



AN BILLE UM AN DLÍ TEAGHLAIGH, 1994
FAMILY LAW BILL, 1994

EXPLANATORY MEMORANDUM

General

1. The main objects of the Bill are to enable the court to make financial, property and other ancillary orders following the granting of a decree of nullity of marriage and in cases where foreign decrees of divorce, nullity and legal separation are entitled to recognition in the State; to give the Circuit Court jurisdiction in respect of nullity proceedings; to restate the law, with amendments, on the powers of the court to make declarations in relation to the status of a person's marriage; to raise the minimum age for marriage to 18 and provide for notice of marriage; to strengthen the general law on maintenance.

Background

2. The Bill implements many of the proposals contained in the White Paper on Marital Breakdown (September, 1992 PL. 9104). It takes into account recommendations contained in "The Law of Nullity in Ireland" published by the Office of the Attorney General in 1976; and it takes into account recommendations contained in the following reports of the Law Reform Commission — Report on the Age of Majority, the Age for Marriage and some connected subjects (LRC 5-1983); Report on Jactitation of Marriage and Declarations of Status (LRC 6-1983); Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees and the Hague Convention on the Celebration and Recognition of the Validity of Marriages (LRC 20-1985); Report of the Oireachtas Joint Committee on Marital Breakdown (Pl. 3074) and the Report of the Combat Poverty Agency on the Financial Consequences of Marital Breakdown.

Main Features

3. (a) *Part II* enables the courts to make financial, property and other ancillary orders following the granting of a decree of nullity. The powers of the court to make orders include provision in relation to periodical and lump sum payments (*section 7*), property adjustment (*section 8*), pensions adjustment (*section 11*) and inheritance (*section 14*). *Section 3* repeals, and *Part II*, in addition, re-enacts *Part II* and *section 39* of the Judicial Separation and Family Law Reform Act, 1989 in relation to the courts' power to make ancillary orders in judicial separation proceedings.

(b) *Part III* enables the courts to make financial etc. orders similar to that provided for in *Part II* in cases where foreign decrees of divorce, separation and nullity are entitled to recognition in the State.

- (c) *Part IV* restates, with amendments, the law which enables a person to apply to the courts for a declaration as to the validity of his or her marriage or that a foreign decree of divorce, separation or nullity is entitled to recognition in the State.
- (d) *Part V*, subject to exceptions, raises the legal age for marriage from 16 years to 18 years and requires persons to give 3 months notice of intention to marry to the local Registrar of Marriages.
- (e) *Part VI* strengthens the general law on maintenance by empowering the courts to order secured payments (*section 41*), lump sum payments (*section 42*) and where a court orders maintenance to order in the same proceedings, subject to certain conditions, attachment of earnings for its enforcement (*section 43*).
- (f) *Part VI* also gives jurisdiction to the Circuit Court (concurrent with the High Court) in all nullity proceedings and jurisdiction, and on a limited basis, to the District Court (*section 48*) in proceedings under the Family Home Protection Act, 1976.

Implications for Women

4. The provisions of the Bill apply equally to men and women. However, the extended powers of the courts to deal with the financial consequences of marital breakdown are expected to be of particular benefit to women.

PART I

PRELIMINARY AND GENERAL

Short title and commencement

5. *Section 1* sets out the short title and provides for the coming into operation of the Act, or Parts or sections thereof, on such day or days as may be fixed by the Minister for Equality and Law Reform either generally or with reference to particular Parts or sections.

Interpretation

6. *Section 2 (1)* sets out various definitions: Key definitions in the Bill include those on "family home", "conveyance", and "household chattels"; "spouse" includes persons who are party to a marriage which is void or voidable or in respect of which a foreign decree of divorce or nullity is recognised in the State; "dependent member of the family" means any child of the family who is under the age of 16 years and may in certain circumstances prescribed in the definition include persons over that age. *Subsection 2* provides that the provisions of the Act apply to decrees of nullity applied for and granted after the commencement of *Part II* of the Act.

