



AN BILLE COMHARBAIS, 1964
SUCCESSION BILL, 1964

SUPPLEMENTARY EXPLANATORY MEMORANDUM

1. The Succession Bill is an important measure for the reform of the law. Because of the nature of the proposals which it contains and the fact that it intimately concerns every member of the community, the text of the Bill was circulated at the beginning of the Summer Recess so that everybody would have ample opportunity to study its provisions before it came to be discussed by Dáil Éireann. At the time, the Minister for Justice stated that the Government would welcome comments on the Bill, that they would be quite prepared to consider any criticisms of the Bill, and that they would examine any amendments that were shown to be desirable.

2. The provisions of the Bill that have attracted most attention are those in Parts IX and X, purporting to give the spouse and issue of a testator 'legal rights' to fixed shares of his estate. While there is general acceptance of the need to restrict a testator's right to disinherit his spouse and children, the view has been widely expressed that the provisions of Parts IX and X of the Bill would impose unduly rigid limitations on the discretion which a testator should have to divide his estate amongst the various members of his family in the manner best suited to the particular needs and circumstances of each case. It has been argued (a) that a married man should not be compelled to leave anything to his children where, in fact, he wants to leave all his property to his wife; (b) that he should not be compelled to leave anything to adult children who are no longer dependent on him; (c) that he should be allowed to choose between his children, having regard to the position in life of each child; (d) that he should have no obligation to grandchildren or remoter issue; and (e) that, if he is the owner of a farm or family business, he should be free to leave the farm or business to one member of his family unencumbered by charges in favour of the other members. Particular objection has been raised to subsections (4) and (5) of section 119, which, it is claimed, will encourage litigation.

3. The Government have approved the preparation of a number of amendments to the Bill. These amendments will be submitted to Dáil Éireann on the conclusion of the Second Stage. An outline of the amendments is given in the Appendix hereto. The amendments will have the following effects:

- (1) Absolute entitlement to legal right shares will be limited to a spouse and *dependent* children.
- (2) A testator's family will have a right to a fixed portion of his property, but the testator will have greater freedom in the disposition of this portion between the different members of the family. The fixed portion will be two-thirds of the estate, where the testator's family consists of a spouse and children. Where the family consists of a spouse and no children, or children and no spouse, the fixed portion will be one-half of the estate.
- (3) A married man with children will be able to leave all his property to his wife.

- (4) The owner of property will be able, at any time before his death, to make a family settlement of his property on his spouse or on any of his children or on his spouse and any of his children. Where the spouse is alive, his or her consent will be required.
- (5) Those provisions of the Bill which have been criticised as likely to give rise to litigation will be deleted.

APPENDIX

OUTLINE OF PROPOSED AMENDMENTS TO PARTS IX AND X OF THE SUCCESSION BILL, 1964

General

1. (1) Entitlement to legal right shares under Part IX is to be limited to a spouse and dependent children. "Dependent child" will be defined as a child who, at the date of the testator's death, is—

- (a) under the age of 21 years;
- (b) an adult unmarried daughter ordinarily resident in the testator's household or dependent on him;
- (c) an adult child subject to mental or physical disability.

(2) Non-dependent children are to be entitled to legal right shares as if they were dependent children unless the testator bequeaths the non-disposable part of his estate (two-thirds or one-half, as the case may be) to (a) his spouse, (b) his spouse and one or some or all of his children, or (c) one or some or all of his children (where there is no spouse).

(3) The "non-disposable" part of an estate is to mean two-thirds of the estate where a testator leaves a spouse and children and one-half of the estate where he leaves a spouse and no children or children and no spouse.

NOTE: This amendment will confine absolute entitlement to legal rights to the spouse and dependent children. The effect will be that children who are settled in the world and able to provide for themselves will have no claim on the testator's estate as legal rights, except where the testator leaves less than the non-disposable part of his estate within his family. Subject to the entitlement of the spouse and dependent children to legal right shares, the testator will be able to allocate the balance of the non-disposable part of his estate any way he wishes within his family. In addition, the testator will have no legal obligations towards grandchildren or remoter issue.

Section 111

2. Subsection (2) is to be amended to provide that, where a testator leaves two-thirds or more of his property to his spouse, dependent children who are also children of that spouse will not be entitled to legal right shares. Dependent children who are not children of the surviving spouse are to be entitled to legal right shares.

NOTE: This amendment is designed to allow a testator with dependent children to leave all or the bulk of his property to his wife, trusting her to look after the children. However, where the dependent children or some of them are the step-children of the surviving spouse, an exception is being made.

3. Subsection (3) is to be replaced by a new subsection to the effect that, where a testator leaves dependent children entitled to a legal right share, the share will be a proportionate part of one-half or one-third of the estate, as the case may be. For the purpose of calculating this share, all the surviving children of the testator are to be deemed to be dependent children.

NOTE: *This amendment is consequential on the proposal to confine entitlement to legal right shares to dependent children.*

Section 115

4. Subsections (1) and (2) are to be amended by the insertion of new provisions on the following lines:

- (1) Where a deceased person dies wholly testate, a spouse or child is to be entitled to elect to take a devise or bequest in *pro tanto* satisfaction of his share as a legal right.
- (2) Where a deceased person dies partly testate and partly intestate, a spouse or child is to be entitled to elect to take his share under the intestacy together with any devise or bequest under the will in *pro tanto* satisfaction of his share as a legal right.

NOTE: *The object of this amendment is to allow a spouse or child to accept a bequest in partial satisfaction of a legal right share.*

Section 117

5. Subsection (1) is to be amended by the substitution of "three years" for "ten years".

NOTE: *Three years is the period for estate duty purposes.*

6. Subsection (1) is to be further amended so as not to apply to:
- (a) premiums paid under an insurance policy for the benefit of a spouse or child (whether or not a dependent child) of the testator;
 - (b) an assignment of pension rights in favour of the testator's spouse;
 - (c) a family settlement made for the benefit of a spouse or for the benefit of a spouse and children or for the benefit of children of the testator, and, where the spouse is alive, made with the consent of the spouse.

NOTE: *Moneys payable under an insurance policy for the benefit of a spouse or child do not form part of a deceased's estate—section 7 (3) of the Married Women's Status Act, 1957. Assignment of pension rights are to be treated on the same basis. It is proposed to exclude family settlements in order to facilitate the practice of keeping the family business or farm in the hands of one member of the family and also to encourage an ageing farmer to hand over his farm to one of his children. Where the spouse is alive, the settlement is to be made with his or her consent.*

Section 119

7. Subsections (4) and (5) are to be deleted.

NOTE: *The proposal to confine entitlement to legal right shares to dependent children renders the subsections largely unnecessary. This is particularly so in the case of subsection (5).*

*Roinn Dlí agus Cirt,
Samhain, 1964.*

