

EXPLANATORY AND FINANCIAL MEMORANDUM

introduction

1. This Explanatory and Financial Memorandum has been prepared by Mr Kieran McCarthy MLA in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill.

2. This 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. The objective of this Bill is to address current inadequacies in the laws governing aspects of the ownership of certain types of private properties which comprise part of multi-unit developments (including privately owned apartments and so-called 'Townhouses').

4. The question of whether or not there are inadequacies in the current laws applicable to certain aspects of the ownership of properties within multi-unit developments was debated by the Assembly on 9 November 2009. On that occasion 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.”

5. There are significantly more than 42,000 private dwellings (including apartments and so-called 'Townhouses') (hereinafter: 'units') that are part of private multi-unit developments in Northern Ireland. Such multi-unit developments contain designated Common Areas. Purchasers of such private dwellings in multi-unit developments [hereinafter 'Owners'] contract to pay for the maintenance of such Common Areas as part of their unit purchase transaction. Yet, in a large number of documented cases, the Common Areas are not being maintained to a standard commensurate with such unit Owners' reasonable expectations.

6. Many Owners have attempted to use aspects of contract law, consumer protection legislation, land law, and company law to address problems such as those outlined above. But for a variety of reasons, it has proved practically impossible for Owners to find appropriate legal remedies to the expensive, stressful and, ultimately, in the absence of appropriate

regulation, inevitable difficulties many of them find themselves in.

7. It is worth noting that while such typical problems as outlined above affect several hundred multi-unit developments already, many hundreds more are susceptible to them because of the absence of appropriate regulation concerning key aspects involved in their sale and ongoing maintenance.

Consultation

8. In excess of 3000 individuals and organisations have been consulted prior to the publication of this Bill. Over one hundred discussions and follow-up meetings were held with key stakeholders on the issues which proposals for law reform in this area has thrown up.
9. There was very strong support, especially among Owners and certain multi-unit development management agents, for law reforms along the lines included in this Bill

OPTIONS CONSIDERED

10. One option considered was to adopt provisions from the jurisdiction of England and Wales's Commonhold and Leasehold Reform Act 2002 (hereinafter "The 2002 Act"). The 2002 Act was introduced after several failed legislative attempts to deal with problems in the jurisdiction of England and Wales which bear a passing similarity to problems in Northern Ireland such as those outlined in paragraphs 5-9 above. The 2002 Act introduced a 'Right to Manage' and the first new form of land tenure in England and Wales - Commonhold – for many centuries. Having consulted on the appropriateness of adopting this framework to address the problems experienced by Owners in Northern Ireland, it was concluded that this Act, however, is not an appropriate model to adapt to local circumstances in Northern Ireland.
11. Alterations to existing regimes of regulation of, for instance, companies or consumer protection were also considered. As indeed was the establishment of an ombudsmen service to decide questions at dispute between Owners and multi-unit development management companies. The question of whether or not the Assembly has a role in promulgating legislation to help owners bind together into a representative organisation was also considered and ultimately rejected. Further consideration was given to setting up a specific regime to regulate apartment management agents. However, after consulting widely on these questions, it was determined that a Bill that addresses the fundamental structural issues, such as the timing of conveying legal title to the Common Areas, was

necessary. A multi-agency approach including legislation such as this Bill together with many other initiatives will be required to deal with the problems identified.

overview

12. The Bill has 23 clauses and a Schedule.
13. Clause 1 defines terms used within the Bill.
14. 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).
15. 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.
16. 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.
17. Clause 5 obliges developers to complete developments in accordance with planning permissions, notwithstanding the obligations imposed in Clauses 2-4 inclusive.
18. Unit owners automatically become members of apartment developments' OMCs under Clause 6.
19. Clause 7 reserves rights of access to a developer for the purpose of completing such developments.
20. Clause 8 ensures members of apartment developments' OMCs have votes of the same weight.
21. All OMCs are obliged under Clause 9 to conform to certain requirements regarding annual general meetings and annual reports.

Apartment Developments' Management Reform

22. All OMCs are obliged under Clause 10 to introduce schemes of annual service charges which are in conformity with certain requirements.
23. 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.
24. Clause 12 obliges apartment development OMCs to set out the basis for payments requested under Clauses 11 and 12.
25. OMCs, under Clause 13, are given the right to recover monies due to them under Clauses 11 and 12.
26. 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.
27. Clause 15 enables certain parties specified in Clause 16 to make applications to the court to enforce obligations contained within the Bill.
28. Clause 17 confers jurisdiction over disputes to the County Court.
29. 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.
30. 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.
31. Clause 21 places restrictions on an OMC's ability to enter into certain contracts.
32. 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.