Repeals

7. *Section 3* deals with repeals. Sections 19 and 25 of the Marriages (Ireland) Act, 1844 and part of section 35 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 are repealed and replaced by *section 32*. Part of section 1 of the Legitimacy Declaration Act (Ireland) 1868 is repealed and replaced by *section 29*. Sections 1 and 18 of the Marriages Act, 1972 are repealed and replaced by *section 3*. Part II and sections 39 and 40 of the Judicial Separation Act, 1989 are being repealed and re-enacted, with amendments, in

Part II. Section 12 of the Married Women's Status Act, 1957 is being repealed and replaced by section 36.

Expenses

8. Section 4 provides for expenses incurred in the administration of the Bill to be paid out of moneys provided by the Oireachtas.

PART II

PRELIMINARY AND ANCILLARY ORDERS IN OR AFTER PROCEEDINGS FOR NULLITY OR JUDICIAL SEPERATION

9. Under the law as it stands the court has no power to order financial etc. support for a person whose marriage has been annulled. Part II of the Bill empowers the Circuit and High Courts to make financial and property provision for such persons. Part VI (section 38) empowers the Circuit Court to grant nullity decrees (at present jurisdiction is confined to the High Court). Part II of the Bill re-enacts the substance of Part II of the Judicial Separation and Family Law Reform Act, 1989 (which is being repealed by section 3) concerning the powers of court to order financial support in the context of judicial separation.

10. Financial, property and other ancillary orders which the court is empowered to make under sections 7 to 12 and sections 14 and 18 can be made by the court, on application to it by either spouse at the time the decree of nullity or judicial separation is granted or at any time thereafter. The making of the orders is subject to general criteria set out in section 16.

Preliminary orders in proceedings for nullity or judicial separation

11. Section 5 provides that the court may, before deciding on an application for a decree of nullity or judicial separation, make one or more of the following orders, namely, a barring order or protection order, a custody order, and an order for protection of the family home and contents.

Maintenance pending suit orders

12. Section 6 provides that the court may make an order for a periodical payment or a lump sum payment pending the determination of an application for a decree of nullity or judicial separation.

Periodical payments and lump sum orders

13. Section 7 provides for the making of orders for periodical payments (subsection (1) (a)), secured periodical payments (subsection (1) (b)) and lump sums (subsection (1) (c) and (2)) for the support of a spouse or dependent children. Lump sums may be ordered to be paid by instalments and to be secured (subsection (3)). The duration of a periodical payment order will not extend beyond the death of either of the spouses or, as the case may be, where the creditor marries (subsection (4)). The court may direct, in nullity cases, that the dependent 'spouse' may not be entitled to apply (under section 18) for an extension of the time period specified in the periodical payments order (subsection 5 (a)). Periodical payments orders may also be the subject of an attachment of earnings order at the time the payments are ordered. Before deciding to make or refuse an attachment of earnings order the spouse who is to make the payments must be given an opportunity to make representations in relation to the matter (subsection (6)).

Property adjustment orders

14. *Section 8 (1)* provides that the court may make one or more of the following property adjustment orders:

- (a) an order for the transfer of property from one spouse to the other or to any dependent child of the family or to a named person for the benefit of such a child;
- (b) an order for the settlement of property, being property to which either of the spouses is entitled, for the benefit of the other spouse and of any dependent child of the family or any or all of those persons;
- (c) an order to vary, for the benefit of the spouses and/or any dependent child of the family, any ante-nuptial or post-nuptial settlement made on the spouses;
- (d) an order extinguishing or reducing the interest of either of the spouses under any such settlement.

With the exception of (a) (property transfer orders), the court may, under *subsection (2)*, restrict the power to vary (under *section 18*) orders made under this section.

Subsection (3) provides for the registration, in the Land Registry or Registry of Deeds, of a certified copy of any court order under *section 8*.

Miscellaneous ancillary orders

15. *Section 9 (1)* provides that the court may make one or more of the following orders:

- (a) an order conferring on one spouse the right to occupy the family home to the exclusion of the other spouse;
- (b) an order for the sale of the family home and for disposal of the proceeds of sale between the spouses and any other person having an interest therein;
- (c) an order under *section 36*;
- (d) an order under sections 4, 5, 7 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 Act, 1868 and the Partition Act, 1876;
- (g) an order under section 11 of the Guardianship of Infants Act, 1964 concerning any dependent child of the family.

