



AN BILLE UM THEACH AN PHÓSTA, 1993

MATRIMONIAL HOME BILL 1993

EXPLANATORY MEMORANDUM

General

1. The object of the Bill is to give each spouse equal rights of ownership in the matrimonial home and household effects unless they already have these rights or agree otherwise. It proposes that the home and effects will be held by both spouses jointly so that if one spouse dies the other becomes sole owner of the joint interest.

Main Features

2. (a) Existing and future matrimonial homes (including mobile homes) and household chattels will vest in both spouses as joint owners (*sections 4, 11 and 15*). The surviving spouses will become full owners of the joint interest.

(b) In relation to farms, the Bill will not apply to the farm proper but only to the farmhouse and any land in the vicinity that is subsidiary and ancillary to it, is required for its amenity or convenience and is not being used or developed commercially (*section 2 (1)*).

(c) There are some exceptions:

(i) Joint ownership will not apply to matrimonial homes that are already owned by the spouses as joint tenants or as tenants in common in equal shares (*section 5 (1)*).

(ii) Spouses or a couple intending to get married may agree to opt out of the statutory joint ownership (*section 7*).

(iii) The Bill will not affect the existing power of courts to divide up property when granting a decree of judicial separation (*section 5 (3)*).

(iv) A court may exclude the application of the Bill in a particular case if it is satisfied that it would be unjust not to do so having regard to the circumstances of the spouses (*section 6*).

(d) Questions arising under the Bill may be decided by the Circuit Court and, in the case of a matrimonial home with a valuation not exceeding £25, a mobile home or household chattels, by the District Court (*section 22*).

(e) As regards the conveyancing implications of the Bill, matrimonial homes in which both spouses are living are also "family homes" and so already need the prior consent of the non-owning spouse to any conveyance of an interest in them. A number of provisions have been incorporated with a view to minimising the additional conveyancing requirements necessarily arising from the Bill. These include an obligation on the part of the "owning" spouse to comply with a request of the other spouse to have the title of the home registered in both their names (*section 8*); giving a good title to a *bona fide* purchaser from one of the spouses if the purchase is for full value without notice (*section 9 (2) (b)*); facilitating the early sale of a matrimonial home in which the spouses have ceased to reside (*section 10*); and providing a time limit of 6 years after which a purchaser is freed from any interest vested in a spouse under the Bill if no action has been taken against the purchaser in the meantime and the spouse is not then in occupation of the home (*section 12*).

(f) Amendments are being made to the Family Home Protection Act 1976 with a view to simplifying conveyancing practices in relation to that Act.

Implications for women

3. Wives (and single women on marriage) who have no ownership interest in the matrimonial home at present will gain joint ownership. Wives (and single women on marriage) who are at present sole owners of such homes will lose sole ownership and become joint owners with their husbands.

PART I

PRELIMINARY AND GENERAL

4. *Section 1* contains the short title and provides for the coming into operation of the Act six months after it is passed. However, *section 7* will operate from the passing of the Act so as to enable spouses or couples intending to marry to opt out, if they so wish, of the application of the other provisions of the Act before those provisions come into force.

5. *Section 2* sets out various definitions. The most important are those relating to "dwelling" and "matrimonial home", which are interlinked. A matrimonial home is the dwelling in which a married couple ordinarily reside as their sole or principal residence, i.e. holiday homes are excluded. It must be a building or part of a building occupied as a separate dwelling (e.g. a farmhouse, semi-detached house or flat). Matrimonial homes which are not buildings (e.g. mobile homes or houseboats) are dealt with in *section 11*. The matrimonial home includes any garden or other land usually occupied with it, provided that the land is ancillary or subsidiary to it, is required for its amenity or convenience and is not being used or developed primarily for commercial purposes. Therefore in the case of a farm only the farmhouse and any garden or other such land in its vicinity will constitute the matrimonial home. (The definition of "dwelling" in the Family Home Protection Act 1976 is being amended in *section 24* to bring it into line with the definition in this Bill.) The definition of matrimonial home includes any rights, easements (e.g. a right of way) or profits *à prendre* (i.e. rights to take something from another's land, e.g. turf) that are attached to the home and are exercisable over other land, e.g. a right of way.