Apartment Developments' Management Reform

33. Clause 23 provides for the short title and commencement of certain sections of the Bill.
34. The Schedule contains a list of documents which the developer is required to supply to the OMC under Clause 20 of the Bill.

cost implications of the proposals

35. This Bill will ensure that existing financial liabilities and obligations arising from multi-unit ownership are more clearly identified and provides for the creation of appropriate mechanisms for ensuring that the ongoing costs associated with multi-unit ownership are fairly and responsibly managed. Enacting this legislation will have limited financial implications.

equality and human rights implications

36. The provisions of the Bill are compatible with the provisions of the Human Rights Act 1998.
37. The provisions are believed to be consistent with equality of opportunity.

Legislative competence

38. The member in charge of the bill, Mr. Kieran McCarthy MLA, had made the following statement under Standing Order 30:

“In my view the Apartment Developments’ Management Reform Bill would be within the legislative competence of the Northern Ireland Assembly.”

Apartment Developments' Management Reform Bill

[AS INTRODUCED]

CONTENTS

Management of apartment developments

1. Definitions
2. Future apartment developments' management companies
3. Existing apartment developments' management companies
4. Partially built apartment developments' management companies
5. Obligations to complete development to remain with the developer
6. Automatic transfer of ownership of owners' management company on sale of unit
7. Consequences of transfer of common areas

Owners' management companies

8. Voting rights in owners' management companies
9. Annual meetings and reports of owners' management companies
10. Annual service charges
11. Sinking fund
12. Owners' management company annual charges
13. Recovery of charges and contributions
14. House rules

Dispute resolution

15. Dispute resolution in multi-unit developments
16. Persons who may apply under Section 15
17. Jurisdiction and venue of County Court
18. Mediation conferences
19. Report of chairperson of mediation conference

Dispute avoidance measures

20. Transfer of benefit of guarantees and warranties

Apartment Developments' Management Reform

21. Restriction on entering into certain contracts
22. Restriction on property managing agents acting for OMC's
General
23. Short title and commencement

Schedule Documentation to be handed over pursuant to Section 20

A

B I L L

TO

Introduce laws relating to the ownership and management of the common areas of certain privately owned residential multi-unit developments and to facilitate the fair, efficient and effective management of bodies responsible for the management of such common areas, and to provide for related matters.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Management of apartment developments

Definitions

1.—(1) In this Act, unless the context otherwise requires—

“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;

“Department” means the Department of Finance and Personnel;

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

“member” means members of an owners’ management company;

“mixed use multi-unit development” means a multi-unit development of which a commercial unit forms part of the development;

“multi-unit development” means a development being land on which there stands erected a building or buildings comprising units that—

(a) as respects such units it is intended that amenities, facilities and services are to be shared, and

(b) the development contains not less than 2 residential units, but the provisions of this Act shall not apply to a unit or units in the building designed and intended for non-residential (including commercial) use;

“Companies Acts” means the companies’ acts as defined by Section 2 of Companies Act 2006;

“owners’ management company” means, subject to subsection 2, 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 Act;

“relevant parts” means those parts of the common areas of a multi-unit development necessary for the enjoyment of quiet and peaceful occupation of sold units and which—

(a) are the subject of a request for a transfer of ownership to an owners’ management company, or

(b) have been the subject of a transfer of ownership to an owners’ management company;

“residential unit” means a unit in a multi-unit development designed for use and occupation as a house, apartment, flat or other dwelling;

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

(2) In this Act a reference to an owners’ management company shall be construed, other than in the case of an owners’ management company to which section 3 or section 8 applied, as including a reference to a partnership or unincorporated body or group of persons owning the common areas of a multi-unit development, and in the case where such ownership is held by a partnership or unincorporated body or group of persons and of the persons in such partnership, body or group shall be entitled to enforce the covenants and house rules concerned.

Future apartment developments’ management companies

2.—(1) A person to whom this section applies shall not, after the coming into operation of this section, transfer his or her interest in a unit in a multi-unit development to which this section applies unless—

(a) an owners’ management company has been established at the expense of the developer of the multi-unit development concerned,

