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*Number 51 of 2013*

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**Pyrite Resolution Act 2013**

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**PYRITE RESOLUTION ACT 2013**

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*Number 51 of 2013*

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## **PYRITE RESOLUTION ACT 2013**

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An Act to provide for the making of a scheme for certain dwellings affected by pyrite; to provide for the establishment of the Pyrite Resolution Board to manage the implementation of such scheme; and to provide for matters connected therewith.

[25th December, 2013]

**Be it enacted by the Oireachtas as follows:**

### **PART 1**

#### **PRELIMINARY AND GENERAL**

#### **Short title and commencement**

1. (1) This Act may be cited as the Pyrite Resolution Act 2013.
- (2) This Act shall come into operation on such day or days as the Minister 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.

#### **Interpretation**

2. In this Act—
  - “appeals officer” means a person appointed under *section 26(1)*;
  - “applicant” means the owner or joint owner of a dwelling to which this Act applies who applies to the Board under *section 15(1)*;
  - “Board” means the board established under *section 8(2)*;
  - “builder” means a person who has constructed a new dwelling and includes a person who is connected, within the meaning of section 10 of the Taxes Consolidation Act 1997, with the first-mentioned person as part of an arrangement in connection with the construction or disposal of the dwelling;
  - “building condition assessment” means a study of relevant information and a visual non-invasive internal and external inspection of a dwelling carried out by a competent person, under and in accordance with the standard for testing, to establish the presence or absence of visible damage that is consistent with pyritic heave and to quantify the extent and significance of such damage;

“competent person” means a person having sufficient theoretical and practical training, experience and knowledge appropriate to the nature of the work to be undertaken;

“damage condition rating” means the rating assigned to a dwelling following a building condition assessment under and in accordance with the standard for testing;

“decision maker” shall be construed in accordance with *section 15(6)*;

“developer” means a person carrying on a trade which consists, wholly or partly, of the construction or refurbishment of buildings or structures with a view to their sale and includes a person who is connected, within the meaning of section 10 of the Taxes Consolidation Act 1997, with the first-mentioned person as part of an arrangement in connection with the construction or refurbishment of buildings or structures with a view to their sale;

“eligibility criteria” has the meaning given to it by *section 14(2)(a)*;

“emergency” means any event or circumstance or combination of events or circumstances, arising out of or in connection with pyritic heave, that has occurred or may occur which—

- (a) adversely affects or may adversely affect the structural integrity of a dwelling or any part thereof,
- (b) results or may result in a risk to the safety of any person, and
- (c) requires urgent action in order to eliminate or mitigate those adverse effects and that risk;

“establishment day” means the day appointed under *section 8(1)*;

“hardcore” means engineered infill material designed to support a ground floor slab of a dwelling and, as the case may be, an adjoining footpath;

“Housing Agency” means the Housing and Sustainable Communities Agency;

“Minister” means the Minister for the Environment, Community and Local Government;

“pyrite remediation” means works for or ancillary to the remediation of significant pyritic damage to dwellings and includes investigation of the damage and the design, specification and supervision of such works and activities connected with the foregoing;

“pyrite remediation scheme” means the scheme made under *section 13*;

“pyritic heave” means upward pressure to constructed works (including floor slabs) and lateral pressure to the rising walls in buildings, resulting specifically from swelling of hardcore due to oxidation of reactive pyrite;

“reactive pyrite” means pyrite in a form that is readily oxidised;

“scheme participant” means an applicant whose dwelling has been included in the pyrite remediation scheme;

“significant pyritic damage” has the meaning given to it by *section 4*;

“standard for remediation” means Irish Standard 398-2:2013 Reactive pyrite in sub-floor



hardcore material — Part 2: Methodology for remediation works, published by the National Standards Authority of Ireland and any amendment thereto or replacement thereof as may be prescribed under *section 14(9)(b)*;

“standard for testing” means Irish Standard 398-1:2013 Reactive pyrite in sub-floor hardcore material — Part 1: Testing and categorisation protocol, published by the National Standards Authority of Ireland and any amendment thereto or replacement thereof as may be prescribed under *section 14(9)(a)*;

“verification report” has the meaning given to it by *section 16(2)*.

### **Application of Act**

3. (1) This Act shall apply to the following classes of dwellings, which are used or suitable for use by a person as a place to reside:
- (a) houses;
  - (b) apartments;
  - (c) duplexes;
  - (d) maisonettes.
- (2) This Act shall also apply to a structure, area or service of a building comprising apartments, duplexes or maisonettes (or any combination of such dwellings) common to any two or more of such dwellings (in this section referred to as a “common area”).
- (3) This Act shall not apply to a garage, car park, garden, patio or other structure not used for human habitation, unless the Board is satisfied that failure to include the structure concerned in the pyrite remediation scheme may result in damage to a dwelling—
- (a) that has been included in the pyrite remediation scheme, or
  - (b) in relation to which a recommendation has been made by the Housing Agency under *section 16(2)(a)*.
- (4) This Act shall not apply to buildings, other than buildings comprising apartments, duplexes or maisonettes (or any combination of such dwellings), that provide multi-occupancy accommodation under specific conditions, including, but not limited to, nursing homes, boarding schools, hotels and hostels.
- (5) This Act shall not apply to dwellings or common areas owned by the following:
- (a) a Minister of the Government;
  - (b) the Office of the President;
  - (c) the Office of the Attorney General;
  - (d) the Office of the Comptroller and Auditor General;
  - (e) the Office of the Houses of the Oireachtas;
  - (f) a local authority;
  - (g) the Health Service Executive;

- (h) a person established—
  - (i) by or under any enactment (other than the Companies Acts),
  - (ii) by any scheme administered by the Government, or
  - (iii) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;
- (i) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government;
- (j) a builder or developer, other than where the application is made in respect of—
  - (i) a dwelling that was not built or developed by that builder or developer, or
  - (ii) a common area and the builder or developer does not own all of the dwellings in the building of which the common area is part.
- (6) Where, following consultation with the Board regarding the implementation of the pyrite remediation scheme, the Minister is satisfied that it is necessary for the purpose of pyrite remediation of a class of dwelling to which this section would apply, save that it is not specified in *paragraph (a), (b), (c) or (d) of subsection (1)*, the Minister may prescribe that class of dwelling for that purpose.

