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*Number 35 of 2021*

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**Land and Conveyancing Law Reform Act 2021**

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ACTS REFERRED TO

Civil Law (Miscellaneous Provisions) Act 2011 (No. 23)

Foreshore Act 1933 (No. 12)

Land and Conveyancing Law Reform Act 2009 (No. 27)

Registration of Title Act 1964 (No. 16)



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Number 35 of 2021

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## LAND AND CONVEYANCING LAW REFORM ACT 2021

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An Act to amend the law relating to the acquisition of easements and *profits à prendre* by prescription; to repeal certain provisions of the Land and Conveyancing Law Reform Act 2009, including section 39 of that Act relating to the extinguishment of easements and *profits à prendre*; to amend the Registration of Title Act 1964; and to provide for related matters. [26th November, 2021]

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

### **Definitions**

1. In this Act—

“Act of 2009” means the Land and Conveyancing Law Reform Act 2009;

“foreshore” has the meaning assigned to it by section 1 of the Foreshore Act 1933;

“relevant date” means the 1<sup>st</sup> day of December 2009, being the date on which Chapter 1 of Part 8 of the Act of 2009 came into operation;

“State authority” means a Minister of the Government or the Commissioners of Public Works in Ireland.

### **Amendment of law relating to acquisition of easements and *profits à prendre* by prescription**

2. Notwithstanding section 34 (repealed by *section 6(1)*) of the Act of 2009, an easement or *profit à prendre* may be acquired by prescription in the following manner:

- (a) in a case where the prescription period was completed before the relevant date, in accordance with the law that applied to the acquisition of an easement or *profit à prendre* by prescription before the relevant date;
- (b) subject to *section 3(1)*, in a case where the prescription period was not completed before the relevant date, in accordance with the doctrine of lost modern grant as it applies at common law.

**Additional provisions relating to acquisition of easements and *profits à prendre* by prescription**

3. (1) (a) Subject to *subsection (2)*, where a claim to an easement or *profit à prendre* is made in respect of land which is owned by a State authority, the prescription period under the doctrine of lost modern grant shall be—
- (i) any period of 30 years, or
  - (ii) where the land is foreshore, any period of 60 years,
- unless the easement or *profit à prendre* had been acquired before the land was owned by that State authority or any other State authority.
- (b) Subject to *subsection (2)*, where a claim to an easement or *profit à prendre* is made in respect of land which was foreshore and has ceased to be foreshore but remains in the ownership of the State, the prescription period under the doctrine of lost modern grant shall be—
- (i) any period of 60 years, or
  - (ii) any period of 30 years after the land ceased to be foreshore, at the election of the person making the claim.
- (2) *Subsection (1)* shall not apply to a claim that falls under *section 2(a)*.

**Extinguishment of easements and *profits à prendre***

4. It is hereby declared for the avoidance of doubt that section 39 (repealed by *section 6(1)*) of the Act of 2009 was without prejudice to the application of the common law with regard to the extinguishment of an easement or *profit à prendre* howsoever or whenever acquired and, accordingly, the common law shall apply to such extinguishment.

**Amendment of section 49A of Registration of Title Act 1964**

5. Section 49A (inserted by section 41 of the Civil Law (Miscellaneous Provisions) Act 2011) of the Registration of Title Act 1964 is amended by—
- (a) the substitution of the following subsection for subsection (1):
    - “(1) Where a person claims to be entitled to an easement or *profit à prendre* by prescription, the person may apply to the Authority and the Authority, if satisfied that there is such an entitlement to the easement or *profit à prendre* may, subject to subsections (2) and (3), cause it, as may be appropriate, to be—
      - (a) registered as a burden under section 69(1)(jj), or
      - (b) entered in the register pursuant to section 82 or, in the case of a *profit à prendre* in gross, in the register of ownership maintained under section 8(b)(i),or both.”,

and

(b) the addition of the following subsection:

“(3) Subsection (2) shall not apply to *profits à prendre* in gross.”.

#### **Repeals and savers**

6. (1) Sections 33 to 39 of the Land and Conveyancing Law Reform Act 2009 are repealed.
- (2) Nothing in this Act (including the repeals effected by *subsection (1)*) shall affect—
- (a) any proceedings in which a claim to an easement or *profit à prendre* by prescription is made, or
  - (b) an application for the registration of an easement or *profit à prendre* under section 49A of the Registration of Title Act 1964,
- that are pending upon the coming into operation of this Act (including claims referred to in paragraph (b) of section 38 (repealed by *subsection (1)*) of the Act of 2009).

#### **Short title, construction and commencement**

7. (1) This Act may be cited as the Land and Conveyancing Law Reform Act 2021.
- (2) This Act (other than *section 5*) and the Land and Conveyancing Law Reform Act 2009 shall be construed together as one Act.
- (3) This Act shall come into operation on the 30<sup>th</sup> day of November 2021.