



**AN BILLE UM AN DLI TEAGHLAIGH (COTHABHAIL
CEILI AGUS LEANAI), 1975**

**FAMILY LAW (MAINTENANCE OF SPOUSES AND
CHILDREN) BILL, 1975**

*Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann*

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AN BILLE UM AN DLI TEAGLAIGH (COTHABHAIL
CEILI AGUS LEANAI), 1975

FAMILY LAW (MAINTENANCE OF SPOUSES AND
CHILDREN) BILL, 1975

BILL

entitled

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AN ACT TO MAKE PROVISION FOR PERIODICAL PAY-
MENTS BY A SPOUSE FOR THE SUPPORT OF THE
OTHER SPOUSE AND ANY DEPENDENT CHILDREN OF
THE FAMILY OF THE SPOUSES IN CERTAIN CASES OF
FAILURE BY THE SPOUSE TO PROVIDE REASONABLE
MAINTENANCE, TO ENABLE PAYMENTS TO BE MADE
BY AN EMPLOYER, BY DEDUCTIONS FROM AN
EMPLOYEE'S EARNINGS, TO A PERSON ENTITLED
UNDER CERTAIN COURT ORDERS TO PERIODIC PAY-
MENTS FOR MAINTENANCE FROM THE EMPLOYEE,
TO PROVIDE FOR OTHER MATTERS CONNECTED
WITH THE MATTERS AFORESAID AND TO AMEND IN
OTHER RESPECTS THE LAW RELATING TO PARENTS
AND CHILDREN.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Family Law (Maintenance of Short title.
25 Spouses and Children) Act, 1976.

2.—This Act shall come into operation on the day that is one Commencement.
month after the date of its passing.

3.—(1) In this Act, save where the context otherwise requires— Interpretation.
“antecedent order” means—

- 30 (a) a maintenance order,
(b) a variation order,
(c) an interim order,
(d) an order under section 8 of this Act (in so far as it is
deemed under that section to be a maintenance order),
35 (e) an order deemed under section 30 of this Act to be a main-
tenance order,

- 1930, No. 17. (f) an order providing for a periodical payment under the Illegitimate Children (Affiliation Orders) Act, 1930,
- 1964, No. 7. (g) an order for maintenance under section 11 (2) (b) of the Guardianship of Infants Act, 1964,
- 1974, No 16. (h) an enforceable maintenance order under the Maintenance Orders Act, 1974, 5
- (i) an order for payment of alimony pending suit or permanent alimony;

"attachment of earnings order" means an order under section 10 of this Act; 10

"Court" shall be construed in accordance with section 23 of this Act;

"dependent child of the family", in relation to a spouse or spouses, means any child—

- (a) of both spouses, or adopted by both spouses under the Adoption Acts, 1952 to 1974, or in relation to whom both spouses are *in loco parentis*, or 15
- (b) of either spouse, or adopted by either spouse under the Adoption Acts, 1952 to 1974, or in relation to whom either spouse is *in loco parentis*, where the other spouse, 20 being aware that he is not the parent of the child, has treated the child as a member of the family,

who is under the age of sixteen years, or, if he has attained that age—

- (i) is or will be or, if an order were made under this Act providing for periodical payments for his support, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of twenty-one years, or 25 30
- (ii) is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully; 40

"desertion" includes conduct on the part of one spouse that results in the other spouse, with just cause, leaving and living separately and apart from him, and cognate words shall be construed accordingly; 35

"earnings" means any sums payable to a person—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service); 40
- (b) by way of pension or other like benefit in respect of employment (including an annuity in respect of past services, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment); 45

"interim order" means an order under section 7 of this Act; 02

"maintenance creditor", in relation to an order under this Act (other than an order under section 22 of this Act), or to proceedings arising out of such an order, means a person on whose application there has been made such an order; 50

"maintenance debtor", in relation to an attachment of earnings order, or to proceedings in which a Court has power to make such an order, or to proceedings arising out of such an order, means the spouse by whom payments are required by the relevant antecedent order to be made and, in relation to any other order under this Act 55

(other than an order under *section 22* of this Act) or to proceedings in which a Court has power to make such an order, or to proceedings arising out of such an order, means a spouse who is or, if it were made, would be required by such an order to make periodical payments for the support of persons named in the order;

"maintenance order" means an order under *section 5* of this Act;

"normal deduction rate" and "protected earnings rate" have the meanings respectively assigned to them by *section 10* of this Act;

"variation order" means an order under *section 6* of this Act varying a maintenance order.

(2) Subject to *section 16* of this Act, the relationship of employer and employee shall be regarded as subsisting between two persons if one of them as a principal and not as a servant or agent pays earnings to the other.

(3) References in this Act to a District Court clerk include references to his successor in the office of District Court clerk and to any person acting on his behalf.

(4) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

4.—A periodical payment under an order under this Act shall commence on such date, not being earlier than the date on which the order is made, as may be specified in the order.

Commencement of periodical payments.

