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

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*Mar a ritheadh ag dhá Theach an Oireachtais  
As passed by both Houses of the Oireachtas*

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### ACTS REFERRED TO

Adoption Acts, 1952 to 1988	
Defence Act, 1954	1954, No. 18
Enforcement of Court Orders Act, 1940	1940, No. 23
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 Act, 1868	1868, c. 40
Partition Act, 1876	1876, c. 17
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27





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ATHCHÓIRIÚ AN DLÍ TEAGHLAIGH, 1987  
JUDICIAL SEPARATION AND FAMILY LAW REFORM BILL,  
1987

# BILL

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*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 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

Definition.

1.—In this Act, except where the context otherwise requires—

“the court” means the court having jurisdiction under *Part III* of this  
Act. 20

Application for a  
decree of judicial  
separation.

2.—(1) An application by a spouse for a decree of judicial sep-  
aration from the other spouse may be made to the court having  
jurisdiction to hear and determine proceedings under *Part III* of this  
Act on one or more of the following grounds:

(a) that the respondent has committed adultery; 25

(b) that the respondent has behaved in such a way that the  
applicant cannot reasonably be expected to live with the  
respondent;

(c) subject to *subsection (2)* of this section, that there has been  
desertion by the respondent of the applicant for a con- 30  
tinuous period of at least one year immediately preceding  
the date of the application;

(d) subject to *subsection (2)* of this section, that the spouses have  
lived apart from one another for a continuous period of  
at least one year immediately preceding the date of the 35



application and the respondent consents to a decree being granted;

5 (e) subject to *subsection (2)* of this section, that the spouses have lived apart from one another for a continuous period of at least three years immediately preceding the date of the application;

10 (f) that the marriage has broken down to the extent that the court is satisfied in all the circumstances that a normal marital relationship has not existed between the spouses for a period of at least one year immediately preceding the date of the application.

(2) In considering for the purposes of *subsection (1)* of this section, whether—

15 (a) in the case of *paragraph (c)* of that subsection, the period for which the respondent has deserted the applicant, or

(b) in the case of *paragraph (d)* or *(e)* of that subsection, the period for which the spouses have lived apart,

20 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 spouses resumed living with each other, but no such period or periods during which the spouses lived with each other shall count as part of the period of desertion or the period for which the spouses have lived apart, as the case may be:

25 Provided that this subsection shall only apply where the spouses are not living with each other at the time the application is made.

30 (3) (a) In this section spouses shall be treated as living apart from each other unless they are living with each other in the same household, and references to spouses living with each other shall be construed as references to their living with each other in the same household.

(b) In this section “desertion” includes conduct on the part of one spouse that results in the other spouse, with just cause, leaving and living apart from that other spouse.

35 3.—(1) Where, on an application under *section 2* of this Act, the court is satisfied that any of the grounds referred to in *subsection (1)* of that section which have been relied on by the applicant have been proved on the balance of probabilities, the court shall, subject to *subsection (2)* of this section and *sections 5* and *6* of this Act, grant a decree of judicial separation in respect of the spouses concerned.

Grant of decree of judicial separation, custody, etc. of children.

40 (2) (a) Where there are, in respect of the spouses concerned, any dependent children of the family, the court shall not grant a decree of judicial separation unless the court—

(i) is satisfied that such provision has been made, or

45 (ii) intends by order upon the granting of the decree to make such provision,

for the welfare of those children as is proper in the circumstances.

(b) In this subsection—



“dependent children of the family” has the same meaning as it has for the purposes of *Part II* of this Act;

“welfare” comprises the religious and moral, intellectual, physical and social welfare of the children concerned.

(3) Upon the granting of a decree of judicial separation by the court, the court may, where appropriate, by order give such directions under section 11 of the Guardianship of Infants Act, 1964, as it thinks proper regarding the welfare or custody of, or right of access to, an infant (being an infant within the meaning of that Act) as if an application had been made under that section.

Supplemental provisions as to proof of adultery and unreasonable behaviour.

4.—(1) Where the spouses 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) (a)* although that adultery may be one of the factors that the applicant may rely on for the purposes of *section 2 (1) (b)* together with other matters.

(2) Where the applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to cohabit with him but the spouses have cohabited 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) (b)* 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 or were 6 months or less.

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

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

(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 spouses 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.

(2) 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.

(3) Provision shall be made by rules of court for the certification required for the purposes of *subsection (2)* of this section.



