combination of these), that is in contravention of the requirements of Part C of the Building Regulations at the time of construction.

Explanatory Note:

Section 2 defines key words and terms used in the Bill, which will be expanded upon as necessary.

Head 3: Regulations

(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Regulations made under this Act may include such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either House within the next 21 days on which that House sits after it is laid before the House, it shall be annulled accordingly, but without prejudice to the validity of anything previously done by or under it.

Explanatory Note:

Section 3 of the Bill contains a standard provision in regard to Ministerial powers to make orders and regulations.

Head 4: Expenses

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Explanatory Note:

Section 4 of the Bill provides that the expenses incurred by the Minister in the administration of the Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Head 5: Advances to and Expenditure of The Housing Agency

(1) In each financial year the Minister may advance such amount of money as he or she considers appropriate to The Housing Agency for the purposes of the performance of its functions under this Act

(2) The advance shall be made by the Minister out of monies provided by the Oireachtas for the purpose of implementing this Act.

(3) The Minister may impose such terms and conditions on the advance as he or she considers appropriate.

(4) The Housing Agency shall submit a budget of its proposed expenditure in the performance of its functions under this Act in each financial year to the Minister:

(5) A budget referred to in subsection (4) shall be submitted—

a) before the date of the start of the financial year to which it relates, but not more than one year prior to that date, and

b) in accordance with regulations made under subsection (9).

(6) The Minister may approve the budget without modifications or approve the budget with such modifications as he or she considers appropriate.

(7) The Minister may consult with The Housing Agency for the purposes of subsection (6).

(8) The Housing Agency shall submit a report of its expenditure incurred in the performance of its functions under this Act in each financial year to the Minister:

(9) The Minister may prescribe:

a) the form and content of a budget referred to in subsection (4) and a report referred to in subsection (8);

b) the intervals at which, and the periods in relation to which, a budget referred to in subsection (4) or a report referred to in subsection (8) shall be submitted.

Explanatory Note:

Section 5 of the Bill provides for advances to, and expenditure by The Housing Agency for the purposes of implementing its functions under the Act. It provides for the submission of budgets and reports of expenditure to the Minister. Here we need to ensure that all funds are properly requested, discharged, accounted for and reported on to ensure full governance and oversight.

PART 2: APARTMENT AND DUPLEX DEFECTS SCHEME

Head 6: Relevant Dwelling

- (1) Subject to subsection (2), for the purposes of this Act, a dwelling is a relevant dwelling if it is a purpose-built apartment or duplex constructed between 1991 and 2013 which is used or suitable for use by a person as a place to reside. For the avoidance of doubt, the relevant dwelling must have been commenced between 1 January 1991 and 28 February 2014.
- (2) Also included may be a structure, area or service of a building, including below ground carpark, comprising apartments or duplexes (or a combination of such dwellings) common to any two or more of such dwellings (in this section referred to as a “common area”).
- (3) A relevant dwelling shall not include—
 - a) buildings, other than buildings comprising apartments or duplexes (or a combination of such dwellings), that provide multi-occupancy accommodation under specific conditions, including, but not limited to, nursing homes, boarding schools, student accommodation, hotels and hostels.
 - b) a garage, car park or car parking area that is not an integral part of the residential building(s), garden, patio or other structure not used for human habitation, unless failure to include the structure concerned may result in damage to a dwelling under (1) or (2) above.
 - c) A commercial unit integral to the residential building.
- (4) The Act shall not apply to dwellings or common areas owned by the builder, developer [or related professional] who was party to the construction of the building to which an application refers except for a common area where the builder, developer [or related professional] does not own all of the dwellings in the building of which the common area is part.

Explanatory Note:

Section 6 of the Bill defines a dwelling as a relevant dwelling, subject to certain conditions. Only buildings that contain residential units may be included in the scheme. Separate buildings or areas that have no residential/habitable use will not be remediated under the scheme.

Note that the relevant dwellings must have been commenced between 1 January 1991 and 28 February 2014. The Defects in Apartments report¹ includes specific definitions for fire safety-, structural safety- and water ingress defects relating such defects to a contravention of the requirements of Part B, A or C of the Building Regulations, respectively, at the time of construction. A chronology of commencement dates of the relevant legislation (Building Regulations & Building Control Regulations), is provided in the table below:

¹ Defects in apartments: report of the Working Group to Examine Defects in Housing, July 2022

Date	Action	Relevant Legislation
21 March 1990	Building Control Act 1990 published ² .	NO. 3 of 1990
4 December 1991	Sections 1 , 2 , 3 (Building Regulations), 4 , 6 (Building Control Regulations) , 7 , 14 , 15 , 18 , 19 , 20 , 21 and 25 of the Building Control Act 1990 come into operation.	S.I. No. 304/1991: BUILDING CONTROL ACT, 1990 (COMMENCEMENT) ORDER, 1991.
4 December 1991	Building Control Regulations 1991 published	S.I. No. 305/1991: BUILDING CONTROL REGULATIONS, 1991.
4 December 1991	Building Regulations 1991 published	S.I. No. 306/1991: BUILDING REGULATIONS, 1991
December 1991	Technical Guidance Documents A – M published	S.I. No. 306/1991: BUILDING REGULATIONS, 1991
1 June 1992	Building Regulations come into effect	S.I. No. 306/1991: BUILDING REGULATIONS, 1991
1 June 1992	Building Control Regulations come into effect. Fire Safety Certificates not required until August 1992	S.I. No. 305/1991: BUILDING CONTROL REGULATIONS, 1991.
1 August 1992	Fire Safety Certificate required in respect of (a) works commenced, or (b) a material change of use of a building made	S.I. No. 305/1991: BUILDING CONTROL REGULATIONS, 1991.
12 December 1997	Building Control Regulations 1997 published	S.I. No. 496/1997: BUILDING CONTROL REGULATIONS, 1997
12 December 1997	Building Regulations 1997 published	S.I. No. 497/1997: BUILDING REGULATIONS, 1997
1 July 1998	Building Control Regulations 1997 come into effect	S.I. No. 496/1997: BUILDING CONTROL REGULATIONS, 1997
1 July 1998	Building Regulations 1997 come into effect	S.I. No. 497/1997: BUILDING REGULATIONS, 1997
15 January 2014	Building Control (Amendment) Regulations 2014 published	S.I. No. 9/2014: BUILDING CONTROL (AMENDMENT) REGULATIONS, 2014
1 March 2014	Building Control (Amendment) Regulations 2014 come into effect	S.I. No. 9/2014: BUILDING CONTROL (AMENDMENT) REGULATIONS, 2014

² Section 22 of the Building Control Act specifies transitional arrangements for building regulations, as follows:

(2) Any bye-law to which *subsection (1)* relates and which is in force on the operative day shall continue to apply in relation to—

- (a) any plans which, in accordance with such bye-laws, were deposited before the operative day,
- (b) any works carried out in accordance with plans which were so deposited whether such works were carried out in accordance with those plans, with or without a departure or deviation from those plans,
- (c) any works carried out and completed before the operative day.

(3) Save as is provided for in *subsection (2)*, any bye-law to which *subsection (1)* relates shall, as regards a particular area, cease to have effect on the operative day to the extent that it relates to the subject matter of this Act.

(4) In this Act "the operative day" means, in relation to any area, the day on which building regulations first come into operation in that area.

Head 7: Relevant Owner

(1) For the purposes of this Act, “relevant owner” shall be construed in accordance with this section.

(2) A relevant owner is a body which owns, whether jointly or not, a relevant dwelling and is either

- a) an Owners’ Management Company
- b) an Approved Housing Body
- c) a local authority

(3) A relevant owner shall not include the builder, developer [or related professional] who was party to the construction of the building to which an application refers except for a common area where the builder, developer [or related professional] does not own all of the dwellings in the building of which the common area is part.