PART II

MAINTENANCE OF SPOUSES AND DEPENDENT CHILDREN

5.—(1) (a) Subject to *subsection (4)* of this section, where it appears to the Court, on application to it by a spouse, that the other spouse has failed to provide such maintenance for the applicant spouse and any dependent children of the family as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the other spouse make to the applicant spouse periodical payments, for the support of the applicant spouse and of each of the dependent children of the family, for such period during the lifetime of the applicant spouse, of such amount and at such times, as the Court may consider proper.

Maintenance order.

(b) Subject to *subsection (4)* of this section, where a spouse—

(i) is dead,

(ii) has deserted, or has been deserted by, the other spouse, or

(iii) is living separately and apart from the other spouse,

and there are dependent children of the family (not being children who are being fully maintained by either spouse), then, if it appears to the Court, on application to it by any person, that the surviving spouse or, as the case may be, either spouse has failed to provide such maintenance for any dependent children of the family as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that that spouse make to that person periodical payments, for the support of each of those dependent children, for such period during the lifetime of that person, of such amount and at such times, as the Court may consider proper.

(c) A maintenance order or a variation order shall specify each part of a payment under the order that is for the support of a dependent child and may specify the period during the lifetime of the person applying for the order for which so much of a payment under the order as is for the support of a dependent child shall be made. 5

(2) The Court shall not make a maintenance order for the support of a spouse where the spouse has deserted and continues to desert the other spouse. 10

(3) Where the applicant spouse has committed adultery, then—

(a) if the other spouse has condoned or connived at, or by wilful neglect or misconduct condoned to, the adultery, the adultery shall not be a ground on which the Court may refuse to make a maintenance order for the support 15 of the applicant spouse,

(b) if the other spouse has not condoned or connived at, or by wilful neglect or misconduct condoned to, the adultery, the Court may, notwithstanding the adultery, make a maintenance order for the support of the applicant 20 spouse in any case where, having regard to all the circumstances (including the conduct of the other spouse), the Court considers it proper to do so.

(4) The Court, in deciding whether to make a maintenance order and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, to the following matters— 25

(a) the income, earning capacity (if any), property and other financial resources of the spouses and of any dependent children of the family, including income or benefits to 30 which either spouse or any such children are entitled by or under statute, and

(b) the financial and other responsibilities of the spouses towards each other and towards any dependent children of the family and the needs of any such dependent children, 35 including the need for care and attention.

Discharge,
variation
and termination of
maintenance order.

6.—(1) The Court may—

(a) discharge a maintenance order at any time after one year from the making thereof, on the application of the maintenance debtor, where it appears to the Court that, having regard to the maintenance debtor's record of payments pursuant to the order and to the other circumstances of the case, the persons for whose support it provides will not be prejudiced by the discharge thereof, or 40

(b) discharge or vary a maintenance order at any time, on the application of either party, if it thinks it proper to do so 45 having regard to any circumstances not existing when the order was made or, if it has been varied, when it was last varied, or to any evidence not available to that party when the maintenance order was made or, if it has been 50 varied, when it was last varied.

(2) Notwithstanding anything contained in subsection (1) of this section, the Court shall, on application to it under that subsection,

discharge that part of a maintenance order which provides for the support of a maintenance creditor where it appears to it that the maintenance creditor, being the spouse of the maintenance debtor, has deserted and continues to desert the maintenance debtor.

- 5 (3) That part of a maintenance order which provides for the support of a dependent child shall stand discharged when the child ceases to be a dependent child of the family by reason of his attainment of the age of sixteen years or twenty-one years, as the case may be, and shall be discharged by the Court, on application to it under
10 subsection (1) of this section, if it is satisfied that the child has for any reason ceased to be a dependent child of the family.

(4) Where the applicant spouse has committed adultery since the making of a maintenance order for the support of such spouse, then—

- 15 (a) if the other spouse has condoned or connived at, or by wilful neglect or misconduct conduced to, the adultery, the adultery shall not be a ground on which the Court may discharge or vary the maintenance order;

- 20 (b) if the other spouse has not condoned or connived at, or by wilful neglect or misconduct conduced to, the adultery, the Court may, notwithstanding the adultery, refuse to discharge or vary the maintenance order for the support of the applicant spouse in any case where the Court, having regard to all the circumstances (including the conduct of that other spouse), considers it proper to refuse
25 to do so.

(5) Desertion or adultery by a spouse shall not be a ground for discharging or varying any part of a maintenance order that provides for the support of dependent children of the family.

- 7.—On an application to the Court for a maintenance order, the
30 Court, before deciding whether to make or refuse to make the order, may, if it appears to the Court proper to do so having regard to the needs of the persons for whose support the maintenance order is sought and the other circumstances of the case, make an order (in this Act referred to as an interim order) for the payment to the applicant
35 by the maintenance debtor, for a definite period specified in the order or until the application is adjudicated upon by the Court, of such periodical sum as, in the opinion of the Court, is proper. Interim order.

8.—Where—

- 40 (a) the parties to a marriage enter into an agreement in writing (including a separation agreement) after the commencement of this Act that includes either or both of the following provisions, that is to say—

- 45 (i) a provision whereby one spouse undertakes to make periodical payments towards the maintenance of the other spouse or of any dependent children of the family or of both that other spouse and any dependent children of the family,

- 50 (ii) a provision governing the rights and liabilities of the spouses towards one another in respect of the making or securing of payments (other than payments specified in paragraph (a) (i) of this section), or the disposition or use of any property, and

- 55 (b) an application is made by one or both of the spouses to the High Court or the Circuit Court for an order making the agreement a rule of court,

the Court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of both spouses and the dependent children (if any) of the family, and such order shall, in so far as it relates to

Orders in respect of certain marital agreements,

a provision specified in *paragraph (a) (i)* of this section, be deemed, for the purpose of *section 9* and *Part III* of this Act, to be a maintenance order.

