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**AN BILLE UM CHLÁRÚ GNÍOMHAS AGUS TEIDIL 2004**  
**REGISTRATION OF DEEDS AND TITLE BILL 2004**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

The purpose of this Bill is to provide a clear statutory basis for the registration of titles and deeds on computer in the Registry of Deeds and the Land Registry, and for a digital mapping system, with a view to preparing the way for an electronic conveyancing system ('e-conveyancing'). This will involve the repeal of existing Registry of Deeds legislation (the earliest of which dates back to 1707) and its replacement with provisions more suited to modern conditions. It will also require the amendment of certain provisions in the Registration of Title Act 1964 which deals with the registration of title to land and the operation of the Land Registry.

There are two separate systems of registration in relation to land in this country. The registration of deeds system, which is operated by the Registry of Deeds, provides for the registration of documents relating to land with a view to determining priorities between documents dealing with the same piece of land. There is no statutory requirement to register a document but failure to do so may result in a loss of priority. The effect of registration is generally to achieve priority over documents that have not been registered or have been registered later. However, the act of registering a document does not in itself guarantee the title to land dealt with by that document.

The registration of title system, which is operated by the Land Registry, was first introduced in this country in 1865 and it was extended in 1891. It is now governed by the Registration of Title Act 1964. Unlike the Registry of Deeds, the Land Registry registers actual ownership of land.

**Provisions of the Bill**

**PART 1 — PRELIMINARY AND GENERAL**

*Section 1* is a standard provision dealing with the short title, collective citation and construction of the Act. *Section 2* deals with the commencement of the Act and is also a standard provision. *Section 3* contains definitions, while *section 4* provides for the repeal of statutes and statutory provisions set out in the Schedule.

**PART 2 — REGISTRATION OF DEEDS**

This Part makes provision for the Registry of Deeds and deals with its operations and procedures. The provisions in this Part are not as detailed as those being repealed. It is intended that the details of the procedures to be followed, and other operational matters, will be set out in general rules which will be drawn up under *section 26*.

Moreover, the provisions set out in this Part are based, as far as possible, on corresponding provisions relating to the Land Registry in the Registration of Title Act 1964. This will help to ensure a unified and coherent approach to the registration of deeds and title.

*Section 5* is a standard provision that contains definitions of terms used in this Part. The definition of ‘deed’ includes a reference to information in electronic or non-legible form which is capable of conversion to legible form. This is included in order to permit the storage of information and records in non-legible forms.

*Section 6* states that there shall be an office or offices to be known as the Registry of Deeds for the purpose of registering deeds relating to land, while *section 7* provides that the Registry of Deeds shall be under the management and control of the Registrar of Deeds (these provisions are broadly based on sections 7 and 9 of the 1964 Act). *Section 7(3)* provides that the Registrar of Deeds may also be the Registrar of Titles.

*Section 8* deals with the official seal of the Registrar of Deeds. It provides that a document sealed with the official seal, or a sealed copy of such a document, will be admissible as evidence without further proof being required. *Section 9* provides that the Registrar of Deeds may sue or be sued in that name.

*Section 10* is a transitional provision. It provides that a person who is Registrar of Deeds immediately before the commencement of the section shall be deemed to be appointed Registrar of Deeds under this Part. It goes on to provide that any register or record maintained under any of the Acts repealed by *section 4* shall form part of the register maintained under this Part. Similarly, any document issued or made under repealed enactments shall have the same validity and remain in force as if made or issued under this Part.

*Section 11* is a standard provision relating to staffing of the Registry of Deeds and is based on the corresponding section of the 1964 Act relating to the Land Registry.

*Section 12* deals with the fees payable for services provided by the Registry of Deeds. The Minister for Justice, Equality and Law Reform, with the consent of the Minister for Finance, may by order prescribe such fees.