### Significant pyritic damage

4. In this Act “significant pyritic damage” means—
- (a) (i) a damage condition rating of 1 (with progression), consistent with pyritic heave, or
  - (ii) a damage condition rating of 2, consistent with pyritic heave,
- in each case established on foot of a building condition assessment carried out by a competent person, and
- (b) hardcore classified by a competent person under and in accordance with the standard for testing as susceptible to significant or limited expansion.

### Regulations

5. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the

regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Expenses of Minister**

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

### **Advances to Housing Agency**

7. The Minister, in each financial year, after consultation with the Board, may make to the Housing Agency a grant, of such amount as may be sanctioned by the Minister for Public Expenditure and Reform out of moneys provided by the Oireachtas, for the purposes of implementing the pyrite remediation scheme and matters ancillary to its implementation.

## **PART 2**

### **PYRITE RESOLUTION BOARD**

#### **Establishment of Pyrite Resolution Board**

8. (1) The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.
- (2) There shall stand established on the establishment day a body to be known, in the English language, as the Pyrite Resolution Board, or in the Irish language, as An Bord Réitigh um Pírit, (in this Act referred to as the “Board”) to perform the functions conferred on it by this Act.
- (3) Subject to this Act, the Board shall be independent in the performance of its functions.

#### **Functions of Board**

9. (1) The Board shall—
- (a) make a scheme of pyrite remediation under *section 13*,
  - (b) direct and oversee the implementation of the pyrite remediation scheme, in accordance with the terms of that scheme,
  - (c) give directions to the Housing Agency in relation to all or any of the following:
    - (i) the carrying out of testing in accordance with the standard for testing;
    - (ii) the categorisation of dwellings in accordance with the standard for testing;
    - (iii) the verification of damage attributable to pyritic heave;

- (iv) the procurement of consultants, contractors and services;
  - (v) the appointment of consultants and contractors for the purpose of carrying out pyrite remediation;
  - (vi) budgetary matters relating to the pyrite remediation scheme;
  - (vii) priorities within the pyrite remediation scheme having regard to allocation of expenditure and progress of pyrite remediation;
  - (viii) the prioritisation of dwellings affected by an emergency;
  - (ix) progress reports on the implementation of the pyrite remediation scheme;
  - (x) liaising and making arrangements with scheme participants in relation to the remediation of their dwellings;
  - (xi) any other matter relating to the pyrite remediation scheme as the Board considers necessary,
- (d) provide information in relation to pyrite and significant pyritic damage,
  - (e) consider and determine applications for inclusion in the pyrite remediation scheme, and
  - (f) determine appeals under *section 27*.
- (2) The Board shall have all such powers as are necessary or expedient for the performance of its functions.
- (3) A direction given under *subsection (1)(c)* to the Housing Agency shall be in writing, and may be in electronic form.
- (4) The Board, not later than 30 June in each year and in addition to the report referred to in *subsection (5)*, shall prepare and submit to the Minister a report on the performance by it of its functions under this Act in the immediately preceding year, or, in the case of the period from the establishment day to the next following 30 June, that period, and the Minister shall, as soon as may be after receiving the report, cause copies of it to be laid before each House of the Oireachtas.
- (5) At the end of every 3 month period, the first period ending 3 months after the establishment day, the Board shall provide the Minister with a report on the implementation, during the period of 3 months preceding the provision of the report, of the pyrite remediation scheme including an assessment by the Board of the operation of that scheme and each report shall contain such information as the Board considers relevant and as the Minister may specify from time to time.

### Staffing

10. (1) The Minister, with the consent of the Board and the Minister for Public Expenditure and Reform, may second or assign to the Board such and so many of his or her officers as he or she may determine and the Housing Agency, with the consent of the Board, the Minister and the Minister for Public Expenditure and Reform, may second or assign to the Board such and so many employees of the Housing Agency as that

Agency may determine, to be members of staff of the Board.

- (2) The Board may perform its functions as it sees fit through or by a member of staff of the Board and in the performance of those functions that member of staff of the Board shall be subject to the directions of the Board.
- (3) Any member of staff of the Board shall attend meetings of the Board when requested to do so by the Board.

### **Membership of Board and related matters**

11. (1) The Board shall consist of not fewer than 4 and not more than 7 members.
- (2) The members of the Board shall be appointed by the Minister.
- (3) The Minister, in appointing the members of the Board, shall ensure that the members are persons who have the necessary knowledge, experience and competence in relation to the functions of the Board.
- (4) Each member of the Board shall hold office for such period not exceeding 3 years from the date of his or her appointment, as the Minister shall determine.
- (5) Subject to *subsection (6)*, a member of the Board whose term of office expires by the effluxion of time shall be eligible for reappointment to the Board.
- (6) A member of the Board who has served 2 terms of office shall not be eligible for reappointment to the Board.
- (7) The Minister may, from time to time, nominate one member of the Board to act as its Chairman.
- (8) The provisions of the Schedule shall have effect in relation to the Board.