Explanatory Note:

Section 7 of the Bill defines a relevant owner. A relevant owner is a body who owns, whether jointly or not, a relevant dwelling. Here, we need to restrict access to the scheme to persons having control of the common areas of a multi owned residential building.

Head 8: Relevant Defect

(1) For the purposes of this Act, “relevant defect” means a defect of the type laid out in subsection (2) and shall be construed in accordance with this section.

(2) In this Act—

- a) “fire safety defect” means a defect that is attributable to defective design, defective or faulty workmanship, defective materials (or any combination of these), that is in contravention of the requirements of Part B of the Building Regulations at the time of construction;
- b) “structural safety defect” means a defect in a structural or load-bearing element of a building — foundations, walls, floors, roofs, balconies, etc. — that is attributable to defective design, defective or faulty workmanship, defective materials (or any combination of these), that is in contravention of Part A of the Building Regulations at the time of construction;
- c) “water ingress defect” means a defect where the passage of moisture to the inside of the home or common area is attributable to defective design, defective or faulty workmanship, defective materials (or any combination of these), that is in contravention of the requirements of Part C of the Building Regulations at the time of construction.

(3) The scheme will support the remediation of relevant defects, where practicable, to the standard that applied at the time of their original construction. Where this is not practicable, alternative approaches and options should be considered, as set out in the Code of Practice, that provide an appropriate level of life safety protection.

(4) The scheme will not support the remediation of defects that originate from inadequate maintenance, a failure of sinking funds to adequately allow for end-of-life replacement of building and safety systems, or inadequate management of later works to the building that have inadvertently or otherwise resulted in defects.

(5) Relevant owners may be required to produce evidence of ongoing maintenance carried out to support any declaration that the defects remediation which is subject of the claim are not due in whole or in part to failure to adequately maintain the property.

Explanatory Note:

Section 8 of the Bill provides for the type of defects covered under the scheme.

Code of Practice states that:

Buildings should be remediated to the standard that applied at the time of their original construction, i.e. to the originally granted Fire Safety Certificate, to the appropriate version of Technical Guidance Document B, or in the case of works carried out before June 1992, to an appropriate standard. Where it is not practicable to achieve this, alternative approaches and options should be considered that provide a reasonable level of life safety protection in accordance with the Fire Services Acts 1981 & 2003. Section 9.2 of the Code outlines three common remediation options for affected apartment and duplex buildings: Tier 1, Tier 2 and Tier 3.

Head 9: Functions of The Housing Agency under this Act

(1) The Housing Agency shall administer and implement the scheme.

(2) Without prejudice to the generality of subsection (1) The Housing Agency shall—

- a) be the public interface for the scheme;
- b) deal with all relevant owner queries;
- c) verify relevant dwelling and relevant owner details;
- d) receive and process applications;
- e) assess and determine eligibility of works and remediation;
- f) engage competent persons (including contractors, consultants or advisers) as it considers necessary for the discharge of its functions under this Act;
- g) pay competent persons who have been engaged by it;
- h) furnish, at intervals not greater than 3 months, reports of the scheme, to the Minister;
- i) liaise and make arrangements with relevant owners/competent professionals in relation to the remediation of their dwellings;
- j) make grant payments. No payment relating to the carrying out of eligible remediation shall be made unless The Housing Agency is satisfied it has been carried out in accordance with the standard for remediation and with certification, as The Housing Agency considers necessary, to that effect.

(3) The Housing Agency shall have all such powers as are necessary or expedient for the performance of its functions under this Act.

(4) The Housing Agency may perform any of its functions under this Act through any member of the staff of The Housing Agency or others duly authorised to work on its behalf by The Housing Agency.

Explanatory Note:

Section 9 of the Bill provides for the role/duties of The Housing Agency as administrator of the scheme.

Head 10: Application for Inclusion in the Scheme

(1) A relevant owner may apply to The Housing Agency for inclusion in the scheme to enable them to complete a relevant defect remediation in respect of a relevant dwelling.

The Housing Agency will first verify the details of the relevant dwelling and the relevant owner to permit submission of an application to the scheme. These details will include:

- Name of Owners' Management Company, Approved Housing Body or local authority.
- Authorised Persons Details – Name, Email Address and Phone Number, Status.
- Property Management Agent Details – Company Name, PRSA Licence Number.
- Multi-Unit Development (MUD) Name and Address.
- Date of Construction.
- Number of Dwellings and Blocks.
- Number of dwellings and the number of storeys for each block.
- Commercial Property Details where applicable.
- Tax Reference Number (TRN) and Validity Dates.
- Declarations.

(2) Once verified, an application will be issued for completion and return by the relevant owner outlining relevant defects, remedial works proposal and costing.

(3) Documentation required in support of an application shall include:

- Tender recommendation for the appointment of the Competent Professional.
- Letter of appointment of the Competent Professional.
- Completed Pricing schedule.
- Tender recommendation for the appointment of the Competent Builder.
- Preliminary programme of works with key milestone dates identified.
- Preliminary inspection plan.
- Tax Clearance Certificate for Competent Professional.
- Tax Clearance Certificate for Competent Builder.

(4) The Housing Agency may request from a relevant owner such other information or clarification as it considers necessary on all or any of the details provided in an application.

(5) An acknowledgement, including a unique reference number, will be issued to the relevant owner when an application is lodged.

Explanatory Note:

Section 10 of the Bill provides for applications to be made by relevant owners to the scheme for grant assistance. It outlines the details required for assessment of eligibility, the application process, and the supporting documentation required. The Housing Agency will carry out validation checking of the application and will either validate the application or refuse the application.

Head 11: Period for Making Application

(1) Subject to subsection (2), an application for inclusion in the scheme under section 10 shall not be made more than 10 years after the date of the coming into operation of this section.

(2) Subsection (1) shall not apply in relation to an application for a second grant.

Explanatory Note:

Section 11 of the Bill provides for the time period in which applications may be made i.e. the life of the scheme. We may need a provision here for the Minister to be able to make extension to this period.

Head 12: Consideration for Inclusion in the Scheme

- (1) Inclusion will be based upon satisfaction of “relevance” of dwelling, owner and defects.
- (2) All application documentation will be assessed and verified. This may require site visit by The Housing Agency authorised officers.
- (3) The Housing Agency will validate an application if it considers that it meets all the eligibility criteria and will notify the relevant owner of its decision, not later than 21 days from the making of the decision. If the application is validated, The Housing Agency will continue to process the application.
- (4) If an application does not meet the conditions of eligibility, The Housing Agency will refuse the application and will notify the relevant owner of the reason(s) for this decision, not later than 21 days from the making of the decision. This decision may be appealed as outlined in section 31 below.
- (5) For the purposes of considering the application The Housing Agency may require the relevant owner to provide to it, within such period as it may specify, such further information or documents as it may specify.

Explanatory Note:

Section 12 of the Bill provides for Housing Agency consideration of the application for inclusion in the scheme. This will be based on “relevance” and the matter of funding will be determined after this. This Section may need to be relied heavily upon where an appeal is made for inclusion in the scheme.

Head 13: Approval of Proposed Remedial Works

(1) The Housing Agency will need to be satisfied with the proposed schedule of remedial works, timelines, standard of remediation, etc.