Transmission of
payments through
District Court
clerk.

9.—(1) Where the Court makes a maintenance order, a variation order or an interim order under this Act, the Court shall— 5

(a) thereupon direct that payments under the order shall be made to the District Court clerk, unless the maintenance creditor requests it not to do so and the Court considers that it would be proper not to do so, and

(b) in a case in which the Court has not given a direction under *paragraph (a)* of this subsection, direct, at any time thereafter on the application of the maintenance creditor, that the payments aforesaid shall be made to the District Court clerk. 10

(2) Where payments to the District Court clerk under this section are in arrear, the District Court clerk shall, if the maintenance creditor so requests in writing, take such steps as he considers reasonable in the circumstances to recover the sums in arrear whether by proceeding in his own name for an attachment of earnings order or otherwise. 15 20

(3) Where a direction has been given under *subsection (1)* of this section, the Court, on the application of the maintenance debtor and having afforded the maintenance creditor an opportunity to oppose the application, may, if it is satisfied that, having regard to the record of the payments made to the District Court clerk and all the other circumstances, it would be proper to do so, discharge the direction. 25

(4) The District Court clerk shall transmit any payments made to him by virtue of this section to the maintenance creditor.

(5) Nothing in this section shall affect any right of a person to take proceedings in his own name for the recovery of any sum payable, but not paid, to the District Court clerk by virtue of this section. 30

(6) References in this section, in relation to any proceedings, to the District Court clerk are references to such District Court clerk in such District Court district as may be determined from time to time by the Court concerned. 35

(7) Nothing in *subsection (1)* or (2) of this section shall affect *paragraph (a)* or *(b)* of *section 14 (8)* of the Maintenance Orders Act, 1974. 40

1974, No. 16.

(8) *Section 14 (8)* of the Maintenance Orders Act, 1974, is hereby amended by the insertion in *paragraph (b)* after “application under” of “*section 10* of the *Family Law (Maintenance of Spouses and Children) Act, 1976*, or” and by the substitution of “the said *section 8*” for “that section” and the said *paragraph (b)*, as so amended, is set out in the Table to this section. 45

TABLE

(b) The district court clerk shall, if any sum payable by virtue of an enforceable maintenance order is not duly paid and if the maintenance creditor so requests in writing, make an application under *section 10* of the *Family Law (Maintenance of Spouses and Children) Act, 1976*, or *section 8* (which relates to the enforcement of certain maintenance orders) of the *Enforcement of Court Orders Act, 1940*, and for that purpose the references in the said *section 8* (other than *subsections (4)* and *(5)*) to the applicant shall be construed as references to the district court clerk. 50 55

1940, No. 23.

PART III

ATTACHMENT OF EARNINGS

10.—(1) (a) On application—

Attachment of
earnings order.

5 (i) to the High Court by a person on whose application the High Court has made an antecedent order,

(ii) to the Circuit Court by a person on whose application the Circuit Court has made an antecedent order,

10 (iii) to the District Court—

(I) by a person on whose application the District Court has made an antecedent order, or

(II) by a District Court clerk to whom payments under an antecedent order are required to be made,

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the Court to which the application is made (subsequently referred to in this section as “the Court”) may, to secure payments under the antecedent order, if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid, make an attachment of earnings order.

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(b) References in this subsection to an antecedent order made by any Court include references to such an order made, varied or affirmed on appeal from that Court.

25

(2) An attachment of earnings order shall be an order directed to a person who has the maintenance debtor in his employment and shall operate as a direction to that person to make, at such times as may be specified in the order, periodical deductions of such amounts (specified in the order) as may be appropriate, having regard to the normal deduction rate and the protected earnings rate, from the maintenance debtor's earnings and to pay the amounts deducted, at such times as the Court may order—

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(a) in case the relevant antecedent order is an enforceable maintenance order, to the District Court clerk specified by the attachment of earnings order for transmission to the person entitled to receive payments made under the relevant antecedent order,

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(b) in any other case, to the person referred to in *paragraph (a)* of this subsection or, if the Court considers proper, to the District Court clerk specified by the attachment of earnings order for transmission to that person.

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(3) An attachment of earnings order shall not be made without the consent of the maintenance debtor unless the Court is satisfied that the maintenance debtor has, without reasonable excuse, defaulted in the making of any payment under the relevant antecedent order.