6.—(1) A solicitor, if any, acting for a respondent in an application for a decree of judicial separation shall, as soon as possible after receiving instructions from the respondent—

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

5 (a) discuss with the respondent 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

10 (b) discuss with the respondent 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

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

(2) An Entry of Appearance or a Notice of Intention to Defend an application for judicial separation shall be accompanied by a certificate by the solicitor, if any, acting on behalf of the respondent, 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 respondent's solicitor to discuss with the respondent the matters referred to in that subsection.

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

7.—(1) Where an application is made under this Act to the court for a decree of judicial separation, the court shall give consideration to the possibility of a reconciliation of the spouses concerned and, accordingly, may adjourn the proceedings at any time for the purpose of affording the spouses an opportunity, if they both so wish, to consider a reconciliation between themselves with or without the assistance of a third party.

Adjournment of proceedings to assist reconciliation or agreements on separation.

35 (2) If during any adjournment of proceedings to which *subsection (1)* of this section relates the spouses resume living with each other, no account shall be taken of that fact for the purposes of those proceedings.

40 (3) Where on an application made under this Act for a decree of judicial separation it appears to the court that no reconciliation of the spouses concerned is possible, it may adjourn or further adjourn the proceedings for the purpose of affording the spouses an opportunity, if they both so wish, to establish agreement (with or without the assistance of a third party) on the terms, so far as is possible, of the separation.

45 (4) If an adjournment has taken place by virtue of *subsection (1)* or (3) of this section, either or both of the spouses may request that the hearing of the application be proceeded with and, without prejudice to *subsection (5)* of this section, the court shall resume hearing the application as soon as is practicable.

50 (5) The power of adjournment exercisable under *subsections (1)* and (3) of this section is in addition to and not in substitution for any other power of adjournment exercisable by the court.



(6) Where the court adjourns proceedings under *subsection (1)* or (3) of this section, it may at its discretion advise the spouses concerned to seek the assistance of a third party for the purpose set out in the appropriate subsection.

(7) Any oral or written communication between either spouse and any third party to whom *subsection (1), (3) or (6)* of this section relates (whether or not made in the presence of the other spouse) and any record of such communication caused to be made by such third party, shall not be admissible as evidence in any court. 5

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

8.—(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 cohabit. 10

(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 cohabiting as husband and wife. 15

(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. 20

Abolition of decree of divorce *a mensa et thoro*, etc.

9.—(1) After the commencement of this Act, no action shall lie for divorce *a mensa et thoro*. 25

(2) *Subsection (1)* of this section shall not have effect in relation to any action instituted before the commencement of this Act.

## PART II

### ANCILLARY FINANCIAL, PROPERTY, CUSTODY AND OTHER ORDERS

Definitions (*Part II*).

10.—In this Part, save where the context otherwise requires— 30

“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;

“dependent child of the family” in relation to a spouse or spouses means any child— 35

(a) of both spouses or adopted by both spouses under the Adoption Acts, 1952 to 1988 or in relation to whom both spouses are *in loco parentis*, or

(b) of either spouse or adopted by either spouse under the Adoption Acts, 1952 to 1988 or in relation to whom either spouse is *in loco parentis* where the other spouse being aware that he is not the parent of the child has treated the child as a member of the family, 40

who is under the age of 16 years or if he has attained that age— 45



5 (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

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

10 "dwelling" means—

(a) any building, or

(b) any structure, vehicle or vessel (whether mobile or not),

15 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;

20 "family home" means, primarily, a dwelling in which a married couple ordinarily reside and comprises, in addition, a dwelling in which a spouse whose protection is in issue ordinarily resides or, if that spouse has left the other spouse, ordinarily resided before so leaving;

25 "household chattels" means 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.

11.—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—

Preliminary orders in judicial separation proceedings.

30 (a) a barring or protection order pursuant to section 2 or section 3 of the Family Law (Protection of Spouses and Children) Act, 1981;

35 (b) a 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;

(c) an order for the protection of the family home or of any moneys realised from the conveyance of any interest in the family home pursuant to section 5 of the Family Home Protection Act, 1976;

40 (d) an order for the protection of household chattels or any moneys realised from the sale thereof pursuant to section 9 of the Family Home Protection Act, 1976.

12.—A court may make orders under *section 11* 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.

Making of applications for preliminary orders.



