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Apartment Developments' Management Reform Bill

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This paper provides a briefing on the proposed Private Members' Bill concerning management reform in apartment developments to the Assembly's Finance Committee.

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Key Points

- The Apartment Developments' Management Reform Bill is a Private Member's Bill which was introduced in the Assembly by Kieran McCarthy, Alliance MLA for Strangford on the 15 November 2010.
- The objective of the Apartment Developments' Management Reform Bill is to address the perceived inadequacies in the laws governing aspects of the ownership of certain types of private properties which comprise parts of multi-unit developments.
- This issue has previously been debated by the Assembly, on 9 November 2009, when the Assembly resolved:

“That this Assembly notes that the regulations on multi-unit development management companies are not currently adequate and calls on the Executive to introduce new legislation that will govern the way in which they operate.”¹
- In the absence of legislation from the Executive, the Bill is intended to provide such legislation.
- There is both existing legislation and proposals on the issue in the rest of the United Kingdom and the Republic of Ireland.
- The Northern Ireland Law Commission is also producing a consultation paper on multi-unit developments, which is due for publication in late 2011.

¹ <http://www.niassembly.gov.uk/record/reports2009/091109.htm>

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1 Background to the Bill

This Bill aims to address inadequacies in the regulation of multi unit developments' management companies in Northern Ireland. Whilst there appears to be clear legislation and proposals on the issue in the rest of the UK and Ireland this does not appear to be the case in Northern Ireland.

The issue was first brought before the Assembly by Kieran McCarthy MLA in Questions to the Finance Minister in 2008:

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AQW 7095/08

Mr K McCarthy (ALL - Strangford) To ask the Minister of Finance and Personnel will he consider introducing for Northern Ireland, provision similar to the Right to Manage section of the Commonwealth and Leasehold Reform Act 2002, rather than the whole Act, in order to deal with Management Companies not being properly handed over to leaseholders of apartments.

14/05/2008

My Department keeps under review the need for new legislation across a broad range of areas of civil law. Whether new provisions giving leaseholders in multi-unit developments the right to manage are necessary will be considered along with other aspects of leasehold reform as and when resources permit. However, as I indicated in answer to AQW 5362/08, my Department currently has no plans to legislate in this field.

AQW 5362/08

Mr K McCarthy (ALL - Strangford) To ask the Minister of Finance and Personnel to give a timescale within which the provisions within the Commonhold and Leasehold Reform Act 2002 are expected to be applied to Northern Ireland.

02/04/2008

There are currently no plans to replicate the provisions of the Commonhold and Leasehold Reform Act 2002 in Northern Ireland.

A plenary debate on the issue was then held on 9 November 2009. This was under the motion:

“That this Assembly notes that the regulations on multi-unit development management companies are not currently adequate; notes that Northern Ireland has fallen behind the rest of the United Kingdom and the Republic of Ireland in

² <http://assist.assemblyni.gov.uk/AIMSPortal/AssemblyQuestionsSearchResults>.

legislating on this issue; and calls on the Department of Finance and Personnel and the Executive to develop proposals on the matter.”³

During this debate it was widely agreed by contributing MLAs that there was a need to pursue new legislation in this area for Northern Ireland.

Following the discussion the motion was carried with an amendment and the Assembly resolved:

“That this Assembly notes that the regulations on multi-unit development management companies are not currently adequate and calls on the Executive to introduce new legislation that will govern the way in which they operate.”⁴

Since this debate Mr McCarthy has sought to address the issue through the formation of a Private Member’s Bill. He actually began the consultation process in 2008, by writing to over 50 organisations including Local Councils, Housing Associations and Law Bodies seeking their views on the issue. In excess of 100 meetings resulted from this original letter. In addition the member has consulted with over 3000 residents of multi-unit developments prior to the bills publication. All of these meetings outlined the problems faced such as residents paying service fees for work which was never completed and management companies’ reputations being damaged by rogue elements within the industry. Mr McCarthy hopes the Bill can address such issues. He also believes enacting the legislation will have little cost implication on the public purse and also that the Bill contains provisions enabling cost-savings for both multi-unit development residents and development management companies who wish to vindicate their rights (through mediation, conferences etc). The Member has received written confirmation from the Chief Commissioner of the Northern Ireland Human Rights Commission that the Bill is compatible with the provisions of the Human Rights Act 1998. Mr McCarthy has also consulted with the Northern Ireland Equality Commission, who believe the Bill is consistent with equality of opportunity.

