



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

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

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ENACTMENTS REPEALED

ACTS REFERRED TO

Adoption Acts, 1952 to 1991			
Capital Acquisitions Tax Act, 1976	1976,	No.	8
Child Abduction and Enforcement of Custody Orders Act, 1991	1991,	No.	6
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 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
Finance (1909-10) Act, 1910	10 Edw. 7, c. 8
Finance Act, 1972	1972, No. 19
Finance Act, 1993	1993, No. 13
Finance Act, 1994	1994, No. 13
Guardianship of Infants Act, 1964	1964, No. 7
Income Tax Act, 1967	1967, No. 6
Judicial Separation and Family Law Reform Act, 1989	1989, No. 6
Jurisdiction of Courts and Enforcement of Judgments Acts, 1988 and 1993	
Legitimacy Declaration Act (Ireland), 1868	1868, c. 20
Marriages Act, 1972	1972, No. 30
Marriages (Ireland) Act, 1844	1844, c. 81
Marriage Law (Ireland) Amendment Act, 1863	1863, c. 27
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, No. 17
Pensions Act, 1990	1990, No. 25
Registration of Marriages (Ireland) Act, 1863	1863, c. 90
Registration of Title Act, 1964	1964, No. 16
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27



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

BILL

entitled

5 AN ACT TO MAKE FURTHER PROVISION IN RELATION
TO THE JURISDICTION OF THE COURTS TO MAKE
PRELIMINARY AND ANCILLARY ORDERS IN CASES
WHERE SPOUSES BECOME JUDICIALLY SEPARATED
10 UNDER THE LAW OF THE STATE, TO ENABLE SUCH
ORDERS TO BE MADE IN CERTAIN CASES WHERE
MARRIAGES ARE DISSOLVED, OR AS RESPECTS
WHICH THE SPOUSES BECOME JUDICIALLY SEP-
ARATED, UNDER THE LAW OF ANOTHER STATE, TO
15 MAKE FURTHER PROVISION IN RELATION TO MAIN-
TENANCE UNDER THE FAMILY LAW (MAINTENANCE
OF SPOUSES AND CHILDREN) ACT, 1976, AND IN
RELATION TO MARRIAGE AND TO PROVIDE FOR
CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Family Law Act, 1995.

Short title and
commencement.

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(2) (a) This Act shall come into operation on such day or days
as, by order or orders made by the Minister for Equality
and Law Reform under this section, may be fixed
therefor either generally or with reference to any par-
ticular purpose or provision and different days may be
so fixed for different purposes and different provisions.

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(b) An order under *paragraph (a)* relating to, or in so far
as it relates to, *section 31* shall not be made without the
consent of the Minister for Health.

2.—(1) In this Act, save where the context otherwise requires—

Interpretation.

“the Act of 1964” means the Guardianship of Infants Act, 1964;

“the Act of 1965” means the Succession Act, 1965;

"the Act of 1976" means the Family Law (Maintenance of Spouses and Children) Act, 1976;

"the Act of 1981" means the Family Law (Protection of Spouses and Children) Act, 1981;

"the Act of 1989" means the Judicial Separation and Family Law Reform Act, 1989; 5

"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 disposition; 10

"the court" shall be construed in accordance with *section 37*;

"decree of judicial separation" means a decree under *section 3* of the Act of 1989;

"decree of nullity" means a decree granted by a court declaring a marriage to be null and void; 15

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

(a) of both spouses or adopted by both spouses under the Adoption Acts, 1952 to 1991, or in relation to whom both spouses are *in loco parentis*, or 20

(b) of either spouse or adopted by either spouse under those Acts, or in relation to whom either spouse is *in loco parentis* where the other spouse, being aware that he or she is not the parent of the child, has treated the child as a member of the family, 25

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

(i) is or will be or, if an order were made under this Act providing for periodical payments for the benefit of the child or for the provision of a lump sum for the child, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 23 years, or 30

(ii) has a mental or physical disability to such extent that it is not reasonably possible for the child to maintain himself or herself fully; 35

"family home" has the meaning assigned to it by *section 2* of the Family Home Protection Act, 1976, with the modification that the references to a spouse in that section shall be construed as references to a spouse within the meaning of this Act;

"financial compensation order" has the meaning assigned to it by *section 10*; 40

"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; 45

"Land Registry" and "Registry of Deeds" have the meanings assigned to them by the Registration of Title Act, 1964;

"lump sum order" means an order under *section 7 (1) (c)*;

"maintenance pending suit order" means an order under *section 6*;

5 "maintenance pending relief order" means an order under *section 23*;

