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Gateway for right of way claims near to closing

Warning that farmers and others may lose access unless they register

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RIGHT of way, the most ancient, contentious and divisive area of property law, which has remained essentially unchanged in hundreds of years, is to be radically overhauled. But time is running out for people to copperfasten their claims.

Under the Land and Conveyancing Act 2009, all rights of way have to be registered with the Land Registry or Registry of Deeds. That law gave people three years grace to sort out their rights but that expires on November 30, 2012.

Land Registry, under the umbrella of the Property Registration Authority, told the *Sunday Independent* last week that it was receiving a "steady stream" of applications from people who felt they had a right of way over another individual's land, whether by deed or by long use.

The legislation, approved by the last government, is designed to modernise the law and it substantially changes the rules on rights of way.

In the past, people could acquire a right of way over land they didn't own simply by using the land for 20 years, although other conditions were also necessary.

Farmers accessing their lands through a neighbour's land holding or urban home owners accessing the rear of a terraced house by means of a laneway without the expressed permission of the owner of the laneway are examples of this type of right of way that has been created over long usage.



OVERHAUL: Alan Shatter is overseeing the process

In the past, those rights did not need to be registered in either the Land Registry or Registry of Deeds. Where the right in question results from long usage, it may never have been registered and one of the aims in the 2009 Act was to ensure registration of those rights.

But the new legislation will permit the Property Registration Authority to register the rights concerned, without a court order, in cases where there is no disagreement between the parties concerning entitlement.

Speaking in the Dail in June, Justice Minister Alan Shatter stressed that the new amendments permitted the Property Registration Authority to register rights of way without a court order where it is satisfied that there is an entitlement to it.

"Where the Property Registration Authority is not satisfied that there is such an entitlement, such as where there is disagreement between the parties concerned, a court order under section 35 of the

2009 will continue to be required," he said.

It works this way. People have until November 20 to inform the Property Registration Authority that they have a right of way. The authority then writes to concerned parties, including neighbours and those who own the land where the right of way is asserted telling them of the claim.

If there is no objection then the Property Registration Authority will register the right of way on the applicant's land-registry folio.

The application can be done through a solicitor and many firms are now offering the service. But there is also a 'do-it yourself' option.

Those asserting a right of way can download form 5A from the Property Registration Authority website. It's a template for making a claim and relatively straightforward if you have access to relevant folio numbers. It costs €25 to register a claim yourself.

Failure to register a right of way can mean problems. For example, a farmer who has been using a right of way to access land all his life could find himself in a position of losing that right if it is not registered with the Land Registry or Registry of Deeds, whether he acquired it by long use or by deed.

The new procedure is intended only for cases where there is no dispute between the parties. If there is a dispute, it's best to get legal advice and there is no definite advice because in this complex and arcane area of the law every case is different.