### **Gifts**

12. (1) Subject to *subsections (2) and (3)*, the Board may, with the consent of the Minister and the Minister for Public Expenditure and Reform, accept gifts of money, land or other property.
- (2) Where the donor of a gift specifies a trust or condition attaching to a gift, the Board may, with the consent of the Minister and the Minister for Public Expenditure and Reform, accept the gift subject to the trust or condition.
- (3) The Board shall not accept a gift if the trust or condition attached to it by the donor is, in the opinion of the Board, inconsistent with or likely to prejudice the Board's operational independence or the effective performance of its functions.
- (4) The Board shall, as soon as may be after accepting a gift of moneys in accordance with this section, pay those moneys to the Minister.
- (5) The Board shall, in such manner as, with the consent of the Minister and the Minister for Public Expenditure and Reform, it determines, sell or otherwise dispose of any land or other property, a gift of which has been accepted by it under this section and, as soon as may be after such disposal, pay the proceeds of such disposal to the

Minister.

- (6) The Board shall include details of any gift, the value of which exceeds an amount specified by the Minister with the consent of the Minister for Public Expenditure and Reform, in the next report prepared under *section 9(4)* after the gift is accepted.
- (7) In *subsection (6)* “details” means—
  - (a) the name and address of the donor of the gift,
  - (b) a description of the gift, and
  - (c) particulars of any trust or condition attached to the gift.

### PART 3

#### PYRITE REMEDIATION SCHEME

##### **Making of pyrite remediation scheme**

- 13.** (1) The Board shall, as soon as may be after the establishment day, prepare a draft scheme for pyrite remediation and shall furnish the draft scheme to the Minister for his or her approval.
- (2) The Minister may give notice to the Board that the draft scheme is approved and direct the Board to make the scheme.
- (3) On receipt of the notice of the Minister under *subsection (2)*, the Board shall make the scheme for pyrite remediation (in this Act referred to as the “pyrite remediation scheme”).
- (4) The Board shall give notice of the making of the pyrite remediation scheme to the Minister who shall cause the scheme to be laid before each House of the Oireachtas as soon as may be after it is made.
- (5) The pyrite remediation scheme may be amended or revoked and replaced by a subsequent scheme prepared, furnished and approved under this section.
- (6) The Board shall publish the pyrite remediation scheme and any amendment or replacement thereof in such manner, including by electronic means, as it sees fit.

##### **Pyrite remediation scheme**

- 14.** (1) The pyrite remediation scheme shall include the terms and conditions applicable to that scheme.
- (2) Without prejudice to the generality of *subsection (1)*, the pyrite remediation scheme shall provide for all or any of the following matters:
  - (a) the criteria to be fulfilled by an applicant in order that a dwelling owned by that applicant shall be eligible for inclusion in the pyrite remediation scheme (in this Act referred to as the “eligibility criteria”);

- (b) limits on the amounts, in respect of pyrite remediation or any element thereof, that may be expended on any dwelling;
- (c) requirement of compliance with the standard for testing to determine presence of significant pyritic damage in any dwelling;
- (d) requirement of compliance of pyrite remediation in any dwelling with the standard for remediation;
- (e) the limits on the amounts recoverable by a scheme participant in respect of—
  - (i) vouched costs incurred by that scheme participant, or
  - (ii) costs that are demonstrated, to the satisfaction of the Board, as to be incurred by that scheme participant,in relation to the following:
  - (I) cost of the building condition assessment;
  - (II) in relation to the pyrite remediation of the scheme participant's dwelling—
    - (A) accommodation expenses, or
    - (B) expenses relating to the removal and storage of furniture, or
    - (C) a combination of expenses referred to in *clause (A)* or *(B)*,  
incurred during the course of works on the dwelling;
- (f) the circumstances in which the costs referred to in *paragraph (e)(ii)* may be paid in advance;
- (g) the scope of works that may be carried out on any dwelling;
- (h) the conditions to be complied with by an applicant for inclusion or by a scheme participant for continued inclusion in the pyrite remediation scheme;
- (i) the arrangements between the applicant and the Board for the giving of consent by the applicant, to the institution by the Board of any civil proceedings proper to be instituted relating to loss arising from the act or default of any person, that causes significant pyritic damage to the dwelling of the applicant;
- (j) the arrangements in relation to the procurement of consultants, contractors and services;
- (k) the arrangements for the oversight and audit of expenditure;
  - (l) the certification of pyrite remediation;
- (m) the criteria to be applied in order to determine priority as between different dwellings;
- (n) the terms for the payment of moneys in respect of the pyrite remediation scheme and the variation of such terms;
- (o) the preparation and maintenance of documentation and records of the Board and the Housing Agency as appropriate;

- (p) the form and manner of application for inclusion in the pyrite remediation scheme under *section 15*;
  - (q) the information to be furnished with an application for inclusion in the pyrite remediation scheme under *section 15*, the form of such information and the manner of its verification.
- (3) The Board in determining the eligibility criteria shall have regard to—
- (a) the number and geographic spread of incidents of significant pyritic damage,
  - (b) the overall severity of damage attributable to pyritic heave in dwellings,
  - (c) the availability of practicable options, other than under the pyrite remediation scheme or through use of the resources of the applicant, for persons affected by significant pyritic damage that, if availed of, would enable such persons to remediate or secure the remediation of their dwelling,
  - (d) the resources (including financial resources) available or likely to be available to the Board for the purpose of implementing the pyrite remediation scheme, and
  - (e) such other matters as the Board considers appropriate, having regard to the functions of the Board.
- (4) Without prejudice to the generality of *subsection (2)*, the Board, in making the pyrite remediation scheme and after taking account of the matters referred to in *paragraphs (b) and (d) of subsection (3)* may exclude from the pyrite remediation scheme dwellings with a damage condition rating of 1 (with progression), consistent with pyritic heave.
- (5) Without prejudice to the generality of *subsection (2)*, the Board, having regard to the need to secure the most beneficial, effective and efficient use of the funds available to the pyrite remediation scheme, may arrange dwellings into groups for the purpose of a programme of pyrite remediation and, in so arranging, shall have regard to the availability of funding, the distribution and overall severity of significant pyritic damage and such other factors as the Board may consider relevant.
- (6) In any proceedings referred to in *subsection (2)(i)*—
- (a) an order may be made for the payment of—
    - (i) damages to the Board, or
    - (ii) costs to or by the Board,
  - (b) no account shall be taken of the inclusion of the dwelling of the applicant in the pyrite remediation scheme or any pyrite remediation of the dwelling carried out under the scheme, and
  - (c) the Board may institute the proceedings on its own behalf or on behalf of the applicant.
- (7) In relation to a dwelling that has been included in the pyrite remediation scheme, the Board, where it has been advised by a competent person that the dwelling is or may be affected by an emergency, may, as an exception to the pyrite remediation scheme, give



a direction to the Housing Agency to prioritise the carrying out of pyrite remediation of that dwelling.

