



AN BILLE UM IDIRSCARADH BREITHIÚNACH AGUS
ATHCHÓIRIÚ AN DLÍ TEAGHLAIGH, 1987
JUDICIAL SEPARATION AND FAMILY LAW REFORM BILL,
1987

Mar a tionscnaíodh
As initiated

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ACTS REFERRED TO

Adoption Acts, 1952 to 1976	
Family Home Protection Act, 1976	1976, No. 27
Family Law Act, 1981	1981, No. 22
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11
Family Law (Protection of Spouses and Children) Act, 1981	1981, No. 21
Guardianship of Infants Act, 1964	1964, No. 7
Legitimacy Declaration Act (Ireland), 1868	1868, c. 20
Married Women's Status Act, 1957	1957, No. 5
Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870	1870, c. 110
Partition Acts, 1868 to 1876	
<i>Status of Children Act</i> , 1987	
Succession Act, 1965	1965, No. 27



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BILL

entitled

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AN ACT TO AMEND THE GROUNDS FOR JUDICIAL
SEPARATION: TO FACILITATE RECONCILIATION
BETWEEN ESTRANGED SPOUSES: TO PROVIDE FOR
THE MAKING OF ANCILLARY ORDERS IN SEP- 10
ARATION PROCEEDINGS: TO AMEND THE LAW
RELATING TO THE COURTS' FAMILY LAW JURIS-
DICTION AND TO PROVIDE FOR CONNECTED MAT-
TERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS: 15

PART I

THE OBTAINING OF A DECREE OF SEPARATION

Judicial separation
on irretrievable
breakdown of
marriage.

1.—After the commencement of this Act the sole ground upon
which an application for judicial separation (*divorce a mensa et thoro*)
may be presented to the court by either party to a marriage and 20
granted by the court shall be that the marriage has broken down
irretrievably.

Proof of
irretrievable
breakdown.

2.—(1) In an application for a decree of judicial separation to
establish a marriage has broken down irretrievably an applicant shall 25
prove to the satisfaction of the court one or more of the following
facts, that is to say—

- (a) that the respondent has behaved in such a way that the
applicant cannot reasonably be expected to co-habit with
the respondent;
- (b) that the respondent has committed adultery; 30
- (c) that the respondent has deserted the applicant for a con-
tinuous period of at least one year immediately preceding
the presentation of the application;
- (d) that the parties to the marriage have lived separate and apart
from each other for a continuous period of at least 1 year 35
immediately preceding the presentation of the application
and the respondent consents to a decree of judicial sep-
aration being granted;
- (e) that the parties to the marriage have lived separate and apart
for a continuous period of 3 years immediately preceding 40
the presentation of the application;

(f) that the family and marital circumstances are such that it is reasonable for the applicant to wish to live separate and apart from the respondent and to cease to be obliged to co-habit with the respondent.

5 (2) If the court is satisfied on the evidence of any such fact as is mentioned in *subsection (1)* of this section, then unless it is satisfied on all the evidence that the marriage has not broken down irretrievably it shall grant a decree of judicial separation.

10 (3) For the purpose of *subsection (1) (c)* of this section desertion shall include conduct on the part of one party to the marriage that results in the other party, with just cause, leaving and living separate and apart from the other party.

15 (4) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of *subsection (1) (d)* of this section the applicant alleges that the respondent consents to a decree of judicial separation being granted, the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

20 3.—(1) Where the parties to the marriage have lived with each other for more than 1 year after it became known to the applicant that the respondent had committed adultery the applicant shall not be entitled to rely on that adultery for the purposes of *section 2 (1) (b)* although that adultery may be one of the factors that the respondent may rely on for the purposes of *section 2 (1) (a)* together with other matters.

Supplemental provisions as to proof of breakdown.