Subsection (2) requires that in exercising its jurisdiction under *subsection (1) (a)* and *(b)* the court must have regard to the welfare of the family and, in particular, the accommodation needs of the parties concerned as well as to the general criteria set out in *section 16*.

Financial compensation orders

16. *Section 10 (1)* provides that on granting a decree of nullity or at any time thereafter the court may make an order for the assignment, in whole or in part, of a spouse's interest in a life insurance policy in favour of the other spouse or dependent child of the family; an order requiring a spouse to take out a life insurance policy in favour of the

other spouse or dependent child of the family or an order to make the necessary payments required under the terms of the policy. *Subsection (2)* provides that the court may make a financial compensation order in addition to or in substitution, in whole or in part, for orders under *sections 7 to 9 and 11* and that in deciding whether to make an order under the section it shall have regard to whether adequate and reasonable provision exists and can be made for a spouse or dependent children.

Pension adjustment orders

17. *Section 11 (1)* provides that on granting of a decree of nullity or at any time thereafter the court may make a pension adjustment order. The court may

- order the “splitting” of a pension i.e. order that a spouse’s interest in his or her pension scheme be reduced and the amount by which it is reduced be used to create a separate pension benefit for the other dependent “spouse” either within the pension scheme or in another scheme approved by the court (*paragraph (a)*); or
- order the “earmarking” of a pension i.e. order that the dependent “spouse” may retain an interest in the member spouse’s pension (including survivors’ benefit) with the proportion of benefit to be paid to be determined by the court, at or after the granting of the nullity decree, as the court considers appropriate, and paid when the benefits involved come on stream (*paragraph (b)*).

Subsection (2) requires that notice of any application in relation to a pension adjustment order (or a variation of such an order under *section 18 (2)*) be given by the applicant spouse to the trustees of a person’s scheme and it also requires the court in making a pension adjustment order to have regard to any representations made by the trustees and to *section 16 (2)*.

Subsection (3) provides that the court in making a pension adjustment order, shall give to the trustees of the pension scheme concerned such directions, as it considers appropriate, in relation to that order. *Subsection (4)* requires that any costs incurred by the trustees under *subsections (2) or (3)* shall be borne by the spouses involved. *Subsection (5)* sets out the circumstances in which the court may make a pension adjustment order and the circumstances in which an order made under this section shall cease to apply. The court shall not make a pension adjustment order if the applicant has married since the granting of the decree of nullity or if adequate and reasonable financial provision already exists or can be made under *sections 7 to 10*. An “earmarked” order under *subsection (1) (b) (i)* shall cease to have effect on the death of the member spouse and any “earmarked” order shall cease to have effect on the remarriage of the spouse in whose favour the order was made. *Subsection (6)* deals with disclosure of information and *subsection (7)* allows the court to give directions to trustees in relation to the time within which valuation of a pension must be furnished to the court and it provides that, where appropriate, the value shall be determined in accordance with the Second Schedule to the Pensions Act, 1990.

Preservation of pension entitlements after judicial separation

18. *Section 12 (1)* applies where a decree of judicial separation has been granted and empowers the court to order the trustees of a pension scheme not to regard the separation of the spouses as a ground for disqualifying a spouse from benefiting under the scheme

on the death of the other spouse. This section is intended to cover situations where the rules of a pension scheme may provide that survivors' benefit will only be paid to the spouse of the deceased member if both spouses were residing together at the time of the member spouse's death. *Subsection (2)* provides for notice to be given to trustees of the pension scheme and for the court to have regard to any representations made by them and to *section 16 (2)*.

Orders extinguishing succession rights on judicial separation

19. *Section 13* empowers the court in cases of judicial separation to order the extinguishment of succession rights of either spouse where adequate and reasonable provision exists (*paragraph (a)*), or the court has refused or would refuse an order for relief under *sections 7, 8, 9 (1) (a)* or *12*. This section is similar in effect to *section 17* of the Judicial Separation and Family Law Reform Act, 1989 which is being repealed by *section 3*.

