



# **DÁIL ÉIREANN**

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## **AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS TÍOLACHTA 2006 LAND AND CONVEYANCING LAW REFORM BILL 2006**

### **LEASUITHE TUARASCÁLA REPORT AMENDMENTS**

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## AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS TÍOLACHTA 2006 —AN TUARASCÁIL

### LAND AND CONVEYANCING LAW REFORM BILL 2006 —REPORT

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#### *Leasuithe Amendments*

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1. In page 20, to delete lines 21 to 40 and substitute the following:

“(2) A regulation under *subsection (1)* 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 21 days on which that House has sat after the regulation is laid before it, the regulation is annulled accordingly, but without prejudice to the validity of anything previously done under it.

(3) (a) If in any respect any difficulty arises during the period of 5 years from the commencement of any provision of this Act (including a provision that amends another Act), either in bringing into operation or in giving full effect to the provision or the Act as amended, the Minister may by regulations do anything which appears to be necessary or expedient for removing that difficulty.

(b) In *paragraph (a)* a reference to another Act is a reference to an Act falling within either paragraph (a) or (b) of the definition of “Act” in section 2 (1) of the Act of 2005.

(4) Regulations under *subsection (3)* may, in so far only as it may appear necessary for the removal of such difficulty, modify a provision referred to in that subsection provided such modification is in conformity with the purposes, principles and spirit of this Act.

(5) Where the Minister proposes to make regulations under *subsection (3)*—

(a) he or she shall, before doing so, consult with such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government in relation to the proposed regulations, and

(b) he or she shall cause a draft of the regulations to be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

(6) A regulation under this section may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

2. In page 20, to delete lines 21 to 30.

—Joanna Tuffy.

3. In page 21, to delete lines 10 to 16 and substitute the following:

“(2) Subject to *subsection (1)*, and without prejudice to section 26(2)(f) of the Act of 2005—

(a) any reference in an enactment to—

- (i) the Settled Land Acts 1882 to 1890,
- (ii) an Act included in that collective citation, or
- (iii) any provision of such an Act,

shall be construed as a reference to this Act or to the equivalent or substituted provision of this Act, as may be appropriate,

(b) any reference in an enactment to—

- (i) the Conveyancing Acts 1881 to 1911, or
- (ii) an Act (other than an Act repealed by this Act) included in that collective citation,

shall be construed as including a reference to this Act, and

(c) any reference in an enactment to—

- (i) an Act that is included in the collective citation “the Conveyancing Acts 1881 to 1911” and that is repealed by this Act, or
- (ii) any particular provision of such an Act,

shall be construed as a reference to this Act or to the equivalent or substituted provision of this Act.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

4. In page 21, line 10, after “*subsection (1)*,” to insert the following:

“and without prejudice to section 26(2)(f) of the Act of 2005,”.

—Joanna Tuffy.

5. In page 21, between lines 23 and 24, to insert the following:

“(3) In so far as they survive, titles of honour or dignity arising from feudal baronies and manorial lordships are abolished.

(4) If after the commencement of this section a person purports to sell or offer for sale a title of honour or dignity abolished by *subsection (3)*, he or she shall be guilty of an offence.”.

—Joanna Tuffy.

6. In page 21, between lines 23 and 24, to insert the following:

“(3) Subject to this Act a fee simple shall be freely alienable by the owner thereof.”.

—Joanna Tuffy.

7. In page 21, to delete lines 29 to 30.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

8. In page 21, between lines 33 and 34, to insert the following:

“(4) A fee simple remains freely alienable.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[SQE 1290]”.

9. In page 22, line 23, after “time” to insert “(whether specified or unspecified)”.  
—Joanna Tuffy.

10. In page 24, between lines 15 and 16, to insert the following:

“(4) Where on the commencement of this section, or on a person becoming entitled to a fee tail after such commencement, another person’s estate or interest in land is extinguished by virtue of *subsection (3)*, the second-mentioned person may apply to the court within 12 years of such extinguishment for an order determining the amount of compensation if any that should be paid to the second-mentioned person, and such order may make provision for charging the payment on the land subject to such conditions as the court sees fit.”.

—Joanna Tuffy.

11. In page 24, line 36, to delete “is void both at law and in equity” and substitute the following:

“shall be deemed to be a grant of a lease for an uncertain period liable to termination by reasonable notice by either party, for the purposes of *section 11(3)(c)*”.

—Joanna Tuffy.