45

(4) An attachment of earnings order shall—

(a) specify the normal deduction rate, that is to say, the rate at which the Court considers it reasonable that the earnings to which the order relates should be applied in satisfying the relevant antecedent order, not exceeding the rate appearing to the Court to be necessary for the purpose of—

50

(i) securing payment of the sums falling due from time to time under the relevant antecedent order, and

55

(ii) securing payment within a reasonable period of any sums already due and unpaid under the relevant antecedent order and any costs incurred in proceed-

ings relating to the relevant antecedent order which are payable by the maintenance debtor,

- (b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the maintenance debtor, the Court considers it proper that the relevant earnings should not be reduced by a payment made in pursuance of the attachment of earnings order, 5
- (c) contain so far as they are known to the Court such particulars as it considers appropriate for the purpose of enabling the maintenance debtor to be identified by the person to whom the order is directed. 10

(5) Payments under an attachment of earnings order shall be in lieu of payments of the like total amount under the relevant antecedent order that have not been made and that, but for the attachment of earnings order, would fall to be made under the relevant antecedent order. 15

Compliance with attachment of earnings order.

11.—(1) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall, if it has been served upon him, comply with it; but he shall be under no liability for non-compliance therewith before ten days have elapsed since the service. 20

(2) Where an attachment of earnings order is served on any person and the maintenance debtor is not in his employment or the maintenance debtor subsequently ceases to be in his employment, that person shall (in either case), within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to the Court. 25

(3) On any occasion when a person makes, in compliance with an attachment of earnings order, a deduction from a maintenance debtor's earnings, he shall give to the maintenance debtor a statement in writing of the total amount of the deduction. 30

(4) Such court registrar or court clerk as may be specified by an attachment of earnings order shall cause the order to be served on the employer to whom it is directed and on any subsequent employer of the maintenance debtor concerned of whom the registrar or clerk so specified becomes aware and such service may be effected by leaving the order or a copy of the order at, or sending the order or a copy of the order by registered prepaid post to, the residence or place of business in the State of the person to be served. 40

Application of sums received by District Court clerk.

12.—Any payments made to a District Court clerk under an attachment of earnings order shall, when transmitted by him to the person entitled to receive those payments, be deemed to be payments made by the maintenance debtor so as to discharge—

- (a) firstly, any sums payable under the relevant antecedent order, 45 and
- (b) secondly, any costs in proceedings relating to the relevant antecedent order payable by the maintenance debtor when the attachment of earnings order was made or last varied.

Statement as to earnings.

13.—(1) In relation to an attachment of earnings order or an application for such an order, the Court that made the order or to which the application is made may, before or at the hearing or while the order is in force— 50

- (a) order the maintenance debtor to give to the Court, within a specified period, a statement in writing signed by him of— 55
 - (i) the name and address of any person by whom earnings are paid to him,

- (ii) specified particulars as to his earnings and expected earnings and as to his resources and needs, and
 - (iii) specified particulars for enabling the maintenance debtor to be identified by any employer of his,
- 5 (b) order any person appearing to the Court to have the maintenance debtor in his employment to give to the Court, within a specified period, a statement signed by that person, or on his behalf, of specified particulars of the maintenance debtor's earnings and expected earnings.

10 (2) Notice of an application for an attachment of earnings order served on a maintenance debtor may include a requirement that he shall give to the Court, within the period and in the manner specified in the notice, a statement in writing of the matters referred to in subsection (1) (a) of this section and of any other matters which

15 are or may be relevant to the determination of the normal deduction rate and the protected earnings rate to be specified in the order.

(3) In any proceedings in relation to an attachment of earnings order, a statement given to the Court in compliance with an order under paragraph (a) or (b) of subsection (1) of this section or with

20 a requirement under subsection (2) of this section shall be admissible as evidence of the facts stated therein, and a document purporting to be such a statement shall be deemed, unless the contrary is shown, to be a statement so given.

14.—Where an attachment of earnings order is in force :

- 25 (a) the maintenance debtor shall notify in writing the Court that made the order of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than ten days from the date on which he does so,
- 30 (b) the maintenance debtor shall, on any occasion on which he becomes employed or re-employed, include in his notification under paragraph (a) of this section particulars of his earnings and expected earnings from the relevant employment,
- 35 (c) any person who becomes an employer of the maintenance debtor and knows that the order is in force and by what Court it was made shall, within ten days of his becoming the maintenance debtor's employer or of acquiring that knowledge (whichever is the later), notify that Court in writing that he is the debtor's employer, and include in
- 40 his notification a statement of the debtor's earnings and expected earnings.

Notification of changes of employment and earnings.

15.—(1) Where an attachment of earnings order is in force, the Court that made the order shall, on the application of the employer

45 concerned or the maintenance debtor or the person to whom payments are being made under the order, determine whether payments (or any portions thereof) to the maintenance debtor of a particular class or description specified by the application are earnings for the purpose of the order, and the employer shall give effect to any

50 determination for the time being in force under this section.

Power to determine whether particular payments are earnings.

(2) Where an application under this section is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments (or any portions thereof) of the class or description specified by the application which are made by

55 him to the maintenance debtor while the application or any appeal in consequence thereof or any decision in relation to the application or appeal is pending, but this shall not, unless the Court otherwise orders, apply as respects such payments (or any portions thereof) if the employer subsequently withdraws the application or, as the case

60 may be, abandons the appeal.

Persons in service
of State, local
authority etc.
1941, No. 23.
1946, No. 9.
1930, No. 29.
1931, No. 8.