Orders for provision for spouse out of estate of other spouse

20. *Section 14* provides that where a decree of nullity is in force and one of the parties to the decree dies the other party, if he or she has not married, may apply to the court for financial provision to be made for him or her out of the deceased spouse's estate. In considering whether to make an order under this section the court must have regard to any lump sum payments made under *section 6* or a property adjustment order made in favour of the applicant, or where relevant, matters referred to in *section 16 (2)* and any devise or bequest made by the deceased spouse to the applicant spouse. The provision which the court can make under this section together with any lump sum payments made under *section 6* and property adjustment order must not exceed in total the share (if any) of the applicant in the estate of the deceased spouse under the Succession Act, 1965 to which the applicant was entitled or would have been entitled if the marriage was valid.

Orders for sale of property

21. *Section 15* provides that where a court makes a secured periodical payments order, a lump sum order or a property adjustment order, it may additionally at any time thereafter make a further order for the sale of any property in which either spouse has a beneficial interest. The order for sale may include provisions in relation to the manner and time of the sale and disposal of the proceeds of sale. The power to order the sale of property may not be exercised so as to interfere with a right to occupy the family home conferred by virtue of an order under *Part II*. Also, where a person, other than one of the spouses, has a beneficial interest in the property concerned, the court must give that person an opportunity to make representations and must take those representations into account before deciding whether to make an order for sale.

Provisions relating to certain orders under sections 7 to 12, 14 and 18

22. *Section 16 (1)* provides that the court, in deciding whether to make an order under *sections 7, 8, 9 (1) (a), 10, 11, 12, 14* or *18*, shall endeavour to ensure that such financial provision is made for the dependent spouse and for any dependent child of the family as is adequate and reasonable having regard to all the circumstances of the case. *Subsection (2)* lists matters (e.g. income, earning capacity, property, financial resources, likely future obligations, age and conduct of the spouses) to which the court must have particular regard when deciding on the making of orders. The court must take into account any contribution made by either spouse to the financial and other resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family. It

also provides for the court, in cases of nullity, to have regard to the value of any benefit, which by reason of the annulment of the marriage, the spouse will lose the opportunity or possibility of acquiring.

Subsection (3) provides that the desertion of a spouse shall be a bar to the making of financial etc. orders in support of a spouse unless the court is of opinion that it would be unjust not to make the order. *Subsection (4)* also lists a number of factors to which the court must have regard in making orders in relation to a dependent child of the family.

Retrospective periodical payments orders

23. *Section 17* provides that the court may, if appropriate, order periodical payments to be paid with effect from a date that is earlier than the date of the order for periodical payments but not earlier than the time of the institution of the proceedings concerned.

Variation, etc., of certain orders under this Part

24. *Section 18 (1)* empowers the court, on the application of either spouse, to vary or discharge various orders, and to suspend temporarily or to revive any provisions of such orders under *Part II*. The orders concerned are:—

- an order for maintenance pending suit;
- a periodical payments order (secured or unsecured);
- a lump sum order requiring payment by instalments or requiring such instalments to be secured;
- a property adjustment order made under *section 8 (1) (b), (c) or (d)* containing a restriction specified in *section 8 (2)*;
- an order relating to the occupation of the family home;
- an order for the sale of property;
- a financial compensation order;
- a pensions adjustment order providing for ‘earmarking’ (see paragraph 17 above);
- an order preserving a separated spouse’s pensions entitlements in the other spouse’s pension scheme;
- an order for the sale of property; and
- a variation order under this section.

Subsection (2) (any change of circumstances) together with *section 16* (general criteria) provide criteria for the making of orders under *section 18*.

Subsection (3) provides for the discharge of orders which provide for the making of payments for the support of a dependent member of the family if the member ceases to be a dependent member of the family.

Restriction in relation to orders for benefit of dependent members

25. *Section 19* provides that the court, in making provision for a dependent child in a maintenance pending suit order, an unsecured or secured periodical payment order, or a lump sum order or a

variation order relating to such orders, shall not have regard to the desertion or other misconduct of either of the spouses concerned.

Transmission of periodical payments through District Court clerk

26. *Section 20* provides that the making of maintenance pending suit payments and periodical payments (secured or unsecured) — made pursuant to orders under *Part II* — are to be transmitted through the local District Court clerk in the same way that such payments are currently made under section 9 of the Family Law (Maintenance of Spouses and Children) Act, 1976.