30 (2) Where the applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to co-habit with him but the parties to the marriage have co-habited for a period or periods after the date of the occurrence of the final incident relied on by the applicant and held by the court to support his allegation, such cohabitation shall be disregarded in determining for the purpose of *section 2 (1) (a)* of this Act whether the applicant cannot be reasonably expected to live with the respondent if the length of the period or of those periods of cohabitation together was 35 or were 6 months or less.

40 (3) In considering for the purpose of *section 2 (1)* of this Act whether the period for which the respondent has deserted the applicant or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding 6 months) or of any two or more periods (not exceeding 6 months in all) during which the parties resumed co-habitation but no period during which the parties co-habited shall count as part of the period of desertion or of the period for which the spouses lived 45 apart, as the case may be.

4.—(1) A solicitor acting for an applicant for a decree of judicial separation shall, prior to the making of an application for a decree of judicial separation—

Safeguards to ensure awareness of alternatives to separation proceedings and to assist attempts at reconciliation.

50 (a) discuss with the applicant the possibility of reconciliation and give to him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged, and

(b) discuss with the applicant the possibility of engaging in

mediation to help effect a separation on an agreed basis with an estranged spouse and give to him the names and addresses of persons and organisations qualified to provide a mediation service, and

(c) discuss with the applicant the possibility of effecting a separation by the negotiation and conclusion of a separation deed or written separation agreement. 5

(2) If at any stage during the hearing of proceedings for a judicial separation it appears to the court that there is a reasonable possibility of a reconciliation being effected between the parties to a marriage, the court may on the application of either party to the proceedings adjourn the proceedings for such period as it thinks fit subject to such conditions, if any, as it deems appropriate to enable attempts to be made to effect such reconciliation provided that no such adjournment shall last for a period longer than 2 months without the agreement of both the applicant and the respondent to the proceedings that the proceedings be adjourned for a longer period. 10 15

(3) An application for judicial separation shall be accompanied by a certificate by the solicitor, if any, acting on behalf of the applicant that he has complied with the provisions of *subsection (1)* of this section and, where a solicitor does not so certify, the court may adjourn the proceedings for such period as it deems reasonable for the applicant's solicitor to discuss with the applicant the matters referred to in that subsection. 20

(4) Provision shall be made by rules of court for the certification required for the purposes of *subsection (3)* of this section. 25

Restriction on application for judicial separation within one year of marriage.

5.—(1) Subject to *subsection (2)* below, no application for a judicial separation shall be presented to the court before the expiration of the period of 1 year from the date of the marriage (hereinafter referred to as the "specified period"). 30

(2) A judge of the court may on an application made to him allow the issuing of an application for judicial separation within the specified period on the ground that the marital difficulties experienced by the applicant are of such a serious and exceptional nature that it would be unreasonable and unjust to delay the issuing of such application. 35

(3) If it appears to the court at the hearing of an application for judicial separation presented in pursuance of an order made under *subsection (2)* above that permission to issue proceedings was fraudulently obtained the court may dismiss the application made for a decree of judicial separation. 40

Effect of judicial separation and rescission of decree of separation and ancillary orders upon reconciliation.

6.—(1) Where the court grants a decree of judicial separation it shall no longer be obligatory for the spouses who were the parties to such proceedings to co-habit.

(2) Following the granting of a decree of judicial separation the applicant and the respondent in the separation proceedings may at any future date by consent apply to the court to rescind the decree of separation granted and such order of rescission shall be made by the court upon it being satisfied that a reconciliation has taken place between the applicant and the respondent and that they have already resumed or again wish to resume co-habiting as husband and wife. 45 50

(3) Upon making an order of rescission under *subsection (2)* of this section the court may also make such necessary ancillary order or

orders as it deems proper in the circumstances with regard to any orders previously made under *Part II* of this Act.

PART II

ANCILLARY FINANCIAL, PROPERTY, CUSTODY AND OTHER ORDERS

5 7.—In this Part, save where the context otherwise requires— Definitions (*Part II*).