- (b) ownership of the relevant parts of the common areas of the multi-unit development and of any reversion in the unit being transferred has, subject to subsection (6), been validly transferred by deed (or otherwise) to the owners' management company relating to that unit, and
 - (c) a contract in writing is entered into between the developer and the owners' management company concerned prior to such transfer setting out the rights and obligations each of those persons has in relation to the other.
- (2) This section applies to—
- (a) a multi-unit development in which a residential unit has not previously been sold; and
 - (b) a person, other than the owners' management company concerned, who is the owner of relevant parts of the common areas of a multi-unit development.
- (3) The obligations, under this section, to transfer ownership of the common areas of a multi-unit development includes an obligation—
- (a) to transfer any right of way or access and any other easements appurtenant to the land so transferred or necessary for the reasonable use and enjoyment of the said lands,
 - (b) to transfer all rights necessary to enable the unit owner or the owner of the transferred lands to enjoy the quiet and peaceful occupation of the unit in the multi-unit development,
 - (c) to transfer all necessary amenities intended to be available for use in conjunction with the ownership and occupation of the units in the multi-unit development.
- (4) Without prejudice to subsection (3), the person to whom subsection (2)(b) refers shall do all things within his or her power which are reasonably necessary to ensure that the unit owner enjoys the rights referred to in that subsection.
- (5) The developer shall ensure that the owners' management company established for the purposes of ownership and management of the common areas of a multi-unit development shall have all the powers necessary—
- (a) to perform functions conferred or imposed on owners' management companies by this Act, and
 - (b) to exercise any powers conferred on such a company by this Act, in relation to the multi-unit development concerned.
- (6) The transfer, in compliance with this section, of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of a charge affecting any such beneficial interest).

Existing apartment developments' management companies

3.—(1) Where, before the coming into operation of this section, the ownership of a unit in a multi-unit development has been the subject of a transfer by or on behalf of a developer to a purchaser, and the ownership of the relevant parts of the

common areas and in the reversion relating to the units has not been transferred to the relevant owners' management company, the developer shall, subject to subsection (2), arrange for the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned together with the reversion to the relevant owners' management company within 6 months of the coming into operation of this section.

(2) The transfer, in compliance with subsection (1), of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units concerned shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of a charge affecting any such beneficial interest).

Partially built apartment developments' management companies

4. Where, before the coming into operation of section 3, a multi-unit development has not been completed by or on behalf of the developer, and the ownership of the relevant parts of the common areas or the reversion in the units concerned has not been transferred to the owners' management company concerned, the developer shall within 6 months of such coming into operation arrange for the transfer of such ownership to the owners' management company concerned of the common areas of the multi-unit development and of any reversion in the unit being transferred.

Obligations to complete development to remain with the developer

5. The transfer of the ownership of an interest in the relevant parts of the common areas of a multi-unit development shall not relieve the person who would otherwise have been responsible from the duty, obligation or responsibility to ensure completion of the development, including—

- (a) compliance with the requirements or conditions of a planning permission under the relevant planning laws which relates to the development concerned, and
- (b) compliance with the Building Regulations (Northern Ireland) 2000.

Automatic transfer of ownership of owners' management company on sale of unit

6.—(1) Where ownership of a unit in a multi-unit development is transferred, whether by conveyance, transfer, assignment, by operation of law or otherwise, membership of the owners' management company which arises by virtue of ownership of the unit shall, notwithstanding any provision to the contrary in the Companies Acts or any other enactment, on such transfer stand transferred to the person becoming entitled to the freehold or leasehold interest in the unit concerned without the need to execute a transfer or have it approved by the directors of the company, and such person shall—

- (a) be entitled to exercise the powers, rights and entitlement of a member in the company concerned, and
- (b) be obliged to perform all obligations (including the payment of service charges) pertaining to the membership of such company concerned.

(2) Notwithstanding subsection (1) an owners' management company shall take all steps necessary to ensure—

- (a) that the share certificate or membership certificate, as appropriate, is issued to the member concerned as soon as practicable following notification of the change of ownership of the unit,
- (b) that the register of members of the company is altered accordingly, and
- (c) that there is compliance with all other relevant requirements under the Companies Acts.

(3) A unit owner shall be under an obligation to furnish to the relevant owners' management company particulars of his or her name together with details of his or her address and such other contact particulars as the owners' management company may reasonably request, and shall notify the owners' management company of any change in such particulars.

Consequences of transfer of common areas

7.—(1) Where a transfer of the ownership of relevant parts of the common areas of a multi-unit development is made in compliance with sections 2, 3 or 4 then, notwithstanding any agreement, contract, deed, instrument or rule of law the developer shall retain the right to pass and re-pass and have access to such parts of the common areas as is reasonably necessary to enable the multi-unit development to be completed.

(2) The developer shall indemnify the owners' management company in respect of all claims made against the company of whatever nature or kind in respect of acts or omissions by the developer in the course of works connected with the completion of the multi-unit development.

(3) The developer shall, at its expense, effect and keep in force a policy of insurance with an authorised insurer providing adequate insurance in respect of all risks in respect of the developer's use or occupation of the multi-unit development.

(4) Subject to subsection (2), in exercising any rights or in discharging any obligations in relation to the multi-unit development (whether those rights or obligations arise under this Act or otherwise), the developer shall take all reasonable steps necessary to minimise inconvenience to the owners of the units in the multi-unit development.

(5) The developer shall ensure that access to the transferred common areas by owners of the units in the transferred common areas and their servants, agents, tenants and licensees, is maintained at all reasonable times, and that such access is maintained in a clean and safe fashion.