6. *Section 3* provides for the repeal of section 12 of the Married Women's Status Act 1957, which dealt with the judicial determination of questions arising between spouses in relation to the title to or possession of property. It is being replaced by *section 19* of the Bill. *Subsection (2)* is a transitional provision.

PART II

JOINT OWNERSHIP OF MATRIMONIAL HOME

7. *Section 4* is the key section of the Bill. It provides that where either or both of the spouses is or are entitled to an interest in the matrimonial home that interest will vest in them as joint tenants. Under the joint tenancy the surviving spouse will acquire the entire interest. The section applies to matrimonial homes in existence at the commencement of the section, i.e. six months after its passing, and to those subsequently created (*subsections (2) and (3)*). *Subsection (4)* makes it clear that the interest in the matrimonial home that vests in both spouses is to be an equitable, or beneficial, interest, whether or not the interest previously held by either or both the spouses was a "legal" interest. For example, one of the spouses may have been the full legal owner of the home and registered as such either in the Land Registry or in the title documents registered in the Registry of Deeds. The effect of the section is to vest an equitable interest in the home in both spouses as joint tenants, leaving only a bare legal estate vested in the spouse concerned unless, pursuant to *section 8*, the spouse takes steps to have both spouses registered as co-owners. Or one of the spouses may have had only an equitable interest in the home, say in a typical mortgage situation, where the legal owner is the mortgagee. In that case an equitable interest also becomes vested in both spouses and the title of both spouses to that interest can be registered in the Land Registry or Registry of Deeds pursuant to *section 8*.

8. Any existing rights, etc. attached to the matrimonial home and exercisable over other land will continue after the vesting (*section 2 (1)*). *Subsection (5)* deals with a situation where adjoining land is owned by either or both of the spouses or by either or both of them and another person and where rights over that land that are necessary for the enjoyment of the matrimonial home are not attached to the home but exist, say, by way of licence. The subsection makes provision in such a situation for the creation of whatever rights, etc. as may be necessary for the reasonable, beneficial use, occupation and enjoyment of the home and do not materially prejudice the use, development or amenity of other land owned by either or both of the spouses and another person. (If there is a consequential diminution in the value of that person's interest in the land, compensation may be payable — *section 18 (2) (b)*.) *Subsection (6)* makes provision for any rights attached to other land and exercisable over the matrimonial home. *Subsection (7)* ensures that any restrictions on dealing with, or the disposal of, the matrimonial home to which the interest in the home was originally subject will not affect the vesting of the joint ownership conferred by this section.

9. *Subsection (8) (a)* deals with a case where one of the spouses was joint tenant of an interest in the matrimonial home with one or more persons when this section applied to the home. In that situation the joint tenancy will be severed and become a tenancy in common with each of the original owners, including the spouse, holding it in equal shares. (Under a tenancy in common in equal shares each tenant may dispose of the share by will whereas under a joint tenancy

each tenant's share passes on death to the surviving joint tenant or tenants.) The spouse's share of the tenancy in common will become vested in both spouses as joint tenants by the operation of this section. The subsection is concerned only with a subsisting joint tenancy of the matrimonial home itself. If other property was held under the joint tenancy, that property will continue to be held by the spouse and the other person or persons concerned as joint tenants. *Paragraph (b)* of the subsection covers the case where *both* spouses were joint tenants with others of an interest in the matrimonial home.

10. *Subsection (9)* disapplies the proviso to section 14 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 ("Deasy's Act"). Section 14 provides that the benefit to a tenant of any covenant, or a tenant's liability for any breach of covenant, ceases once the tenant assigns the property provided that he or she gives notice of the assignment to the landlord. The effect of this subsection is that both the benefits and the liability in respect of any such covenants will apply to the statutory assignment to both spouses effected by this section without any requirement to give notice of the assignment to the landlord. *Subsection (10)* deems any rights, easements and profits *à prendre* over the matrimonial home or any other land arising by virtue of *subsections (5) or (6) (b)* to be burdens to which section 72 (1) of the Registration of Title Act 1964 applies, i.e. they will be burdens affecting registered land without appearing on the register. *Subsection (11)* makes it clear that spouses are free to dispose of, divide or sever the interest conferred on them by this section and, if they do, any resultant increase in the interest in the home held by one of the spouses will not be subject to the further operation of the section, i.e. it will not revest in both spouses as joint tenants. The subsection also covers alienation of the joint interest, or part of the interest, by operation of law, e.g. on the bankruptcy of one of the spouses.