Maintenance  
pending suit, etc.

13.—Where application is made for a judicial separation the court may make an order for maintenance pending suit, that is to say, an order requiring either spouse to make to the other spouse such periodical payments for the support of that other spouse and of such (if any) dependent children of the family, for such period beginning not earlier than the date of the application and ending not later than the date of the determination of that application, as the court considers proper. 5

Periodical  
payments and lump  
sum orders.

14.—(1) On granting a decree of judicial separation or at any time thereafter the court may, on application to it by either spouse, make any one or more of the following orders— 10

(a) a periodical payments order, that is to say—

(i) an order that either spouse shall make to the other spouse such periodical payments of such amount and at such times as may be specified in the order; or 15

(ii) an order that either spouse shall make to such person as may be specified in the order for the benefit of a dependent child of the family such periodical payments of such amount and at such time as may be so specified; 20

(b) a secured periodical payments order, that is to say—

(i) an order that either spouse shall secure to the other spouse to the satisfaction of the court, such periodical payments as may be so specified; or

(ii) an order that a spouse shall secure to such person as may be so specified for the benefit of such dependent child of the family such periodical payments to the satisfaction of the court as may be so specified; 25

(c) an order that either spouse shall pay to the other spouse such lump sum or sums of such amount and at such time or times as may be so specified; 30

(d) an order that a spouse shall pay to such person as may be specified for the benefit of a dependent child of the family such lump sum or sums of such amount and at such time or times as may be so specified. 35

(2) Without prejudice to the generality of *subsection (1) (c) or (d)* of this section—

(a) an order under this section that a spouse shall pay a lump sum to the other spouse may be made for the purpose of enabling that other spouse to meet any liabilities or expenses reasonably incurred by him or her, before making an application for an order under this section in his or her favour, in maintaining himself or herself or any dependent child of the family; 40

(b) an order under this section for the payment of a lump sum for the benefit of a dependent child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and 50



- 5 (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

15 15.—(1) On granting a decree of judicial separation or at any time thereafter, the court may, on application to it by either spouse, make a property adjustment order, that is to say, any one or more of the following orders—

Property  
adjustment orders.

- 10 (a) an order that a spouse shall transfer to the other spouse, to any dependent child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned spouse is entitled, either in  
15 possession or reversion;

- (b) an order that a settlement of such property as may be so specified, being property to which a spouse is so entitled, be made to the satisfaction of the court for the benefit of the other spouse and of any dependent child of the family  
20 or any or all of those persons;

- (c) an order varying for the benefit of the spouses and of any dependent child of the family or any or all of those persons any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the spouses;

- 25 (d) an order extinguishing or reducing the interest of either of the spouses under any such settlement.

(2) The court may, following the granting of a decree of judicial separation, consider and determine whether an order or orders should be made by it in favour of a spouse under this section on one occasion  
30 only unless on that occasion a spouse wilfully conceals information of a material nature relevant to the making of any such order or orders.

16.—On granting a decree of judicial separation or at any time thereafter, the court may, on application to it by either spouse, make any one or more of the following orders:

Miscellaneous  
ancillary orders.

- 35 (a) an order conferring on one spouse either for life or for such other period (definite or contingent) as the court may specify the right to occupy the family home to the exclusion of the other spouse;

- 40 (b) an order for the sale of the family home subject to such conditions as the court considers proper;

- (c) an order under section 12 of the Married Women's Status Act, 1957, determining any dispute between the spouses as to the title to or possession of any property;

- 45 (d) an order under section 4, 5 or 9 of the Family Home Protection Act, 1976;

- (e) an order under section 2 or 3 of the Family Law (Protection of Spouses and Children) Act, 1981;



(f) an order for the partition of property or under the Partition Acts 1868 and 1876;

(g) an order under section 11 of the Guardianship of Infants Act, 1964 concerning any dependent child of the family.

Order extinguishing  
succession rights.