*Section 13* provides that a register of deeds shall be maintained by the Registrar. The form of the register will be prescribed in rules and may be in an electronic or other form capable of conversion into a permanent legible form. *Section 14* deals with applications for registration. The application procedure, and the procedure by which registration is to be given effect, shall be prescribed in rules.

*Section 15* changes the way in which applications for registration are to be recorded in future. Applications for registration will be allocated a serial number. *Section 16* deals with the effect of registration. It provides generally that the priority accorded to registered documents will be based on the serial number allocated under *section 15*. A deed which is not registered will continue to be void against a registered deed affecting the land concerned.

*Section 17* is a technical provision which relates to memorials of deeds in cases where execution by grantees only is proved. While it has been the practice of the Registry of Deeds to accept such memorials, it is now considered that execution by the grantor would be

preferable in order to avoid forgeries (this was a primary objective of the 1707 Act).

*Section 18* provides for the rectification of errors in the Registry of Deeds. It is based on section 32 of the 1964 Act. *Section 19* deals with registration, or attempted registration, by means of a false deed.

*Section 20* relates to the retention of other records by the Registry of Deeds (*section 13* already provides for the keeping of a register of documents). It provides for the keeping of records such as indexes in a prescribed form, including by electronic means.

*Section 21* provides for searches of records kept by the Registry. The existence of other registered deeds in relation to a piece of land may come to light as a result of such a search. *Section 22* deals with the inspection, search and examination of records. A person may make extracts from, or take notes of, such records. *Section 23* provides for judicial notice to be taken of certified copies of entries in the register etc., including reproductions of documents and records kept in electronic format.

*Section 24* relates to the closing of the Index of Lands. This Index was required to be kept under section 17 of the Registry of Deeds (Ireland) Act 1832 (as amended by the Land Transfer (Ireland) Act 1848). It appears, however, that it has not been maintained since 31 December 1946 and it is now proposed to deem it to have been closed on that date.

*Section 25* deals with the closing of certain other records. The Registry of Deeds (Ireland) Act 1832 required that certain books be kept in parchment form. However, these books were not maintained as provided for under that Act during certain periods. The purpose of this section is to deem the books to have been closed during the periods when they were not properly maintained.

*Section 26* provides for the making of general rules by the Registration of Deeds and Title Rules Committee established under *section 44*. It lists those areas in which the Committee are required to make general rules including the making and keeping of registers, forms of application, the allocation of serial numbers, the form of entry into registers and inspection of the records and register.

*Section 27* is an important transitional provision relating to the priority and registration of deeds registered prior to the commencement of the section or to deeds lodged for registration before the commencement of the section.

*Section 28* is a standard provision relating to expenses, while *section 29* deals with the laying of orders and general rules drawn up under *section 26* before the Oireachtas.

### **PART 3 — AMENDMENTS TO REGISTRATION OF TITLE ACT 1964**

The amendments to the 1964 Act are intended to clarify certain aspects of the law relating to the registration of land and to provide the Land Registry with the means to operate an electronic conveyancing system.

*Section 30* amends the list of definitions contained in section 3 of the Registration of Title Act 1964. In particular, it substitutes an amended definition of ‘register’ and inserts a new definition of

‘index’, both of which contain references to material ‘kept in electronic or other non-legible form which is capable of being converted into a permanent form’.

The section provides for deletion of the definitions of ‘local office’ and ‘local registrar’ in the 1964 Act since computerisation of the registers will obviate the need to keep and maintain duplicates in local offices for inspection locally. Access to the registers will now be available to all by electronic means. The definition of ‘registering authority’ is also being amended to delete the reference to ‘local registrar’.

*Section 31* substitutes a new section 7 in the 1964 Act, while *section 32* deletes the references to ‘local offices’ in section 12 of the same Act. *Section 33* substitutes a new text for section 15 of the 1964 Act. It provides that a document sealed with the official seal, or a sealed copy of such a document, will be admissible in evidence without further proof.