11. *Subsection (1) of section 4* defines the kind of interest in a matrimonial home which will vest in both spouses by virtue of the section as being any such interest, whether it is legal or equitable or is real or personal estate. It includes an interest under a tenancy agreement, e.g. a periodic (weekly, monthly etc.) tenancy or a tenancy for a fixed term, but excludes an interest held as trustee or licensee. Also excluded are lettings made for the period of a person's employment and temporary convenience lettings.

12. *Section 5 (1)* provides that, where the matrimonial home is already owned by the spouses as joint tenants or as tenants in common in equal shares, vesting under *section 4* will not apply to it. Under section 45 of the Land Act 1965, as amended, the consent of the Minister for Agriculture, Food and Forestry is required to the vesting of land in certain circumstances. *Subsection (2)* of this section provides that such consent will not be necessary to the vesting of an interest in both spouses under *section 4* or the registration of title under *section 8*. *Subsection (3)* makes it clear that enactment of the Bill will not prejudice a court from exercising its jurisdiction under section 5 of the Family Home Protection Act 1976 or Part II of the Judicial Separation and Family Law Reform Act 1989. Section 5 of the 1976 Act provides that where a spouse is engaged in conduct which may lead to loss of the family home the court may make such order as it considers proper for the protection of the family home in the interest of a spouse or dependent child. Part II of the 1989 Act empowers the court to make property adjustment orders when granting decrees of judicial separation.

13. Vesting of the home in both spouses by virtue of *section 4* may also be excluded by an order of the court under *section 6*. The court

may hear an application for such an order from either of the spouses or, where one of them has died, from that spouse's personal representative or from or on behalf of one of the children. Any order made has the effect of re-vesting the interest in the home in the applicant spouse or in his or her estate (*subsection (1)*). The application may be granted only if the court is satisfied that it would be unjust not to grant it having regard to the circumstances of the spouses and, in particular, to any unreasonable conduct of the spouse who benefited from the vesting under *section 4*, any unreasonable failure or refusal by that spouse to contribute to mortgage payments, rent or any other necessary expenditure in relation to the home and, where appropriate, any consequential unfair enrichment of that spouse having regard to his or her financial circumstances (*subsection (5)*). Where one of the spouses has died the exclusion order must be applied for by the personal representative, or by or on behalf of the child, not later than 9 months after the death or 3 months after the grant of representation, whichever is the later (*subsection (2)*). An adult child of the deceased spouse or, with the prior approval of the court, a minor child may give a written undertaking not to apply to the court under this section and in that case the child concerned will not be entitled so to apply (*subsection (3)*). Both these provisions are in the interests of furthering certainty in conveyancing transactions. The reference to mortgage in *subsection (5) (b)* includes a reference to an equitable mortgage (e.g. by deposit of title deeds) and also a charge on registered land but not a charge mentioned in section 1 (1) (a) or (b) of the Building Societies (Amendment) Act 1983, i.e. a charge on land to secure payment of the whole or part of a conventional rent, fee farm rent or crown rent or a charge on land held under a lease or fee farm grant to secure moneys payable in the event of any breaches of covenants or conditions (*subsection (7)*).

14. *Section 7*, which comes into operation on the passing of the Act, allows a married couple or a couple contemplating marriage to exclude the application of *section 4* to their matrimonial home or intended matrimonial home. The parties may subsequently annul such an agreement, in which event *section 4* will apply, or reapply as the case may be, to the home. The Minister for Equality and Law Reform may by regulations provide that agreements shall be in a specified form or a form to the like effect.

15. *Section 8 (1)* provides for the formal registration of the title of both spouses to the interest vested in them as joint tenants by *section 4*. In the case of registered land, it entitles both spouses to be registered in the Land Registry as co-owners of the interest. In the case of unregistered land, provision is made for a declaration in writing to be made by the spouse who appears from the title deeds to be the sole owner of the interest that the interest has vested under *section 4* in both spouses and for the registration of a certified copy of the declaration in the Registry of Deeds. If the former sole owner had had a legal interest in the home, he or she would have retained a nominal legal interest in it after the vesting of the equitable interest in both spouses by virtue of *section 4*. In that event, the legal interest will, on registration in the Land Registry or on the making of the declaration, also vest in the spouses. Under *subsection (2)*, the former sole owner may be compelled to have the title formally registered under the section. *Subsection (3)* provides for the making of rules by the Registration of Title Rules Committee in relation to registration under this section. Under *subsection (4)* the Minister for Equality and Law Reform may prescribe the form of declaration.

