



AN BILLE UM CHAOMHNU ARAS AN TEAGHLAIGH, 1976 FAMILY HOME PROTECTION BILL, 1976

As initiated

EXPLANATORY MEMORANDUM

PART I: SUMMARY OF PROVISIONS OF BILL

1. A section-by-section explanation of the Bill is given in Part II of this Memorandum but, in general terms, the Bill's main provisions may be summarised as follows:

- (i) The Bill proposes that a spouse who owns (or has an interest in) a family home may not sell or otherwise dispose of it without the consent of the other spouse unless the need for consent is dispensed with by Court Order on the ground that, in all the circumstances of the case, the refusal to consent is unreasonable. (*Bona fide* purchasers for full value who can show that they had made all appropriate enquiries, etc., are protected but both criminal and civil sanctions are provided against a spouse who has sought to ignore the rights of the other spouse in this respect.)
- (ii) The Bill provides that a spouse may apply to the court for an order restraining the other spouse from disposing of such or so many household chattels that it would be difficult for the spouse making the application—or a dependent child—to continue to reside in the family home without undue hardship; and, if such a disposal has already been made, it enables a court to order that suitable action be taken to restore the situation.
- (iii) The Bill provides that where a mortgagee or landlord of a family home brings proceedings because of arrears of repayments or of rent due by a spouse, the other spouse may, in effect, apply to the court to be given the opportunity to clear off the arrears and to take over the responsibility for future payments; and the court, if satisfied, may grant adjournments and make other orders to enable that to be done. (*Note:* Already, under existing law, a spouse who makes such payments, in default of payment by the other spouse, is recognised as having a legal interest at least corresponding to the payments so made.)
- (iv) The Bill proposes to abolish stamp duty, court fees and registration fees (i.e. fees that would otherwise be payable in the Land Registry or Registry of Deeds) on any transaction transferring ownership of any interest in a family home from one spouse to both spouses jointly.

PART II: PROVISIONS OF VARIOUS SECTIONS OF BILL

Section 1

2. This is the principal interpretation section. The definition of "dependent child of the family" is very similar to that recently

enacted by the Oireachtas in the Family Law (Maintenance of Spouses and Children) Act, 1976.

Subsections (2) and (3) give, in the standard form, rules of interpretation regarding references in the Bill to enactments, sections and subsections.

Section 2

3. This section defines "family home" for the purposes of the Bill. *Subsection (1)* provides that the expression means, primarily, a dwelling in which a married couple ordinarily reside. It extends also to a dwelling in which a spouse whose protection is in issue ordinarily resides or, if that spouse has with just cause left the other spouse, ordinarily resided before leaving—in both these cases the definition is concerned with situations where the spouses have ceased to live together. *Subsection (2)* defines "dwelling" so as to include any garden or portion of ground attached to and normally occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling (*cf.* section 56 (14) of the Succession Act, 1965).

Section 3

4. *Subsection (1)* provides that where a spouse, without the prior consent of the other spouse, purports to convey any interest in the family home to any person except the other spouse, then, subject to *section 4*, the purported conveyance will be void. ("Conveyance" and "interest" are defined in *section 1 (1)* of the Bill.)

Subsection (2) provides that *subsection (1)* is not to apply as against a purchaser in good faith for full value who proves that all reasonable steps, inquiries and inspections were taken and made by him or on his behalf.

Subsection (4) provides that, in *subsection (3)*, the expression "full value" is to mean such value as amounts or approximates to the value of that for which it is given (*cf.* section 23 (2) of the Succession Act, 1965). The point of the definition is in its reference to an approximation.

Section 4

5. This is concerned with the circumstances in which the court may dispense with a spouse's consent or give its consent to an intended disposition.

Subsection (1) provides that where the spouse whose consent is required omits or refuses to consent the court may, subject to the other provisions of the section, dispense with the consent.

Subsection (2) provides that the court is not to dispense with a spouse's consent unless it considers that it is unreasonable for the spouse to withhold consent, taking into account all the circumstances, including

- (a) the needs and resources of the spouses and the dependent children (if any) of the family, and
- (b) where the spouse whose consent is required is offered alternative accommodation, the suitability of that accommodation having regard to the respective degrees of security of tenure in the family home and in the alternative accommodation.