(2) Verification of this satisfaction will need to be made by The Housing Agency, without which, no works undertaken will be funded from the scheme. Such verification will include:

- a) The relevant owner has procured a Competent Professional to prepare the remedial Works Plan and has demonstrated that a procurement process has been undertaken that has resulted in the most economically advantageous tender being selected.
- b) The relevant owner has procured a Competent Builder to carry out the remedial works in accordance with the Remedial Works Plan and has demonstrated that a procurement process has been undertaken that has resulted in the most economically advantageous tender being selected.
- c) The relevant owner will co-operate in full in the planning, procurement, and implementation of the remedial works and carrying out of the remedial Works Plan.
- d) The relevant owner shall ensure access to the Property, and where required shall rely upon the provisions for the MUD Act including but not limited to Section 13 of the MUD Act and shall make such rules and regulations as are required to facilitate the carrying out of the remedial works in accordance with the Remedial Works Plan.
- e) The relevant owner will notify the apartment and duplexes owners, any users of the apartments and duplexes to include any licensees or tenants of the Development, service providers and block insurance company provider of the commencement of the remedial works. The relevant owner will be responsible for any additional premiums charged by any service providers and insurance companies, among others, arising from the remedial works.
- f) The relevant owner shall procure that the Competent Builder shall supervise and maintain records of all and any works in progress in the carrying out of the remedial works.
- g) The relevant owner shall ensure the Competent Professional holds adequate insurance and is responsible to certify completion of the remedial works and furnish the Certificate of Remediation and shall provide The Housing Agency with copy of such insurances when requested from time to time.

(3) In exceptional circumstances, where The Housing Agency considers that value for money is not being achieved for the proposed remedial works, the relevant owner may be directed to re-engage with the market and/or extend the procurement process.

Explanatory Note:

Section 13 of the Bill provides for the approval by The Housing Agency of proposed works.

Head 14: Certification of Remediation

(1) A Certificate of Remediation shall certify that on a date stated in the certificate, on or before the date on which the certificate is signed—

- a) the approved remedial works were fully completed in accordance with the Remedial Works Plan and;
- b) that the remedial works are in full working order and condition in compliance with the statutes and the Building Control Act.

(2) A Certificate of Remediation shall be signed by the Competent Professional who specified and supervised the works, the subject of the certificate, and be in such form and manner as may be prescribed.

Explanatory Note:

Section 14 of the Bill provides for certificates of remediation regarding completion of works, and specifies the form and level of certification required to show that value for money and the required standard of works have been achieved.

PART 3: GRANTS

Head 15: Grant Amount

(1) A grant relating to proposed remedial works approved under section 13 to assist a relevant owner of a relevant dwelling to complete approved remedial works in respect of the dwelling shall be calculated in accordance with this section. The grant shall be calculated as 100% of the eligible costs of the remedial works approved by The Housing Agency.

For the avoidance of doubt, the total amount of grant(s) approved for the eligible remedial works of a relevant dwelling shall not exceed the reinstatement cost or the open market value of the relevant dwelling.

(2) A grant approved under section 21 (in this Act referred to as an “ancillary grant”), for any or all of the following, shall be calculated in accordance with this section:

- a) to enable a unit owner to pay for accommodation alternative to the individual unit within the relevant dwelling where—
 - (i) the unit is no longer habitable due to damage caused by relevant defects
 - (ii) the alternative accommodation is necessary during the carrying out of remediation;
- b) to enable a unit owner to pay for the storage of contents of a relevant dwelling;

(3) A grant –

- a) referred to in subsection (2)(a), shall be of an amount not exceeding €15,000
- b) referred to in subsection (2)(b), shall be of an amount not exceeding €5,000

(4) A relevant owner may undertake works to a relevant dwelling in addition to the approved remedial works (referred to in this Part as “additional works”), but a grant shall not be approved under section 13 or section 21 for the purposes of completing the additional works.

(5) Subject to this section, the Minister may prescribe the methodology by which the amount of grant referred to in subsection (1) or (2) is to be calculated.

Explanatory Note:

Section 15 of the Bill provides for the approval of grants for remedial works, alternative accommodation and storage cost and immediate repairs.

Head 16: Grant Prioritisation

(1) The Minister may under this section prescribe the criteria to be applied in order to determine priority as between different dwellings with regard to grant approval for remedial works.

(2) The Minister will have regard to principles, including a threat to safety or life and fire safety in making any Regulations under this section.

Explanatory Note:

Section 16 of the Bill contains provisions to allow for the prioritisation of approval and funding of remedial works.

A Schedule of Priority may need to be developed and adopted based on agreed principles and policies, such as threat to safety or life and fire safety. A “worst first” principle may be applicable.

Head 17: Grant Retrospection

Where costs have already been incurred in the remediation of relevant defects in a relevant dwelling, an application may be made by the relevant owner for the payment of such costs under the scheme. Such application will be subject to the consideration, verification and evidence of costs and value for money, nature and standard of works completed, approval and certification provisions within the Act, having regard to Regulations/guidance made by the Minister in respect of such payments.

Explanatory Note:

In this context, “retrospection” means the provision of grant funding (a) where a remediation of relevant defects has been initiated but not completed, or (b) where a remediation of relevant defects has been completed.

Clear principles and policies will be needed for retrospection, which may include:

- **Grant payments tied to sinking fund** - Where a relevant owner has utilised sinking funds previously accumulated during its normal operations to pay for relevant defect remediation, the relevant owner will be required to use grant funds to reimburse the sinking fund.
- **Payments based on production of relevant evidence** - Any grant payment made to a relevant owner will only be made subject to the production of vouched expenditure records.
 - Vouched expenditure records will include invoices issued by consultants and contractors to the relevant owner.
 - Payment records, clearly validating the payment of the relevant invoices by the relevant owner will also be required.
 - Relevant owners may be required to produce evidence of ongoing maintenance carried out to support any declaration that the defects remediation which is subject of the claim are not due in whole or in part to failure to adequately maintain the property
 - The onus will be on the relevant owner to comply fully with the standard of evidence required.
- **Payments based only on works within the scope of the scheme** - Invoices must detail the work carried out to such an extent that it is clear to The Housing Agency that the invoiced work relates to relevant defect remediation. If The Housing Agency cannot determine that an invoice, or a portion of the work included in an invoice, relates to relevant defect remediation then no grant payment will be made in respect of the invoice.
- **Certification required** - Regarding the standard of fire safety defect remediation carried out, a relevant owner will be required to produce a Fire Safety Risk Assessment (FSRA) carried out in accordance with the Code of Practice for the Remediation of Fire Safety Defects which validates, either completely or partially, the fire safety defect remediation work previously carried out in the apartment blocks. The cost of production of this report by a Competent Professional will be covered by grant payments.
- **Role of The Housing Agency** - The Housing Agency will have sole discretion in determining if evidence provided by a relevant owner constitutes proof of relevant defect remediation expenditure.
- **Value for Money and payment adjustment**
 - As relevant owners will have contracted and completed works prior to the scheme, the process with regard to procurement may not adhere to the provisions outlined in Head 13. Accordingly, The Housing Agency may have regard to value for money

and may adjust the approved grant payment having regard to Regulations made by the Minister.

- The Minister may issue Regulations with regard to the principles which should guide the decision making of The Housing Agency in this regard including (i) whether the costs submitted by a relevant owner are within the expected range of costs for similar works having regard to the data available to them from applications under the scheme and other evidence based sources of cost data, (ii) the impact of the cost of inflation in comparing costs with more recent works of a similar nature.
- **Appeals** – relevant owners will have access to the Appeal Process set out in Part 4
- **Grant Agreement** - The Housing Agency will enter into a Grant Agreement with a relevant owner.

The details to be included in any Regulations/guidance will be developed in tandem with the working through of this legislation.

Head 18: Grant Agreement

(1) Where a relevant owner is approved to proceed with the proposed remedial works, a Grant Agreement will be exchanged between the relevant owner and The Housing Agency.

