

ELIZABETH II



Defective Premises Act 1972

1972 CHAPTER 35

An Act to impose duties in connection with the provision of dwellings and otherwise to amend the law of England and Wales as to liability for injury or damage caused to persons through defects in the state of premises.

[29th June 1972]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) A person taking on work for or in connection with the provision of a dwelling (whether the dwelling is provided by the erection or by the conversion or enlargement of a building) owes a duty—

- (a) if the dwelling is provided to the order of any person, to that person; and
- (b) without prejudice to paragraph (a) above, to every person who acquires an interest (whether legal or equitable) in the dwelling;

to see that the work which he takes on is done in a workman-like or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.

(2) A person who takes on any such work for another on terms that he is to do it in accordance with instructions given by or on behalf of that other shall, to the extent to which he does it properly in accordance with those instructions, be treated for

the purposes of this section as discharging the duty imposed on him by subsection (1) above except where he owes a duty to that other to warn him of any defects in the instructions and fails to discharge that duty.

(3) A person shall not be treated for the purposes of subsection (2) above as having given instructions for the doing of work merely because he has agreed to the work being done in a specified manner, with specified materials or to a specified design.

(4) A person who—

(a) in the course of a business which consists of or includes providing or arranging for the provision of dwellings or installations in dwellings ; or

(b) in the exercise of a power of making such provision or arrangements conferred by or by virtue of any enactment ;

arranges for another to take on work for or in connection with the provision of a dwelling shall be treated for the purposes of this section as included among the persons who have taken on the work.

(5) Any cause of action in respect of a breach of the duty imposed by this section shall be deemed, for the purposes of the Limitation Act 1939, the Law Reform (Limitation of Actions, &c.) Act 1954 and the Limitation Act 1963, to have accrued at the time when the dwelling was completed, but if after that time a person who has done work for or in connection with the provision of the dwelling does further work to rectify the work he has already done, any such cause of action in respect of that further work shall be deemed for those purposes to have accrued at the time when the further work was finished.

1939 c. 21.
1954 c. 36.
1963 c. 47.

Cases
excluded
from the
remedy
under
section 1.

2.—(1) Where—

(a) in connection with the provision of a dwelling or its first sale or letting for habitation any rights in respect of defects in the state of the dwelling are conferred by an approved scheme to which this section applies on a person having or acquiring an interest in the dwelling ; and

(b) it is stated in a document of a type approved for the purposes of this section that the requirements as to design or construction imposed by or under the scheme have, or appear to have, been substantially complied with in relation to the dwelling ;

no action shall be brought by any person having or acquiring an interest in the dwelling for breach of the duty imposed by section 1 above in relation to the dwelling.

(2) A scheme to which this section applies—

- (a) may consist of any number of documents and any number of agreements or other transactions between any number of persons ; but
- (b) must confer, by virtue of agreements entered into with persons having or acquiring an interest in the dwellings to which the scheme applies, rights on such persons in respect of defects in the state of the dwellings.

(3) In this section “ approved ” means approved by the Secretary of State, and the power of the Secretary of State to approve a scheme or document for the purposes of this section shall be exercisable by order, except that any requirements as to construction or design imposed under a scheme to which this section applies may be approved by him without making any order or, if he thinks fit, by order.

(4) The Secretary of State—

- (a) may approve a scheme or document for the purposes of this section with or without limiting the duration of his approval ; and
- (b) may by order revoke or vary a previous order under this section or, without such an order, revoke or vary a previous approval under this section given otherwise than by order.

(5) The production of a document purporting to be a copy of an approval given by the Secretary of State otherwise than by order and certified by an officer of the Secretary of State to be a true copy of the approval shall be conclusive evidence of the approval, and without proof of the handwriting or official position of the person purporting to sign the certificate.

(6) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution by either House of Parliament.

(7) Where an interest in a dwelling is compulsorily acquired—

- (a) no action shall be brought by the acquiring authority for breach of the duty imposed by section 1 above in respect of the dwelling ; and
- (b) if any work for or in connection with the provision of the dwelling was done otherwise than in the course of a business by the person in occupation of the dwelling at the time of the compulsory acquisition, the acquiring authority and not that person shall be treated as the person who took on the work and accordingly as owing that duty.