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

27. *Section 21* is a technical amendment to section 3 of the Family Law (Maintenance of Spouses and Children) Act, 1976.

Application of maintenance pending suit and periodical payment orders to certain members of Defence Forces

28. *Section 22* provides that an order for the payment of alimony under the Defence Forces Act, 1954 shall be construed as including maintenance pending suit and periodical payments orders under the Bill.

Amendment of Enforcement of Court Orders Act, 1940

29. *Section 23* provides that references to an order in section 8 (1) and (7) of the Enforcement of Court Orders Act, 1940 (as amended) shall be construed as including maintenance pending suit and periodical payments orders made under the Bill.

PART III

RELIEF AFTER DIVORCE, ANNULMENT OR SEPARATION OUTSIDE STATE

30. Where a foreign decree of nullity or divorce, is entitled to recognition in the State, the courts have no power to order financial support for the persons concerned. *Part III* of the Bill addresses this situation by empowering the Circuit and High Courts to make ancillary provisions of the kind provided for in *Part II*.

Relief orders where marriage dissolved, or annulled, or spouses legally separated outside State

31. *Section 24* deals with financial, etc., orders in relation to marriages which have been dissolved or annulled, or as respects which the spouses have been legally separated after the commencement of this section under the law of another country or jurisdiction and such divorce, annulment or legal separation is entitled to be recognised as valid in the State (*subsection (6)*). *Subsection (1)* provides that the court may, in relation to such a marriage, on application to it by either of the spouses concerned, make any order under *Part II* (other than an order under *section 6* or an order under *subsection (1) (e)* of *section 18*) that it could have made in relation to the marriage if the court had granted a decree of nullity or judicial separation in relation to the marriage. The court may not make an order in relation to a previous marriage where the spouse concerned has remarried (*subsection (1) (c)*). *Subsection (2)* provides that the leave of the court must be obtained before an application for relief can be made under this section. The court in deciding whether to make a relief order under this section shall have regard to *section 16* and in determining the financial resources of a spouse or dependent member of the family shall have regard to compliance with any order for relief granted by a court outside the State (*subsection (3)*). The duration of a periodic payment order will not extend beyond the death of either of the

spouses or, as the case may be, where the creditor marries (*subsection (4)*). The court, in granting a periodical payments order (secured or unsecured) after a divorce or the annulment of the marriage may direct that the dependent 'spouse' may not be entitled to apply under *section 18* for an extension of the time period specified in the periodical payments order (*subsection 5 (a)*).

Maintenance pending relief orders

32. *Section 25* provides that the court may make an order for maintenance pending the determination of an application for relief under *section 24*. The court cannot make a maintenance pending relief order where neither of the requirements of *paragraphs (a) and (b) of section 27 (1)* is satisfied.

Appropriateness of making relief orders in State

33. *Section 26* provides that the court shall not make a "relief order" under *section 24* unless it is satisfied that in all the circumstance it is appropriate to do so. It also sets out matters to which the court must have particular regard when deciding whether to order relief, (e.g. the connection which the parties have with the State and the country in which the marriage concerned was dissolved or annulled or in which they were legally separated; financial relief or benefit which the applicant is receiving on foot of a decree of another country; enforceability of a foreign relief order and the length of time which has elapsed since the foreign divorce, annulment or legal separation.

Jurisdiction of court to make relief orders

34. *Section 27 (1)* provides that the court may make a "relief order" only where either of the spouses are domiciled in the State at the time of making the application (*paragraph (a)*), ordinarily resident in the State for a year before making the application (*paragraph (b)*) or has a beneficial interest in a family home in the State. *Subsection (2)* excludes the operation of *subsection (1)* in relation to a case to which the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Acts 1988 and 1993 applies.

Restriction of jurisdiction of court to make relief orders

35. *Section 28 (1)* provides that, where the jurisdiction of the court to make a relief order is only conferred by either or both of the spouses having a beneficial interest in a family home in the State at the time of making the application (*section 27 (1) (c)*), certain orders (e.g. lump sum orders, certain property adjustment orders, order for provision out of estate of other spouse) for financial relief can only be made. Where the court makes an order under this section for lump sum payments the amount must not exceed the value of the interest that the spouse liable to make the payment has in the family home concerned (*subsection (2)*).

