

= Defective Premises Act 1972 =

The Defective Premises Act 1972 (c . 35) is an Act of the Parliament of the United Kingdom that covers landlords ' and builders ' liability for poorly constructed and poorly maintained buildings , along with any injuries that may result . During the 19th century , the common law principle that a landlord could not be liable for letting a poorly maintained house was established , while a long @-@ running principle was that , in practice , builders could not be sued for constructing defective buildings . The courts began to turn against the first principle during the 20th century , imposing several restrictions on the landlord 's immunity , but the landlord was still largely free from being sued .

The Defective Premises Bill was introduced to the House of Commons as a private member 's bill by Ivor Richard on 1 December 1971 , and given the Royal Assent on 29 June 1972 , coming into force as the Defective Premises Act 1972 on 1 January 1974 . The Act establishes a duty of care builders and their sub @-@ contractors owe to the occupiers of property they construct or modify , and also establishes a duty of care landlords hold towards their tenants and any third parties who might be injured by their failure to maintain or repair property . The Act received a mixed reaction from critics ; while some complimented it on its simple nature compared to the previously complex common rule laws , others felt that it was too limited for what was desired to be achieved , and that the wording used was at times both too vague and too specific .

= = Background = =

Prior to the passing of the Act , builders who constructed defective buildings could not , practically , be sued under tort . At the same time , a landlord who let a dilapidated or defective house could not be sued for injuries suffered by non @-@ tenants , something based first on the " Privity of Tort " principle that was overturned in *Donoghue v Stevenson* [1932] AC 562 (that if A had a contract with B and in the process injured C , C was prevented from suing A because of the contract with B) and the decision in *Robbins v Jones* [1863] 15 CB (ns) 221 , where Chief Justice Earl said that " a landlord who lets a house in a dangerous state is not liable for accidents happening during the term ; for , fraud apart , there is no law against letting a tumbledown house " . This immunity was further extended in later cases .

The courts began to turn against this position in the 20th century ; the case of *Cunard v Antifyre* [1933] 1 KB 551 established that a landlord could be liable if the source of an injury emanated from property of which he was in possession , even if the injury happened on land he no longer owned or occupied . In *Dutton v Bognor Regis Urban District Council* [1972] 1 QB 373 , the courts arguably abolished the immunity of the landlord completely . By 1974 , this immunity excluded situations where the danger came from premises that the landlord occupied and where the landlord actively created a danger , and only included the landlord , not associated people .

The Defective Premises Bill was introduced to the House of Commons as a private member 's bill by Ivor Richard on 1 December 1971 , and was not debated at all in the Commons , something the academic lawyer Peter North called " remarkable " . There was some debate in the House of Lords , with questions and amendments covering Section 1 , but the bill was not substantially amended , something North puts down to the quality of the draft prepared by the Law Commission . The Act was given the Royal Assent on 29 June 1972 , and came into force on 1 January 1974 .

= = Act = =

= = = Duty of care = = =

Section 1 of the Act lays out the duty of care and who it applies to . The duty applies to " 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) " , something including not only

builders but also electricians , plumbers and other subcontractors . The duty also extends to those who have statutory powers to arrange for the provision of dwellings , and those who do so in the course of business . This duty is owed to two classes of people ; the person ordering the house , and also every person who later takes an equitable and legal interest in the house .

The duty itself is laid out in Section 1 (1) , and is a duty on the people covered by the act " to see that the work which he takes on is done in a workmanlike 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 " . This is a three @-@ part test , all parts of which must be fulfilled ; if , for example , a house is badly designed but well @-@ built , the architect will be held responsible even though the house is habitable . Those owing a duty can be released from their obligations if they are acting according to the claimant 's instructions , under Section 1 (2) . If they act completely in accordance with the instructions , the duty of care is fulfilled even though the house may not be properly constructed . However , if the claimant instructs the builder to construct a poorly designed and unstable building , the builder has a duty to warn the claimant . Section 2 of the Act excludes " approved scheme " constructions , such as those run by the National House Building Council .

= = = Disposal of premises = = =

Prior to the passage of the Act , the owner of premises who created a danger there disposed of his duty of care when he disposed of the property by selling or leasing it , something North described as both " bizarre " and " capricious in operation , unjust in the result and indefensible in principle " . Section 3 (1) of the Act , therefore , establishes that where work is done on premises , whatever duty of care may arise as a result of the work to people affected by defects in the work is not disposed of if the property is sold or let . Section 3 (2) qualifies this principle by providing exceptions , which are when the property is the subject of a tenancy and when the property has been disposed of (or is in the process of being disposed of) before 1 January 1974 , when the Act came into force .

= = = Landlord 's duty of care = = =

Prior to the passage of the Occupiers ' Liability Act 1957 , the general principle was that landlords were not liable for injuries suffered by third parties on their property . The 1957 Act qualified this , providing in Section 4 (repealed by the Defective Premises Act) that where a landlord was obligated by his tenant to repair property and he breached this obligation , third parties injured as a result of the breach would be able to claim providing that the tenant could . This provision was limited ; it provided no remedy to the tenant himself , and only applied to lawful visitors , not trespassers . In addition , it only came into effect if the landlord was obliged to repair the property ; if he simply had the option to do so , there was no remedy for an injured third party . Similarly , if a tenant failed to inform the landlord of something needing repair , any resulting injury could not be sued upon .

Section 4 of the Act includes new provisions to cover this sort of situation . Section 4 (1) establishes a general duty to repair and maintain the property , owed by the landlord to anyone who could reasonably be expected to be harmed by a breach ; this includes tenants , their friends and family and also trespassers . This duty applies when a landlord ought to have known of a defect , not just when he has been informed of a defect . Additionally , a landlord who merely has the right to repair property rather than an obligation to do so may still be found liable , if one of the groups described in Section 4 was harmed by their failure to repair .

= = = Miscellaneous = = =

The Act includes a number of miscellaneous points , mainly in Sections 5 and 6 . The Act and its provisions are taken to extend to The Crown , which can be held tortiously liable to the extent laid out in the Crown Proceedings Act 1947 . It repeals Section 4 of the Occupiers ' Liability Act 1957 ,

replacing it with Section 4 of this Act , and unlike the 1957 Act does not allow any provisions or duties to be excluded or restricted .

= = Commentary and further territorial extent = =

The Act met a mixed review from academics . North praised it , saying that " The Act admirably disposes of confusion , controversy , illogicality and point @-@ less distinctions " , while admitting that the vagueness of much of it left it up to the courts to flesh out the statute . Others were more critical ; academic Vera Bermingham pointed out that the exclusion of liability for " approved scheme " buildings under Section 2 at the time included almost all new houses built within the United Kingdom , although these schemes have been much reduced since the 1980s . At the same time , actions brought under the Act are the subject of a six @-@ year limitation period starting on the date the dwelling is completed , regardless of when the defect is discovered , which is a " significant [drawback] in the utility of the [Act] " . Academic John Spencer criticised both Section 1 and Section 3 , the former for being too vaguely worded and the latter for being too specific . Spencer argues that , because of limitations imposed by the bill 's sponsors , the original meaning of the draft bill was changed , and the Act itself goes no further than the existing common law .

The Defective Premises (Northern Ireland) Order 1975 brought identical provisions into force in Northern Ireland on 1 January 1976 , with the section covering injuries to third parties excluded .