12. In page 30, line 2, after “1973” to insert “and the Charities Act 2009”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

13. In page 31, line 8, after “1973” to insert “and the Charities Act 2009”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

14. In page 33, between lines 5 and 6, to insert the following:

“(b) an order for the taking of an account of incumbrances affecting the land, if any, and the making of inquiries as to the respective priorities of any such incumbrances,”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

15. In page 35, line 17, to delete “In” and substitute “Subject to *subsection (3)\**, in”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[\*Note: This is a reference to the subsection proposed to be inserted by amendment No. 16.]

16. In page 35, between lines 21 and 22, to insert the following:

“(3) The court may make an order under *subsection (2)* where the relevant user period was not immediately before the commencement of the action if it is satisfied that it is just and equitable to do so in all the circumstances of the case.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

17. In page 39, to delete lines 15 to 22 and substitute the following:

“(a) a building owner fails within a reasonable time to—

- (i) make good damage under *subsection (2)(a)*, the adjoining owner may apply to the court for an order requiring the damage to be made good and on such application the court may make such order as it thinks fit, or

- (ii) reimburse costs and expenses under *subsection (2)(a)* or to pay reasonable costs or compensation under *subsection (2)(b)*, the adjoining owner may recover such costs, expenses or compensation as a simple contract debt in a court of competent jurisdiction.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 18.** In page 39, to delete lines 27 to 30 and substitute the following:

“45.—(1) Where a building owner and an adjoining owner are in dispute in relation to the exercise or proposed exercise of rights under *section 44*, either party may apply to the court in a summary manner and the court may give such directions as it thinks fit, and may in particular make an order authorising the carrying out of specified works (a “works order”).”.

—Joanna Tuffy.

- 19.** In page 39, between lines 30 and 31, to insert the following:

“(2) Where a building owner and an adjoining owner are in dispute in relation to the giving of permission to the building owner temporarily to enter the lands of the adjoining owner where such entry is essential to enable the building owner to carry out essential repairs on the building owner’s land (other than to a party structure), either party may apply to the court in a summary manner and the court may give such directions as it thinks fit, and may in particular make an order authorising the building owner temporarily to enter the lands of the adjoining owner to carry out such repairs.”.

—Joanna Tuffy.

- 20.** In page 40, between lines 10 and 11, to insert the following:

“High hedges.

48.—Where a person complains that trees or hedges grown or maintained by a neighbouring owner are of such a height as to constitute an unreasonable interference with any easement enjoyed by the complaining owner, or unreasonably interfere with light whether or not an easement exists in that regard, the person may apply to the court which may make such order, including an order directing the neighbouring owner to remove or reduce the height of any trees or hedges.”.

—Joanna Tuffy.

- 21.** In page 50, line 35, to delete “*subsections (5) to (7)*” and substitute “*section 68\**”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[\*Note: This is a reference to the section proposed to be inserted by amendment No. 22.]

- 22.** In page 50, to delete lines 41 to 46 and in page 51, to delete lines 1 to 7 and substitute the following:

“Extinguishment of certain interests.

68.—(1) An interest—

(a) to which a person was entitled, or

(b) acquired by a person,

before the commencement of this Chapter in consequence of the failure to use words of limitation in a conveyance executed before that commencement or the application of the Rule in *Shelley’s Case* is extinguished unless the person claiming to be entitled to the interest or to have acquired it—

- (i) applies to the court, within 12 years from the commencement of this Chapter, for an order under this section, and
- (ii) registers any order made under this section in accordance with *subsection (3)*.

(2) On such an application the court may—

- (a) make an order declaring that the applicant is entitled to the interest or has acquired it,
- (b) refuse to make such an order if it is satisfied that no substantial injustice will be done to any party, or
- (c) in lieu of a declaration in favour of the applicant, order payment by another party of such compensation to the applicant as the court thinks appropriate.

(3) An order under this section shall be registered in the Registry of Deeds or Land Registry, as appropriate.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

**23.** In page 62, to delete lines 22 to 44 and in page 63, to delete lines 1 to 7 and substitute the following:

“Court order for sale.

93.—(1) This section applies to any action brought by a mortgagor for—

- (a) redemption, or
- (b) sale, or
- (c) the raising and payment in any manner of the mortgage debt, or
- (d) any combination of these in the alternative.

(2) In any action to which this section applies the court may, if it thinks fit, direct a sale of the mortgaged property on such terms as it thinks fit.