Duty of care with respect to work done on premises not abated by disposal of premises.

3.—(1) Where work of construction, repair, maintenance or demolition or any other work is done on or in relation to premises, any duty of care owed, because of the doing of the work, to persons who might reasonably be expected to be affected by defects in the state of the premises created by the doing of the work shall not be abated by the subsequent disposal of the premises by the person who owed the duty.

(2) This section does not apply—

- (a) in the case of premises which are let, where the relevant tenancy of the premises commenced, or the relevant tenancy agreement of the premises was entered into, before the commencement of this Act ;
- (b) in the case of premises disposed of in any other way, when the disposal of the premises was completed, or a contract for their disposal was entered into, before the commencement of this Act ; or
- (c) in either case, where the relevant transaction disposing of the premises is entered into in pursuance of an enforceable option by which the consideration for the disposal was fixed before the commencement of this Act.

Landlord's duty of care in virtue of obligation or right to repair premises demised.

4.—(1) Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect.

(2) The said duty is owed if the landlord knows (whether as the result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the relevant defect.

(3) In this section "relevant defect" means a defect in the state of the premises existing at or after the material time and arising from, or continuing because of, an act or omission by the landlord which constitutes or would if he had had notice of the defect, have constituted a failure by him to carry out his obligation to the tenant for the maintenance or repair of the premises ; and for the purposes of the foregoing provision "the material time" means—

- (a) where the tenancy commenced before this Act, the commencement of this Act ; and

(b) in all other cases, the earliest of the following times, that is to say—

- (i) the time when the tenancy commences ;
- (ii) the time when the tenancy agreement is entered into ;
- (iii) the time when possession is taken of the premises in contemplation of the letting.

(4) Where premises are let under a tenancy which expressly or impliedly gives the landlord the right to enter the premises to carry out any description of maintenance or repair of the premises, then, as from the time when he first is, or by notice or otherwise can put himself, in a position to exercise the right and so long as he is or can put himself in that position, he shall be treated for the purposes of subsections (1) to (3) above (but for no other purpose) as if he were under an obligation to the tenant for that description of maintenance or repair of the premises ; but the landlord shall not owe the tenant any duty by virtue of this subsection in respect of any defect in the state of the premises arising from, or continuing because of, a failure to carry out an obligation expressly imposed on the tenant by the tenancy.

(5) For the purposes of this section obligations imposed or rights given by any enactment in virtue of a tenancy shall be treated as imposed or given by the tenancy.

(6) This section applies to a right of occupation given by contract or any enactment and not amounting to a tenancy as if the right were a tenancy, and “tenancy” and cognate expressions shall be construed accordingly.

5. This Act shall bind the Crown, but as regards the Crown's Application liability in tort shall not bind the Crown further than the Crown to Crown. is made liable in tort by the Crown Proceedings Act 1947. 1947 c. 44.

6.—(1) In this Act—

Supplemental.

“disposal”, in relation to premises, includes a letting, and an assignment or surrender of a tenancy, of the premises and the creation by contract of any other right to occupy the premises, and “dispose” shall be construed accordingly ;

“personal injury” includes any disease and any impairment of a person's physical or mental condition ;

“tenancy” means—

- (a) a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or under-

lease or by a tenancy agreement, but not including a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee; or

(b) a tenancy at will or a tenancy on sufferance; or

(c) a tenancy, whether or not constituting a tenancy at common law, created by or in pursuance of any enactment;

and cognate expressions shall be construed accordingly.

(2) Any duty imposed by or enforceable by virtue of any provision of this Act is in addition to any duty a person may owe apart from that provision.

(3) Any term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, the operation of any of the provisions of this Act, or any liability arising by virtue of any such provision, shall be void.

1957 c. 31.

(4) Section 4 of the Occupiers' Liability Act 1957 (repairing landlords' duty to visitors to premises) is hereby repealed.

Short title,
commence-
ment and
extent.

7.—(1) This Act may be cited as the Defective Premises Act 1972.

(2) This Act shall come into force on 1st January 1974.

(3) This Act does not extend to Scotland or Northern Ireland.

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