

DILAPIDATION BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. While certain aspects of this issue (public health/statutory nuisance) have been addressed through the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, much of the pertinent legislation dates back to the 19th century, while other relevant legislation that is in operation in other parts of the UK has never been replicated in Northern Ireland. Those jurisdictions have access to powers to deal with dilapidation at a much earlier stage.
4. Although purporting to address the same basic issues, there is a lack of consistency across the ‘local’ legislation and even the NI-wide legislation is subject to differences in interpretation between district councils, making some very reluctant to use it at all. There are also potential human rights issues with some provisions, e.g. power of enforced sale within the Belfast Improvement Act 1878.
5. There are a number of discrete types of problem sites to be considered under the umbrella of dilapidation policy: (a) public health nuisance; (b) property in a dilapidated state; (c) dangerous buildings; and (d) neglected sites.
6. The lack of a modern effective enforcement regime is seen as a barrier to local government efforts to maintain and improve their districts for the benefit of citizens, tourists and businesses. For example, the vacant, and increasingly derelict, shop fronts and other structures that populate many town centres make it more difficult for councils to regenerate those areas, attract new investment and encourage tourism.

CONSULTATION

7. Work towards the development of a Dilapidation Bill originated in 2012 and was initiated as the result of feedback from a number of councils through two “Blight Summits” and

significant engagement between officials and a range of key stakeholders culminating in a formal public policy consultation which ran from 10 March to 30 June 2016.

8. The main issues identified during earlier engagement included the need to:
 - a) consolidate and streamline the disparate regimes in operation;
 - b) provide robust cost recovery provisions;
 - c) broaden the scope of powers to address the legislative deficit compared to other jurisdictions; and
 - d) enhance the protection of heritage buildings.

OPTIONS CONSIDERED

9. The consultation document contained 4 suggested options that addressed these identified issues to greater or lesser extent. The 4 options were:
 - a) Option 1: do nothing;
 - b) Option 2: non-statutory guidance for councils;
 - c) Option 3: new Bill to consolidate/amend existing legislation; and
 - d) Option 4: new Bill with provisions for a new, broader enforcement regime (the Department's preferred option).
10. There was significant consensus across responses to the consultation, particularly from within the local government sector, reflecting the fact that the issue of dilapidation and aspects surrounding it have been extensively debated within and between relevant organisations.
11. Of the 24 responses received, 23 indicated their support for Option 4 – to develop a wide-ranging Dilapidation Bill that would consolidate and amend much of the existing legislation and supplement it with new provisions in respect of low-level dilapidation and dangerous buildings already available to local authorities in the rest of the UK. The other key proposal was to significantly enhance the cost recovery provisions available to councils, making the option of them carrying out the relevant works themselves much more viable.

OVERVIEW

12. The Bill has 33 clauses and 2 Schedules.

COMMENTARY ON CLAUSES

Clause 1 (Maintenance notice)

Clause 1 allows district councils to serve a maintenance notice to require owners, occupiers and others with a relevant interest to take appropriate remedial action to deal with low level dilapidation and neglect within a specified period.

Clause 2 (Appeal against maintenance notice)

Clause 2 provides for appeals to a Magistrates' Court against a notice issued under clause 1, stipulating the grounds for appeal and providing that the timeframe for bringing an appeal will be 28 days from the date the notice becomes live. Further provisions on appeals can be found in clause 22.

Clause 3 (Breach of maintenance notice)

Clause 3 allows district councils to take the necessary remedial action for non-compliance with a notice and sets out the offence and penalty provisions for a breach of a notice.

Clause 4 (Dilapidation notice)

Clause 4 allows district councils to serve a dilapidation notice to require owners, occupiers and others with a relevant interest to take appropriate remedial action to deal with more serious dilapidation and neglect (including demolition).

Clause 5 (Appeal against dilapidation notice)

Clause 5 provides for appeals to a Magistrates' Court against a notice issued under clause 4, stipulating the grounds for appeal and providing that the timeframe for bringing an appeal will be 28 days from the date the notice becomes live. Further provisions on appeals can be found in clause 22.

Clause 6 (Breach of dilapidation notice)

Clause 6 provides that where a person fails to comply with a dilapidation notice (or conditions specified in a notification under clause 4(3)), the council may apply to a Magistrates' Court for an order compelling that person to take the steps specified in the notice or condition.

The clause also allows district councils to take the necessary remedial action for non-compliance with a notice or condition. The clause also sets out the offence and penalty provisions for a breach of a notice or condition or where the whole or a part of the building is demolished without the council's permission.

Clause 7 (Dangerous structure notice)

Clause 7 allows district councils to serve a dangerous structure notice to require owners, occupiers and others with a relevant interest to take appropriate remedial action (including demolition) where a council considers that a building is in a dangerous condition or is used to

carry such loads as to be dangerous (unless it decides to act under clause 10 (Emergency action)).

In a case where the council considers that danger has arisen from overloading of the building, a notice may also restrict the use of the building until the council is satisfied that the necessary work has been carried out and withdraws or modifies the restriction.