PART IV

DECLARATIONS AS TO MARITAL STATUS

Declarations as to marital status

36. *Section 29 (1)* provides for the obtaining of the following declarations relating to marital status:

- (a) a declaration that the marriage was at its inception a valid marriage;
- (b) a declaration that the marriage subsisted on a date specified in the application;

- (c) a declaration that the marriage did not subsist on a date so specified not being the date of inception of the marriage;
- (d) a declaration that the validity of a divorce, annulment or legal separation obtained under the civil law of any other State in respect of the marriage is entitled to recognition in the State;
- (e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in the State.

Subsection (2) sets out the conditions (e.g. domicile, ordinary residence in the State) which determine the court's jurisdiction under *subsection (1)*. *Subsections (3) to (7)* are procedural and deal with persons (including personal representatives and the Attorney General) who may become party to proceedings under *section 29*. Where a party to proceedings alleges that the marriage is void or voidable the court may treat the application instead as one for nullity of marriage (*subsection (7)*). A declaration under this section is binding on the parties to the proceedings concerned and where the Attorney General is a party the declaration is binding on the State (*subsection (8)*). It also provides that a declaration obtained under this section shall not prejudice any person if it is subsequently proved to have been obtained by fraud or collusion (*subsection (9)*).

Provisions supplementary to section 29

37. *Section 30 (1)* provides for rules of court to be made in relation to applications under *section 29*. Costs incurred by the Attorney General in proceedings under *section 29* may be ordered by the court to be paid by the parties to the proceedings (*subsection (2)*). A declaration under *section 29* conflicting with a previous final judgment of a court of competent jurisdiction cannot be made unless the previous judgment was obtained by fraud or collusion (*subsection (3)*). Notification of declarations (except in relation to legal separations) must be given by the registrar of the court to an tArd Chláraitheoir (*subsection (4)*).

PART V

MARRIAGE

Age of marriage

38. *Section 31 (1) (a)* provides that a marriage solemnised between persons either of whom is under the age of 18 years shall not be valid. Under the law as it stands in the Marriages Act, 1972 the minimum age of marriage is 16 years. The subsection applies to any marriage solemnised in the State irrespective of the ordinary residence of either party or both of them or, outside the State, where either party or both of them is or are ordinarily resident in the State (*paragraph (a) (ii)*). The subsection does not apply by virtue of *paragraph (c)* if exemption from it is granted before the marriage under *section 33*.

Subsection (2) provides that persons intending to marry may be required to produce evidence of age and failure to produce such evidence shall be a ground for refusing permission to marry (*subsection (3)*).

Subsection (4) makes it an offence to solemnise or permit the solemnisation of a marriage contrary to the provisions of *section 31*.

Notification of intention to marry

39. Section 32 (1) provides that a marriage solemnised in the State between two persons shall not be valid unless notification in writing of intention to marry is given to the Registrar of Marriages for the district concerned three months prior to the date on which the marriage is to be solemnised. The Registrar must notify each of the persons concerned of the receipt by him or her of the notification of their marriage and make the notification available for public inspection (subsection (2)).

Exemptions of certain marriages from sections 31 (1) and 32 (1)

40. Section 33 provides that on application to the court by both of the parties intending to marry the court may make an order exempting the marriage from the application of sections 31 and 32.

Abolition of right to petition for jactitation of marriage

41. Section 34 provides for abolition of the right to petition the court for jactitation of marriage.

PART VI

MISCELLANEOUS

Powers of court in relation to transactions intended to prevent or reduce relief

42. Section 35 provides that the court, on application to it by a spouse who has instituted or intends to institute proceedings for financial or other relief under Parts II and III, may, if it is satisfied that the other spouse proposes to make any disposition, referred to in the section as a "reviewable disposition" (subsection (1)), or otherwise deal with property with the intention of defeating the claim for relief, make such order as it thinks fit for the purpose of restraining that other spouse or other person. It also provides that where a reviewable disposition has already been made the court may set it aside (subsection (2)). Where neither of the conditions specified in paragraphs (a) and (b) of section 27 (1) concerning jurisdiction of the court to make relief orders are satisfied, the court shall not make an order on any property other than on the family home (subsection (4)). Where the reviewable disposition takes place less than three years before the date of the application under section 35, it shall be presumed, unless the contrary is shown, that the disposition was made with the intention of defeating the claim for relief (subsection (5)).