(6) The owners' management company and unit owners shall not obstruct the developer—

- (a) in exercising any rights in relation to the multi-unit development or adjacent land, or
- (b) in discharging obligations pursuant to section 4 in relation to the multi-unit development or adjacent land.

(7) References in this section to the developer shall be construed as including a reference to servants, agents and licensees of the developer.

(8) References in this section to a unit owner shall be construed as including a reference to servants, agents, tenants and licensees of the unit owner concerned.

Owners' management companies

Voting rights in owners' management companies

8.—(1) The voting rights of members in an owners' management company shall be structured in such a manner that in the determination of any matter by the members of the company one vote shall attach to each unit in a multi-unit development to which the owners' management company relates, and that no other person has such a vote.

(2) Each vote referred to in subsection (1) shall be of equal value.

(3) The words "owners' management company" shall be included in the name of every owners' management company to which this section applies which words may be abbreviated to "OMC".

Annual meetings and reports of owners' management companies

9.—(1) An owners' management company shall—

- (a) prepare and furnish to each member an annual report which complies with subsection (2),
- (b) hold a meeting at least once in each year for purposes which include the consideration of the annual report referred to in paragraph (a),
- (c) maintain at least two identified interest-bearing bank accounts into which payments of service charges and contributions to the building investment fund by the unit owners are to be paid.

(2) An annual report of an owners' management company shall include—

- (a) a statement of income and expenditure relating to the period covered by the report which statement shall include, if specifically requested by a unit owner (reproduction costs to be borne by the requesting unit owner), provision of copies of original bank statements for the bank accounts in the name of the OMC;
- (b) a statement of the assets and liabilities of the company;
- (c) where the owners' management company is required to establish and maintain a sinking fund, a statement of the funds standing to the credit of that fund;
- (d) a statement of the amount of the annual service charge and the basis of such charge in respect of the period covered by the report;
- (e) a statement of the projected or agreed annual service charge relating to the current period;
- (f) a statement of any planned expenditure on the refurbishment, improvement or maintenance of a non-recurring nature which it is intended to carry out in the current period;

- (g) a statement of the insured value of the multi-unit development, the amount of the premium charged, the name of the insurance company with which the policy of insurance is held and a summary of the principal risks covered, which statement shall include, if specifically requested by a unit owner (reproduction costs to be borne by the requesting unit owner), provision of copies of the original insurance policy documents in the name of the OMC;
- (h) a statement setting out, in general terms, the fire safety equipment installed in the development and the arrangements in place for the maintenance of such equipment; and
- (i) a statement fully disclosing any contracts entered into or in force between the owners' management company and a director or shadow director of the company or a person who is a connected person as respects that director or shadow director.

(3) At least 21 days notice of the meeting referred to in subsection (1)(b) shall be given to each member.

(4) A copy of the annual report referred to in subsection (1)(a) shall be furnished to each member at least 10 days before the meeting referred to in subsection (1)(b).

(5) The meeting referred to in subsection (1)(b) shall take place within reasonable proximity to the multi-unit development and at a reasonable time (unless otherwise agreed in writing by 75 per cent majority vote of the members).

(6) The obligations of an owners' management company under this section are in addition to any other obligation or duty of such company whether arising under an Act, statutory instrument, by rule of law or otherwise.

Annual service charges

10.—(1) An owners' management company shall, as soon as practicable, establish and maintain a scheme in respect of annual service charges from which the owners' management company may discharge ongoing expenditure reasonably incurred on the insurance, maintenance (including cleaning and waste management services) and repair of the common areas of the multi-unit development concerned and on the provision of common or shared services to the owners and occupiers of the development.

(2) The annual service charge in respect of a multi-unit development relating to a particular period shall not be levied unless it has been considered by a general meeting of the members concerned called for purposes which include the consideration of an estimate of the expenditure it is anticipated will be incurred by the company in that period and the meeting shall take place within reasonable proximity to the multi-unit development and at a reasonable time (unless otherwise agreed in writing by a 75 per cent majority vote of the members).

(3) The estimate referred to in subsection (2) shall be broken down into the following categories—

- (a) insurance;
- (b) general maintenance;
- (c) repairs;

- (d) waste management;
- (e) cleaning;
- (f) gardening and landscaping;
- (g) concierge and security services;
- (h) legal services and accounts preparation; and
- (i) other expenditure arising in connection with the maintenance, repair and management of the common areas anticipated to arise.

(4) The proposal in relation to the setting of an annual service charge may be amended at the meeting referred to in subsection (2) with the approval of 60 per cent of those present and voting at the meeting.

(5) Where the service charge proposed to the general meeting is disapproved by not less than 75 per cent of the persons attending and entitled to vote, the proposed service charge shall not take effect but the charge applying to the previous period shall continue to apply pending the adoption of a service charge in respect of the period concerned.