The clause also allows a district council to charge a fee for exercising its powers under the clause. The fees will be specified in regulations to be made by the Department.

Clause 8 (Appeal against dangerous structure notice)

Clause 8 provides for appeals to a Magistrates' Court against a notice issued under clause 7, stipulating the grounds for appeal and providing that the timeframe for bringing an appeal will be 14 days from the date the notice becomes live – owing to the more serious nature of this notice. Further provisions on appeals can be found in clause 22.

Clause 9 (Breach of dangerous structure notice)

Clause 9 provides that where a person fails to comply with a dangerous structure notice (or conditions specified in a notification under clause 7(3)), the council may apply to a Magistrates' Court for an order compelling that person to take the steps specified in the notice or condition.

The clause also allows district councils to take the necessary remedial action for non-compliance with a notice or condition. The clause also sets out the offence and penalty provisions for a breach of a notice or condition or where the whole or part of the building is demolished without a council's permission.

Clause 10 (Emergency action)

Clause 10 deals with a building which is considered by a district council to be in such a state or is carrying such loads as to be dangerous and immediate action should be taken to obviate the danger and allows a council to take the necessary steps for that purpose.

Clause 10 also requires that after seven days from the date when remedial works began, the council must advise at least one person with an interest in the building of the action being taken and that an appeal may be made to a Magistrates' Court against that action, stipulating the grounds for appeal and providing that the timeframe for bringing an appeal will be 14 days from the date the notice becomes live. Further provisions on appeals can be found in clause 22. However, this notification of the right to appeal will not apply in cases where an interested person cannot be identified by the council.

Clause 10 also deals with cases where an interested person sustains damage as a result of the exercise of the council's power under the clause. In such cases the person is entitled to compensation if a Magistrates' Court determines (whether on an appeal under this clause or by a separate application under this clause) that the council was not justified in its exercise of the power. Any disputes around compensation shall be determined by the Lands Tribunal or by an agreed arbitrator.

Clause 10 also allows a district council to charge a fee for exercising its powers under the clause. The fees will be specified in regulations to be made by the Department.

Clause 11 (Urgent abatement notice)

Clause 11 allows district councils to serve an urgent abatement notice on a range of persons where premises appear to be in such a state as to be “prejudicial to health or a nuisance” stating that the council intends to carry out the necessary remedial works. The clause provides that a district council may carry out these works after 9 days of service of the original notice.

Clause 11 also provides for a mechanism whereby the person on whom the notice was served can serve (within 7 days of service of the original notice) a counter-notice on the council stating his intention to carry out the remedial works himself. In that case the council cannot take action unless the person concerned fails to commence or complete works within a reasonable time.

Clause 11 further provides that after seven days from the date when remedial works began, the council must serve notice on the person on whom the original notice was served that an appeal may be made to a Magistrates’ Court against the carrying out of the works, stipulating the grounds for appeal and providing that the timeframe for bringing an appeal will be 14 days from the date the notice becomes live. Further provisions on appeals can be found in clause 22.

Clause 12 (Costs of district council)

Clause 12 provides that where a district council has issued a maintenance notice, a dilapidation notice, a dangerous structure notice, an urgent abatement notice; or where a council has to take emergency action in order to remove danger, it may recover costs it has reasonably incurred from the relevant person where it has taken the necessary remedial action itself. The clause also allows councils to recover fencing costs or the costs of arranging for the building to be watched in certain circumstances.

Clause 13 (Charge on land)

Clause 13 provides that costs which can be recovered under clause 12 are to be a charge on the land and are to be registered in the Statutory Charges Register under Schedule 11 to the Land Registration Act (Northern Ireland) 1970.

The clause also provides for a district council to register a Dilapidation Notice in the Statutory Charges Register, the purpose of which would be not to recover costs but, rather, to allow a property to be sold “with information” and binding the purchaser to the terms of the original notice.

The clause also provides for a consequential amendment to the 1970 Act.

Clause 14 (Costs of interested person)

Clause 14 provides that where costs have been demanded under clause 12 a person who is receiving the rent for the land on behalf of another person would not be pursued for costs as it is not likely that they could be deemed responsible for causing a relevant nuisance.

Clause 15 (Obstruction by occupier etc)

Clause 15 provides that a court order may be made in a case where an occupier is preventing an owner from carrying out works to comply with a notice. It also provides for the associated offence and penalty.

Clause 16 (Information)

Clause 16 gives a district council the power to require information for the purposes of any function conferred on it by the Act. The clause also provides for two offences and penalties.

Clause 17 (Consultation with planning department)

Clause 17 requires a district council to consult relevant colleagues or officers of the Department for Communities before issuing a notice in relation to a heritage site. It also provides that regulations may be made by the Department amending the definition of “heritage site”.

Clause 18 (Power of entry)

Clause 18 provides for occasions where an authorised officer of the council may enter land in the council’s district. An authorised officer may enter by force in cases of emergency and may obtain a warrant from a lay magistrate where entry has been refused or refusal is reasonably apprehended. It also covers compensation and inserts a relevant offence provision of obstructing an authorised officer.