17.—(1) On granting a decree of judicial separation, or at any time thereafter, the court shall, on the application of either spouse, consider whether it should make an order extinguishing the share that either spouse would otherwise be entitled to in the estate of the other spouse as a legal right or on intestacy under the Succession Act, 1965. 5

(2) The court shall make an order extinguishing the share that a spouse would otherwise be entitled to in the estate of the other spouse as a legal right or on intestacy under the said Act of 1965 if— 10

(a) it is satisfied, having regard to the provisions of *section 20*, that adequate and reasonable provision of a permanent nature has been made to provide for the future security of the spouse whose succession rights are in question, or 15

(b) it is satisfied, having regard to the provisions of *section 20*, that the case is not one where provision of a permanent nature requires to be made for the future security of the spouse whose succession rights are in question, or 20

(c) the spouse whose succession rights are in question is not a spouse for the support of whom the court, having had regard to the provisions of *section 20* (including *subsections (2) (i) and (3)*) made an order under *section 14, 15 or 16 (a)*, or 25

(d) it is satisfied that the spouse whose succession rights are in question is not a spouse for the support of whom the court would, having regard to the provisions of *section 20* (including *subsections (2) (i) and (3)*), make an order under *section 14, 15 or 16 (a)* if an application were made to it in that regard. 30

Orders for sale of  
property.

18.—(1) Where the court makes a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in that order, being property in which or in the proceeds of sale of which either or both spouses has or have a beneficial interest, either in possession or reversion. 35

(2) The power to make an order for sale in the case of a property adjustment order shall not be exercised so as to interfere with a right to occupy the family home conferred by that order. 40

(3) An order under *subsection (1)* of this section may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include— 45

(a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and



(b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

5 (4) Where an order is made under *subsection (1)* of this section, the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

10 (5) Where an order under *subsection (1)* of this section contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a spouse, the order shall cease to have effect on the death of that spouse.

15 (6) Where a spouse has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not one of the spouses also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under *section 20*.

20 19.—The court shall exercise its jurisdiction under *section 16 (a)* and *(b)* 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 spouses to continue to reside together;

30 (b) that proper and secure accommodation should, where practicable, be provided for a dependent spouse and any dependent child of the family;

(c) the matters referred to in *section 20* of this Act.

35 20.—(1) In deciding whether to exercise its powers under *section 13, 14, 15 or 16 (a) or (b)* of this Act and, if so, in what manner, the court shall seek to ensure that such provision is made for any spouse and for any dependent child of the family as is adequate and reasonable having regard to all the circumstances of the case. Provisions relating to maintenance, property and other orders.

(2) As regards the exercise of the powers of the court under *section 13, 14, 15 or 16 (a) or (b)* of this Act in relation to a spouse, the court shall in particular have regard to the following matters—

40 (a) the income, earning capacity, property and other financial resources which each of the spouses has or is likely to have in the foreseeable future;

45 (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before proceedings were instituted or before the spouses separated, as the case may be;



- (d) the age of each spouse, the duration of the marriage and the length of time the spouses lived together;
  - (e) any physical or mental disability of either spouse;
  - (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including the contribution made by each spouse to the income, earning capacity, property and financial resources of the other and any contribution by looking after the home or caring for the family; 5
  - (g) the effect on the earning capacity of each spouse of the marital responsibilities assumed by each during the period when they lived together and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family; 10 15
  - (h) any income or benefits to which either spouse is entitled by or under statute;
  - (i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances be repugnant to justice to disregard it; 20
  - (j) the accommodation needs of either spouse.
- (3) The court shall not make an order under *section 13, 14, 15 or 16 (a) or (b)* of this Act for the support of a spouse where the spouse has deserted and has continued to desert the other spouse up to the time of the institution of proceedings for a decree of judicial separation unless, having regard to all the circumstances (including the conduct of the other spouse), the court is of opinion that it would be repugnant to justice not to make such order or orders. 25
- (4) As regards the exercise of the powers of the court under *section 13, 14 or 15* of this Act in relation to any dependent child of the family, the court shall in particular have regard to the following matters— 30
- (a) the financial needs of the child;
  - (b) the income, earning capacity (if any), property and other financial resources of the child; 35
  - (c) any physical or mental disability of the child;
  - (d) any income or benefits to which the child is entitled by or under statute;
  - (e) the manner in which he was being and in which the spouses expected him to be educated or trained; 40
  - (f) the considerations mentioned in relation to the spouses in *subsection (2) (a), (b), (c) and (e)* of this section;
  - (g) the accommodation needs of the child.
- (5) In this section “desertion” includes conduct on the part of one spouse that results in the other spouse, with just cause, leaving and living apart from that other spouse. 45



21.—(1) The court may when making a periodical payments order under *section 14 (1) (a)* 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 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 spouse ordered to make such payment for any relevant moneys paid by him to the spouse to whom such payment is to be made in the period between the dates when the 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 14 (1) (c)* and *14 (1) (d)*.