16.—(1) Where a maintenance debtor is in the service of the State, a local authority for the purposes of the Local Government Act, 1941, a harbour authority within the meaning of the Harbours Act, 1946, a health board, a vocational education committee established by the Vocational Education Act, 1930, or a committee of agriculture established by the Agriculture Act, 1931, or is a member of either House of the Oireachtas—

(a) in a case where a maintenance debtor in the service of the State is employed in a department, office, organisation, service, undertaking or other body, its chief officer (or such other officer as the Minister of State by whom the department, office, organisation, service, undertaking or other body is administered may from time to time designate) shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment,

(b) in a case where a maintenance debtor is in the service of such an authority, board or committee, its chief officer shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment,

(c) in any other case, where a maintenance debtor is paid out of the Central Fund or out of moneys provided by the Oireachtas, the Secretary of the Department of Finance (or such other officer of the Minister for Finance as that Minister may from time to time designate) shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment, and

(d) any earnings of a maintenance debtor paid out of the Central Fund or out of moneys provided by the Oireachtas shall be regarded as paid by the chief officer referred to in *paragraph (a) or (b)*, as the case may be, of this subsection, the Secretary of the Department of Finance or such other officer as may be designated under *paragraph (a) or (c)*, as the case may be, of this subsection, as may be appropriate.

(2) If any question arises in proceedings for or arising out of an attachment of earnings order as to what department, office, organisation, service, undertaking or other body a maintenance debtor in the service of the State is employed in for the purposes of this section, the question may be referred to and determined by the Minister for the Public Service, but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the Court.

(3) A document purporting to contain a determination of the Minister for the Public Service under *subsection (2)* of this section and to be signed by an officer of the Minister for the Public Service shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and be deemed, unless the contrary is shown, to contain an accurate statement of that determination.

(4) In this section references to a maintenance debtor in the service of the State include references to a maintenance debtor to whom earnings are paid directly out of moneys provided by the Oireachtas.

Discharge,
variation and
lapse of attachment
of earnings order.

17.—(1) The Court that made an attachment of earnings order may, if it thinks fit, on the application of the maintenance creditor, the maintenance debtor or the District Court clerk on whose application the order was made, make an order discharging or varying that order.

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, if it has been served upon

him, comply with it, but he shall be under no liability for non-compliance before ten days have elapsed since the service.

5 (3) Where an employer affected by an attachment of earnings order ceases to have the maintenance debtor in his employment, the order shall, in so far as that employer is concerned, lapse (except as respects deductions from earnings paid after the cesser by that employer and payment to the person in whose favour the order was made of deductions from earnings made at any time by that employer).

10 (4) The lapse of an order under *subsection (3)* of this section shall not prevent its remaining in force for other purposes.

15 18.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the relevant antecedent order, except as regards payments under the attachment of earnings order in respect of any time before the date of the discharge.

Cesser of attachment of earnings order.

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the Court that made the order shall give notice of the cesser to the employer.

20 19.—(1) Where an attachment of earnings order has been made, any proceedings commenced under section 8 (1) of the Enforcement of Court Orders Act, 1940, for the enforcement of the relevant antecedent order shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect.

Provisions in relation to alternative remedies. 1940, No. 23.

25 (2) An attachment of earnings order shall cease to have effect upon the making of an order under section 8 (1) of the Enforcement of Court Orders Act, 1940, for the enforcement of the relevant antecedent order.

20.—(1) Where, without reasonable excuse, a person—

Enforcement.

30 (a) fails to comply with *subsection (1)* or *(2)* of *section 11* or *section 14* or an order under *section 13* or *section 17 (2)* of this Act, or

(b) gives to a Court a statement pursuant to *section 13 (1)* of this Act, or a notification under *section 14* of this Act, that is false or misleading,

35 and a maintenance creditor as a result fails to obtain a sum of money due under an attachment of earnings order, that sum may be sued for as a simple contract debt in any court of competent jurisdiction by the maintenance creditor or the District Court clerk to whom such sum falls to be paid, and that court may order the person to pay
40 to the person suing such amount (not exceeding the sum aforesaid) as in all the circumstances the court considers proper for distribution in such manner and in such amounts as the court may specify amongst the persons for whose benefit the attachment of earnings order was made.

45 (2) Where a person gives to a Court—

(a) a statement pursuant to *section 13* of this Act, or

(b) a notification under *section 14* of this Act,

that is to his knowledge false or misleading, he shall be guilty of an offence and shall be liable on summary conviction to a fine

not exceeding £200 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both.

(3) A person who contravenes *section 11 (3)* of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

PART IV

MISCELLANEOUS

Property in household allowance.

21.—Any allowance made by one spouse to the other spouse after the commencement of this Act for the purpose of meeting household expenses, and any property or interest in property acquired out of such allowance, shall, in the absence of any agreement, whether express or implied, between them to the contrary, belong to the spouses as joint owners.

Barring of spouse from family home.

22.—(1) On application to it by either spouse, the Court may, if it is of opinion that there are reasonable grounds for believing that the safety or welfare of that spouse or of any dependent child of the family requires it, order the other spouse, if he is residing at a place where the applicant spouse or that child resides, to leave that place, and, whether the other spouse is or is not residing at that place, prohibit him from entering that place until further order by the Court or until such other time as the Court shall specify.