“conveyance” includes a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by a will or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such conveyance;

10 “dependent child of the family” in relation to a party to a marriage or to the parties of a marriage means any child—

(a) of both parties or adopted by both parties under the Adoption Acts, 1952 to 1976 or in relation to whom both parties are in *loco parentis*, or

15 (b) of either party to a marriage or adopted by either party under the Adoption Acts, 1952 to 1976 or in relation to whom either party is in *loco parentis* where the other party being aware that he is not the parent of the child has treated the child as a member of the family,

20 who is under the age of 16 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 or for the provision of a lump sum would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 21 years, or

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

30 “dwelling” means—

(a) any building, or

(b) any structure, vehicle, or vessel, (whether mobile or not) or part thereof occupied as a separate dwelling and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity and convenience of the dwelling;

35 “family home” means primarily a dwelling in which a married couple ordinarily reside and comprises in addition a dwelling in which a party to a marriage whose protection is in issue ordinarily resides or, if that party has left the other party to the marriage, ordinarily resided before so leaving;

40 “household chattels” mean furniture, bedding, linen, china, earthenware, glass, books and other chattels of ordinary household use or ornament and also consumable stores, garden effects and domestic animals but does not include any chattels used by either spouse for business or professional purposes or money or security for money.

Interim orders in
judicial separation
proceedings.

8.—After an application for a decree of judicial separation has been issued, the court, before deciding whether to grant or refuse to grant such decree, may if it appears to the court proper to do so make any one or more of the following orders—

- (a) an interim maintenance order pursuant to section 7 of the Family Law (Maintenance of Spouses and Children) Act, 1976; 5
- (b) an interim barring or protection order pursuant to section 2 or section 3 of the Family Law (Protection of Spouses and Children) Act, 1981; 10
- (c) an interim custody or access order or other order on any question affecting the welfare of an infant pursuant to section 11 of the Guardianship of Infants Act, 1964;
- (d) an interim order for the protection of the family home or of any monies realised from the conveyance of any interest in the family home pursuant to section 5 of the Family Home Protection Act, 1976; 15
- (e) an interim order for the protection of household chattels or any monies realised from the sale thereof pursuant to section 9 of the Family Home Protection Act, 1976. 20

Making of
applications for
interim orders.

9.—A court may make interim orders under *section 8* if sought by the applicant or the respondent without separate proceedings having to be instituted under the Acts referred to in the said section as preliminary orders in proceedings for judicial separation brought under this Act. 25

Jurisdiction to
make ancillary
orders in judicial
separation
proceedings.

10.—(1) When granting a decree of judicial separation or at any time thereafter, subject to the provisions of *subsection (4)* of this section, the court may make any one or more of the following orders if sought by the applicant or the respondent, that is to say—

- (a) an order that either party to the marriage shall make such periodical payments in respect of the maintenance of the other for such period during the lifetime of the other, of such amount and at such times as the court considers proper; 30
- (b) an order that either party to the marriage shall pay to the other such lump sum or sums of such amount and at such time or times as the court considers proper; 35
- (c) an order that a party to the marriage shall make to the other or to such other person as may be specified by the court such periodical payments for the maintenance of each dependant child of the family, of such amount and at such times as the court considers proper; 40
- (d) an order that a party to the marriage shall pay to the other party or such other person as may be specified by the court for the benefit of each dependant child such lump sum or sums of such amount and at such time or times as the court considers proper; 45
- (e) an order that a party to the marriage shall transfer to the other such property as may be so specified being property

to which the first-mentioned party is entitled either in possession or in reversion;