Determination of questions between spouses in relation to property

43. Section 36 replaces section 12 of the Married Women's Status Act, 1957 which provided for the determination of questions between spouses as to the title to or possession of any property and which is being repealed by section 3 of the Bill. In particular, Section 36 allows a spouse (or child of a deceased spouse) to seek redress where it is claimed that the other spouse has had in his or her possession property (including money) belonging to that spouse or child and has not paid over the property or its value (subsections (3) and (4)).

Subsection (5) provides that in proceedings under this section any party (other than the spouses or child concerned) will be treated as a stakeholder for the purposes of costs or otherwise. This provision is for the protection of trustees and others who may hold "matrimonial" money or property in a fiduciary capacity. Subsection (6) repeats section 12 (6) of the Married Women's Status Act, 1957 to make it clear that this section does not affect the legal capacity of married women as prescribed in section 2 of that Act, including the capacity to sue her husband in contract and tort.

Subsection (7) imposes a time limit of three years on application under this section in cases where marriages have been annulled or where there has been a foreign divorce which is recognised here. The limit applies from the date of the annulment or dissolution. A similar limit applies where a marriage is void but has not been so declared and runs from the time the parties have ceased to be ordinarily resident together. *Subsection (8)* makes it clear that applications to the court under this section may be made not only by parties to a valid marriage but also by the personal representative of a deceased spouse and in addition, subject to the time limit mentioned, by parties to marriages that are void (even if not declared to be such), or are voidable and have been annulled or have been the subject of a foreign divorce that is recognised here.

Payments to be made without deduction of income tax

44. *Section 37* is a standard provision in family law legislation and provides that payments of money made pursuant to an order under the provisions of the Bill shall be made without deduction of income tax.

Jurisdiction of courts and venue

45. *Section 38 (1)* provides, subject to the provisions of the section, that the Circuit Court shall, concurrently with the High Court have jurisdiction to hear and determine proceedings under the Bill and that in relation to that jurisdiction it shall be known as the Circuit Family Court. *Subsection (2)* provides that the Circuit Court shall have jurisdiction to hear and determine proceedings for a decree of nullity. *Subsection (3)* requires the Circuit Court, on application by any person having an interest in the proceedings, to transfer the proceedings to the High Court where the rateable valuation of the land exceeds £200. *Subsection (4)* confers jurisdiction on the Circuit Family Court in the circuit in which any of the parties to the proceedings under the Bill ordinarily resides or carries on business or a profession or occupation. *Subsection (6)* provides, in effect, that proceedings under the Bill shall be heard otherwise than in public and as informally as is practicable and consistent with the administration of justice.

Exercise of jurisdiction by court in relation to nullity

46. *Section 39 (1)* provides that the court may grant a decree of nullity where either of the spouses was domiciled in the State on the date of the institution of the proceedings or either of the spouses was ordinarily resident in the State for one year prior to the date of the application. Where either of the spouses died before the date of application the relevant date is the date of death. It also provides (*subsection (2)*) that a court dealing with proceedings for a decree of nullity shall have jurisdiction to determine an application for the grant of a decree of judicial separation in respect of the same marriage notwithstanding that such jurisdiction is not conferred by section 31 (4) of the Judicial Separation and Family Law Reform Act, 1989.

Notice of proceedings under Act

47. *Section 40* provides for notice to be given to other parties of proceedings under the provisions of the Bill.

Secured maintenance orders

48. *Section 41* provides that where a court, including the District Court, makes an order providing for a periodical maintenance payment under any other Act (e.g. in proceedings under the Family Law (Maintenance of Spouses and Children) Act, 1976, or the Guardianship of Infants Act, 1964) it may order that the payment be secured to the satisfaction of the Court.