³ <http://assist.assemblyni.gov.uk/AIMSPortal/PlenaryItems/PlenaryItemDetails.aspx?qf=1&tb=61&pt=0&mc=0&mt=0&sp=11&s>

⁴ <http://www.niassembly.gov.uk/record/reports2009/091109.htm>

2 Legislation in the rest of the UK and Ireland

Whilst the need for regulation on this issue in Northern Ireland has been recognised, other legislatures are proposing and have existing legislation on multi-unit developments.

Scotland

In June 2008 the Scottish Government announced its intentions to create an accreditation scheme to raise the standard of service in this area.

This exercise is still at consultation stage, the responses of which were published in November 2010⁵. Early suggestions by the Government on achieving accreditation, include property managers having to meet high standards of service and a robust complaints procedure put in place if the service is unacceptable. Among other requirements, property managers would have to produce clear written contracts for every client including an explicit complaints procedure. They would be expected to obtain quotations from a range of contractors and show transparent accounting and billing systems, clearly highlighting all management income being received⁶.

In addition, Patricia Ferguson MSP has launched a Private Member's Bill which was introduced into the Scottish Parliament on 01 June 2010. The Property Factors Bill (Scotland) aims to create a new offence if a property factor (someone who manages properties and estates) operates without being registered⁷. This Bill is currently being considered at stage one.

England & Wales

Regulation in these regions usually falls under the Right to Manage section in the Commonhold and Leasehold Reform Act (2002). The purpose of this Act was to provide more rights and power for leaseholders and greater protection of their service charge fees. This section covers the areas of:

- Covenants not to assign etc

⁵ <http://www.scotland.gov.uk/Publications/2010/11/02091432/0>

⁶ <http://www.scotland.gov.uk/News/Releases/2008/07/02102754>

⁷ <http://www.scottish.parliament.uk/s3/bills/51-PropertyFactors/index.htm>

- Defective premises
- Repairing obligations
- Service charges
- Right to request information on insurance
- Managing agents; Right of first refusal
- Appointment of manager
- Right to acquire landlord's interest
- Variation of leases
- Service charges to be held in trust
- Information to be furnished to tenants
- Statutory duties relating to certain covenants
- Tenants' right to management audit
- Right to appoint surveyor and Administration charges⁸.

Republic of Ireland

In May 2009 the Irish Government published the Multi-Units Development Bill. The Bill contains proposals for a comprehensive statutory framework for multi-unit developments and for governance of the property management companies which own and manage the common internal and external areas of such developments. This new framework would apply not only to new developments, but to those under construction and those which have already been completed. The Bill is currently at Committee stage. The areas it covers include:

- Obligation to establish company
- Duties of company
- Annual service charges

⁸ <http://www.legislation.gov.uk/ukpga/2002/15/schedule/7>

- Sinking Funds
- House Rules
- Resolution of disputes
- Amended strike-off provisions

Whilst the member recognises the legislation used in these places, he believes the land law regime in Northern Ireland has not undergone many of the same kind of reforms implemented in these other regions. Therefore, applying legislation used in these jurisdictions is not in their opinion appropriate and specific legislation for Northern Ireland is required.

3 Law Commission Review

The Northern Ireland Law Commission has selected the topic of multi-unit developments for inclusion in its *First Programme of Law Reform*. This project formally commenced on 1 April 2010. A consultation paper is due to be published in late 2011.