(6) Where the proposed service charge is disapproved pursuant to subsection (4) and no service charge applied in the previous period the directors of the owners' management company may determine a scheme to operate for a period of 4 months from the date of the meeting, and such charges may be levied and recovered as if such scheme had been approved by the members.

(7) Service charges levied under this section may not be used to defray expense on matters which are or were the responsibility of the developer or builder of the multi-unit development concerned unless such expenditure is approved by a general meeting of the owners' management company concerned where 75 per cent of those attending and entitled to vote have voted in favour of such expenditure being incurred.

(8) An approval under subsection (7) shall not have effect unless—

- (a) at least 65 per cent of the units in the development have been transferred to a person who is not a connected person as respects the person who was—
 - (i) the developer or builder of the multi-unit development concerned, or
 - (ii) a director or shadow director of a company which was the developer or builder of the development, and
- (b) at least 3 years have elapsed since the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned.

(9) Where expenditure is incurred following an approval under subsection (7) the owners' management company may recover such expenditure from any person (including the developer) who had responsibility for incurring such expenditure or carrying out the works concerned.

(10) The owner of each unit in a multi-unit development (including a person who is the developer or building contractor of the development) shall be under an obligation to pay all service charges levied under this section.

(11) For the purpose of this section a developer or building contractor, as the case may be, shall be considered to be the owner of a unit in a multi-unit development upon the completion of the sale of the first unit in the development.

(12) Nothing in this section shall operate to prevent a unit owner from seeking and recovering reimbursement of service charges levied under this section from a tenant of that owner where so provided by agreement.

(13) The annual service charge shall be calculated on a transparent basis and shall be equitably apportioned between unit owners.

(14) The owners' management company in setting the annual service charge shall do so by reference to the actual or projected expenditure for the year in respect of which the same is levied.

(15) To the extent that any part of the service charge levied is not required for the year concerned any excess shall be taken account of in setting the service charge for the following year.

(16) To the extent that the service charge is inadequate for the expenditure in the year concerned the extent of such inadequacy may be added to the service charge otherwise payable in respect of the following year.

(17) An owners' management company shall maintain sufficient and proper records of expenditure incurred by it to enable appropriate verification and audits to be undertaken.

(18) Service charges levied pursuant to this section shall be applied for the purposes specified in subsection (1) but any excess may, notwithstanding subsections (14), (15) and (16), be applied on expenditure which may be incurred by the sinking fund established pursuant to section 11.

(19) The Department may, for the purpose of advancing the objective of the fair, effective and efficient operation of owners' management companies and the fair, efficient and effective management of the common areas of multi-unit developments, makes regulations prescribing the class or classes of items of expenditure which may be the subject of annual service charges, the procedures to be followed in setting of such charges and matters to be taken into account in the setting of such charges, and arrangements for the levying and payment of such charges.

(20) Any regulations the Department shall make under subsection (19) shall be subject to negative resolution and before making any such regulations the Department must consult such persons appearing to the Department to represent relevant interests as the Department considers appropriate.

Sinking fund

11.—(1) An owners' management company shall establish a building investment fund (in this section referred to as a "sinking fund") for the purpose of discharging expenditure reasonably incurred on—

- (a) the refurbishment,
- (b) improvement,
- (c) maintenance of a non-recurring nature, or

- (d) advice from a suitably qualified person relating to paragraphs (a) to (c), of the multi-unit development in respect of which the owners' management company stands established.
- (2) Expenditure shall not be considered to be expenditure on maintenance of a recurring nature unless—
- (a) the expenditure relates to a matter in respect of which expenditure is generally incurred in each year,
 - (b) it is certified by the directors of the owners' management company concerned as being expenditure on maintenance or a recurring nature, and
 - (c) the expenditure is approved by a meeting of the members of the owners' management company as being expenditure on maintenance of a recurring nature.
- (3) Each unit owner in a multi-unit development (including a person who is the developer or building contractor of the development) shall be obliged to make payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with this section.
- (4) For the purposes of this section a developer or building contractor, as the case may be, shall be considered to be the owner of a unit in a multi-unit development upon the completion of the sale of the first unit in the development.
- (5) Subject to subsection (6) the amount of the contribution to be paid as respects a unit by each unit owner of such a unit to the sinking fund in respect of a particular year shall be the amount of £200 or such other amount as may be agreed by a meeting of the members as the contribution in respect of the year concerned.
- (6) The obligation to establish a sinking fund and to make contributions to such fund shall apply on the happening of the later of—
- (a) the passing of a period of 3 years since the first transfer of the ownership of a unit in the multi-unit development concerned, or
 - (b) the expiry of 18 months from the coming into operation of this section.
- (7) The contributions made to the sinking fund shall be held in a separate account and in a manner which identifies these funds as belonging to the sinking fund and such funds shall not be used or expended on matters other than expenditure of a type referred to in subsection (1).
- (8) Where a dispute arises in relation to whether assets of an owners' management company should properly be applied to the sinking fund account or the annual service charges account the dispute may be the subject of an application under section 15.
- (9) The Department may, for the purpose of advancing the objective of the fair, prudent, effective and efficient operation of owners' management companies and the fair, prudent, efficient and effective management of the common areas of multi-unit developments, make regulations prescribing—
- (a) a class or classes of expenditure which may be incurred by a sinking fund,
 - (b) the procedures to be followed in setting such charges,
 - (c) the matters to be taken into account in the setting of such charges,