"member of the scheme", in relation to a pension scheme, means any person who, having been admitted to membership of the scheme under its rules, remains entitled to any benefit under the scheme;

10 "pension adjustment order" has the meaning assigned to it by *section 11*;

"pension scheme" means—

(a) an occupational pension scheme (within the meaning of the Pensions Act, 1990), or

15 (b) (i) an annuity contract approved by the Revenue Commissioners under *section 235* of the Income Tax Act, 1967, or a contract so approved under *section 235A* of that Act,

20 (ii) a trust scheme, or part of a trust scheme, so approved under subsection (4) of the said *section 235* or subsection (5) of the said *section 235A*, or

(iii) a policy or contract of assurance approved by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972, or

25 (c) any other scheme or arrangement (including a personal pension plan and a scheme or arrangement established by or pursuant to statute or instrument made under statute other than under the Social Welfare Acts) that provides or is intended to provide either or both of the following, that is to say:

30 (i) benefits for a person who is a member of the scheme or arrangement ("the member") upon retirement at normal pensionable age or upon earlier or later retirement or upon leaving, or upon the ceasing of, the relevant employment,

35 (ii) benefits for the widow, widower or dependants of the member, or for any other persons, on the death of the member;

"periodical payments order" and "secured periodical payments order" have the meanings assigned to them by *section 7 (1)*;

40 "property adjustment order" has the meaning assigned to it by *section 8*;

"relief order" means an order under *Part II* (other than *section 6*) made by virtue of *section 22*;

"trustees", in relation to a scheme that is established under a trust,

means the trustees of the scheme and, in relation to a pension scheme not so established, means the persons who administer the scheme.

(2) In this Act, where the context so requires—

- (a) a reference to a marriage includes a reference to a marriage that has been dissolved under the law of a country or jurisdiction other than the State, 5
- (b) a reference to a remarriage includes a reference to a marriage that takes place after a marriage that has been dissolved under the law of a country or jurisdiction other than the State, 10
- (c) a reference to a spouse includes a reference to a person who is a party to a marriage that has been dissolved under the law of a country or jurisdiction other than the State,
- (d) a reference to a family includes a reference to a family as respects which the marriage of the spouses concerned has been dissolved under the law of a country or jurisdiction other than the State, 15

and cognate words shall be construed accordingly.

(3) In this Act—

- (a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act, 20
- (b) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended, 25
- (c) a reference to a subsection, paragraph, subparagraph or clause is a reference to the subsection, paragraph, subparagraph or clause of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended. 30

Repeals.

3.—(1) The enactments specified in the *Schedule* to this Act are hereby repealed to the extent specified in the *third column* of that *Schedule*.

(2) Notwithstanding *subsection (1)*, orders made or proceedings instituted before the commencement of *Part II* of this Act under a provision of the Act of 1989 repealed by that subsection or under section 1 of the Legitimacy Declaration Act, (Ireland), 1868, section 1 of the Marriages Act, 1972, or section 12 of the Married Women's Status Act, 1957, shall continue in force or may be continued and determined as if that subsection had not been enacted. 35 40

Expenses.

4.—The expenses incurred by the Minister for Equality and Law Reform, the Minister for Health or the Minister for Justice in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 45

PART II

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

5 5.—Where an application is made to the court for the grant of a decree of judicial separation, the court, before deciding whether to grant or refuse to grant the decree, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders—

Preliminary orders in proceedings for nullity or judicial separation.

- 10 (a) a barring order or a protection order under the Act of 1981,
(b) an order under section 11 of the Act of 1964,
(c) an order under section 5 or 9 of the Family Home Protection Act, 1976.

15 6.—(1) Where an application is made to the court for the grant of a decree of judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either of the spouses concerned to make to the other spouse such periodical payments or lump sum payments for his or her support and, where appropriate, to make to such person as may be specified in the order
20 such periodical payments for the benefit of such (if any) dependent member of the family and, as respects periodical payments, for such period beginning not earlier than the date of the application and ending not later than the date of its determination, as the court considers proper and specifies in the order.

Maintenance pending suit orders.

25 (2) The court may provide that payments under an order under this section shall be subject to such terms and conditions as it considers appropriate and specifies in the order.

30 7.—(1) On granting a decree of judicial separation or at any time thereafter during the lifetime of both of the spouses concerned, the court may, on application to it in that behalf by either of the spouses, make any one or more of the following orders—

Periodical payments and lump sum orders.