(2) Under this Grant Agreement, the relevant owner is bound by various terms and conditions, including:

- a) The requirement to meet the definition of relevant owner under the meaning of this Act.
- b) The relevant owner is the full legal and beneficial owner of the common areas to the Property and is directly responsible for all the management, maintenance and repair of the Property. The relevant owner has all requisite easements and rights over the individual units contained within the relevant dwelling to include access for the purposes of repair and maintenance of the services serving the relevant dwelling and such other purposes as are required to ensure fire safety of the relevant dwelling.
- c) The relevant owner has full authority and power to enter into the terms of this Agreement with The Housing Agency and has on the same date as the date of this Agreement furnished The Housing Agency with a copy of the resolution of the board of directors of the Relevant owner authorising the carrying out of the remedial works and entering into the terms of this Agreement.
- d) The relevant owner confirms the Property has not been secured with any third party lender or any form of security and there are no charges registered against the Relevant owner or so much of the Property that forms the common areas.
- e) The relevant owner has applied to The Housing Agency to have the Property included in the Remediation Scheme and The Housing Agency has agreed to include the Property in the Scheme.
- f) The relevant owner will permit The Housing Agency access to the Property for inspection of the Property from time to time.
- g) For the avoidance of doubt it is acknowledged by the relevant owner that The Housing Agency its licensees or assigns are not in any way responsible for damage to the Property caused when carrying out its routine inspections of the Property from time to time.
- h) The relevant owner will procure the carrying out of the remedial works in a good workmanlike manner and in accordance with all relevant statutes.
- i) The relevant owner confirms that it submitted documentary evidence (namely Fire Safety Risk Assessment, Remedial Works Plan and Pricing Schedule) which is clear, specific and contemporary in support of the Eligible Costs for the purposes of funding under the Grant and that all of the information contained in the Application and this Agreement is true and correct.
- j) The relevant owner has followed the prescribed tender process requirements for procuring the services of the Competent Professional and the Competent Builder
- k) The relevant owner confirms the Competent Professional and Competent Builder have not carried out any works or professional services in the original construction, development and completion of the relevant dwelling. The relevant owner will notify The Housing Agency in writing immediately on becoming aware of the occurrence of any Event of Default.

(3) In the event of default, The Housing Agency shall be entitled to:

- a) at any time before or after payment of the Grant or any part thereof, suspend (on such terms and for such period as it may in its discretion determine), revoke or cancel or

proportionally reduce the Grant or any part thereof and/or require repayment of all or part of the Grant; and/or

- b) terminate this Agreement forthwith; and
- c) recover all loss and damage sustained by The Housing Agency by reason of the breach, neglect, default or omission of the Relevant owner under this Agreement.

Explanatory Note:

Section 18 of the Bill contains provisions relating to remediation grants, as specified in the Grant Agreement, including the requirement to submit a Remedial Works Plan and other documents.

Head 19: Grant Payment

(1) The Housing Agency shall make available the Grant to the relevant owner upon and subject to the terms of the Grant Agreement. The obligations of The Housing Agency to advance any amount of the Grant shall at all times be subject to ongoing compliance by the relevant owner with the terms of the Grant Agreement

(2) Upon execution of the Grant Agreement, The Housing Agency shall make available a portion of the Grant to the relevant owner in such an amount as reflects no more than 60% of the Professional Fees incurred by the relevant owner in employing the services of the Competent Professional.

(3) Subject to the terms of the Grant Agreement and subject to no material adverse change having occurred and no Event of Default, the Grant may, upon receipt by The Housing Agency of a duly completed Drawdown Notice, be drawn down in accordance with the Drawdown Schedule in [Schedule X of the Grant Agreement]. Upon the issuance of the Drawdown Notice the warranties on behalf of the relevant owner shall be deemed repeated by the relevant owner.

(4) The parties agree where the Grant funding amounts to no more than €100,000.00, a Certificate of Remediation shall be provided to The Housing Agency in the form as set out in Schedule X hereto at the same time as the Drawdown Notice.

(5) The parties agree where the Grant funding exceeds €100,000.00, the Certificate of Remediation shall be provided to The Housing Agency with the final Drawdown Notice.

(6) In submitting a Drawdown Notice the Relevant owner shall also submit;

- a) where applicable, an interim certificate issued by the Competent Professional certifying completion of any relevant Completion Milestone, in accordance with Schedule X; and
- b) any other relevant documentation evidencing achievement of the Completion Milestone which is deemed necessary by The Housing Agency, acting reasonably.

(7) The Housing Agency shall be given a reasonable opportunity to seek further evidence of, or to inspect for itself, achievement of any Completion Milestone and The Housing Agency reserves the right to require at any stage that an independent expert or agent investigate the remedial works, the completion thereof and any expenditure in order to provide assurances to The Housing Agency that all legal requirements and contractual obligations have been complied with.

(8) The Relevant owner shall procure that The Housing Agency and any person appointed by The Housing Agency shall at all reasonable times have access to the Property and to the remedial works and such other places where work is being prepared for the Remedial Works Plan.

(9) The Relevant owner acknowledges that The Housing Agency shall not be obliged to make available the Grant pursuant to a Drawdown Notice unless and until it is satisfied that the relevant Completion Milestone has been achieved and all expenditure has been properly incurred and vouched.

(10) The Grant funding is only payable to successful relevant owners who have satisfied The Housing Agency that they fulfil all of the criteria for Grant funding under the Application scheme, including,

inter alia, having met every milestone, condition precedent or other requirement provided for in the Grant Agreement to the satisfaction of The Housing Agency, acting reasonably;

(11) The submitting of an Application by it and/or engagement by The Housing Agency in the process creates no expectation on the part of the Relevant owner that it will receive the Grant funding;

(12) By engaging in the process of the application with the Relevant owner (to include providing the Relevant owner with initial confirmation and/or the grant scheme agreements), The Housing Agency has made no promise to it nor created any reasonable expectation that the Relevant owner will receive the grant funding, The Relevant owner acknowledges that there is no obligation whatsoever on The Housing Agency to make the Grant available to the Relevant owner unless and until it is satisfied that all requirements of the Application scheme and the Grant Agreement have been met.”

(13) The Relevant owner shall make the Competent Professional available to The Housing Agency representative upon any inspection contemplated by this Agreement acting reasonably at all times.

(14) The Relevant owner hereby covenants and undertakes to apply the Grant exclusively to the procuring and completion of the remedial works.

(15) The parties agree that the Grant shall become repayable without deduction or set-off in accordance with the provisions of [E. 8 - E. 12].

(16) The warranties set out in the Grant Agreement shall be deemed repeated on each occasion on which any amount of the Grant is drawn down by the Relevant owner subject only to such exceptions as may be both disclosed in writing to and approved in writing by The Housing Agency.

Explanatory Note:

Section 19 of the Bill provides for compliance with conditions applicable to the payment of remediation grants including claiming interim grant payments and requirements in respect of the final grant payment. The form and manner for making applications will be set out in regulations, and guidelines may be made regarding payments.

Head 20: Time Limits for Payment of Grant

(1) Approved remedial works must be commenced within a period of [3 months] from the date of the Grant Agreement and must be completed in accordance with section 14 within [X months] from the date of the Grant Agreement.

Explanatory Note:

Section 20 of the Bill provides time limits for payment of grants. This is needed from a budgetary perspective, and some of the detail at least needs to be in primary legislation.

Head 21: Ancillary Grant Application

(1) An ancillary grant may be approved in respect of costs incurred by a unit owner for the purposes referred to in section 15(2) only after the making of an application under section 10 by a relevant owner and the approval of that application by The Housing Agency.

(2) An application for an ancillary grant referred to in section 15(2) shall be accompanied by—

- a) details of the alternative accommodation or storage in respect of which the application is made,
- b) the estimated or actual cost, as the case may be, of the alternative accommodation or storage,
- c) such other documents or information as may be prescribed.

(3) The Minister may prescribe—

- a) the form and manner in which an application may be made under this section, and
- b) the procedure for the payment of ancillary grants.

Explanatory Note:

Section 21 of the Bill provides for the application process in respect of grants to cover the cost of alternative accommodation and storage of furniture, if necessary, while the remedial works are being carried out. The Minister may prescribe the form and manner in which applications may be made, and the procedure for payment of grants.