- (d) the arrangements for levying and payment of such charges, and the thresholds of expenditure (by reference to amounts of expenditure or by reference to the proportion of the sinking fund) which necessitate approval of the members of the owners' management company.

(10) Any regulations the Department shall make under subsection (9) shall be subject to negative resolution and before making any such regulations the Department must consult such persons appearing to the Department to represent relevant interests as the Department considers appropriate.

Owners' management company annual charges

12.—(1) An owners' management company may issue a single request for payment of the aggregate of the charges arising under section 10 and the contributions fixed under section 11, and every request for payment, whether in reliance on this section or on section 10 or 11 shall set out the basis of the calculation of the charge and contribution, a breakdown of how it is calculated and the amount payable in respect of the unit concerned.

(2) Where payment of charges arising under sections 10 and 11 are requested or collected together such charges may collectively be referred to as "owners' management company annual charges".

Recovery of charges and contributions

13. Charges arising under section 10 and contributions fixed under section 11, whether requested or sought to be collected separately or together, may be recovered by the owners' management company concerned as a simple contract debt in a court of competent jurisdiction.

House rules

14.—(1) An owners' management company may, as respects the multi-unit development for which that company has responsibility, make house rules as respects the development relating to the effective operation and maintenance of the development and with the objective of enhancing the quiet and peaceable occupation of units generally in the development, and such house rules shall be binding on—

- (a) unit owners,
- (b) tenants of unit owners, and
- (c) servants, agents and licensees of persons referred to in paragraphs (a) and (b).

(2) House rules made pursuant to subsection (1) shall be consistent with the covenants and conditions contained in—

- (a) the documents of title under which unit owners in the multi-unit development concerned have title to the units concerned, and
- (b) the documents of title under which the owners' management company concerned has title to the multi-unit development concerned.

(3) House rules made under subsection (1) shall be made in a manner consistent with the objective of advancing the quiet enjoyment of the property by the owners of units in the development.

(4) House rules shall not be made under this section unless the rules have been considered and approved by at least 60 per cent of those unit owners present and voting at the meeting.

(5) Notice of a meeting referred to in subsection (4) shall be given to each unit owner not less than 21 days prior to the meeting.

(6) The notice of the meeting to consider the making of house rules under this section shall be accompanied by a draft of the proposed rules.

(7) Following the approval of rules under this section the owners' management company shall furnish a copy of the rules to each owner and shall also send a copy to each unit in the development.

(8) House rules made pursuant to this section may be amended from time to time in the same manner as house rules may be made.

(9) It shall be a term of every letting of a unit in a multi-unit development that the letting is subject to the observance by all those occupying the property (including their licensees, servants or agents), in whatever capacity, of—

(a) the conditions and covenants in the title documents relating to the use and enjoyment of the property, and

(b) house rules made under this section, and a summary of such relevant conditions and covenants together with a copy of any house rules shall be incorporated into the letting agreement relating to the unit concerned.

(10) Where a person, who by reason of subsection (1) is obliged to comply with house rules, commits a material breach of such rules, the owners' management company of the development concerned may recover the reasonable costs of remedying such breach from such person which costs may be recovered as a simple contract debt in a court of competent jurisdiction.

(11) The Department may make regulations relating to—

(a) the making of house rules, and

(b) the matters to which they may relate.

(12) Any regulations the Department shall make under subsection (11) shall be subject to negative resolution and before making any such regulations the Department must consult such persons appearing to the Department to represent relevant interests as the Department considers appropriate.

Dispute resolution

Dispute resolution in multi-unit developments

15.—(1) A person specified in section 16 may make, in respect of a multi-unit development, an application to the court for an order under this section to enforce any rights conferred, or obligations imposed, by this Act.

(2) An application under this section shall state the circumstances giving rise to the application and the order or orders that the applicant invites the court to make and whether or not mediation has been attempted.

(3) Where the court is satisfied that a right has been infringed or an obligation has not been discharged, it shall make such remedial order as it deems appropriate

in the circumstances with a view to ensuring that effective enforcement of a right or the effective discharge of an obligation relating to the multi-unit development.