- (8) Where a dwelling affected by pyritic heave is or has been remediated other than in accordance with the pyrite remediation scheme, the costs of remediation and any associated costs shall not be refundable under this Act.
- (9) The Minister following consultation with the Board—
  - (a) having considered any revision or replacement by the National Standards Authority of Ireland of the Irish Standard 398-1:2013 Reactive pyrite in sub-floor hardcore material — Part 1: Testing and categorisation protocol, published by the National Standards Authority of Ireland may prescribe amendments to, revisions of or replacements of the standard for testing, or
  - (b) having considered any revision or replacement by the National Standards Authority of Ireland of the Irish Standard 398-2:2013 Reactive pyrite in sub-floor hardcore material — Part 2: Methodology for remediation works, published by the National Standards Authority of Ireland may prescribe amendments to, revisions of or replacements of the standard for remediation.

#### **Application for inclusion in pyrite remediation scheme**

15. (1) Subject to *subsections (2) and (3)*, the owner or joint owner of a dwelling to which this Act applies may apply to the Board for that dwelling to be included in the pyrite remediation scheme.
- (2) A person who—
  - (a) on 12 December 2013 owns more than one dwelling, whether or not jointly, or
  - (b) purchases on or after 12 December 2013, one or more than one dwelling,may, subject to *subsection (3)* in the case of a dwelling referred to at *paragraph (b)*, make an application to the Board for inclusion of one only of those dwellings in the pyrite remediation scheme.
- (3) Where a person purchases a dwelling on or after 12 December 2013, that person shall not be entitled to apply for inclusion of the dwelling in the pyrite remediation scheme where they knew or ought to have known that the dwelling was constructed using hardcore containing reactive pyrite.
- (4) *Subsections (2) and (3)* shall not apply where the applicant is a body corporate (whether a corporation aggregate or a corporation sole) or an unincorporated body of persons and—
  - (a) one of its principal objects is the provision of social housing, and
  - (b) on the day of the making of the application under this section it is entitled to an exemption under section 207 or 208 of the Taxes Consolidation Act 1997 and a number (commonly referred to as a CHY number) stands issued by the Revenue Commissioners for the purposes of that exemption.
- (5) An application under this section shall—

- (a) be in writing in the form, which may include electronic form, specified by the Board,
  - (b) specify the name of the applicant and the address at which he or she ordinarily resides,
  - (c) specify the address of the dwelling to which the application relates,
  - (d) in relation to the dwelling to which the application relates, contain the report of the competent person who carried out the building condition assessment,
  - (e) contain details of any steps taken by or on behalf of the applicant to secure remediation of significant pyritic damage or compensation for that damage, and
  - (f) contain such other information as may be specified by the Board under the terms and conditions of the pyrite remediation scheme.
- (6) A member of staff of the Board, who shall, for the purposes of the application, be and be called the “decision maker”, shall consider the application under this section and shall either—
- (a) refer the application to the Housing Agency, or
  - (b) refuse the application,
- and shall notify the applicant of its decision, not later than 21 days from the making of the decision.
- (7) In considering the application under this section, the decision maker shall consider information submitted by the applicant and may request further information on all or any of the following:
- (a) the extent to which the dwelling the subject of the application is covered by structural warranty insurance, structural warranty guarantee or other form of insurance;
  - (b) whether a claim has been made under any such structural warranty insurance, structural warranty guarantee or other form of insurance and the outcome of any such claim;
  - (c) whether legal proceedings have been initiated or concluded in relation to damage to the dwelling arising out of or in connection with pyritic heave, by or on behalf of the applicant, and, if concluded, the outcome of the legal proceedings.
- (8) A notification under *subsection (6)(b)* shall include reasons for the decision and shall advise the applicant that he or she may appeal the decision within 28 days to the Board.

### Assessments

16. (1) The Housing Agency shall consider an application referred to it under *section 15(6)(a)* and may arrange for the testing of a dwelling by a competent person to establish the cause and level of damage to the dwelling.
- (2) The Housing Agency, having considered any report of a competent person under

*subsection (1)* (in this Act referred to as a “verification report”) and all information contained in the application, shall furnish a recommendation to the decision maker including reasons therefor, to—

- (a) include the dwelling the subject of the application in the pyrite remediation scheme, or
  - (b) exclude the dwelling from that scheme.
- (3) A recommendation to the decision maker under *subsection (2)(a)* may include a recommendation as to the priority that may be afforded to the remediation of the dwelling having regard to those criteria under the pyrite remediation scheme that the Housing Agency considers appropriate to be applied.
- (4) The Housing Agency, in its recommendation under *subsection (2)*, may report on the existence of circumstances, which may or may not apply to the dwelling the subject of the recommendation, that in its opinion could be considered exceptional circumstances under *section 17*.

### **Exceptional circumstances**

**17.** (1) Where the Board is satisfied, whether—

- (a) on consideration by it of an application under *section 15*,
- (b) on consideration of a recommendation of the Housing Agency under *section 16(2)*, or
- (c) otherwise,

that exceptional circumstances exist such that the matters set out in *subsection (2)* may be disregarded by the Board, the Board may so disregard those matters and include a dwelling (in this section referred to as the “dwelling concerned”) which, but for this section, would not be so included, in the pyrite remediation scheme.