For reference, note that the Pyrite Remediation Scheme provides:

- a) that the vouched cost of the alternative accommodation, required for the dwelling occupants during the remedial works, can be recouped by the scheme participants. Recoupment of the vouched cost is subject to a monthly maximum limit of €2,000 (including VAT) and an overall limit of €6,000 (including VAT) per dwelling.
- b) The vouched costs in relation to the removal, storage and return of the furniture in the dwelling, equipment and effects can be recouped by the scheme participants, subject to a maximum limit of €2,500 (including VAT) per dwelling.

We need to be clear here about the application process. The scheme is currently envisaged on a “relevant owner” only application process. Application for an ancillary grant from a unit owner is not preferable as it may create an overlap of process and payment methodology.

Head 22: Regulations to Increase or Decrease Grant Amount

(1) Where it considers it necessary to do so, the Minister may, by Regulations—

- a) decrease the percentage referred to in section 15(1), and/or
- b) increase or decrease the amount referred to in section 15(3)

(2) The Minister shall not make Regulations under *paragraph (a) or (b) of subsection 1* earlier than—

- a) in the case of the first Regulations under that paragraph, 12 months after the date of the coming into operation of this section, and
- b) in the case of subsequent Regulations, 12 months after the date of the coming into operation of the previous Regulations under that paragraph.

(3) In making Regulations under *subsection 1(a)*, the Minister shall have regard to—

- a) the cost of construction prevailing at the time of the making of the Regulations, including the cost of—
 - (i) materials necessary to carry out remediation options, and
 - (ii) services and labour necessary to carry out remediation options, and
- b) the economic circumstances of the State prevailing at the time of the making of the Regulations, and the demands on the State's financial resources which may occur during the period the Regulations shall remain in effect.

(4) In making Regulations under *subsection 1(b)*, the Government shall have regard to the Harmonised Indices of Consumer Prices (HICP).

(5) The Minister may consult such persons or commission such research as he or she considers appropriate for the purposes of preparing a draft Regulations for consideration by the Government under this section.

(6) Where Regulations are proposed to be made under *subsection 1(a)*, a draft of the Regulations shall be laid before each House of the Oireachtas and it shall not be made until a resolution approving the draft has been passed by each such House.

(7) In this section—

“Harmonised Indices of Consumer Prices” means the All-Items Harmonised Index of the Consumer Price (HICP) values in relation to Ireland, which is published by the Central Statistics Office with reference to EuroStat data.

Explanatory Note:

Section 22 of the Bill provides for Ministerial Regulations to decrease the overall grant (currently at 100%) and to increase or decrease the ancillary grants available. Each year, the Minister has the option to raise the overall cap, based on available evidence. If the legislation will be specifying a maximum grant, then this section will be required also, so it should be kept as a general holding. Note that the grant cannot exceed the market value or reinstatement value of the property.

We need to make provision here for works which have not commenced when the grant amount has been changed by Regulations of the Minister.

Head 23: Application for Revised Grant Approval

(1) Where The Housing Agency approves a grant under section 10/section 12, the relevant owner may, after the date of commencement of the works notified under section 21, apply to The Housing Agency for approval of a revised grant by The Housing Agency under subsection 1 (in this section referred to as a “revised grant approval”).

(2) An application under subsection (1) shall be accompanied by a report from a Competent Professional which states that, in the opinion of the Competent Professional, there has been, since the date of the first approval, an unforeseen and material deterioration in the condition of the relevant dwelling in accordance with the approved remediation grant, such that a revised approval is necessary to remedy the relevant defects.

(3) Where The Housing Agency is satisfied that there has been an unforeseen and material deterioration in the condition of the relevant dwelling, such that a revised grant approval is necessary to remedy the relevant defects, it shall approve—

- a) in accordance with any regulations made in subsection (7), a revised grant to remedy the damage, and
- b) in accordance with section 15, a revised remediation grant which may be paid to the relevant owner under section 20 for the purpose of completing the revised remedial works.

(4) The Housing Agency shall, for the purposes of the revised grant approval, consider an application referred under subsection (3) and may—

- (a) require an authorised officer to exercise such powers as are referred to in section 43 that it considers necessary for that purpose, or
- (b) consult with such persons as it considers necessary.

(5) Subject to the modification referred to in subsection (6) and any other necessary modification, a revised grant approval shall be deemed to be an approval under section 12 for the purposes of this Act.

(6) The modification is that the period referred to in section 20 shall continue to apply as if the revised approval was made on the date of the first approval.

(7) The Minister may prescribe the form and manner in which an application is to be made and considered under this section.

Explanatory Note:

Section 23 of the Bill provides for a revised approval for proposed remedial works. The Housing Agency will determine the application and provision is made for the application process. The form and manner of applications will be prescribed by the Minister. Note that this should be of limited relevance to the apartment defects scheme i.e. a very thorough initial assessment should minimise revised grant approvals.

Head 24: Refund of Compensation

(1) Where a relevant owner receives monies from another person other than under this Act in respect of relevant defects, the relevant owner shall give notice to The Housing Agency of the receipt of the monies and the amount of the monies within 28 days of receiving them.

Explanatory Note:

Section 24 of the Bill provides for refund of compensation, where claimants must refund grants received under this scheme to The Housing Agency, where they received monies otherwise than under this Act in respect of relevant defects.

Head 25: Recovery of Payment under Part 3

(1) Where any of the circumstances referred to in subsection (2) arise in relation to a relevant owner to whom a payment has been made under Part 3, The Housing Agency shall issue a notice to the relevant owner stating—

- a) the circumstance or circumstances that have arisen, and
- b) that the amount of the payments made to the relevant owner under that section before the date of the notice is required to be paid to The Housing Agency within 21 days of the date of the notice.

(2) The circumstances are:

- a) the relevant owner fails to provide a Certificate of Remediation to The Housing Agency under section 14;
- b) The Housing Agency determines that it has made a payment to the relevant owner which it would not have made but for the submission of information to The Housing Agency by the relevant owner which he or she knew to be false or misleading, or in relation to which he or she was reckless as to whether it was false or misleading;
- c) the relevant owner refuses notwithstanding section 12 (2) to consent to entry to the site of the relevant dwelling by an authorised officer of The Housing Agency for the purposes of this Act;
- d) the relevant owner is convicted of an offence under section 41.

(3) An amount stated to be due and owing under subsection (1) but not paid by a relevant owner to The Housing Agency within the period specified in the notice given to the relevant owner under subsection (1) shall be recoverable by The Housing Agency from the relevant owner as a simple contract debt in any court of competent jurisdiction.

(4) A determination shall not be made under subsection (2)(b) unless the relevant owner has been given the opportunity to make representations to The Housing Agency in relation to the intention of The Housing Agency to make the determination.

(5) The Minister may prescribe—

- a) the form and content of a notice under subsection (1),
- b) the procedure by which a determination under subsection (2)(b) may be made, and
- c) the manner in which representations may be made under subsection (4).

Explanatory Note:

Section 25 of the Bill provides for the recovery of grants under specific circumstances as listed. The Minister may prescribe the form and contents of notices, procedures, and the manner in which representations may be made to The Housing Agency in relation to their intention to make the determination.

Head 26: Assignment and Subrogation of Claims to Minister

(1) Where a relevant owner receives a payment under Part 3, all rights of action which the relevant owner has against any other person, or the estate of any other person, for damage to the relevant dwelling caused by relevant defects shall, to the amount of the payment and from the date of the making of the payment, be assigned to and vest in the Minister.

(2) Without prejudice to subsection (1), the Minister shall, to the amount of the payment referred to in subsection (1) be subrogated to all rights or remedies to which a relevant owner is entitled in respect of damage to the relevant dwelling caused by relevant defects.