- 5 (f) an order that a settlement of such property as may be so specified (being property to which a party to the marriage is so entitled) be made to the satisfaction of the court for the benefit of the other party to the marriage;
- 10 (g) an order extinguishing or reducing the statutory share either party may claim in the estate of the other by way of testate or intestate succession pursuant to the Succession Act, 1965;
- 15 (h) an order pursuant to section 11 of the Guardianship of Infants Act, 1964 determining any dispute between the parties to the marriage relating to any dependant child of the family;
- (i) an order pursuant to section 12 of the Married Women's Status Act, 1957 determining any dispute between the parties to the marriage as to the title to or possession of any property;
- 20 (j) an order or orders pursuant to sections 4, 5 or 9 of the Family Home Protection Act, 1976 where the court considers it proper that any such order be made in accordance with the provisions of the said Act;
- (k) an order pursuant to section 2 or 3 of the Family Law (Protection of Spouses and Children) Act, 1981;
- 25 (l) an order pursuant to the Partition Acts, 1868 to 1876 in respect of any property in the ownership of the parties to the marriage;
- 30 (m) an order determining which party to the marriage shall after the making of a decree of judicial separation have the right to continue to reside in the family home and which party to the marriage shall vacate the said home or, in the alternative, an order for the sale of the family home on such conditions as the court deems proper.

35 (2) In making an order pursuant to *subsections (1) (a), (b), (c) or (d)* of this section the court may order that the party required to make a payment shall secure to the other the payment to be made to the satisfaction of the court.

40 (3) The court may make orders pursuant to *subsections (1) (h), (i), (j), (k), or (l)* of this section without separate proceedings having to be instituted under the Acts referred to in the said subsections as ancillary orders, where sought, in an application for a decree of judicial separation.

45 (4) The court shall only on one occasion, following the granting of a decree of judicial separation, consider and determine whether an order or orders should be made by it pursuant to *subsection (1) (e), (f) or (g)* of this section.

50 11.—The court shall exercise its jurisdiction under *section 10 (1) (m)* above as an additional jurisdiction to that which arises under the Family Law (Protection of Spouses and Children) Act, 1981 and the Family Home Protection Act, 1976 and shall in exercising such jurisdiction have regard to the welfare of the family as a whole and in particular shall take into consideration—

Additional family home jurisdiction.

- (a) that where a decree of judicial separation is granted it is not possible for the parties to a marriage to continue to reside together;
- (b) that proper and secure accommodation should, where practicable, be provided for a dependent spouse and any dependent child of the family; 5
- (c) the matters referred to in *section 13* of this Act.

Restriction on orders extinguishing or reducing succession rights.

12.—An order under *section 10 (1) (g)* extinguishing or reducing the statutory share a spouse may claim under the Succession Act, 1965 shall only be made if an order or orders are also being made by the court in favour of such spouse under one or more of the following sections, that is to say *section 10 (1) (b)*, *10 (1) (e)* and *10 (1) (f)* save in circumstances where a spouse has been guilty of gross matrimonial misconduct. 10

Matters to be considered by the court in exercising original jurisdiction conferred by *section 10*.

13.—It shall be the duty of the court in deciding whether to exercise its powers under *section 10 (1) (a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)* and *(m)* to have regard to all the circumstances of the case and in particular the following matters— 15

- (a) the income, earning capacity (if any), property and other financial resources of the parties to the marriage and of any dependent children of the family including income or benefits to which either party or any such children are entitled by or under statute; 20
- (b) the financial or other responsibilities of the parties to the marriage towards each other and towards any dependant children of the family and the needs of any such dependant children, including the need for care and attention; 25
- (c) the age and the physical and mental health of each of the parties to the marriage;
- (d) the standard of living enjoyed by the family before the breakdown in the marriage; 30
- (e) the duration of the marriage and the length of time the parties co-habited;
- (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; 35
- (g) the contribution made by each party to the income, earning capacity, property and financial resources of the other;
- (h) the effect on the earning capacity of each party to the marriage of the marital responsibilities assumed by each during the period when the parties co-habited together; 40
- (i) the financial benefits (if any) accruing to either party as a result of the marriage and of their co-habiting together.

Relevance of conduct of spouse.

14.—(1) In considering the liability of one party to a marriage to maintain the other party to the marriage and the amount of maintenance it may order, the court may have regard to the conduct of 45

the party seeking maintenance where it is of such nature and degree that it would be repugnant to justice to require the other party to pay maintenance.