Clause 19 (Fixed penalty)

Clause 19 provides for a discretionary £500 fixed penalty to be issued by councils to discharge liability for conviction for breach of a maintenance notice and for failure to provide information without reasonable excuse. A fixed penalty in respect of a breach of a maintenance notice will only discharge liability for conviction in respect of failure to comply with the notice up to the date of payment of the fixed penalty. If the person continues to fail to comply with the maintenance notice after having paid the fixed penalty, it does not affect any criminal liability for continuing failure to comply with the notice after that date. The Department may amend the fixed penalty amount by regulations. Schedule 1 makes further provision regarding fixed penalties.

Clause 20 (Guidance)

Clause 20 provides that a district council must have regard to any statutory guidance issued by the Department. A draft of the guidance and any revisions will be laid before the Assembly.

Clause 21 (Notices)

Clause 21 provides for general issues relating to notices issued by district councils such as variation and withdrawal.

Clause 22 (Appeal)

Clause 22 provides that an appeal against a notice issued under the Act will suspend that notice being appealed until the appeal is concluded or withdrawn. However, this does not apply to an appeal against works under section 10 or 11.

On the determination of any appeal under this Act, the court must give directions for giving effect to its determination.

A subsequent appeal to the County Court may be brought against the original appeal decision.

Clause 23 (Offences: defendant)

Clause 23 provides for the procedures in cases where proceedings have been brought but the defendant ceased to be the owner/occupier before the end of the notice period.

Clause 24 (Meaning of “interested person” etc.)

Clause 25 (Other definitions)

Clause 26 (Repeals and consequential amendments)

Clause 26 provides for the repeals set out in Schedule 2 and allows the Department by regulations to make consequential amendments.

Clause 27 (Savings)

Clause 27 preserves the effect of a notice served under any legislation being repealed under the Bill therefore allowing a district council to complete works which it has begun under such a provision before its repeal.

Clause 28 (Regulations)

Clause 28 provides that regulations made by the Department may include certain additional provisions. It also specifies the regulations which shall be subject to negative resolution and draft affirmative resolution.

Clause 29 (Review of Act)

Clause 29 requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of the Act and at least once in every 5 years after that.

Clause 30 (Accessible register of action taken under this Act)

Clause 30 requires district councils to establish, maintain and publish a public register of action taken under the Act. The clause gives further details of what the register must include and further provides that the Department may by regulations make further provision concerning the register.

Clause 31 (General Interpretation)

Clause 31 contains general interpretation provisions.

Clause 32 (Commencement)

Clause 32 concerns the commencement of the Bill.

Clause 33 (Short Title)

Clause 33 provides a short title for the Bill.

Schedule 1 (Fixed Penalties)

Schedule 1 sets out the form and content, etc of fixed penalty notices issued under clause 19. It also contains information regarding the use of fixed penalty receipts by district councils and gives the Department powers to make regulations regarding the use of receipts.

Schedule 2 (Repeals)

Schedule 2 lists the necessary repeals.

FINANCIAL EFFECTS OF THE BILL

13. It is not anticipated that the Bill will have any financial effects on the Department.
14. New powers contained in the Bill typically involve relatively low-cost remediation work to tackle low-level dilapidation. District councils can use pre-notification engagement to minimise potential costs and successful use of the powers may generate a positive ‘ripple effect’ across a wide area without the need to issue formal notices.
15. The Bill places the onus for remedial works on those with an interest in the property but also gives councils stronger cost recovery powers for circumstances in which councils opt to undertake works, including charges on land; the power of sale through the Conveyancing Act 1881; and a broad definition of ‘interested person’.
16. The Bill includes additional sources of income for councils including provision to make regulations in respect of fees relating to dangerous structures, a fixed penalty of £500 in relation to maintenance notices and the sale of site materials.

HUMAN RIGHTS ISSUES

17. The Bill is considered to be compliant with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

18. The Department completed an equality screening of the policy proposals and concluded that they do not impact on equality of opportunity.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

19. The Regulatory Impact Assessment summarises that a new broader dilapidation regime with enhanced cost recovery provisions, introduced by way of a Dilapidation Bill, is the preferred option. There are likely to be additional costs for landlords, property developers, property management companies, financial institutions etc. However, this will be offset to a large extent by enhanced property values, additional activity within the construction sector and a range of benefits such as reduced dilapidation and anti-social behaviour, increased economic regeneration, tourism, job creation and improvement in the built environment. A reduction in dilapidated premises and increased economic activity may boost district and regional rate revenue.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

20. The Bill has no data protection impacts.

RURAL NEEDS IMPACT ASSESSMENT

21. The Department completed a rural needs impact assessment of the policy proposals and concluded that they do not reveal any significant adverse differential impact on people in rural areas.

LEGISLATIVE COMPETENCE

At Introduction the Minister of Agriculture, Environment and Rural Affairs had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Dilapidation Bill would be within the legislative competence of the Northern Ireland Assembly.”



**Northern Ireland
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