(3) Every right of action vested in the Minister under subsection (1) may, on and from the date on which it is so vested, be sued on, recovered or enforced by the Minister in his or her own name, and it shall not be necessary for the Minister, to give notice to any person bound by the right of action of the vesting effected by that subsection.

(4) The Minister may request, without prejudice to section 10, the relevant owner to provide the Minister with such information or documents as he or she considers necessary for the purposes of exercising any right of action which vests in him or her under subsection (1), or protecting any right or remedy subrogated to him or her under subsection (2).

(5) The Minister may, for the purpose of exercising any right of action vested in him or her under subsection (1) or protecting any right or remedy subrogated to him or her under subsection (2), require the relevant owner to execute all documents (including the verification by the relevant owner of any document by affidavit) or take any other step as may, in the opinion of the Minister, be necessary for that purpose.

Explanatory Note:

Section 26 of the Bill provides for assignment and subrogation of claims, where the State will take over a legal right or claim related to which a relevant owner may have against any party.

PART 4: APPEALS

Head 27: Appeals Panel

- (1) The Minister may appoint such number of people as he or she considers appropriate, not exceeding 10, to be members of a panel (in this Act referred to as the “Appeals Panel”) established and maintained by the Minister.
- (2) The Minister shall have regard to a person’s experience or expertise in relation to the subject matter of decisions, the subject of appeals under this Act or in relation to the hearing of appeals generally in appointing him or her under subsection (1).
- (3) An appointment under subsection (1) shall be made for such period, not exceeding 5 years from the date of the appointment, as the Minister determines.
- (4) Subject to subsection (5), a member whose appointment under subsection (1) expires shall be eligible for reappointment under that subsection.
- (5) A person shall not be appointed to the Appeals Panel for more than 2 terms.
- (6) The Minister shall appoint a chairperson of the Appeals Panel from among its members.
- (7) The Minister may pay a member such remuneration, fees or allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines.
- (8) A member may resign from his or her appointment by giving one month’s notice of his or her resignation to the Minister.
- (9) The Minister may remove a member where, in the opinion of the Minister—
- a) the member has become incapable through ill-health of effectively performing his or her functions,
 - b) the member has committed stated misbehaviour, or
 - c) the removal of the member appears to the Minister to be necessary for the effective performance by the Appeals Panel of its functions.
- (10) A person shall cease to be qualified for appointment under this section and shall cease to be a member of the Appeals Panel if he or she—
- a) is adjudicated bankrupt,
 - b) makes a composition or arrangement with his or her creditors,
 - c) is sentenced by a court to a term of imprisonment,
 - d) is convicted on indictment of an offence, or is convicted outside the State of an offence consisting of acts or omissions which would constitute an offence triable on indictment if done or made in the State,
 - e) is convicted of an offence involving fraud or dishonesty,
 - f) has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
 - g) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act,
 - h) is nominated as a member of Seanad Éireann,
 - i) is elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

- j) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament,
- k) is elected or co-opted as a member of a local authority, or becomes an employee of a local authority, or
- l) becomes a member of the Board, or employee, of The Housing Agency.

(11) If a member dies, resigns, ceases to be qualified for office or is removed from office, the Minister may appoint a person to fill the vacancy so occasioned.

(12) A person appointed to be a member of the Appeals Panel pursuant to subsection (11)—

- a) holds office for so much of the term of appointment of the member who occasioned the vacancy as remains unexpired at the date of the appointment, and
- b) is eligible for reappointment as a member on the expiry of that period.

(13) The Minister shall provide such support of an administrative nature to the Appeals Panel as the Minister determines is necessary to enable the Appeals Panel, and any Appeal Board, to perform its functions.

Explanatory Note:

Section 27 of the Bill provides for an Appeals Panel, and provides for appointments, tenure, pay, resignation, removal, qualification and administrative support.

Head 28: Appeal Board

- (1) An Appeal Board of 3 persons shall be constituted by the chairperson of the Appeals Panel from among the members of the Appeals Panel to determine an appeal under this Part.
- (2) Subject to subsection (3), the chairperson of an Appeal Board shall be appointed by the chairperson of the Appeals Panel from among the members of the Appeal Board.
- (3) Where the chairperson of the Appeals Panel is appointed to be a member of the Appeal Board, he or she shall be the chairperson of the Appeal Board.
- (4) An Appeal Board shall be independent in the performance of its functions.

Explanatory Note:

Section 28 of the Bill provides for an Appeals Board of 3 persons from the Appeals Panel to hear and determine individual appeals.

Head 29: Determination of Appeals

(1) An appeal may be made in respect of a decision made under section 10, section 12 and section 20 and shall—

- a) be lodged with the Appeals Panel not later than 28 days after the date of the notification of the decision,
- b) be made in writing,
- c) state all of the grounds upon which the appeal is made,
- d) subject to subsection (2), be accompanied by the documents upon which the person making the appeal intends to rely in support of those grounds, and
- e) be accompanied by such written submissions as the person making the appeal intends to rely upon in support of the appeal.

(2) An appeal under subsection (1) may not be accompanied by documents other than documents which were considered by The Housing Agency, or which were submitted to The Housing Agency and ought to have been considered by The Housing Agency in accordance with this Act, in making the decision the subject of the appeal.

(3) A party responding to an appeal shall—

- a) respond in writing,
- b) state all of the grounds upon which he or she responds to the appeal,
- c) subject to subsection (4), provide to the Appeal Board all of the documents upon which he or she intends to rely to support those grounds, and
- d) provide to the Appeal Board such written submissions as he or she intends to rely upon in support of those grounds.

(4) A response to an appeal may not be accompanied by documents other than documents which were considered by The Housing Agency, or which were submitted to The Housing Agency and ought to have been considered by The Housing Agency, in accordance with this Act in making the decision the subject of the appeal.

(5) Written submissions referred to in subsection (1)(e) or (3)(d), or made by the party who made the appeal in reply to submissions referred to in subsection (3)(d), shall be limited to such submissions as are related to the grounds and documents referred to in paragraphs (c) and (d) of subsection (1) and paragraph (b) and (c) of subsection (3).

(6) Where it considers it necessary for the purposes of ensuring fair procedures in the consideration of an appeal, the Appeal Board may require a party to the appeal to provide the Appeal Board, within a period specified by it, such further information in writing as the Appeal Board considers necessary, and shall give any other party to the appeal the opportunity to make submissions in relation to that information.

(7) The Appeal Board may refuse to consider an appeal where—

- a) an appeal is not made in accordance with this section, or any regulations or rules made under this Act, or
- b) it is of the opinion that the appeal is not made in good faith or is frivolous or vexatious.

(8) A decision by a majority of the members of an Appeal Board shall suffice for any purpose.

(9) In considering an appeal under this Part an Appeal Board shall have regard to—

- a) the expertise of The Housing Agency,
- b) the grounds, documents, and submissions referred to in subsections (1), (3) and (5), and
- c) any further information provided in response to a requirement under subsection (6), or submissions made in relation to such further information.

(10) Following consideration of the appeal, the Appeal Board shall—

- a) affirm the decision the subject of the appeal, or
- b) where the Appeal Board considers that a serious and significant error of law or fact, or a series of minor errors of law or fact which, when taken together, amount to a serious or significant error, was made by The Housing Agency, annul the decision and—
 - (i) direct The Housing Agency, as the case may be, to reconsider its decision in accordance with such directions as the Appeal Board may consider appropriate, or
 - (ii) replace the decision with such other decision as it considers it appropriate to make in accordance with this Act.

(11) The Appeal Board shall notify the parties to the appeal of its determination under subsection (10) as soon as practicable after it is made.

(12) In the case of a determination under subsection (10)(b)(i), the Housing Agency shall comply with a direction of the Appeal Board under that subsection.