- (2) Each of the following matters may be disregarded by the Board under *subsection (1)*:
- (a) the dwelling concerned is not affected by significant pyritic damage;
  - (b) the dwelling concerned is owned by a person who on 12 December 2013 owns, whether or not jointly, more than one dwelling affected by significant pyritic damage;
  - (c) the dwelling concerned is owned by a person who purchased the dwelling on or after 12 December 2013 who knew or ought to have known that the dwelling was constructed using hardcore containing reactive pyrite;
  - (d) a dwelling, other than the dwelling concerned, owned by a person referred to in *paragraph (b)* has been included in the pyrite remediation scheme or a recommendation under *section 16(2)(b)* has been made in relation to it by the Housing Agency.
- (3) For the purposes of *subsection (1)* exceptional circumstances means that the dwelling concerned adjoins one or more than one dwelling—

- (a) that has been included in the pyrite remediation scheme, or
  - (b) in relation to which a recommendation has been made by the Housing Agency under *section 16(2)(a)*,
- and—
- (i) failure to include the dwelling concerned in the pyrite remediation scheme may result in damage to the dwelling concerned or to the dwelling or dwellings being remediated, or
  - (ii) pyrite remediation is causing or may cause damage to the dwelling concerned.
- (4) The Board shall consider the report of at least one competent person as to the existence of exceptional circumstances before it shall be satisfied for the purposes of *subsection (1)*.

#### **Inclusion in pyrite remediation scheme**

- 18.** (1) The decision maker shall consider the recommendation of the Housing Agency under *section 16(2)* and—
- (a) shall notify the applicant not later than 21 days from the making of his or her decision if the decision is in accordance with the recommendation of the Housing Agency to—
    - (i) include the dwelling in the pyrite remediation scheme, or
    - (ii) exclude the dwelling from the pyrite remediation scheme,
 or
  - (b) if his or her proposed decision is not in accordance with the recommendation of the Housing Agency shall refer the application, the recommendation of the Housing Agency, and the proposed decision, together with his or her reasons therefor, to the Board for a decision.
- (2) A notification under *subsection (1)(a)(ii)* shall advise the applicant that he or she may appeal the decision to the Board within 28 days.
- (3) The Board shall consider a matter referred to it by the decision maker under *subsection (1)(b)* and shall, as soon as practicable, make its decision and shall notify the decision maker and the applicant within 21 days of its decision to—
- (a) include the dwelling in the pyrite remediation scheme, or
  - (b) exclude the dwelling from the pyrite remediation scheme.
- (4) A notification under *subsection (3)(b)* shall advise the applicant that he or she may appeal the decision to an appeals officer within 28 days.

#### **Deferral of decisions**

- 19.** (1) Where the Board becomes aware that a builder or developer of a dwelling, has instituted or invoked dispute resolution procedures arising out of or in connection

with pyritic heave affecting a dwelling owned by an applicant, the making of a decision—

- (a) by the decision maker under *section 15(6)(a)* or *section 18(1)(a)(i)*, or
- (b) by the Board under *section 18(3)(a)*,

in relation to that dwelling may, subject to this section, be deferred.

- (2) Where the Board proposes under *subsection (1)* to defer the making of a decision, the Board shall give notice in writing to the applicant concerned of its intention to defer the making of a decision and invite the applicant concerned to make a written submission to it, within 21 days setting out any reasons why the making of a decision should not be deferred.
- (3) The Board, following the expiration of the period referred to in *subsection (2)*, shall consider any submission to it under that subsection and any other matters it considers relevant and may defer the making of a decision under *subsection (1)* for such period as it considers appropriate in the circumstances and, within 21 days, shall give notice in writing to the applicant concerned of its decision (in this section referred to as a “decision to defer”).
- (4) The Board shall review the decision to defer not later than 2 years after the date of the notice under *subsection (3)* and shall, thereafter, review the decision to defer not later than 1 year after the date of the previous review of the decision to defer.
- (5) Where the Board proposes to review the decision to defer under *subsection (4)*, it shall give not less than 21 days notice in writing of the proposal to the applicant concerned and invite the applicant to make a written submission to it, within 21 days, setting out any reasons why the making of a decision should no longer be deferred.
- (6) In undertaking a review of the decision to defer, the Board shall have regard to any submissions made to it under *subsection (5)* and any other relevant information and may either—
  - (a) further defer the decision, or
  - (b) make a decision in relation to the applicant’s dwelling,and, within 21 days, shall give notice in writing to the applicant concerned of its decision.
- (7) The Board may make, in relation to an application for inclusion in the pyrite remediation scheme, not more than 4 decisions to defer and, if applicable, shall make a decision on the application not later than 12 months after the fourth decision to defer.
- (8) A notice of a decision to defer under *subsections (3)* and *(6)(a)* shall advise the applicant that he or she may appeal the decision to the appeals officer within 28 days.

### **Refund of compensation**

20. (1) Where, in relation to a dwelling that has been included in the pyrite remediation scheme a payment otherwise than under this Act is made to or for the benefit of the

scheme participant concerned in respect of damage to the dwelling arising out of or in connection with pyritic heave, that scheme participant shall give notice in writing to the Board of the payment and the amount thereof within 28 days of the making of that payment.