(4) Notwithstanding the generality of subsection (3), an order under that subsection may include an order—

- (a) that the legal documentation relating to the owners' management company be amended;
- (b) in the case of a multi-unit development consisting of more than one structure, to provide that, where an issue relating to one structure only in the multi-unit development arises, only the unit owners in that structure shall have the right to be consulted and vote on the issue;
- (c) in the case of a multi-unit development with more than one owners' management company, that a single owners' management company be formed to replace the existing owners' management companies;
- (d) directing the establishment of an additional owners' management company in respect of a multi-unit development where—
 - (i) there are separate blocks or buildings in the development,
 - (ii) there are units of a different character in the development, or
 - (iii) there are units which are used for different purposes within the development;
- (e) apportioning the funds of an owners' management company as between its sinking fund and its service charges;
- (f) amending the covenants contained in an agreement (including a lease) between the developer, owners' management company and the unit owners;
- (g) approving a proposal to enable an owners' management company—
 - (i) to deal with a debt, whether caused by an inadequacy in, or the absence of, a sinking fund, and
 - (ii) to deal with any issues arising therefrom in relation to the future management of the owners' management company;
- (h) transferring control of an owners' management company from a developer to the unit owners, where the court is satisfied the developer has unreasonably refused to effect such transfer, or the unit owners have unreasonably refused to accept such transfer;
- (i) determining whether the management structure of an owners' management company in a mixed use multi-unit development complies with the provisions of this Act, and if not the order may direct that such steps as the court considers necessary to ensure that the arrangements concerned do so comply, be taken;
- (j) determining whether a proposal to materially alter the physical character of a multi-unit development would disproportionately or inequitably affect any class of unit owners;
- (k) directing the developer of a multi-unit development to complete the multi-unit development in accordance with—
 - (i) the terms of any contract,

- (ii) the conditions of a relevant planning permission under the relevant planning legislation, or
 - (iii) the Building Regulations (Northern Ireland) 2000;
 - (l) directing a unit owner or a minority of unit owners to cooperate with decisions made by a majority of the unit owners in the development.
- (5) Before making an order pursuant to this section the court shall be satisfied that all parties likely to be affected by the making of the order have received notice of the making of the application (unless the court has dispensed with the giving of such notice or deemed service of the notice good) and the court shall be satisfied that in all the circumstances, it is just to do so.
- (6) Where—
- (a) a person is directed by an order under subsection (3) or this subsection to execute a deed or other instrument in relation to land, and
 - (b) such person refuses or neglects to comply with the direction, the Court may—
 - (i) make such ancillary orders as it considers necessary in order to give effect to any order or orders made by it under subsection (3) including an order directing—
 - (A) the registration in the appropriate manner of any deed required to be executed in compliance with the order, and
 - (B) compliance with subsection (7), or
 - (ii) order another person to execute the deed or instrument in the name of the first-mentioned person and a deed or other instrument executed by the person in the name of another person pursuant to such an order shall be as valid as if it had been executed by that other person.
- (7) When any deed required to be executed by reason of an order under this section and such order has been registered in the appropriate manner, each unit owner in the development shall without charge to such unit owner be furnished with a duly certified copy of such deed.

Persons who may apply under Section 15

- 16.—**(1) The following persons may apply for, or appear and be heard at an application for, an order under section 15—
- (a) the owners' management company relating to the relevant multi-unit development or a part of the relevant multi-unit development;
 - (b) any member of such an owners' management company;
 - (c) any trustee under a will, settlement or other disposition of land by such member;
 - (d) the personal representative of a member of such an owners' management company;
 - (e) the developer of the multi-unit development;
 - (f) with the permission of the court, such other person as the court sees fit.
- (2) A person referred to in paragraph (f) of subsection (1) shall apply for permission to make an application, or to appear and be heard at an application, for

an order under section 15, as the case may be, in a summary manner and shall include in such application for permission the reasons why such permission should be granted.

Jurisdiction and venue of County Court

17.—(1) The County Court shall have jurisdiction to hear and determine applications under section 15.

(2) The jurisdiction conferred on the County Court by this Act may be exercised by a judge of the County Court area in which the relevant multi-unit development or any part thereof is situated.

Mediation conferences

18.—(1) Upon its own motion or upon the request of any party to an application under section 15, the court may at any stage during the course of the proceedings (including immediately after the issue of the proceedings), if it considers that the holding of a meeting pursuant to a direction under this subsection would assist in reaching a settlement of the matter, direct that the parties to the application meet to discuss and attempt to settle the matter.

(2) A meeting held pursuant to a direction under this section is in this Act referred to as a “mediation conference”.

(3) Where the court gives a direction under subsection (1), each party to the application concerned shall comply with that direction.