*Section 34* provides for an amendment to section 23 of the 1964 Act. It responds to a 1989 recommendation of the Law Reform Commission to exempt lands covered by the Irish Church Act 1869 from the compulsory registration provisions of the 1964 Act. The matter was subsequently reconsidered by the Law Reform Commission in 1998 and it concluded that what was required was a provision that would absolve non-compliant owners from the obligation to register. This is the purpose of paragraphs (a) and (b). These changes are in turn linked with the amendment in section 30 which involves deletion of the reference to the Irish Church Act 1869 from the definition of the ‘Land Purchase Acts’.

*Section 35* substitutes a new subsection (1) in section 32 of the 1964 Act. The effect of the amendment will be to enable the Registrar to amend errors originating in the Land Registry where he or she is satisfied that the error can be rectified without injustice to any party.

*Section 36* substitutes a new section 84 in the 1964 Act. It will allow the Registrar to use electronic or digitalised maps. *Section 37* deals with the description and identification of registered lands and substitutes a new section for section 85 of the 1964 Act.

*Section 38* amends section 90 of the 1964 Act in order to widen the powers conferred by that section to include the granting of a lease, easement, or *profit à prendre* in respect of property. The amendment also provides that the Minister for Agriculture and Food shall have powers previously conferred on the Land Commission relating to rights of ownership.

*Section 39* provides for an amendment to section 107 of the 1964 Act and flows from the intended computerisation of the register, the maps and index. It allows for inspection of material in the form in which it is stored or in a legible reproduction of it.

*Section 40* provides for changes in the method by which compensation in relation to error, fraud or forgery is handled (section 120 of the 1964 Act). It avoids any reference to the determination of a claim by the Registrar, a matter that has been the subject of adverse comment by the courts.

*Section 41* responds to a 1998 recommendation of the Law Reform Commission by inserting three new subsections into section 123 of the 1964 Act. They are necessary because section 123 of the 1964 Act does not appear to apply to the granting of appurtenant rights

such as an easements or a *profit à prendre*. The absence of these necessary words of limitation would probably mean that the easement or *profit* would last for the lifetime of the grantee only.

*Section 42* is a new provision which will permit judicial notice to be taken of certified copies of entries in registers etc., including reproductions of documents and records kept in electronic format.

*Section 43* amends section 126 of the 1964 Act in order to take account of the new Registration of Deeds and Title Rules Committee (see *section 44*). The intention is that this new Committee will deal with the general rules both for the Registry of Deeds and the Land Registry. The technical amendment to paragraph (*k*) of section 126 of the 1964 Act flows from the computerisation of the register, maps and index.

#### **PART 4 — REGISTRATION OF DEEDS AND TITLE RULES COMMITTEE**

*Section 44* provides for the establishment of a new rules committee to perform the functions assigned to it under *section 26* and section 126 of the 1964 Act. It also contains provisions relating to membership of the committee. *Section 45* provides that this committee shall meet at least yearly and shall report to the Minister for Justice, Equality and Law Reform on matters falling within its remit.

#### **SCHEDULE**

Part 1 of the Schedule lists the enactments relating to the registration of deeds that are repealed by *section 4*. Part 2 contains a listing of provisions relating to registration of title that are repealed by the same section.

#### **Financial implications**

The proposals set out in this Bill are intended to streamline and modernise the operation of the Registry of Deeds and the Land Registry, in particular by preparing for an electronic conveyancing system ('e-conveyancing'). Improving the systems for the registration of deeds and title will help to make the conveyancing of land easier and faster. By reducing registration delays and associated costs it will contribute to the broader process of regulatory reform outlined in the White Paper 'Regulating Better'.

As regards expenditure, attention is drawn to *section 12* which deals with the fees to be charged by the Registry of Deeds (this corresponds broadly with section 14 of the 1964 Act). The Bill does not create any additional cost for the Exchequer.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Samhain, 2004.*