Subsection (3) provides that where the spouse whose consent is required has deserted and continues to desert the other spouse the court is to dispense with the consent. (The court nevertheless has a function, viz. the determination of the question whether there is desertion.) Desertion for this purpose includes conduct on the part of one spouse that results in the other spouse, with just cause,

leaving and living separately, i.e. what is generally referred to as "constructive desertion". (Section 3 (1) of the Family Law (Maintenance of Spouses and Children) Act, 1976 similarly "defines" desertion).

Subsection (4) provides that where the spouse whose consent is required is incapable of consenting by reason of unsoundness of mind or other mental disability, or has not after reasonable inquiries been found, the court may give a consent on behalf of that spouse, if it appears to the court to be reasonable to do so.

Section 5

6. *Subsection (1)* provides a remedy, analogous to an injunction, in respect of intentional conduct by a spouse that is likely to lead to—in effect—the loss of the family home. The subsection provides that, in such a case, on the application of the other spouse, the court may make such order as it considers proper, directed to the other spouse or to any other person, for the protection of the family home in the interest of the applicant spouse or the child.

Subsection (2) provides that where it appears to the court, on the application of a spouse, that the other spouse has deprived the applicant spouse or a dependent child of the family of that person's residence in the family home by conduct that led to—in effect—the loss of the family home, the court may order the spouse to pay to the applicant spouse the amount that the court considers proper to compensate the applicant spouse and the child for their loss or make such other order as may be just and equitable.

Section 6

7. *Subsection (1)* provides, broadly speaking, that a landlord, local authority, mortgagee, or other recipient of payments affecting the family home must accept a payment by one spouse in discharge of the other spouse's liability.

Subsection (2) provides that this does not affect any claim by the spouse who has made the payment against the other spouse to an interest in the family home by virtue of such payment. (*Note*: Such a claim might, for instance, be made under section 12 of the Married Women's Status Act, 1957.)

Section 7

8. This section provides that where a mortgagee or landlord of the family home brings an action against a spouse in which he claims possession or sale of the home under the provisions of the mortgage or lease because of non-payment of sums due under the mortgage or lease, and it appears to the court (a) that the other spouse is capable of paying the arrears within a reasonable time and (b) that it would, in all circumstances, be just and fair to do so having regard to the terms of the mortgage or lease, the interests of the mortgagee or lessor and the interests of the spouses, the court may adjourn the proceedings for such period and on such terms as appear to it to be just and equitable. ("Arrears" is used in this paragraph in its ordinary sense. Legally, where there is default in payments, *all* the outstanding balance on a mortgage may become due and this—if the terms of the mortgage so provide—can constitute "arrears". The subsection specifies that arrears in this wider sense need *not* be cleared off—except in the normal way as payments fall due—by the spouse offering to take over responsibility.)

Section 8

9. *Subsection (1)* provides that where, after an adjournment of proceedings under *section 7*, it appears to the court that arrears and periodical payments due to date have been paid off and that

the periodical payments subsequently falling due will continue to be paid, the court may by order declare accordingly and *subsection (2)* provides that, if the court does this, only the ordinary periodical payments will then be due—in effect, the breach of the conditions of the mortgage or lease will be of no effect.

Subsection (4) provides that where the spouse whose consent is required is incapable of consenting by reason of unsoundness of mind or other mental disability or has not after the death of the spouse appeared to the court to be sane.

Section 9

10. This section imposes certain restrictions on the disposal of household chattels.

Subsection (1) provides that, where it appears to the court, on the application of a spouse, that there are reasonable grounds for believing that the other spouse intends to dispose of or to remove such a number or proportion of the household chattels in a family home as would be likely to make it difficult for the applicant spouse or a dependent child of the family to reside in the family home without undue hardship, the court may by order prohibit, on such terms as it may see fit, the other spouse from making the intended disposition or removal.

Subsection (2) provides that, where matrimonial proceedings have been instituted by either spouse, neither spouse is to sell or otherwise dispose of or remove any of the household chattels in the family home until the proceedings have been finally determined (unless either the other spouse or the court has consented.)

Subsection (3) provides that, in *subsection (2)*, the expression “matrimonial proceedings” includes proceedings under section 12 of the Married Women’s Status Act, 1957, under the Guardianship of Infants Act, 1964, or under section 21 or 22 of the Family Law (Maintenance of Spouses and Children) Act, 1976. (Section 12 of the 1957 Act is concerned with disputes between spouses as to title or possession of property. Section 21 of the 1976 Act is concerned with joint ownership by the spouses of a household allowance and section 22 of that Act is concerned with exclusion of a spouse from the family home where the safety or welfare of the other members of the family requires it.)