(4) A mediation conference shall take place—

- (a) at a time and place agreed by the parties to the application concerned, or
- (b) where the parties do not agree a time and place, at a time and place specified by the court.

(5) There shall be a chairperson of a mediation conference who shall—

- (a) be a person appointed by agreement of all the parties to the application concerned, or
- (b) where no such agreement is reached—
 - (i) be a person appointed by the court, and
 - (ii) be a practising barrister or practising solicitor of not less than 5 years standing, or
 - (iii) be a person nominated by a body prescribed, for the purpose of this section, by an order of the Department which order would be subject to negative resolution.

(6) The notes of the chairperson of a mediation conference and all communications during a mediation conference or any records or other evidence thereof shall be confidential and shall not be used in evidence in any proceedings whether civil or criminal.

(7) The costs incurred in the holding and conducting of a mediation conference shall be paid by such party to the application concerned as the court hearing the action shall direct.

Report of chairperson of mediation conference

19.—(1) A person appointed under section 18(5) to be the chairperson of a mediation conference shall prepare and submit to the court hearing the application under section 15 a report, which shall set out—

- (a) where the mediation conference did not take place, a statement of the reasons as to why it did not take place, or
- (b) where the mediation conference did take place—
 - (i) a statement as to whether or not a settlement has been reached in respect of the application, and
 - (ii) where a settlement has been entered into, a statement of the terms of the settlement signed by the parties thereto.

(2) A copy of a report prepared under subsection (1) shall be given to each party to the application at the same time as it is submitted to the court under that subsection.

(3) At the conclusion of the hearing of an application under section 15, the court may—

- (a) after hearing submissions by or on behalf of the parties to the application, and
- (b) if satisfied that a party to the application failed to comply with a direction under section 18(1), make an order directing that party to pay the costs of the application, or such part of the costs of the application as the court directs, incurred after the giving of the direction under section 18(1).

Dispute avoidance measures

Transfer of benefit of guarantees and warranties

20.—(1) Notwithstanding any agreement to the contrary, where a person develops a multi-unit development the benefit of any warranty or guarantee relating to any materials used in the construction, repair or improvement of a multi-unit development or plant, machinery or equipment installed in the multi-unit development shall stand transferred to the owners' management company concerned without any requirement for the giving of a notice of assignment to any person for the benefit of the unit owners in the development.

(2) On completion of a multi-unit development, a developer shall furnish to each owner's management company concerned the documentation specified in the Schedule.

Restriction on entering into certain contracts

21. An owners' management company shall not, after enactment of this Act, enter into a contract for the provision of a service or the purchase of goods—

- (a) which is expressed to run for a period in excess of 3 years from the date the contract is entered into by the owners' management company, or
- (b) which provides for a penalty to be imposed on or damages to be paid by the owners' management company if the contract is terminated by it after a period of 3 years from the date the contract is entered into by the owners' management company.

Restriction on property managing agents acting for OMC's

22. A property managing agent who provides property management services for a multi-unit development shall—

- (a) not perform the functions of company secretary (if any) or director (within the meaning of the Companies Acts) of the owners' management company of that multi-unit development, and
- (b) not perform the functions of a property management agent, without a written contract between it and the owners' management company detailing the length in years (if any) of such contract's duration and the levels of service standards expected of such property management agents.

General

Short title and commencement

23.—(1) This Act may be referred to as the Apartment Developments' Management Reform Act (Northern Ireland) 2011.

(2) This Act, other than sections 8, 21 and 23, shall come into operation on such day or days as the Department may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

SCHEDULE

DOCUMENTATION TO BE HANDED OVER PURSUANT TO SECTION 20

Documentation to be handed over pursuant to section 20

1. Confirmation that the development has been completed—
 - (i) in accordance with all relevant planning permissions under the relevant planning legislation;
 - (ii) in accordance with Building Regulations (Northern Ireland) 2000.
2. Any safety file required by or under any enactment to be maintained by the developer.
3. Professionally prepared drawings of the development together with the latest revisions of the drawings of the structure or structures prepared by the design team.
4. Professionally prepared drawings showing the services relating to the development, as built.
5. Operational and maintenance manuals relating to plant and equipment in the development.
6. Documentation relating to warranties and guarantees as respects plant and equipment in the development.
7. Maintenance contracts and contracts for the provision of services relating to the development.
8. Test records relating to drainage, water pipe work and heating pipe work.
9. Schedule of plant and equipment setting out the expected useful life of such plant and equipment.
10. Title documents relating to the development including, as respects the common areas and the reversion, the original stamped deeds.
11. Stamped and registered counterpart leases or other deeds relating to each unit in the development or relevant parts of the development.
12. Documentation relating to the owners' management company including such documents and records as the company is required by law to maintain together with financial and management accounts and records relating to service charges as respects the development.