16. *Section 9* makes provision for the protection of the interest of a spouse who acquires an interest under *section 4* whenever there is a sale or transfer of a matrimonial home which is a family home

within the meaning of the Family Home Protection Act 1976, i.e. a matrimonial home in which both spouses are residing. (*Section 10* makes corresponding provision in connection with the disposal of a matrimonial home in which both spouses have ceased to reside.) This section gives a purchaser a good title to the home, i.e. a title freed of any interest of that spouse, in three situations only. One is where the home is conveyed by both spouses by deed of conveyance. The second is where it is conveyed by only one of the spouses but the purchase is *bona fide* for full value and the purchaser is without notice of the fact that the home is a matrimonial home, i.e. after such inquiries and inspections as might reasonably have been made. The third is where the first conveyance of the home does not comply with either of the requirements just mentioned but the home is subsequently acquired by a person who buys it for full value without actual notice (knowledge) on the part of himself or his agent that the home is a matrimonial home (*subsection (2)*). Even where a purchaser acquires a good title to a matrimonial family home under these provisions, the spouse who has acquired an interest under *section 4* will be entitled to recover the value of the interest from the proceeds of sale in the hands of the other spouse (*subsection (4)* and *section 19*). The requirement under the Family Home Protection Act 1976 to obtain the prior consent of the spouse concerned to any conveyance of the interest in the home will continue to apply.

17. *Subsection (3)* of *section 9* covers the case where a court gives consent to the conveyance of an interest in the matrimonial family home under *section 4 (4)* of the Family Home Protection Act 1976, i.e. where the spouse whose consent is required is incapable of consenting by reason of unsoundness of mind or other mental disability or has not been found after reasonable inquiries. In that case also the purchaser will hold the interest freed and discharged from any interest of that spouse without prejudice to the spouse's redress otherwise than against the home.

18. *Subsection (5)* is a technical provision. Under *section 52 (2)* of the Succession Act 1965 a deceased's personal representatives may execute an assent vesting any estate or interest in land passing under the will or intestacy to the person entitled to it. While the equitable interest vesting in both spouses under *section 4* passes automatically to the surviving spouse, any nominal legal interest of the deceased in the home, evidenced by his or her name appearing as sole owner in the Land Registry or the Registry of Deeds, will pass to the personal representatives. This subsection therefore requires them to execute an assent vesting that nominal legal interest in the surviving spouse so as to give that spouse full legal title to the matrimonial family home. *Subsection (6)* provides that it shall not be the duty of the Registrar of Titles, before registering a person as owner of land, to ascertain whether any other person has an interest in that land arising by virtue of *section 4*.

19. *Section 10* deals with a matrimonial home where the ownership has vested in both spouses by virtue of *section 4* but is no longer a family home, i.e. where it is a matrimonial home in which the married couple have ceased to reside. This situation will normally occur where a couple have sold their home and bought another and where it is therefore necessary to facilitate the early completion of the sale. If in such a case one of the spouses is shown on the Land Registry register or in the title deeds as sole owner, this section provides that that spouse will hold the matrimonial home in trust for sale for both spouses as joint tenants and it gives the spouse all necessary powers to sell and otherwise deal with the home so that the purchaser will have a title freed of the interest of the joint tenancy of the other spouse acquired by virtue of *section 4*. As trustee, the spouse is

accountable to the other spouse for that spouse's share of the proceeds of sale of the home. *Subsection (4)* is a technical provision implying, in the conveyance of the home by the trustee spouse, the covenants specified in section 7 (1) of the Conveyancing Act 1881 and applying sections 7 (6) and 7 (7) of that Act to the implied covenants. The covenants in question are covenants for title (e.g. for the vendor's right to convey, quiet enjoyment, etc.). Sections 7 (6) and 7 (7) of the 1881 Act deal with the enforcement, and the variation or extension, of those covenants. *Subsection (6)* parallels *section 9 (5)* and provides that, where a trustee spouse dies, the executor or administrator will vest any nominal legal interest in the home which the deceased possessed in the surviving spouse, or if he or she has also died, in the person entitled to it under that spouse's will or intestacy. *Subsection (7)* enables the court to confer on a trustee any additional powers necessary for the purposes of managing, disposing of, preserving etc. the home or of safeguarding the rights or interest of either spouse in the home or the trustee's rights in relation to it.