5 **15.**—(1) The court may when making a maintenance order pursuant to *section 10 (1) (a)* and *10 (1) (c)* provide that the sum ordered to be paid by it be backdated to the date when the separation application was issued, but no earlier, where it is deemed appropriate that such order be made having regard to all the circumstances of the case and may in so doing order that any arrears of maintenance it accordingly
10 deems to have accumulated be paid by way of a lump sum by a specified date and may in ordering the payment of such lump sum give credit to the party ordered to make such payment for any relevant monies paid by him to the party to the marriage to whom such payment is to be made in the period between the dates when the
15 separation proceedings were issued and a decree of judicial separation was granted.

Retrospective maintenance orders.

 (2) The jurisdiction conferred on the court to make a lump sum order under *subsection (1)* of this section is without prejudice to the generality of the jurisdiction to make such order arising under section
20 10 (1) (b) and 10 (1) (d).

16.—(1) The court may discharge or vary a maintenance order at any time on the application of either party to the marriage if it thinks it proper to do so having regard to the circumstances of the case and the matters set out in section 13, any circumstances not existing
25 when the order was made, including any change in the financial circumstances of either or both of the parties to the marriage and of any dependant child of the family 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 varied, when it was
30 last varied.

Discharge and variation of maintenance orders.

 (2) Notwithstanding anything contained in *subsection (1)* of this section the court may discharge that part of a maintenance order which provides for the support of a party to the marriage where it appears to the court that the conduct of such party is of such a nature
35 and such a degree that it would be repugnant to justice to require that maintenance payments continue to be made to such party for his support.

17.—(1) A maintenance or a variation order shall specify each part of a payment under the order that is for the support of a dependant
40 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 dependant child shall be made.

Child maintenance.

 (2) Conduct of the nature referred to in *section 14* or in *section 16* (2) shall not be a ground upon which a court shall refuse to make a
45 maintenance order for the support of a dependant child and shall not be a ground for discharging or varying any part of a maintenance order that provides for the support of such child.

18.—The provisions of section 9 of the Family Law (Maintenance of Spouses and Children) Act, 1976 with regard to the making of
50 periodical payments pursuant to a maintenance order or a variation order or an interim order made under that Act shall apply to the making of such payments pursuant to an order made under this Act and in particular to the making of payments ordered pursuant to *sections 8 (a)*, *10 (1) (a)* and *10 (1) (b)* of this Act.

Transmission of maintenance payments through district court clerk.

Attachment of earnings orders.

19.—The provisions of Part III of the Family Law (Maintenance of Spouses and Children) Act, 1976 relating to the making of attachment of earnings orders shall apply to the enforcement of orders made pursuant to sections 8 (a), 10 (1) (a) and 10 (1) (c) of this Act and for the purposes of Part III of the aforesaid Act of 1976 any such order made under this Act shall be regarded as an “antecedent order”. 5

Payments to be made without deduction of income tax.

20.—A periodical payment of money pursuant to a maintenance order, a variation order or an interim order made under this Act shall be made without deduction of income tax.

PART III

10

COURT JURISDICTION

Jurisdiction of court.

21.—(1) The Circuit Court shall have jurisdiction to hear and determine proceedings under this Act and in so doing shall be referred to as the Circuit Family Court.

(2) The jurisdiction herein conferred on the Circuit Court shall be exercised by the Judge of the Circuit where any party to the proceedings ordinarily resides or carries on a profession, business or occupation. 15

(3) The jurisdiction conferred on the Circuit Court to hear and determine proceedings instituted under the Married Womens Status Act, 1957, the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children) Act, 1976, the Family Home Protection Act, 1976, the Family Law Act, 1981, the Family Law (Protection of Spouses and Children) Act, 1981, the *Status of Children Act, 1987*, the Legitimacy Declaration Act (Ireland), 1868, and proceedings between spouses under the Partition Acts, 1868 to 1876 shall be exercised by the Circuit Family Court. 20 25

Hearing of proceedings.