- (2) On receipt of the notice under *subsection (1)* the Board shall give notice in writing to the scheme participant concerned of the total cost or, where the pyrite remediation is not commenced or completed, estimated cost of the pyrite remediation of the dwelling, including any costs referred to in *section 14(2)(e)*.
- (3) On receipt of the notice under *subsection (2)* the scheme participant concerned shall be immediately liable to pay to the Board the lesser of the following amounts:
  - (a) the amount equal to the total cost or, where the pyrite remediation is not completed, estimated cost of pyrite remediation notified to the scheme participant concerned under *subsection (2)*;
  - (b) the amount equal to the payment referred to in *subsection (1)*.
- (4) If the scheme participant concerned does not pay the amount specified in the notice under *subsection (2)* within 21 days of receipt of the notice, the Board is entitled to exclude the dwelling from the pyrite remediation scheme.
- (5) Where the cost of pyrite remediation has been estimated for the purposes of *subsection (2)*, the Housing Agency shall, on completion of the pyrite remediation of the dwelling, calculate the total cost of pyrite remediation of that dwelling, including any costs referred to in *section 14(2)(e)*, and shall give notice in writing to the Board and the scheme participant of that amount (in this section referred to as the “final cost”).
- (6) Where the final cost is less than the amount paid by the scheme participant under *subsection (3)*, the Housing Agency shall pay the difference between the final cost and the amount paid by the scheme participant under *subsection (3)* to the scheme participant.
- (7) Where the final cost is greater than the amount paid by the scheme participant under *subsection (3)*, the Board may give notice of a liability to pay to the Board, and the scheme participant shall be immediately liable on receipt of that notice to pay to the Board, the lesser of the following amounts:
  - (a) the difference between the amount paid by the scheme participant under *subsection (3)* and the amount of the payment referred to in *subsection (1)*;
  - (b) the difference between the amount paid by the scheme participant under *subsection (3)* and the final cost.
- (8) Any amount not paid to the Board under *subsection (3)* or (7) shall be recoverable by the Board as a simple contract debt in a court of competent jurisdiction.
- (9) The Board, as soon as may be after receiving or recovering a payment under this section, shall pay the moneys received or recovered to the Minister.

## PART 4

## HOUSING AGENCY

**Functions of Housing Agency under this Act**

21. (1) The Housing Agency shall, subject to the direction of the Board, secure pyrite remediation of certain dwellings affected by pyrite and, for that purpose, shall implement the pyrite remediation scheme.
- (2) Without prejudice to the generality of *subsection (1)* the Housing Agency shall—
- (a) satisfy itself regarding the professional qualifications of and compliance with regulatory requirements by competent persons engaged by the Housing Agency having regard to the function they shall perform under this Act,
  - (b) engage competent persons (including contractors, consultants or advisers) as it considers necessary for the discharge of its functions under this Act,
  - (c) pay competent persons who have been engaged by it under *paragraph (b)*,
  - (d) make recommendations to the decision maker under *section 16*, and
  - (e) furnish, at intervals not greater than 3 months, reports to the Board on the implementation by the Housing Agency of the pyrite remediation scheme.
- (3) Without prejudice to the generality of *subsection (1)* the Housing Agency may—
- (a) provide verification reports to the Board,
  - (b) arrange for the testing and classification of dwellings, which are or may be affected by pyrite, in accordance with the standard for testing,
  - (c) liaise and make arrangements with scheme participants in relation to the remediation of their dwellings and pay their vouched expenses, and
  - (d) with the consent of the Board enter into an agreement with any person for the performance by the person, subject to such terms and conditions including payment (if any), of such functions conferred on the Housing Agency under this Act, as may be specified in the agreement and any functions referred to in such an agreement shall remain performable by the Housing Agency.
- (4) For the purposes of *subsection (2)(c)*, no payment relating to the carrying out of pyrite remediation shall be made unless the Housing Agency is satisfied in relation to a dwelling, that the pyrite remediation is being, or as the case may be, has been carried out in accordance with the standard for remediation and with certification, as the Housing Agency considers necessary, to that effect.
- (5) The Housing Agency may pay to the members of the Board (including the Chairman) such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (6) The Housing Agency shall have all such powers as are necessary or expedient for the performance of its functions under this Act.

- (7) The Housing Agency may perform any of its functions under this Act through or by any member of the staff of the Housing Agency duly authorised in that behalf by the Housing Agency.

#### **Compliance with directions of Board**

22. The Housing Agency shall comply with a direction of the Board under *section 9(1)(c)* or *section 14(7)*.

#### **Expenditure of Housing Agency**

23. (1) The Housing Agency shall submit budgets for its expenditure under this Act to the Board for approval.
- (2) The budgets referred to in *subsection (1)* shall be submitted prior to the period to which they relate and no such period shall exceed one year.
- (3) The Board may, in respect of each budget submitted to it under this section, either approve of such budget without modification or approve of the budget with such modifications as it thinks fit to make.
- (4) Any departure from the budget as approved by the Board under this section may take place only with the prior approval of the Board.

#### **Reports of Housing Agency**

24. The Housing Agency shall furnish to the Minister such information regarding the performance or proposals for the performance of its functions under this Act as the Minister may from time to time require.

#### **Accountability of chief executive of Housing Agency to Oireachtas Committees**

25. (1) The Housing Agency shall keep in such form as may be approved by the Minister, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts of all moneys received or expended by it under this Act and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister, with the consent of the Minister for Public Expenditure and Reform, may from time to time direct.
- (2) The financial year of the Housing Agency for the purposes of this Act shall be the period of 12 months ending on 31 December in any year, and, in the case of the year in which the establishment day falls, the period commencing on the establishment day and ending on 31 December in that year.
- (3) Accounts under *subsection (1)* shall be submitted annually by the Housing Agency, on or before such date as the Minister shall direct, to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall, as soon as may be, cause copies thereof to be laid before each House of the Oireachtas.



## PART 5

## APPEALS

**Appeals officer**

26. (1) The Minister shall appoint on such terms and conditions as are specified in writing, one or more than one person who has a special interest or expertise in or knowledge of fair procedures, structural or civil engineering and construction or damage caused by pyrite and knowledge of the pyrite remedation scheme to consider an appeal under *section 28* who shall, in relation to the appeal be called the “appeals officer”.
- (2) An appeals officer shall be independent in the performance of his or her functions under this Act.
- (3) An appeals officer—
- (a) shall be paid such remuneration and allowances as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines, and
  - (b) may resign from the appointment by notice in writing given to the Minister.
- (4) The Minister may revoke the appointment of an appeals officer for stated reasons.
- (5) An appeals officer shall, at such intervals and in relation to such periods as are specified in writing by the Minister, submit a report in writing to the Minister in relation to the performance of his or her functions as an appeals officer during the period to which the report relates and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.
- (6) The Housing Agency, as directed by the Minister, shall make payments to an appeals officer in compliance with *subsection (3)*.