Lump sum maintenance orders

49. Section 42 provides that where a court, including the District Court makes an order for a periodical maintenance payment under any other Act it may, in addition to or instead of such order, make an order for the payment of a lump sum. The amount of the lump sum shall be determined by the court having regard to the amount of any periodical payments. The amount of the lump sum(s) which the District Court may order shall not exceed £5,000.

Attachment of earnings orders in relation to maintenance orders under Family Law (Maintenance of Spouses) and Children Act, 1976

50. Section 43 amends the Family Law (Maintenance of Spouses and Children) Act, 1976 to provide that periodical payments orders made in proceedings under that Act may in the same proceedings be made the subject of an attachment of earnings order. Before deciding to make or refuse an attachment of earnings order the maintenance debtor concerned must be given an opportunity to make representations in relation to the matter.

Discharge of orders under the Family Law (Maintenance of Spouses) Act, 1976

51. Section 44 provides that where an application is made for an order under Parts II and III of the Bill and an order made under the Family Law (Maintenance of Spouses and Children) Act, 1976 is in force, the court may discharge the order made under the 1976 Act.

Custody of dependent members of the family after decree of nullity

52. Section 45 provides that the court in making an order for the grant of a decree of nullity may declare either of the spouses concerned to be unfit to have custody of any children of the family.

Social reports in family law proceedings

53. Section 46 provides for social reports in family law cases (i.e. proceedings under the Bill, the Child Abduction and Enforcement of Custody Orders Act, 1991, the Judicial Separation and Family Law Reform Act, 1989, the Family Law (Protection of Spouses and Children) Act, 1981, the Guardianship of Infants Act, 1964, etc.) to be provided to the court by the Probation and Welfare Service of the Department of Justice, a person nominated by a Health Board or any other person which the court may specify in the order (*subsection (1)*). It also provides that the court shall have regard to submissions made by the parties concerned in deciding whether to order a report (*subsection (2)*). A copy of any report must be given to the parties concerned (*subsection (3)*) and the fees and expenses incurred in the preparation of reports must be paid by such party or parties to the proceedings as the court may determine.

Property of engaged couples

54. Section 47 is an avoidance of doubt provision. Section 5 (1) of the Family Law Act 1981 applied to formerly engaged couples the rules of law relating to the rights of spouses to the ownership of property in which either or both of them had a beneficial interest. Section 47 makes it clear that that provision does not relate to the rules of law relating to the rights of spouses under the Succession Act 1965, the Family Home Protection Act, 1976 or the Judicial Separation and Family Law Reform Act, 1989.

Amendment of Family Home Protection Act, 1976 and the Act of 1989

55. Section 48 amends the Family Home Protection Act, 1976 and the Judicial Separation and Family Law Reform Act, 1989. *Subsection (1) (a) (ii)* provides that proceedings may not be instituted to have a conveyance declared void by reason of the absence of a spouse's prior

consent any later than 6 years after the date of the conveyance, unless that spouse is then in occupation of the family home. (This provision is without prejudice to any right of that spouse to seek redress otherwise than in such proceedings.) It is also provided that a conveyance is deemed not to be void for that reason unless it has been so declared by a court or unless it is void and the parties to the conveyance or their successors in title so state in writing within 6 years after the date of the conveyance. Provision is also being made for a spouse to give a valid general consent. *Subsection (1) (b)* confers jurisdiction on the District Court for the purpose of proceedings under the Act of 1976 in relation to the family home where the rateable valuation is not more than £20. It is also being provided that the District Court for the purposes of determining whether it has jurisdiction in the proceedings may determine whether or not the rateable valuation exceeds £20. Under *subsection (2)*, where the ownership of the family home is vested by the court in one of the spouses in judicial separation proceedings, it must, unless it sees reason to the contrary, order that the other spouse's consent under the Act of 1976 to any future sale of the home will not be necessary.

Amendment of Child Abduction and Enforcement of Custody Act, 1991

56. *Section 49* amends section 2 of the Child Abduction and Enforcement of Custody Orders Act, 1991 — by defining “the Minister” as the Minister for Equality and Law Reform. This is a technical amendment following on a transfer of functions under the 1991 Act from the Minister for Justice to the Minister for Equality and Law Reform.

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*An Roinn Comhionannais agus Ainmnóirthe Dlí,
Feabhra, 1994*