

*These notes refer to the Defective Premises (Landlord's Liability) (Northern Ireland) 2001 (c.10) which received Royal Assent on 2 July 2001*

# Defective Premises (Landlord's Liability) (Northern Ireland) 2001

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## EXPLANATORY NOTES

### BACKGROUND AND POLICY OBJECTIVES

#### *Background to the proposals*

3. The Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001 represents a development of the existing law and implements the recommendations of the Law Reform Advisory Committee's report on the subject (Report no.7, 1998). In its report the Committee concluded that landlords enjoy a degree of immunity stemming from the House of Lords decision in *Cavalier -v- Pope* [1906] AC 428. It felt that whilst this "immunity" was limited by section 4(1) of the Occupiers' Liability Act (Northern Ireland) 1957, the law in Northern Ireland had not developed in the same manner as in England and Wales where the landlord's liability was extended to include those who might reasonably be expected to be affected by defects in the premises (section 4 of the Defective Premises Act 1972).
4. Although the Defective Premises Act 1972 was mirrored in Northern Ireland by the Defective Premises (Northern Ireland) Order 1975, the provision regarding a landlord's liability for failure to repair defective premises was omitted. The premier reason given at the time for this omission was due to the high number of bomb damaged  
  
and derelict properties in Northern Ireland, the imposition of this further liability would be too onerous a burden for many landlords.
5. The Law Reform Advisory Committee's consultations revealed that there had been a major improvement in the quality of housing stock in Northern Ireland and substantial redevelopment in poorer areas, principally undertaken by the Northern Ireland Housing Executive. This coupled with the greatly reduced threat of terrorist bombings and the continued availability of grants to improve housing led the Committee to recommend that legislation should be introduced along similar lines to that currently existing in England and Wales.

***Purpose of the Bill and summary of its main provisions***

6. The Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001 gives effect to the recommendations of the Law Reform Advisory Committee for Northern Ireland.
7. The main feature of the Act will be to impose a duty of care upon a landlord to all persons who might be reasonably expected to be affected by defects in the state of his premises. This provision will replace the existing limited statutory claim available against the landlord to the tenant's lawful visitors as expressed under section 4 of the Occupiers' Liability Act (Northern Ireland) 1957. It may thus cover lawful visitors, the tenant, passers-by, neighbouring occupiers and their families and guests.
8. The duty of care owed by the landlord will apply if the landlord knows of the defect or if he ought to know of it in all the circumstances. A relevant defect is one which arises due to the actions of the landlord which amounts to a breach of his obligation to a tenant for the maintenance or repair of the premises. The duty is extended further by the removal of the requirement of an obligation to repair by providing that the landlord is under a duty either where he has undertaken to do repairs or where he has a right, express or implied, to carry out maintenance and repair.
9. Several types of landlords will be exempt from the proposed reforms. The Law Reform Advisory Committee's consultations revealed that landlords holding restricted or regulated tenancies (within the meaning of the Rent (Northern Ireland) Order 1978) would face an onerous duty if the legislation was applied to them. The level of recoverable rents in relation to such tenancies led the Committee to recommend that they should be exempted from duty. In addition, it recommended that owners of ground rents or nominal rents be exempted, as they do not maintain the same degree of economic interest or control in the premises as in the usual landlord-tenant relationship.