(2) Either spouse may apply at any time to the Court that made it for the discharge of an order under this section, and the Court shall discharge the order if it is satisfied that it is proper to do so and that the safety and welfare of the spouse on whose application the order was made or any dependent child will not be prejudiced by the discharge.

(3) Without prejudice to the law as to contempt of court, where a person—

(a) contravenes an order under this section, or

(b) while an order under this section directed against him is in force, molests or puts in fear his spouse or a dependent child,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both.

(4) In *subsections (1) and (2)* of this section “the Court” means the High Court, the Circuit Court or the District Court, and—

(a) the District Court shall have jurisdiction in relation to proceedings under this section irrespective of the rateable value of the place to which the proceedings relate, but any order made by the District Court shall, subject to *subsection (5)* of this section, expire three months after the date of its making but may be renewed from time to time by order of the District Court, on application to it by a person in whose favour the order was made, for further periods of three months but not exceeding three months in respect of any one renewal,

(b) the Circuit Court (except on appeal from an order of the District Court) shall not have jurisdiction in relation to proceedings under this section where the rateable value of the place to which the proceedings relate exceeds £100,

(c) an order made by the Circuit Court on appeal from an order of the District Court under *subsection (1)* of this section

5 in relation to a place the rateable value of which exceeds £100 shall, subject to *subsection* (5) of this section, expire three months after the date of its making but may be renewed from time to time by order of the District Court, on application to it by a person in whose favour the order was made, for further periods of three months but not exceeding three months in respect of any one renewal.

10 (5) An order under this section shall expire upon the determination of any matrimonial cause or matter in the High Court between the spouses or of any proceedings between the spouses under the Guardianship of Infants Act, 1964, in the High Court or Circuit Court, and the Court determining any such cause, matter or proceedings may, in the cause, matter or proceedings, make an order under this section irrespective of the rateable value of the place to 15 which the order relates.

1964, No. 7.

(6) An appeal from an order under this section shall, if the court that made the order or the court to which the appeal is brought so determines, but not otherwise, stay the proceeding upon the order upon such terms (if any) as may be imposed by the court making the 20 determination.

23.—(1) Subject to *subsection* (2) of this section, the High Court, the Circuit Court (on appeal from the District Court) and the District Court shall, concurrently, have jurisdiction to hear and determine proceedings under *sections* 5, 6, 7 and 9 of this Act. Jurisdiction of Courts.

25 (2) (a) The District Court and the Circuit Court (on appeal from the District Court) shall not have jurisdiction to make an order under this Act for the payment of a periodical sum at a rate greater than £40 per week for the support of a spouse or £10 per week for the support of a child.

30 (b) Nothing in *subsection* (1) of this section shall be construed as conferring on the District Court or on the Circuit Court (on appeal from the District Court) jurisdiction to make an order or direction under *sections* 5, 6, 7 or 9 of this Act in any matter in relation to which the High Court has 35 made an order or direction under any of those sections.

(3) Notwithstanding anything contained in section 52 or 79 of the Courts of Justice Act, 1924, the jurisdiction conferred on the Circuit Court by *section* 8 of this Act may be exercised by the Judge of the circuit where either of the parties to the proceedings ordinarily resides or carries on any profession, business or occupation and proceedings under this Act may be brought, heard and determined before and by a Justice of the District Court for the time being assigned to the District Court district where either party to the proceedings ordinarily resides or carries on any profession, business or occupation. 1924, No. 10.

24.—A periodical payment of money pursuant to a maintenance order, a variation order, an interim order, an order under *section* 8 of this Act (in so far as it is deemed under that section to be a maintenance order), or an attachment of earnings order shall be made 50 without deduction of income tax. Payments to be without deduction of income tax.

25.—(1) Proceedings under this Act shall be conducted in a summary manner and shall be heard otherwise than in public. Conduct of Court proceedings.

(2) Proceedings in the High Court and the Circuit Court under this Act shall be heard in chambers.

26.—The costs of any proceedings under this Act shall be in the discretion of the Court. Costs.

27.—An agreement shall be void in so far as it would have the effect of excluding or limiting the operation of any provision of this Act (other than *section* 21). Voidance of certain provisions of agreements.

28.—(1) The Illegitimate Children (Affiliation Orders) Act, 1930,
is hereby amended—

(a) by the insertion in section 1 of the following definition:

“ ‘ child ’ means any child who is under the age of sixteen
years, or, if he has attained that age—

5

(i) is or will be or, if an order were made under this Act
providing for periodical payments for his support,
would be receiving full-time education or instruction
at any university, college, school or other educational
establishment and is under the age of twenty-one 10
years, or

(ii) is suffering from mental or physical disability to such
extent that it is not reasonably possible for him to
maintain himself fully.”;

(b) by the substitution in section 2 of the following subsection 15
for subsection (2):

“ (2) An application for the issue of a summons or
other process under this section may be made only—

(a) before the birth of the illegitimate child in respect
of whom the application is made, or 20

(b) within three years after the birth of the child,
or

(c) where the alleged father of the child contributed
to the maintenance of the child within three years
after the date of the birth of the child, at any 25
time after the contribution, or