20. *Section 11* provides for joint ownership of homes occupied by a married couple which are not permanently attached to land, e.g. mobile homes, caravans and houseboats. Separate provision is necessary for vesting joint ownership of these matrimonial homes in both spouses as *section 4*, applying as it does only to interests in land, is not appropriate in such cases. *Subsection (3)* of the section applies to mobile homes etc., with any necessary modifications, the provisions of *sections 4 (5)* (rights, etc. over land), *6* (exclusion of joint ownership by court order) and *18 (2)* (determination by court of questions relating to rights, etc. over land).

21. *Section 12* provides that when six years have elapsed after the purchase of a matrimonial home from one of the spouses the purchaser will be deemed to hold the property free from any interest of the other spouse arising by virtue of *section 4*, unless the other spouse is then in actual occupation of the home. This provision is without prejudice to proceedings instituted within six years of the conveyance concerned and which are either registered as a *lis pendens* or of which the purchaser has actual notice. Somewhat analogous provision is being made in *section 24 (b) (ii)* for the purposes of the Family Home Protection Act 1976.

22. *Section 13* exempts from stamp duty any "contracting out" agreement under *section 7 (1)* or an agreement annulling such an agreement.

23. *Section 14* deals with the case where one of the spouses, having mortgaged an interest in the matrimonial home which became vested in both spouses by virtue of *section 4*, dies leaving the other spouse surviving him and acquiring the interest by survivorship. The section provides that *section 47* of the Succession Act 1965 will apply to that interest, with the result that it will be primarily liable for payment of the mortgage.

24. *Section 15* provides that the household chattels in a matrimonial or mobile home will belong to both spouses jointly in the absence of agreement to the contrary. Household chattels for this purpose are furniture, bedding, linen, china, earthenware, glass, books and other chattels of ordinary household use or ornament and also consumable stores, garden effects and domestic animals, but do not include any chattels used by either spouse for business or professional purposes or money or security for money.

25. *Section 16* makes provision for the situation where one or other of the spouses is or becomes a bankrupt or an arranging debtor. If

the spouse who would acquire an interest under *section 4* or *11* is already a bankrupt or an arranging debtor, neither section will apply to create a joint interest in the home. If the other spouse is adjudicated bankrupt or becomes an arranging debtor after the joint tenancy has been created under either section, only that spouse's share of the joint interest will vest in the Official Assignee or other person. *Subsection (5)* provides that the household chattels which are jointly owned by virtue of *section 15* will not vest in the Official Assignee by virtue of section 44 of the Bankruptcy Act 1988 and that those chattels will be in addition to the other articles the bankrupt is entitled to retain under section 45 of that Act.

26. *Section 17* is a transitional provision affecting any enforceable agreements for the sale of an interest in a matrimonial home entered into, but not completed, by a spouse before the commencement of the Act. The section provides for the completion of the sale as if the Act had not been passed, without prejudice to the interest of the other spouse in the purchase money.

27. *Section 18* gives the court jurisdiction to determine various questions relating to a matrimonial home, such as the precise area of the land comprising the home, any question arising under *section 9* or *10* in connection with a conveyance or trust for sale of the home or the existence, nature or extent of any rights, etc. exercisable over the home or other land. If the rights, etc. are exercisable by virtue of *section 4 (5)* over land that is jointly owned by either or both of the spouses and another person, the court may order compensation to be paid by either or both of the spouses to that other person for any consequential diminution in the value of that person's interest in the land (*subsection (2) (b)*).

PART III

MISCELLANEOUS

28. *Section 19* replaces section 12 of the Married Women's Status Act 1957, which provided for the determination of questions between spouses as to the title to or possession of any property and which is being repealed by *section 3* of the Bill. In particular, it allows a spouse (or a child of a deceased spouse) to seek redress where it is claimed that the other spouse has had in his or her possession property (including money) belonging to that spouse or child and has not paid over the property or its value (*subsections (3) and (4)*).