(13) The Appeal Board may not award the costs or expenses of an appeal under this Part to any party.

Explanatory Note:

Section 29 of the Bill provides for matters in the determination of appeals, for example decisions which can be appealed, the manner in which appeals may be made, responses, matters for consideration, decisions and directions

Head 30: Conduct of Appeals

(1) The Minister may, for the purposes of the efficient conduct of appeals under this Part, prescribe:

- a) the form and manner in which an appeal may be made under
- b) the form and manner in which a person may respond to an appeal and reply to a response to an appeal, or make submissions in an appeal under
- c) the fees payable on the making of an appeal.

(2) The Appeals Panel may for the purposes of the efficient conduct of appeals under this Part, make rules providing for:

- a) processes for the prioritisation of categories of appeals;
- b) the form and manner in which requirements for further information may be made by the Appeal Board under the provision of notice to parties to the appeal of the making of an appeal and submissions in relation to that appeal;
- c) periods within which submissions must be made;
- d) the form and manner in which an appeal may be withdrawn;
- e) the joining of, or separation of, appeals.

(3) Subject to this Part, and any regulations and rules made under it, an appeal shall be conducted in such manner as the Appeal Board hearing the appeal considers appropriate.

Explanatory Note:

Section 30 of the Bill provides for the efficient conduct of appeals, and for the Minister to prescribe matters such as form, manner, fees, processes, notices, time periods and rules.

PART 5: TRANSITIONAL, MISCELLANEOUS AND SAVING PROVISIONS

Head 31: Transitional Arrangements

- (1) Where a relevant owner has made an application to the Interim Remediation Scheme the provisions as set out in this section shall apply.
- (2) Where The Housing Agency has made available a full grant under the Interim Remediation Scheme in respect of a relevant dwelling, a relevant owner, subject to this section, may make an application for inclusion in the scheme, in accordance with section 10.
- (3) Where The Housing Agency has made available a partial grant under the Interim Remediation Scheme in respect of a relevant dwelling, a relevant owner, subject to this section may
- (4) Where The Housing Agency has not made available a grant under the Interim Remediation Scheme in respect of a relevant dwelling, a relevant owner, subject to this section may

Explanatory Note:

Section 31 of the Bill provides, where necessary, for the transition of relevant owners from the Interim Remediation Scheme to the full statutory scheme.

Head 32: Consultants and Advisers

(1) The Housing Agency may engage such competent persons, including consultants and advisers, with such expertise and experience, as it considers necessary for the performance of its functions under this Act.

(2) The Housing Agency shall comply with any directions concerning the engagement of competent persons which may be given to it by the Minister with the consent of the Minister for Public Expenditure and Reform.

(3) Any fees due to a competent person engaged under this section shall be paid by The Housing Agency out of monies at its disposal.

Explanatory Note:

Section 32 of the Bill provides for consultants and advisers to assist The Housing Agency to undertake its functions under this Act.

Head 33: Indemnity

(1) Where the Minister is satisfied that a relevant person has discharged his or her duties under this Act in good faith, the Minister shall indemnify the relevant person against all actions or claims howsoever arising in respect of the discharge by the relevant person of his or her duties.

(2) In this section, “relevant person” means—

- a) an employee, servant, agent or authorised officer of The Housing Agency,
- b) a member of the Appeals Panel.

Explanatory Note:

Section 33 of the Bill provides for indemnity and is a standard provision to protect persons in the performance of their functions under this Act.

Head 34: Data Processing

(1) Each of the following bodies may, in so far as is necessary and proportionate, process personal data for the performance by it of its functions under this Act:

- a) The Housing Agency;
- b) the Appeals Panel; and
- c) an Appeal Board.

(2) The Minister may prescribe—

- a) the personal data that may be processed under subsection (1).
- b) the circumstances in which the personal data may be processed, including specifying the persons to whom the data may be disclosed, and
- c) such conditions as the Minister considers appropriate to impose on such processing.

(3) In this section—

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ;

“personal data” has the same meaning as it has in the General Data Protection Regulation;

“processing”, in relation to personal data, has the same meaning as it has in the General Data Protection Regulation.

Explanatory Note:

Section 34 of the Bill contains a standard provision in relation to the processing of personal data under this Act.

Head 35: Information Sharing

(1) The Housing Agency may share information with a public body where it is necessary and proportionate:

- a) for the purpose of the performance of a function of the public body in so far as the function relates to the provision of a service to a relevant owner for the purposes of this Act, or
- b) to establish the entitlement of a relevant owner to the provision of a service by the public body for the purposes of this Act.

(2) The information referred to in subsection (1) may include:

- a) a relevant owner's name and address;
- b) the address and Eircode of a relevant dwelling;
- c) a copy of the Remedial Works Plan submitted under section 10 or reports of an authorised officer under section 12;
- d) the amount of remediation grant approved by The Housing Agency under section 12 in relation to a relevant dwelling;
- e) such other information as may be prescribed by the Minister for the purposes of subsection (1).

(3) The Minister may prescribe—

- a) the purposes for which the information may be shared under subsection (1), including specifying the persons with whom the information may be shared, and
- b) such conditions as the Minister considers appropriate to impose on the sharing of the information.

(4) In this section, “public body” has the same meaning as it has in section 10 of the Data Sharing and Governance Act 2019.

Explanatory Note:

Section 35 of the Bill contains a standard provision allowing for data sharing including personal information by one public body with another.

Head 36: Disclosure of Confidential Information

(1) Subject to subsection (2), a relevant person shall not disclose confidential information obtained by him or her while performing functions under this Act.

(2) A relevant person does not contravene subsection (1) by disclosing confidential information if the disclosure—

- a) is made to the Minister by or on behalf of The Housing Agency, in compliance with this Act,
- b) is made to, or authorised by, The Housing Agency,
- c) is made to a member of the Garda Síochána and, in the opinion of the person making the disclosure, the information may relate to the commission of an offence, or
- d) is otherwise required by law.

(3) Where a relevant body is satisfied that a relevant person has contravened subsection (1), it shall decide the appropriate action (including removal from office or termination of contract) to be taken by it in relation to the relevant person.

(4) In this section—

“confidential information” means information that is expressed by the relevant body to be confidential either as regards particular information or as regards information of a particular class or description;

“relevant body” means—

- a) in relation to a member of staff or authorised officer of The Housing Agency, or a competent person referred to in section 32 appointed by The Housing Agency, and
- b) in relation to a member of the Appeals Panel, the Minister;

“relevant person” means—

- a) a member of staff or authorised officer, of The Housing Agency, or a competent person referred to in section 32 appointed by The Housing Agency, and
- b) a member of the Appeals Panel.

Explanatory Note:

Section 36 of the Bill contains a standard provision precluding persons disclosing confidential information except as provided for under this Act.

Head 37: Research and Training

(1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, make a grant or loan out of monies provided by the Oireachtas, on such terms and conditions as may be determined by the Minister, to a person or body which conducts research or provides training in relation to issues arising from apartment defects.

(2) The Minister may request a person or body referred to in subsection (1) to conduct the research or provide the training referred to in that subsection.

Explanatory Note:

Section 37 of the Bill empowers the Minister to provide funding for research and training on the issue of apartment defects to a person or body.

Head 38: Guidelines

(1) For the purpose of giving practical guidance to The Housing Agency in the performance of its functions under this Act, the Minister may make guidelines concerning—

- a) the performance by The Housing Agency of its functions under sections 16 and section 25
- b) the payment of remediation grants in parts under section 20,
- c) the circumstances which constitute exceptional circumstances under section 21,
- d) such other matters as he or she considers necessary for the effective operation of this Act.

(2) The Housing Agency, in exercising its functions shall have regard to the guidelines of the Minister under subsection (1) and any amendments of them under subsection (3).

(3) The Minister may amend guidelines made under subsection (1).