(d) where the alleged father of the child was not
resident in the State at the date of the birth of
the child, at any time not later than three years
after the alleged father first takes up residence 30
in the State after that date, or

(e) where the alleged father of the child was resident
in the State at the date of the birth of the child
but ceased to be so resident within three years
after that date, at any time not later than three 35
years after the alleged father first takes up resi-
dence in the State after that cesser.”;

(c) by the substitution in section 3 (1) (a) of “ two hundred
pounds ” for “ fifty pounds ” (inserted by the Courts Act,
1971); 40

(d) by the substitution for section 3 (5) of the following sub-
section:

“ (5) Proceedings under this Act shall be conducted
otherwise than in public.”;

(e) by the substitution for section 3 (6) of the following sub- 45
section:

“ (6) It shall not be lawful to print or publish or
cause to be printed or published any material relating
to proceedings under this Act which would tend to
identify the parties to the proceedings.”; 50

(f) by the deletion of sections 3 (7) and 9 (2);

(g) by the substitution in section 6 (1) and 7 of “ two hundred
pounds ” for “ fifty pounds ” (inserted in the said section 7
by the Courts Act, 1971);

and the said sections 3 (1) (a), 6 (1) and 7, as so amended, 55
are set out in the Table to this section.

(h) by the insertion in section 3, after subsection (9) of the
following subsection:

“ (10) Notwithstanding anything in this Act, the pro-
visions of section 9 of the *Family Law (Maintenance* 60

of Spouses and Children) Act, 1976, shall apply in relation to an affiliation order subject to the modifications that the reference in subsection (4) of the said section 9 to the maintenance creditor shall be construed as a reference to the person to whom payments under the order would, apart from this section, be made by virtue of subsections (3) and (4) of section 9 of this Act and the other references in the said section 9 to the maintenance creditor shall be construed as references to the person on whose application the affiliation order was made.”;

(i) by the substitution for section 4 of the following sections:

“4.—(1) A periodical payment under an order under this Act shall commence on such date, not being earlier than the date on which the order is made, as may be specified in the order.

(2) Every periodical sum payable by a putative father under an affiliation order shall, subject to subsection (3) of this section and to any variation in the amount thereof made under this Act, continue to be payable for such period as may be specified in the order.

(3) Every periodical sum payable by a putative father under an affiliation order shall cease to be payable on the happening of whichever of the following events first happens, that is to say:

- (a) the death of the child in respect of whom the said periodical sum is payable;
- (b) the commutation under this Act of such periodical sum by payment of a lump sum;
- (c) the termination of the said periodical sum by an order under section 5;
- (d) the attainment by such child of the age of sixteen years, unless at the time of the making of the order or at any time thereafter before the attainment by the child of the age of sixteen years, the District Court, on account of the educational needs of such child or on account of a physical or mental disability of the child, has ordered otherwise;
- (e) the attainment by such child of the age of twenty-one years, where the Court, on account of the educational needs of such child, has ordered that payments be made on his behalf after he has attained the age of sixteen years.

(4) (a) Where an affiliation order, whether made before or after the commencement of the *Family Law (Maintenance of Spouses and Children) Act, 1976*, has been discharged by the District Court under section 5 of this Act or where payments under an affiliation order have ceased to be payable by virtue of this Act, the District Court may, at any time thereafter, notwithstanding anything in this Act, by order direct the making by the putative father of payments of such amount, at such times and for such period as the District Court may specify while the person for whose benefit the order was made is a child.

(b) An order under this subsection shall be deemed, for the purposes of section 3 (10) of this Act, subsection (1) of this section,

sections 5 and 6 of this Act and section 31 (1) of the Adoption Act, 1952, to be an affiliation order.

(5) On the death of a putative father liable to pay a periodical sum under an order under this Act, the liability for the payment of such periodical sum shall attach to his estate as a civil debt and such periodical sum shall be recoverable accordingly by the person to whom it is for the time being payable.

4A.—(1) Where it appears to the Court on application to it by any person, that a parent of a child has failed to provide such maintenance for the child as is proper in the circumstances, the Court may make an order that the parent make to that person periodical payments for the support of the child for such period during the lifetime of that person, of such amount and at such times as the Court may consider proper.

(2) The provisions of the *Family Law (Maintenance of Spouses and Children) Act, 1976*, relating to maintenance orders shall apply, with any necessary modifications and adaptations, in relation to an order under this section.

(3) The Court shall not make an order in relation to a parent of a child under this section if an affiliation order or an order under section 4 (4) of this Act requiring that parent to make payments for the benefit of the child is in force or that parent has made provision for the child by an agreement under which, at or after the time of the hearing of the application for the order under this section, payments fall to be made and in relation to which an order under section 10 of this Act has been made unless—

(a) the parent is not complying with the affiliation order or the order under the said section 4 (4) or the agreement, as the case may be, and

(b) the Court, having regard to all the circumstances thinks it proper to do so,

but, if the Court makes the order under this section, any amounts falling due for payment under the affiliation order, the order under the said section 4 (4) or the agreement, as the case may be, on or after the date of the making of the order under this section shall not be payable.