22.—(1) Where the court has made an order to which this section applies, then subject to the provisions of this section and of *section 20* of this Act, the court may, on application to it by either spouse, if it considers it proper to do so having regard to any change in the circumstances and to any new evidence, vary or discharge the order or suspend any provision thereof temporarily, revive the operation of any provision so suspended, and in any appropriate case again vary any such order or again suspend or revive its operation.

Variation and  
discharge of  
financial and  
property orders.

(2) This section applies to the following orders—

- (a) an order for maintenance pending suit;
- (b) a periodical payments order;
- (c) a secured periodical payments order;
- (d) that part of an order for the payment of a lump sum which provides for the payment of that sum by instalments or requires the payment of such instalments to be secured;
- (e) an order in relation to the occupation of the family home, and
- (f) an order for the sale of property.

(3) Without prejudice to the generality of *section 14* of this Act that part of an order which provides for the support of a dependent child shall stand discharged where 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 *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) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(5) No property adjustment order shall be made on an application for the variation of a periodical payments or secured periodical



payments order made (whether in favour of a spouse or in favour of a dependent child of the family) under *section 14* of this Act.

(6) Where the spouse liable to make payments under a secured periodical payments order has died, an application under this section relating to that order (and to any order which requires the proceeds of sale of property to be used for securing those payments) may be made by the spouse entitled to payment under the periodical payments order or by the personal representatives of the deceased spouse, but no such application shall, except with the permission of the court, be made after the end of the period of twelve months from the date on which representation in respect of the estate of the deceased is first granted.

(7) The personal representatives of a deceased spouse against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of twelve months referred to in *subsection (6)* of this section on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

Child maintenance.

23.—(1) A maintenance 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.

(2) Conduct of the nature referred to in *section 20(2)(i)* or *20(3)* or in *section 22* shall not be a ground upon which a court shall refuse to make a maintenance order for the support of a dependent 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.

Transmission of periodical payments through District Court clerk.

24.—Notwithstanding anything in this Act, the provisions of *section 9* of the Family Law (Maintenance of Spouses and Children) Act, 1976, shall apply in relation to an order for maintenance pending suit, to a periodical payments order or a secured periodical payments 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 be made 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 periodical payments order was made.

Amendment of section 3 of Family Law (Maintenance of Spouses and Children) Act, 1976.

25.—(1) Subject to *subsection (2)* of this section, *section 3 (1)* of the Family Law (Maintenance of Spouses and Children) Act, 1976, is hereby amended by the deletion in the definition of “antecedent order” of—

“(i) an order for payment of alimony pending suit or permanent alimony;”

and the substitution of—

“(i) an order for alimony pending suit;



(j) an order for payment of maintenance pending suit under the *Judicial Separation and Family Law Reform Act, 1989*, or a periodical payments order under that Act.”.

5 (2) *Subsection (1)* of this section shall not affect the application of the Family Law (Maintenance of Spouses and Children) Act, 1976, to an order for payment of permanent alimony in force at the commencement of this Act.

26.—Payments of money pursuant to an order under this Part shall be made without deduction of income tax.

Payments to be made without deduction of income tax.

10 27.—The reference in section 98 (1) (h) of the Defence Act, 1954, to an order for payment of alimony shall be construed as including references to an order for maintenance pending suit, a periodical payments order and a secured periodical payments order.

Application of maintenance and periodical payments orders to men of Defence Forces.

15 28.—The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act, 1940 (as amended by section 29 of the Family Law (Maintenance of Spouses and Children) Act, 1976), to an order shall be construed as including references to an order for payment of maintenance pending suit and a periodical payments order under this Act.

Amendment of Enforcement of Court Orders Act, 1940.

20 29.—(1) For the purposes of this section, “financial relief” means relief under any of the provisions of sections 13, 14, 15, 16 (a), 16 (b), 21 and 22 (except subsection (6)) of this Act, and any reference in this section to defeating a person’s claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a dependent child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at the instance of that person under any of those provisions.

Avoidance of transactions intended to prevent or reduce financial relief.