22.—The Circuit Family Court shall sit to hear and determine proceedings instituted under this Act and under the Acts referred to in section 21 (3) in a different place or at different times or on different days from those on which the ordinary sittings of the Circuit Court are held. 30

Conduct of family proceedings in Circuit and High Courts.

23.—(1) Circuit Family Court proceedings shall be as informal as is practicable and consistent with the administration of justice.

(2) Neither judges sitting in the Circuit Family Court nor barristers nor solicitors appearing in such courts shall wear wigs or gowns. 35

(3) Proceedings in the High Court (a) by way of appeal from any order made by the Circuit Family Court under this Act or (b) under any of the enactments as referred to in section 21 (3) or (c) arising for determination in accordance with the provisions of subsections (4) and (5) of Section 31 of this Act or (d) for nullity of marriage or (e) pursuant to the Adoption Acts, 1952-76 shall be as informal as is practicable and consistent with the administration of justice. 40

(4) In hearing and determining such proceedings as are referred to in subsection (3) of this section neither judges sitting in the High Court nor barristers nor solicitors appearing in such proceedings shall wear wigs or gowns. 45

24.—Proceedings under this Act shall be heard otherwise than in public. Privacy.

25.—The costs of any proceedings under this Act shall be at the discretion of the court. Costs.

5 26.—Rules of court shall provide for the documentation required for the commencement of proceedings under this Act in a summary manner. Rules of court.

PART IV

MISCELLANEOUS

10 27.—(1) Subsections 5 (2) and 5 (3) of the Family Law (Maintenance of Spouses and Children) Act, 1976 are hereby repealed and there shall be inserted in their place— Amendments to sections 5 and 6 of Family Law (Maintenance of Spouses and Children) Act, 1976.

15 “5.—(2) In considering the liability of a spouse to maintain the other, the court may have regard to the conduct of the party seeking to be maintained where it is of such a nature and degree that it would be repugnant to justice to require the other party to pay maintenance and where it so determines the court may refuse to make a maintenance order for the support of the spouse seeking maintenance.”

20 (2) Sections 6 (2), 6 (4) and 6 (5) of the Family Law (Maintenance of Spouses and Children) Act, 1976 are hereby repealed and there shall be inserted the following new subsections in section 6 of the said Act that is to say—

25 “6.—(2) Notwithstanding anything contained in subsection (1) of this section the court may discharge that part of a maintenance order which provides for the support of a maintenance creditor where it appears to the court that the conduct of the maintenance creditor is of such a nature and degree that it would be repugnant to justice to require the maintenance debtor to continue to pay maintenance.

30 6.—(4) Matrimonial conduct of the nature referred to in section 6 (2) shall not be a ground by itself, for discharging or varying any part of a maintenance order that provides for the support of a dependent child of the family.”

35 28.—There shall be inserted the following new subsections in section 11 of the Guardianship of Infants Act, 1964, that is to say— Amendment of section 11 of Guardianship of Infants Act, 1964.

40 “11.—(5) Upon any application made under this section the court may if it is satisfied that it is necessary for the proper determination of the application request any person whom it considers qualified to do so to prepare a medical, psychiatric, psychological or social work report on the infant who is the subject of the application and on other relevant members of the infant’s family.

(6) In deciding whether or not to request a report under subsection (5) of this section the court shall have regard to the wishes of the parties before the court where ascertainable.

(7) A copy of any report prepared under subsection (5) shall be made available to the barrister or solicitor, if any, representing each party in the proceedings or, if any party is not so represented, to that party. 5

(8) Where any person prepares a report pursuant to a request under subsection (5) of this section, the fees and expenses of that person shall be paid by such party or parties to the proceedings as the court shall order. 10

(9) The court may, if it thinks fit, call the person making the report as a witness."

Repeal of section 18 (1) of Guardianship of Infants Act, 1964.

