RSUA briefing paper for the NI Assembly's Committee for Communities on the proposed amendments to the Defective Premises Order

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RSUA represented by:

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1. RSUA

The Royal Society of Ulster Architects (RSUA) is the professional body for architects in Northern Ireland.

As a charity we strive to enhance our built environment for all through the promotion of architecture.

2. Victoria Square

Firstly, our sympathies lie with the residents of the Victoria Square Apartments who have been unable to live in their homes for the last 4 years. As we stated in a letter to the Minister on 28th March 2024, we believe there needs to be a better way to handle such problems when they arise that focuses minds on fixing the problem first. Who foots the bill should come later.

3. Our goal

We wish to contribute to finding the best response for these homeowners, for all residents who could face similar issues in the future and for everyone involved in the design and construction of homes in Northern Ireland.

4. Concerns

We acknowledge that the proposed changes to the Defective Premises Act have been brought forward with good intentions and we fully understand the Executive's desire to act quickly. RSUA shares the desire to see urgent improvements in Building Safety and Quality. Indeed RSUA issued a statement of dissent in the report 'Improving Safety in High Rise Residential Buildings in Northern Ireland' due to the absence of firm targets and timescales for implementation.

However, in relation to the proposed legislation being discussed today we do have concerns about:

(i) the unintended consequences, particularly arising from the retrospective change in liability from 6 years to 30 years.
(ii) the effectiveness of the legislation in delivering positive outcomes for homeowners.

(i) Unintended Consequences

A potential threat to accessing the Government's Building Safety Fund

There are currently 5 buildings housing hundreds of people in NI that are under consideration to receive money from the Government's Building Safety Fund to pay for cladding remediation. It is our understanding that that Fund requires all alternative avenues for redress to have been explored before turning to the Fund. A change in the Limitation Act may put this funding at risk of delay as it would open-up a previously unavailable avenue for redress. We seek confirmation that the Building Safety Fund applications will be unaffected should the liability period be extended retrospectively to 30 years.

The innocent could be held liable

As legislators I believe you would want the people responsible for defects in buildings to be held to account – however this legislation opens-up the potential for innocent people to be sued for defective buildings.

The UK Government advice states that liability under the Defective Premises Act in England is 'strict'. This means that no fault or negligence has to be shown in a claim.

What would that mean in reality?

Let's take the mica situation in Donegal and other border counties as an example - that was the defective concrete blocks.

If that happened here after this legislation was brought in, a case could be taken against the architect, particularly where the builder was no longer in existence, and the architect could potentially be held fully liable despite bearing no responsibility for the fault.

Retired architects without insurance

Retired architects have been advised to maintain Professional Indemnity Insurance for 6 years after they stop working. Retrospectively increasing liability to cover work done 30 years ago could expose retired architects to claims that they don't have insurance to cover. (Regardless of fault)

(ii) Effectiveness

This is a radical piece of legislation – in that it is proposing to apply a rule retrospectively.

In England it was part of a much wider package of measures, both legislative and funding. The Building Safety Act ran to around 300 pages.

30 years retrospective liability has not been adopted in Scotland and something similar is not in place in the Republic of Ireland.

What is right for England is not always right for Northern Ireland. The situation in England is very different to the situation here.

In England there was a widespread problem with thousands of apartment blocks potentially at risk due to cladding issues. The numbers are small in Northern Ireland.

The house building sector in England is dominated by large volume house builders. In NI our house building is carried out mainly by small privately-owned businesses.

This issues that will impact on the proposed legislation's effectiveness are:

- Often builders or developers will no longer be in existence or will have established a limited company solely for the purpose of the development. There are no proposals to address this in contrast to the steps taken under the Building Safety Act. There is a danger that this legislation could encourage businesses to close.
- There are no measures included to hold material manufacturers liable.
- Records would normally be held for 6 to 12 years. In older cases the absence of records could make it very hard to have a fair process. This could make it difficult for homeowners to get the remedy they seek.

5. Conclusion

This is not something to be rushed through but something that requires careful consideration and scrutiny.

Whilst I fully appreciate the desire for action to be taken as soon as possible, I find it hard to believe that if the Executive had been aware of all the facts that they would have approved accelerated passage for this legislation.