30 (2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—

35 (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for the purpose of restraining the other party from so doing or otherwise for protecting the claim;

40 (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;

45 (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) of this section by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

50



and an application for the purposes of *paragraph (b)* shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under *subsection (2) (b)* or *(c)* of this section setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property). 5

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of *subsection (2) (b)* and *(c)* of this section unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief. 10 15

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

(a) in a case falling within *subsection (2) (a)* or *(b)* of this section, that the disposition or other dealing would (apart from this section) have the consequence, or 20

(b) in a case falling within *subsection (2) (c)* of this section, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for the financial relief. 25

(6) In this section "disposition" does not include provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise. 30

### PART III

#### COURT JURISDICTION

35

Definition (*Part III*).

30.—In this Part "family law proceedings", in relation to a court, means proceedings before a court of competent jurisdiction under—

(a) this Act,

(b) the Adoption Acts, 1952 to 1988,

(c) the Family Home Protection Act, 1976,

40

(d) the Family Law (Maintenance of Spouses and Children) Act, 1976,

(e) the Family Law (Protection of Spouses and Children) Act, 1981,



- (f) the Family Law Act, 1981,
  - (g) the Guardianship of Infants Act, 1964,
  - (h) the Legitimacy Declaration Act (Ireland), 1868,
  - (i) the Married Women's Status Act, 1957, or
  - 5 (j) the Status of Children Act, 1987,
- or between spouses under the Partition Act, 1868, and the Partition Act, 1876, where the fact that they are married to each other is of relevance to the proceedings.

10 31.—(1) The Circuit Court shall be known as “the Circuit Family Court” when exercising its jurisdiction to hear and determine family law proceedings or, where provided for, when transferring family law proceedings to the High Court.

Courts, jurisdiction and venue.

15 (2) Subject to the other provisions of this section, the Circuit Family Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Act for a decree of judicial separation.

20 (3) Where in proceedings under this Act for a decree of judicial separation an order could be made in respect of land whose rateable valuation exceeds £200 and an application commencing those proceedings is made to the Circuit Family Court, that Court shall, if the respondent so requires before the hearing thereof, transfer those proceedings to the High Court, but any order made (including an interim order) or act done in the course of those proceedings before such transfer shall be valid unless discharged or varied by order of

25 the High Court.

(4) The jurisdiction referred to in *subsection (2)* of this section shall only be exercisable where either of the spouses is domiciled in the State on the date of the application commencing proceedings or is ordinarily resident in the State throughout the period of one year

30 ending on that date.

(5) The jurisdiction referred to in *subsection (2)* of this section shall, in the Circuit Family Court, be exercised by the judge of the circuit where either spouse to the proceedings ordinarily resides or carries on any profession, business or occupation.

35 32.—The Circuit Family Court shall sit to hear and determine proceedings instituted under this Act and under the Acts referred to in *section 30* of this Act 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.

Hearing of proceedings.

40 33.—(1) Circuit Family Court proceedings shall be as informal as is practicable and consistent with the administration of justice.

Conduct of family proceedings in Circuit and High Courts.

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

45 (3) Family law proceedings before the High Court shall be as informal as is practicable and consistent with the administration of justice.



(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.

Privacy. 34.—Proceedings under this Act shall be heard otherwise than in public. 5

Costs. 35.—The costs of any proceedings under this Act shall be at the discretion of the court.

Rules of court. 36.—(1) Rules of court shall provide for the documentation required for the commencement of proceedings under this Act in a summary manner. 10

(2) The rules of court, and any established form or course of pleading, practice or procedure, for the purposes of any enactment or jurisdiction affected by this Act shall, pending the due making of rules of court, apply for such purposes with such adaptations as may be necessary. 15

#### PART IV

##### MISCELLANEOUS

Saver for existing law. 37.—Save in so far as otherwise provided in this Act, the law relating to proceedings for divorce *a mensa et thoro* shall, so far as applicable, apply in relation to proceedings for judicial separation. 20

Amendment of sections 5 and 6 of Family Law (Maintenance of Spouses and Children) Act, 1976. 38.—(1) In this section “the Act of 1976” means the Family Law (Maintenance of Spouses and Children) Act, 1976.