The Aims of the Project are:

- To assess the evidence of problems in practice and evaluate the need for new legislation;
- To analyse the different types of legislative models which are used to regulate MUDs and assess the most appropriate model for Northern Ireland;
- To consult key stakeholders including unit owners, owners management companies, managing agents, developers, the Law Society, MLAs etc;
- To develop detailed legislative proposals which are tailored to the particular context in Northern Ireland and which address the problems arising in this jurisdiction⁹.

This consultation and legal research process is currently ongoing.

The Committee for Finance and Personnel discussed the Bill at its meeting on 8 December 2010. During this meeting, Mr. McCarthy came before the Committee and - whilst welcoming the Law Commission's review - expressed concerns that it may not address problems in this area quickly enough. The Member claimed that after consulting with the Law Commission he believed the bodies' consultation paper may not now be ready until summer 2012, and that the issue required swift action which he believes the Bill can provide. The broad proposals of the Bill were welcomed by the Committee and they agreed to write to the Law Commission seeking an urgent response on the matter before it reaches second stage.

⁹ <http://www.nilawcommission.gov.uk/index/current-projects/multi-unit-domestic-developments-apartments.htm>

4 Overview of the Bill

The objective of the Apartment Developments' Management Reform Bill is to address the perceived inadequacies in the laws governing aspects of the ownership of certain types of private properties which comprise parts of multi-unit developments. The details of the Apartment Developments' management Reform Bill are as follows:

- The Bill has 23 clauses and a Schedule.
- Clause 1 defines terms used within the Bill.
- Clause 2 ensures that in the case of future apartment developments' developers shall transfer ownership of the common areas to such developments' Owner Management Companies (OMCs).
- Clause 3 ensures that in the case of completed apartment developments' developers shall transfer ownership of the common areas to such developments' OMCs within 6 months.
- Clause 4 ensures that in the case of an apartment development which has not been completed developers will actually transfer ownership of the common areas to such developments' OMCs within 6 months.
- Clause 5 obliges developers to complete developments in accordance with planning permissions, notwithstanding the obligations imposed in Clauses 2-4 inclusive.
- Unit owners automatically become members of apartment developments' OMCs under Clause 6.
- Clause 7 reserves rights of access to a developer for the purpose of completing such developments.
- Clause 8 ensures members of apartment developments' OMCs have votes of the same weight.
- All OMCs are obliged under Clause 9 to conform to certain requirements regarding annual general meetings and annual reports.

- All OMCs are obliged under Clause 10 to introduce schemes of annual service charges which are in conformity with certain requirements.
- Under Clause 11 all OMCs are obliged in Clause 11 to establish sinking funds for the purpose of funding major irregular reparations of the apartment developments' common areas.
- Clause 12 obliges apartment development OMCs to set out the basis for payments requested under Clauses 11 and 12.
- OMCs, under Clause 13, are given the right to recover monies due to them under Clauses 11 and 12.
- OMCs power to make, and the rules governing, the proper creation of 'house rules' are outlined in Clause 14. The Department of Finance and Personnel is also enabled to make regulations regarding such house rules by this clause.
- Clause 15 enables certain parties specified in Clause 16 to make applications to the court to enforce obligations contained within the Bill.
- Clause 17 confers jurisdiction over disputes to the County Court.
- Mediation conferences for parties specified in Clause 16 are provided for under Clause 18, while Clause 19 provides for the submission of a report of the mediation conference to the parties to the application and to the court.
- Clause 20 transfers the benefit of any warranties and guarantees related to the construction of the development to the OMC and obliges the developer to provide certain documents pertaining to the development to the OMC.
- Clause 21 places restrictions on an OMC's ability to enter into certain contracts.
- Property management agents acting on behalf of OMCs either already in existence or to come into being are restricted under Clause 22 from acting

in certain capacities as regards the administration of OMCs duties and the exercise of such OMCs rights

- The Schedule contains a list of documents which the developer is required to supply to the OMC under Clause 20 of the Bill¹⁰.

¹⁰Apartment Developments' Management Reform Bill: Explanatory And Financial Memorandum
http://www.niassembly.gov.uk/legislation/primary/2010/niabill4_10_efm.htm