**Appeals to Board**

27. (1) A decision of a decision maker under *section 15(6)(b)* or *section 18(1)(a)(ii)* may be appealed by the applicant to the Board within the period referred to in *section 15(8)* or *section 18(2)*.
- (2) An appeal under this section shall state the reasons for the appeal.
- (3) The Board shall prescribe procedures for hearing and determining appeals in relation to—
- (a) the form in which the appeal shall be made, including electronic form,
  - (b) the making of submissions, whether oral or written, to the Board,
  - (c) requests for further information by the Board, and
  - (d) examination by the Board of the applicant and any other person whom the Board considers appropriate.
- (4) In considering an appeal under this section the Board shall consider all information furnished with the application, the recommendation of the Housing Agency, the

reasons for the decision of the decision maker, written or oral submissions made by the applicant and any additional information furnished with the appeal or in response to a request by the Board for further information and shall decide to either—

- (a) revoke the decision made under *section 15(6)(b)* or *section 18(1)(a)(ii)* and direct that the dwelling concerned is included in the pyrite remediation scheme, or
  - (b) affirm the decision made under *section 15(6)(b)* or *section 18(1)(a)(ii)*.
- (5) The Board shall notify the applicant and the decision maker of its decision within 21 days of the making of its decision, including reasons therefor and shall advise that it can be appealed to the High Court on a point of law within 28 days.

### **Appeals to appeals officer**

- 28.** (1) An applicant may appeal a decision of the Board under *section 18(3)(b)* or a decision to defer under *section 19(3)* or *(6)(a)* to an appeals officer.
- (2) Subject to *subsection (3)*, an appeal under this section shall be made not later than the period specified in *section 18(4)* or *section 19(8)*, as appropriate.
- (3) The period referred to in *subsection (2)* may, at the request in writing of the applicant, be extended by the appeals officer—
- (a) for a further period not exceeding 14 days after the expiry of the period referred to in *subsection (2)*, or
  - (b) for a further period not exceeding 30 days after the expiry of the period referred to in *subsection (2)* where the appeals officer is satisfied that the applicant has given reasonable cause to so extend.
- (4) An appeal under this section shall state the reasons for the appeal.
- (5) The Minister shall prescribe procedures for hearing and determining appeals by an appeals officer including in relation to—
- (a) the form in which the appeal shall be made, including electronic form,
  - (b) the making of submissions, whether oral or written, to the appeals officer,
  - (c) requests for further information by the appeals officer, and
  - (d) examination by the appeals officer of the applicant and any other person whom the appeals officer considers appropriate.
- (6) In considering an appeal under this section an appeals officer shall—
- (a) not be confined to the grounds on which the decision of the decision maker was based, but may decide the matter the subject of the appeal as if it were being decided for the first time,
  - (b) subject to procedures prescribed under *subsection (5)*, as he or she considers appropriate, consider written or oral submissions made by the applicant and consult with the Board,
  - (c) make a decision in writing determining the appeal as soon as is practicable in all

the circumstances of the case, which may be a determination to—

- (i) confirm the decision the subject of the appeal,
  - (ii) revoke the decision and replace it with such other decision as the appeals officer considers appropriate, or
  - (iii) refer the matter back to the Board for reconsideration in accordance with such directions as the appeals officer considers appropriate,
- and
- (d) send a copy of the decision to the applicant together with his or her reasons for the decision and shall advise that it can be appealed to the High Court on a point of law within 28 days.

### Appeals to High Court

- 29.** (1) A person affected by a decision under *section 27(4)(b)* or *section 28(6)(c)* may, not later than 28 days after he or she receives a copy of the decision under *section 27(5)* or *section 28(6)(d)*, as appropriate, appeal to the High Court on a point of law from the decision.
- (2) A decision of the High Court following an appeal under *subsection (1)* shall, where appropriate, specify the period within which effect shall be given to the decision.
- (3) A decision of the High Court on an appeal under *subsection (1)* shall be final and conclusive.

### Giving effect to decisions on appeal

- 30.** The Board shall—
- (a) if applicable, give effect to a decision under *section 28(6)(c)* as soon as is practicable after the period referred to in *section 29(1)* has elapsed without any appeal under *section 29(1)* having been made in respect of that decision,
  - (b) if applicable, give effect to a decision of the High Court on an appeal under *section 29(1)*—
    - (i) within the period, if any, specified in the decision,
    - (ii) if *subparagraph (i)* is not applicable, as soon as is practicable.

## PART 6

### MISCELLANEOUS

### Offences and penalties

- 31.** (1) A person who knowingly or recklessly furnishes information—
- (a) to the Board in purported compliance with *section 15, 20* or *27*, or

- (b) to an appeals officer in purported compliance with *section 28*, that is false or misleading shall be guilty of an offence and shall be liable on summary conviction to a class A fine.
- (2) A person who fails to give notice as required by *section 20(1)* or *(4)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine.
- (3) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (4) Summary proceedings for an offence under this section may be brought and prosecuted by the Board.
- (5) Where a person is convicted of an offence under this section the court, unless it is satisfied that there are special and substantial reasons for not so doing, shall order the person to pay to the prosecutor the costs and expenses, measured by the court, incurred by the prosecutor or other person in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred by the Housing Agency in the carrying out of tests, examinations and analyses.
- (6) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted at any time within 2 years from the date of the alleged commission of the offence.