Subsection (4) provides that a spouse who contravenes *subsection (2)* is to be guilty of an offence and liable to specified penalties—without prejudice to any other liability, civil or criminal.

Subsection (5) provides that, where it appears to the court, on application to it by either spouse, that the other spouse has either (a) contravened an order under *subsection (1)* or the provisions of *subsection (2)*, or (b) sold or otherwise disposed of or removed such a number or proportion of chattels as has made or is likely to make it difficult for the applicant spouse or a dependent child to reside in the family home without undue hardship, the court may order the other spouse to provide chattels (or money in lieu) to the applicant spouse, so as to restore as far as possible the situation previously prevailing.

Subsection (6) provides that where a third person, before a sale or other disposition of a household chattel was made to him by a spouse, was informed in writing by the other spouse that the latter intended to take proceedings in respect of the disposition (or intended disposition), the court, in proceedings under this section, may make such order in respect of the chattel as appears to it to be proper in the circumstances.

Subsection (7) provides a definition of “household chattels” for the purposes of the section. (The definition is substantially similar to that in section 56 (14) of the Succession Act, 1965.)

Section 10

11. *Subsection (1)* provides that the jurisdiction conferred on a court by the Bill may be exercised by the High Court.

Subsection (2) provides that, subject to *subsections (3) and (4)*, the Circuit Court is to have, concurrently with the High Court, all the jurisdiction of the High Court to hear and determine proceedings under the Bill.

Subsection (3) provides that, where either spouse is a person of unsound mind and there is a committee of the spouse's estate, the jurisdiction conferred by the Bill may, subject to *subsection (4)*, be exercised by the court that has appointed the committee.

Subsection (4) provides that, where the value (or the valuation of the land) exceeds certain specified amounts, and the application is made to the Circuit Court, that Court shall, if a defendant requires it, transfer the proceedings to the High Court but any order made or act done in the course of the proceedings before the transfer is to be valid unless discharged or varied by order of the High Court.

Subsection (5) provides that, subject to *subsection (3)*, the District Court is to have jurisdiction to deal with a question arising under *section 9* (i.e. in relation to household chattels) where the value of the chattels intended to be disposed of or removed, or actually disposed of, does not exceed £1,000.

Subsection (6) provides that proceedings under the Bill are to be conducted in a summary manner and are to be heard otherwise than in public and *subsection (7)* provides that proceedings in the High Court and the Circuit Court under the Bill are to be heard in chambers.

Section 11

12. *Subsection (1)* provides that a spouse may register in the Registry of Deeds (in the case of unregistered land) or under the Registration of Title Act, 1964 (in the case of registered land) a notice stating that that person is married to a person who has an interest in such property. (The object of such registration would be to ensure that potential purchasers would know of the existence of that spouse.)

Subsection (2) provides that the fact that notice of a marriage has not been registered under *subsection (1)* is not to give rise to any inference as to the non-existence of a marriage. (Thus, while a spouse who wishes to do so may register—as a safeguard—non-registration, whether deliberate or not, will not in any proceedings be held against the spouse concerned.)

Subsection (3) provides that no stamp duty or registration fees are to be payable in respect of any notice under the section.

Section 12

13. This provides that *section 59 (2)* of the Registration of Title Act, 1964 is not to apply to the provisions of the Bill. *Section 59 (2)* of the 1964 Act is concerned with the obligation on the part of the Registrar to note on the register provisions of any enactment restricting the power to alienate land. That subsection also provides that such provisions, although not registered, are to be burdens on the land under *section 72* of the 1964 Act.

Section 13

14. This section provides that no stamp duty, land registration fee, Registry of Deeds fee or court fee is to be payable on any transaction creating a joint tenancy between spouses in respect of a family home where the home was immediately prior to the transaction owned by either spouse or by both spouses otherwise than as joint tenants.

Section 14

15. This section provides that where a person who has an interest in any premises, on being required in writing, by or on behalf of any other person proposing to acquire that interest, to give any information necessary to establish if the conveyance of that interest requires a consent (i.e. by that person's spouse) under section 3 (1), knowingly gives information that is false or misleading in any material particular, he will be guilty of an offence and liable (a) on summary conviction, to a fine not exceeding £200 or to imprisonment for a term not exceeding six months or to both, or (b) on conviction on indictment, to imprisonment for a term not exceeding five years. The provision is expressed to be without prejudice to any other liability, civil or criminal.

16. Section 15 provides for the short title of the Bill.

*Roinn Dlí agus Cirt,
Bealtaine, 1976.*