(2) Section 5 of the Act of 1976 is hereby amended—

(a) by the insertion in subsection (2) after “the other spouse” of the following: 25

“unless, having regard to all the circumstances (including the conduct of the other spouse), the Court is of opinion that it would be repugnant to justice not to make a maintenance order”, 30

(b) by the deletion of subsection (3), and

(c) by the insertion of the following paragraph after paragraph (b) of subsection (4):

“(c) the conduct of each of the spouses, if that conduct is such that in the opinion of the Court it would in all the circumstances be repugnant to justice to disregard it.”. 35

(3) Section 6 of the Act of 1976 is hereby amended—

(a) by the insertion in paragraph (b) of subsection (1), after “any



circumstances not existing when the order was made", of the following:

5                   “(including the conduct of each of the spouses, if that conduct is such that in the opinion of the Court it would in all the circumstances be repugnant to justice to disregard it)”,

(b) by the insertion in subsection (2), after “and continues to desert the maintenance debtor”, of the following:

10                   “unless, having regard to all the circumstances (including the conduct of the other spouse), the Court is of opinion that it would be repugnant to justice to do so.”,

(c) by the deletion of subsection (4), and

(d) by the deletion of “or adultery by” in subsection (5) and the substitution of “by, or conduct of,”.

15   39.—Where, after the making of an order under section 5, 6 or 7 of the Family Law (Maintenance of Spouses and Children) Act, 1976, application is made for a judicial separation between the parties to the proceedings in which that order was made, the court in which the application, or any application made under *Part II* of this Act, is  
20 pending may, if it thinks fit, direct that the order made shall cease to have effect on such date as may be specified in the direction.

Discharge of orders under Family Law (Maintenance of Spouses and Children) Act, 1976.

40.—Section 11 of the Guardianship of Infants Act, 1964, is hereby amended by the addition of the following subsections:

Reports on children in guardianship cases.

25                   “(5) The court may, of its own motion or on an application under this section, by an order under this section give such directions as it thinks proper to procure a report from such person as it may nominate on any question affecting the welfare of the infant.

30                   (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 but shall not be bound by the said wishes.

35                   (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 and may be received in evidence in the proceedings.

40                   (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.

(9) The court may, if it thinks fit, or either party to the proceedings may, call the person making the report as a witness.”.

45   41.—(1) Where the court grants a decree of judicial separation it may declare either spouse to be unfit to have custody of any dependent child of the family.

Custody of dependent children.

(2) Where a decree of judicial separation contains such a declaration, then, if the spouse to whom the declaration relates is a parent of any child of the family, that spouse shall not, on the death of the other spouse, be entitled as of right to the custody of that child.



(3) Section 18 (1) of the Guardianship of Infants Act, 1964, is hereby repealed except in relation to an action instituted before the commencement of this Act.

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

42.—(1) Section 120 (2) of the Succession Act, 1965 is hereby amended by the deletion of the words from “against whom the deceased obtained a decree of divorce *a mensa et thoro*,” to “and a spouse”. 5

(2) *Subsection (1)* of this section shall not have effect in relation to a decree of divorce *a mensa et thoro* granted in proceedings instituted before the commencement of this Act. 10

Divorce *a mensa et thoro* decrees and alimony orders.

43.—Any order made by either the Circuit Court or the High Court granting a decree of divorce *a mensa et thoro* in proceedings issued 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 14 (1) (a)* of this Act. 15

Collusion,  
condonation,  
recrimination,  
connivance.

44.—(1) Collusion between the spouses in connection with an application for a judicial separation or, subject to *subsection (2)* of this section, any conduct (including condonation or recrimination) on the part of the applicant shall not be a bar to the grant of a decree of judicial separation. 20

(2) Where an application for a decree of judicial separation is made on the ground of adultery and the respondent proves that the adultery was committed with the connivance of the applicant the court may refuse the application. 25

Conduct of District  
Court family  
proceedings.

45.—(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 administration of justice. 30

(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. 35

Short title and  
commencement.

46.—(1) This Act may be cited as the Judicial Separation and Family Law Reform Act, 1989.

(2) This Act shall come into operation on the day that is 6 months after the date of the passing of this Act. 40







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

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BILLE

*dá ngairtear*

Acht do leasú na bhforas le haghaidh idirscaradh breithiúnach: d'éascú comhréitigh idir céilí coimhthithe: do dhéanamh socrú chun ord-uithe 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.

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*Ritheadh ag dhá Theach an Oireachtais,  
13 Aibreán, 1989*

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BAILE ÁTHA CLIATH:  
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JUDICIAL SEPARATION AND FAMILY  
LAW REFORM BILL, 1987

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BILL

*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.

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*Passed by both Houses of the Oireachtas,  
13th April, 1989*

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