(4) The Minister shall notify The Housing Agency of the making of guidelines under subsection (1) or amendments of them under subsection (3) and shall publish the guidelines or amendments on a website maintained by or on behalf of the Department of Housing, Local Government and Heritage as soon as may be after they are made.

Explanatory Note:

Section 38 of the Bill provides for guidelines The Housing Agency in the performance of its functions under this Act.

Head 39: Offences and Penalties

(1) A person who furnishes information—

- a) The Housing Agency in purported compliance with this Act, or
- b) an Appeal Board in purported compliance with Part 5, that is false or misleading, knowing it to be false or misleading or being reckless as to whether it is false or misleading, shall be guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable—

- a) on summary conviction to a class A fine, or imprisonment for a term not exceeding 12 months or both, or
- b) on conviction on indictment to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person who without reasonable excuse—

- a) refuses to comply with a requirement of an authorised officer under section 32, or
- b) obstructs or impedes an authorised officer in the exercise of any of the powers referred to section 32, shall be guilty of an offence.

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both.

(5) Where a person is convicted of an offence under this section the court, unless it is satisfied that there are special and substantial reasons for not doing so, shall order the person to pay to the prosecutor the costs and expense, measured by the court, incurred by the prosecutor or other person in relation to the investigation, detection and prosecution of the offence, including costs incurred in respect of the remuneration and other expenses of The Housing Agency in the carrying out of the tests, examinations and analyses.

(6) A person shall not be eligible to apply for a remediation option grant under section 10 where he or she is convicted of an offence under subsection (1).

Explanatory Note:

Section 39 of the Bill contains provisions in relation to offences and penalties under the Act.

Head 40: Disqualification for Providing False or Misleading Information

(1) Where The Housing Agency determines that a person has furnished information to The Housing Agency for the purposes of making an application under section 10 which he or she knows is false or misleading, or being reckless as to whether it is false or misleading—

- a) The Housing Agency shall, where it has not at the time of the determination made a decision under section 10 in respect of the application, refuse to consider further the application, and
- b) subject to section 40, the person shall be disqualified from making a further application for a period of 5 years from the date of The Housing Agency's determination.

(2) The Housing Agency shall not make a determination under subsection (1) unless it has given the person the opportunity to make representations to The Housing Agency in relation to its proposal to make the determination.

(3) The Minister may prescribe—

- a) the procedure by which The Housing Agency may make a determination under subsection (1), and
- b) the form and manner in which representations referred to in subsection (2) may be made.

Explanatory Note:

Section 40 of the Bill further provides for disqualification of relevant owners from the scheme.

Head 41: Right of Relevant Owner to Effect Remediation

(1) Where the assessment and remediation of the relevant defect so requires, the relevant owner shall have a right to carry out this work on a part of a relevant multi-unit development which is not in their ownership or control where such works 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.

(2) The relevant owner shall have a right of access through any part of the multi-unit development not in common ownership in order to carry out works on defects impacting on fire safety, structural safety or water ingress, where the remediation of such defects comes within the scope of this Bill.

(3) If the consent of a unit owner is not given to the relevant owner to enable such access in the circumstances outlined in (2) above, the relevant owner may seek an order from the District Court for permission to enter such part of an owner unit used as a private dwelling, where the following conditions are met:

- a) every reasonable effort has been made to secure the consent of the unit owner but has failed to gain such consent, and evidence of such efforts are made available to the Court,
- b) such access to an individual owner unit is demonstrated by the relevant owner to be essential, having regard to the public good in ensuring a safe dwelling for all residents of a multi-unit development, and necessary in order for the relevant owner to complete necessary works, (as provided for within the scope of this Bill), on the building as a whole,
- c) such access is strictly to the parts of the owner unit necessary for the purposes of carrying out the works, and
- d) such access is for the period only required to carry out the works in question.

Explanatory Note:

Section 41 of the Bill is based upon Section 13 of the Multi-Unit Developments Act 2011, though may not be adequate. A specific provision is needed in this bill. While an OMC “owns” the common areas including the external shell of a unit, remediation such as fire stopping in voids and at doors requires access to the unit, as does work to deal with defective balconies and the exterior wall. A specific duty to cooperate is necessary. Also, a power to apply to the District Court for access may be helpful especially where a unit is empty.

Referencing UK Statutory Book: Rights under the Access to Neighbouring Land Act 1992 re access to a neighbour’s property in order to carry out repairs.

Head 42: Collection of Data

(1) The relevant owner should have access to relevant contact information as set out under section 8(3) of the MUD Act for access to individual units.

Explanatory Note:

Section 42 of the Bill further relates to access. The scheme will have to deal with occupiers who are renting the units as their cooperation will be necessary and relevant powers need to be given in order to facilitate access, even if at first instance the active assistance of renters will be sought by persuasion. It will be necessary to get the names and telephone/email contacts of occupiers and this needs to be covered in terms of the collection of data.

Head 43: Deficiencies Arising from Failure to Maintain

(1) The scheme will not support the remediation of deficiencies that originate from inadequate maintenance, a failure of sinking funds to adequately allow for end-of-life replacement of building and safety systems, or inadequate management of later works to the building that have inadvertently or otherwise resulted in defects, including wear and tear.

(2) Relevant owners may be required to produce evidence of ongoing maintenance carried out to support any declaration that the defects remediation which is subject of the claim are not due in whole or in part to failure to adequately maintain the property.

(3) Where the provision of an appropriate level of life safety protection is impacted by a deficiency of the type laid out in subsection (1) support of the remediation of relevant defects under the scheme may be subject to:

- a. a programme of works for remediation of the deficiencies of the type laid out in subsection (1), agreed by The Housing Agency and the relevant owner,
- b. an agreed schedule of completion milestones under subsection (3)(a) and
- c. provision of a Certificate of Remediation to The Housing Agency for all remediation agreed under subsection (3)(a) consistent with the provisions under section 14 (in this Act referred to as Certification of Remediation)

The Housing Agency shall be given a reasonable opportunity to seek further evidence of, or to inspect for itself, achievement of this subsection and The Housing Agency reserves the right to require at any stage that an independent expert or agent investigate the completion thereof.

(4) Funding under Part 3 (in this Act referred to as Grants) may be subject, in part, to achievement of subsection (3).

Explanatory Note:

Section 43 of the Bill relates to deficiencies from wear and tear, lack of maintenance and replacement of end-of-life safety systems which fall outside the scope of the scheme. From a fire safety perspective some deficiencies such as upgrading Fire Detection Alarm Systems (FDAS), Emergency Lighting Systems (EML) and fire doors are considered crucial for managing fire safety in any building. Both the Local Authority Fire Services (LAFS) and Competent Professionals (CP) view these as high-risk items that need immediate attention. For this reason, CPs may not be willing/able to sign off on Certificates of Remediation because critical fire safety items remain unaddressed [and may in certain serious instances need to consider issuing enforcement actions]. For this reason, Grant funding under the scheme may need to be subject to a programme of works and milestones being agreed for these “outside scope” works to be completed in order to ensure that an appropriate level of life safety protection is achieved and public money is properly spent. The Head seeks to provide flexibility so that the discretion remains with the Housing Agency in linking grant payment in part to progressing works to address such deficiencies.

Head 44: Limitations or Exemptions on Certain Commercial Owners

(1) Notwithstanding section 6 (3)(c) the remediation of relevant defects that impact on the property of commercial owners, within the building, such as ground floor retail units, may be funded under the scheme.

Explanatory Note:

Section 44 of the Bill relates to the remediation of defects that impact on the property of commercial owners, within the building, such as ground floor retail units, etc. It may be necessary to fund the remediation of shared boundaries from the scheme, but the extent of this remediation and associated cost must be equitable. Matters such as business interruption, access, insurance will need to be managed. In some instances, the commercial unit owners may be part of the relevant owner membership.