29. *Subsection (5)* provides that in proceedings under this section any party (other than the spouses or child concerned) will be treated as a stakeholder for the purposes of costs or otherwise. This provision is for the protection of trustees and others who may hold "matrimonial" money or property in a fiduciary capacity. *Subsection (6)* repeats section 12 (6) of the Married Women's Status Act 1957 to make it clear that *section 19* does not affect the legal capacity of a married woman as set out in section 2 of that Act, including the capacity to sue her husband in contract and tort.

30. *Subsection (7)* imposes a time limit of three years on applications under this section in cases where marriages have been annulled or where there has been a foreign divorce which is recognised here. The limit applies from the date of the annulment or dissolution. A similar limit applies where a marriage is void but has not been so declared and it runs from the time the parties have ceased to be ordinarily resident together. *Subsection (8)* makes it clear that applications to the court under this section may be made not only by parties

to a valid marriage but also, subject to the time limits mentioned, by the personal representative of a deceased spouse and in addition by parties to marriages that are void (even if not declared to be such) or are voidable and annulled or have been the subject of a foreign divorce that is recognised here. An exception is where the matters in dispute are between parties to marriages that are void or have been annulled and where the matters in dispute arise by virtue of the joint ownership provisions of *Part II* of the Bill. These provisions are not applicable in such situations.

31. *Section 20* is an avoidance of doubt provision. Section 5 (1) of the Family Law Act 1981 applied to formerly engaged couples the rules of law relating to the rights of spouses in property. *Section 20* makes it clear that that section relates only to the determination of disputes between spouses in relation to the beneficial ownership of property and does not, in particular, relate to the rights of spouses under the Succession Act 1965, the Family Home Protection Act 1976, the Judicial Separation and Family Law Reform Act 1989 or *Part II* of the Bill.

32. *Section 21* treats a spouse who has made a substantial financial contribution to the improvement of real or personal property (other than household chattels) belonging to either or both of the spouses as having acquired a share, or an enlarged share as the case may be, in that property to whatever extent may be agreed between them or may be determined by the court. The section does not apply to contributions to the improvement of matrimonial homes or mobile homes that are jointly owned by both spouses, whether by virtue of *Part II* or otherwise.

33. *Section 22* provides that the Circuit Court may exercise jurisdiction under the Bill. Jurisdiction may also be exercised by the District Court in so far as the proceedings relate to a matrimonial home with a rateable valuation not exceeding £25 or a mobile home or the household chattels in them. *Subsection (2)* requires the Circuit Court to transfer proceedings to the High Court where the rateable valuation of the land in question exceeds £200.

34. *Section 23* provides that proceedings under the Act are to be heard otherwise than in public.

35. *Section 24* amends the Family Home Protection Act 1976 in two respects. It amends the definition of "dwelling" in that Act to make it correspond with that in *section 2 (1)* of the Bill (so far as appropriate) and it provides that proceedings may not be instituted to have a conveyance of unregistered land declared void by reason of the absence of a spouse's prior consent any later than six years after the date of the conveyance, unless that spouse is then in occupation of the family home. (This provision is without prejudice to any right of that spouse to seek redress otherwise than in such proceedings.) It is also provided that a conveyance is deemed not to be void for that reason unless it has been so declared by a court or unless it is void and the parties to the conveyance or their successors in title so state in writing within six years after the date of the conveyance. Finally, provision is made for a spouse to give a valid general consent in writing to any subsequent conveyance of any interest in a dwelling.

36. *Section 25* restricts the operation of section 8 of the Capital Acquisition Tax Act 1976 in its application to a gift or inheritance of an interest in a dwelling which is or becomes a matrimonial home. This section ensures that the spouse who acquires a joint tenancy of the interest in the home by virtue of *section 4* will not be deemed for

the purposes of section 8 to have acquired it as a gift or inheritance taken from the original donor.

37. Section 26 is the usual provision for laying regulations (under sections 7 (3) and 8 (4)) before both Houses of the Oireachtas.

*An Roinn Comhionannais agus Athchóirithe Dlí,
Meitheamh, 1993.*

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