(4) In this section—

‘Court’ shall be construed in accordance with section 23 of the *Family Law (Maintenance of Spouses and Children) Act, 1976*;

‘parent’, in relation to a child, means the mother of the child, the putative father of the child, or a person who has made provision for the child by an agreement in relation to which an order has been made under section 10 of this Act;”

(f) by the insertion in section 5 of the following subsection:

“(3) A Justice of the District Court, on the application of the person by whom a periodical sum is payable under an affiliation order, shall discharge the order if it is satisfied that the person for whose benefit the order was made has ceased to be a child.”

(2) References in the said Illegitimate Children (Affiliation Orders) Act, 1930, to a weekly payment shall be construed as references to a periodical payment.

(3) Section 19 (3) (a) of the Courts Act, 1971, is hereby amended by the substitution of £10 for £5, and the said section 19 (3) (a), as so amended, is set out in the Table to this section.

TABLE

10	(a) if such child has died before the making of such order, the funeral expenses, as measured by the Justice, of such child to an amount not exceeding two hundred pounds, or	
15	6.—(1) Upon an application under this section in relation to an illegitimate child under the age of sixteen years in respect of whom a weekly sum is then payable under an affiliation order or in relation to an illegitimate child of the age of sixteen years in respect of whom a weekly sum was payable under an affiliation order immediately before he attained that age, a Justice of the District Court may order the putative father of such child or the personal representative of such putative father to pay such sum not exceeding two hundreds pounds as the Justice shall fix for the purpose of apprenticing such child to a trade.	
20	7.—Where an illegitimate child in respect of whom an affiliation order has been made dies while a weekly sum is payable in respect of it under such order, a Justice of the District Court may, upon the application within two months after the death of such child of the person to whom such weekly sum was payable, order the putative father of such child or the personal representative of such putative father to pay the funeral expenses, as measured by such Justice, of such child to an amount not exceeding two hundred pounds.	
25	(a) The District Court shall not have jurisdiction to make an order under the said Act for the payment of a weekly sum exceeding £10 for the maintenance and education of a child.	
30	29.—The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act, 1940, to an order shall be construed as references to a maintenance order, a variation order, an interim order, an order under section 8 of this Act (in so far as it is deemed under that section to be a maintenance order) or a direction under section 9 of this Act.	Amendment of Enforcement of Court Orders Act, 1940. 1940, No. 23.
35	30.—(1) The Married Women (Maintenance in case of Desertion) Act, 1886, section 13 of the Illegitimate Children (Affiliation Orders) Act, 1930, section 7 of the Enforcement of Court Orders Act, 1940, and section 18 of the Courts Act, 1971, are hereby repealed, and the reference in section 98 (1) (a) of the Defence Act, 1954, to an order made by a civil court under section 1 of the said Married Women (Maintenance in case of Desertion) Act, 1886, shall be construed as a reference to an order under section 5, 6, or 7 of this Act or an order under section 8 of this Act (in so far as it is deemed under that section to be a maintenance order).	Repeals. 1886, c. 52. 1940, No. 23. 1971, No. 36. 1954, No. 18.
45	(2) (a) Any order made by a Court under the provisions repealed by this section and in force immediately before the commencement of this Act shall continue in force as if it was, and shall be deemed for all purposes to be, a maintenance order or an attachment of earnings order, as the case may be.	
50	(b) Any proceedings initiated under the provisions repealed by this section and not completed before the repeal shall be deemed for all purposes to be proceedings under the corresponding provisions of this Act and may be continued accordingly.	
55		

AN BILLE UM AN DLI TEAGHLAIGH
(COTHABHAIL CEILI AGUS LEANAD),
1975

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dá ngairtear

Acht do dhéanamh forála le haghaidh focaíochtaí tréimhsiúla ag céile chun an céile eile agus aon leanaí cleithiúnacha de chlann na gcéilí a chothú i gcásanna áirithe mainneachtana ag an gcéile cothabháil réasúnach a sholáthar do chumasú focaíochtaí a dhéanamh ag fostóir, trí asbhaint as tuilleamh fostaí, le duine i dteideal, faoi ordúithe cúirte áirithe, focaíochtaí tréimhsiúla a fháil ón bhfostaí le haghaidh cothabhála, do dhéanamh socrú i dtaobh nithe eile a bhaineann leis na nithe réamhráite agus do leasú ar shlite eile an dlí a bhaineann le tuismitheoirí agus leanaí.

An tAire Dlí agus Cirt a thug isteach

Rite ag Dáil Éireann, 25 Feabhra, 1976

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FAMILY LAW (MAINTENANCE OF
SPOUSES AND CHILDREN) BILL, 1975

BILL

entitled

An Act to make provision for periodical payments by a spouse for the support of the other spouse and any dependent children of the family of the spouses in certain cases of failure by the spouse to provide reasonable maintenance, to enable payments to be made by an employer, by deductions from an employee's earnings, to a person entitled under certain court orders to periodic payments for maintenance from the employee, to provide for other matters connected with the matters aforesaid and to amend in other respects the law relating to parents and children.

Introduced by the Minister for Justice

Passed by Dáil Éireann, 25th February, 1976

DUBLIN:
PUBLISHED BY THE STATIONERY OFFICE

To be purchased through any bookseller, or direct
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Printed by CAHILL & Co., LTD.

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