29.—Section 18 (1) of the Guardianship of Infants Act, 1964 is hereby repealed. 15

Amendment of section 120 (2) of Succession Act, 1965.

30.—Section 120 (2) of the Succession Act, 1965 is hereby repealed save insofar as the said section applies to a spouse—

- (a) who has failed to comply with a decree of restitution of conjugal rights obtained by the deceased spouse,
- (b) against whom a decree of divorce *a mensa et thoro* was granted prior to the coming into operation of this Act, 20
- (c) guilty of desertion for two years or more which desertion has continued up to the death of the deceased spouse which death occurred within five years of the coming into operation of this Act. 25

Repeal of jurisdiction to grant divorce *a mensa et thoro* decrees on grounds inherited from Ecclesiastical Courts.

31.—(1) The jurisdiction conferred on the High Court in respect of divorce *a mensa et thoro* proceedings by the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 is hereby repealed.

(2) Section 5 of the Courts Act, 1981 is hereby repealed.

(3) Any order made by either the Circuit Court or the High Court granting a decree of divorce *a mensa et thoro* in proceedings issued and determined before the commencement of this Act shall not be affected by this Act save that any alimony order made subsequent to the granting of such decree shall be deemed for all purposes to be an order made under *section 10 (1) (a)* of this Act. 35

(4) Any proceedings issued seeking a decree of divorce *a mensa et thoro* and not determined before the commencement of this Act shall in so far as such proceedings could have been initiated under *section 2* of this Act had it been in operation prior to the issuing of such proceedings be deemed for all purposes to be proceedings under the said *section 2* and may be continued accordingly. 40

(5) Any proceedings issued in the High Court as referred to in *subsection 4* of this section may be treated in the manner referred to in the said subsection by the High Court and such proceedings may be determined by and in the High Court. 45

32.—The defences of collusion, condonation, connivance and recrimination in regard to proceedings for a decree of divorce *a mensa et thoro* are hereby repealed. Repeal of bars to obtaining decree of divorce *a mensa et thoro*.

5 33.—(1) Proceedings before the District Court under the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children) Act, 1976, the Family Home Protection Act, 1976, section 9 of the Family Law Act, 1981, the Family Law (Protection of Spouses and Children) Act, 1981 and the *Status of Children Act, 1987* shall be as informal as is practicable and consistent with the
10 administration of justice. Conduct of District Court family proceedings.

(2) Neither district justices hearing and determining such proceedings as are referred to in *subsection (1)* of this section nor barristers nor solicitors appearing in such proceedings shall wear wigs or gowns.

15 34.—(1) This Act may be cited as the Judicial Separation and Family Law Reform Act, 1987. Short title and commencement.

(2) This Act shall come into operation on the day that is 6 months after the date of the passing of this Act.

AN BILLE UM IDIRSCARADH
BREITHIÚNACH AGUS ATHCHÓIRIÚ
AN DLÍ TEAGHLAIGH, 1987

BILLE

*(mar a tionscnaíodh)
dá ngairtear*

Bille dá ngairtear Acht do leasú na bhforas le haghaidh idirscaradh breithiúnach: d'éascú athmhuintearais idir céilí coimhthithe: do dhéanamh socrú chun orduithe coimhdeacha a dhéanamh in imeachtaí idirscartha: do leasú an dlí a bhaineann le dlínse dlí teaghlaigh na gcúirteanna agus do dhéanamh foráil i dtaobh nithe comhghaolmhara.

*An Teachta Alan Shatter a thíolaic,
3 Nollaig, 1987*

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Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais,
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JUDICIAL SEPARATION AND FAMILY
LAW REFORM BILL, 1987

BILL

*(as initiated)
entitled*

An Act to amend the grounds for judicial separation: to facilitate reconciliation between estranged spouses: to provide for the making of ancillary orders in separation proceedings: to amend the law relating to the courts' family law jurisdiction and to provide for connected matters.

*Presented by Deputy Alan Shatter
3rd December, 1987*

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