(3) Without prejudice to the generality of the court’s discretion under *subsection (2)*, it may—

- (a) allow any time for redemption or payment of the mortgage debt,
- (b) require lodgment in court of a sum to meet the expenses of a sale and to secure a performance of its terms,
- (c) give directions as to costs and require the giving of security for costs,
- (d) direct a sale without previously determining priorities of incumbrances,
- (e) give the conduct of the sale to a particular party,
- (f) make a vesting order conveying the mortgaged property to a purchaser or appoint a person to make such a conveyance.

(4) Except in the case of a housing loan mortgage, this section takes effect subject to the terms of the mortgage.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

**24.** In page 64, line 4, to delete “otherwise” and substitute “in relation to any other mortgage”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

25. In page 64, line 10, after “taking” to insert “not more than 7 days prior to such taking”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

26. In page 64, line 10, after “taking” to insert the following:

“, being a consent given in contemplation of a specific taking of possession of the mortgaged property”.

—Joanna Tuffy.

27. In page 64, to delete lines 44 and 45.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

28. In page 65, line 14, to delete “101” and substitute “100”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

29. In page 65, lines 18 and 19, to delete “mortgagor, or on one of 2 or more mortgagors,” and substitute “mortgagor”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

30. In page 65, line 36, after “exercise” to insert “not more than 7 days prior to such exercise”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

31. In page 66, between lines 28 and 29, to insert the following:

“(4) Subject to *subsection (5)*, an application under *section 96(2)* or *section 99(3)* may be made to the High Court.

(5) Where an application under *section 96(2)* or *section 99(3)* concerns property which is subject to a housing loan mortgage the Circuit Court shall have exclusive jurisdiction to deal with the application and the application shall not be made to the High Court.

(6) The jurisdiction of the Circuit Court to hear and determine applications under *sections 96(2)* and *99(3)* concerning property which is subject to a housing loan mortgage shall be exercised by the judge of the circuit where the property or any part of it is situated.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

32. In page 69, lines 28 and 29, to delete “mortgagor, or on one of 2 or more mortgagors,” and substitute “mortgagor”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

33. In page 74, line 37, after “section” to insert “or *section 31*”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

34. In page 75, line 1, to delete “rights or”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

35. In page 75, line 4, to delete “rights or”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

36. In page 75, lines 5 and 6, to delete “the judgment debtor’s estate or interest in”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

37. In page 76, between lines 14 and 15, to insert the following:



“(4) A *lis pendens* registered under section 10 of the Judgments (Ireland) Act 1844 which has not been vacated before the repeal of that section continues to have effect as if that section has not been repealed and such registration shall be deemed to form part of the register to be maintained under *subsection (1)*.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

**38.** In page 78, between lines 18 and 19, to insert the following:

“Interpretation  
(Part 14).

130.—In this Part, “business” and “lease” have the same meanings as they have in the Landlord and Tenant (Amendment) Act 1980.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

**39.** In page 78, between lines 18 and 19, to insert the following:

“Review of rent in  
certain cases.

131.—(1) This section applies to a lease of land to be used wholly or partly for the purpose of carrying on a business other than a lease entered into prior to the commencement of this section.

(2) A provision in a lease to which this section applies which provides for the review of the rent payable under the lease shall be construed as providing that the rent payable following such review may be fixed at an amount which is less than, greater than or the same as the amount of rent payable immediately prior to the date on which the rent falls to be reviewed.

(3) *Subsection (2)* shall apply—

(a) notwithstanding any provision to the contrary contained in the lease or in any agreement for the lease, and

(b) only as respects that part of the land demised by the lease in which business is permitted to be carried on under the terms of the lease.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

**40.** In page 78, to delete lines 24 and 25.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

**41.** In page 80, to delete lines 10\* to 16\* and to substitute the following:

Courts (Supplemental Provisions) Act 1961	Third Schedule	In column (2) at reference number 19, the insertion of the following after paragraph (c):  “(d) applications under <i>sections 93, 96</i> (except where the property concerned is subject to a housing loan mortgage), <i>99</i> (except where the property concerned is subject to a housing loan mortgage) and <i>116</i> of the <i>Land and Conveyancing Law Reform Act 2009</i> ”.
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—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[\*Note: A printer error has resulted in incorrect line references in page 80 of the Bill. The line references in this amendment relate to the actual number of lines of text contained in page 80 of the Bill.]