### **Indemnity**

- 32.** The Minister shall, subject to the provisions of any enactment or rule of law, indemnify each member of the Board and the members of staff of the Board in respect of any act done or omitted to be done by him or her in the performance, or purported performance, of his or her functions as such member unless the act or omission concerned was done in bad faith.

## SCHEDULE

## Section 11(8)

## THE BOARD

1. The Minister may at any time, on reasonable notice in writing and for stated reasons, remove from office a member of the Board (or, if the appointed member concerned is the Chairman, either from the Board or only from being Chairman) if, in the opinion of the Minister—
  - (1) the member has become incapable through ill-health of performing his or her functions, or
  - (2) the member has committed stated misbehaviour, or
  - (3) the member's removal from office appears to be necessary or expedient for the effective performance by the Board of its functions.
2. Subject to *paragraph 3*, the Board may act notwithstanding one or more vacancies among its members.
3. The quorum for meetings of the Board shall be three members.
4. (1) In addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time and such a meeting shall be referred to as an "electronic meeting".
  - (2) A member who participates in an electronic meeting is taken for all purposes to be present at the meeting.
5. A member of the Board may resign at any time his or her membership by a letter addressed to the Minister and the resignation shall take effect from the date specified in the letter or upon receipt of the letter by the Minister, whichever is the later.
6. A person shall cease to be, and shall be disqualified from being, a member of the Board if he or she—
  - (1) is adjudicated bankrupt,
  - (2) makes a composition or arrangement with creditors,
  - (3) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (4) is disqualified or restricted from being a director of any company,
  - (5) is convicted of any indictable offence in relation to a company,
  - (6) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,
  - (7) is the subject of an order under section 160 of the Companies Act 1990, or
  - (8) does not possess a tax clearance certificate issued under section 1095 (inserted by section 127(b) of the Finance Act 2002) of the Taxes Consolidation Act 1997.
7. Where a member of the Board—

- (1) becomes a member of a local authority,
- (2) accepts a nomination as a member of Seanad Éireann,
- (3) is elected to be a member of either House of the Oireachtas or to be a member of the European Parliament,
- (4) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,
- (5) becomes a Judge, Advocate General or Registrar of the Court of Justice of the European Union,
- (6) becomes a member of the Commission of the European Union,
- (7) becomes a member of the Court of Auditors of the European Union, or
- (8) is appointed under the Constitution as a Judge or as the Comptroller and Auditor General,

he or she shall thereupon cease to be a member of the Board.

8. A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein, or who is a representative in the European Parliament or a member of a local authority shall, while he or she is so entitled or is such a representative or member, be disqualified from becoming a member of the Board.
9. Where at a meeting of the Board any of the following matters arise, namely—
  - (1) an arrangement to which the Board is a party or is a proposed party, or
  - (2) a contract or other agreement, or a proposed contract or other agreement with the Board,then, any member of the Board present at the meeting who otherwise than in his or her capacity as a member of the Board has a material interest in the matter shall—
  - (a) at the meeting disclose the fact of such interest and the nature thereof to the other members of the Board present in advance of any consideration of the matter,
  - (b) neither influence nor seek to influence a decision to be made in relation to the matter,
  - (c) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed, and
  - (d) take no part in any deliberation or decision relating to the matter.
10. Where a material interest is disclosed under *paragraph 9*, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member of the Board by whom the disclosure is made shall not be counted in the quorum for the meeting.
11. Where, at a meeting of the Board, a question arises as to whether or not a course of conduct, if pursued by a member of the Board, would constitute a failure by him or

her to comply with the requirements of *paragraph 9*, the question may, subject to *paragraph 12*, be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

12. Where, at a meeting of the Board, the chairperson of the meeting is the person in respect of whom a matter to which *paragraph 9* applies falls to be determined, then the other members of the Board attending the meeting shall choose one of their number to be chairperson of the meeting for the purposes of *paragraph 11*.
13. Where—
  - (1) the Minister is satisfied that a member of the Board has contravened *paragraph 9*, the Minister may, if he or she thinks fit, remove that member of the Board from office,
  - (2) a person is removed from office pursuant to *subparagraph (1)*, he or she shall henceforth be disqualified for being a member of the Board.
14. If a member of the Board dies, resigns, becomes disqualified or is removed from membership, the Minister may appoint a person to be a member of the Board and fill the vacancy so caused and the person so appointed shall hold office for the unexpired term of office of the said member.
15. The Board shall hold such and so many meetings as may be necessary for the performance of its functions.
16. The Chairman may, at any reasonable time, call a meeting of the Board and the Chairman shall convene a meeting of the Board whenever requested to do so by not less than three members.
17. If the Chairman refuses to call a meeting of the Board having been presented with a requisition for that purpose, signed by not less than three members of the Board, any two members of the Board may forthwith, on that refusal, call a meeting of the Board and, if the Chairman of the Board (without so refusing) does not, within seven days after the presentation of the requisition, call a meeting of the Board, any three members of the Board may, on the expiration of those seven days, call a meeting of the Board.
18. At a meeting of the Board—
  - (a) the Chairman of the Board shall, if present, be the chairperson of the meeting, or
  - (b) if and so long as the Chairman of the Board is not present or if that office is vacant, the other members of the Board who are present shall choose one of their number to be chairperson of the meeting.
19. Every question at a meeting of the Board shall be determined by a majority of the votes of the members of the Board present and voting on the question, and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
20. Subject to this Act, the Board shall regulate its procedures, including procedures for

an electronic meeting, and business by rules or otherwise.

21. The members of the Board (including the Chairman) may be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
22. The Board may sue or be sued in its own name.
23. The Board shall, as soon as may be after its establishment, provide itself with a seal.
24. The seal of the Board shall be authenticated by the signature of—
  - (1) the Chairman of the Board, or
  - (2) the signature of any 2 members of the Board authorised by the Board to act in that behalf.
25. Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal of the Board shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.