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

35 (i) an order that either of the spouses shall make to the other spouse such periodical payments of such amount, during such periods and at such times as may be specified in the order, or

40 (ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amount, during such period and at such times as may be so specified,

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

45 (i) an order that either of the spouses shall secure, to the satisfaction of the court, to the other spouse such periodical payments of such amounts during such period and at such times as may be so specified, or

(ii) an order that either of the spouses shall secure, to the

satisfaction of the court, to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amounts, during such period and at such times as may be so specified,

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(c) (i) an order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified,

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified.

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(2) The court may—

(a) order a spouse to pay a lump sum to the other spouse to meet any liabilities or expenses reasonably incurred by that other spouse before the making of an application by that other spouse for an order under *subsection (1)* in maintaining himself or herself or any dependent member of the family, or

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(b) order a spouse to pay a lump sum to such person as may be specified to meet any liabilities or expenses reasonably incurred by or for the benefit of a dependent member of the family before the making of an application on behalf of the member for an order under *subsection (1)*.

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(3) An order under this section for the payment of a lump sum may provide for the payment of the lump sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

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(4) The period specified in an order under *paragraph (a)* or *(b)* of *subsection (1)* shall begin not earlier than the date of the application for the order and shall end not later than the death of either of the spouses concerned.

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(5) (a) Upon the remarriage of the spouse in whose favour an order is made under *paragraph (a)* or *(b)* of *subsection (1)*, the order shall, to the extent that it applies to that spouse, cease to have effect, except as respects payments due under it on the date of the remarriage.

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(b) If, after the grant of a decree of judicial separation, either of the spouses concerned remarries, the court shall not, by reference to that decree, make an order under *subsection (1)*, or a property adjustment order, in favour of that spouse.

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(6) (a) Where a court makes an order under *subsection (1) (a)*, it shall in the same proceedings, subject to *paragraph (b)*, make an attachment of earnings order (within the meaning of the Act of 1976) to secure payments under the first-mentioned order if it is satisfied that the person against whom the order is made is a person to whom earnings (within the meaning aforesaid) fall to be paid.

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5 (b) Before deciding whether to make or refuse to make an attachment of earnings order by virtue of *paragraph (a)*, the court shall give the spouse concerned an opportunity to make the representations specified in *paragraph (c)* in relation to the matter and shall have regard to any such representations made by the said person.

(c) The representations referred to in *paragraph (b)* are representations relating to the questions—

10 (i) whether the spouse concerned is a person to whom such earnings as aforesaid fall to be paid, and

(ii) whether he or she would make the payments to which the relevant order under *subsection (1) (a)* relates.

15 (d) References in this subsection to an order under *subsection (1) (a)* include references to such an order as varied or affirmed on appeal from the court concerned or varied under *section 17*.

20 8.—(1) On granting a decree of judicial separation or at any time thereafter during the lifetime of both of the spouses concerned, the court may, on application to it in that behalf by either of the spouses, make a property adjustment order, that is to say, an order providing for one or more of the following matters:

25 (a) the transfer by either of the spouses to the other spouse, to any dependent member of the family or to any other specified person for the benefit of such a member of specified property, being property to which the first-mentioned spouse is entitled either in possession or reversion;

30 (b) the settlement to the satisfaction of the court of specified property, being property to which either of the spouses is so entitled as aforesaid, for the benefit of the other spouse and of any dependent member of the family or of any or all of those persons;

35 (c) the variation for the benefit of either of the spouses and of any dependent member of the family or of any or all of those persons of any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the spouses;

(d) the extinguishment or reduction of the interest of either of the spouses under any such settlement.

40 (2) An order under *paragraph (b)*, *(c)* or *(d)* may restrict to a specified extent or exclude the application of *section 17* in relation to the order.

45 (3) Where a property adjustment order is made in relation to land, a copy of the order certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to *section 69 (1) (h)* of the Registration of Title Act, 1964, in a register maintained under that Act or be registered in the Registry of Deeds.

9.—(1) On granting a decree of judicial separation or at any time thereafter during the lifetime of both of the spouses concerned, the court may, where appropriate, on application to it in that behalf by either of the spouses, make one or more of the following orders:

- (a) an order— 5
 - (i) providing for the conferral on one spouse either for life or for such other period (whether definite or contingent) as the court may specify the right to occupy the family home to the exclusion of the other spouse, or 10
 - (ii) directing the sale of the family home subject to such conditions (if any) as the court considers proper and providing for the disposal of the proceeds of the sale between the spouses and any other person having an interest therein, 15
- (b) an order under *section 35*,
- (c) an order under *section 4, 5, 7 or 9 of the Family Home Protection Act, 1976*,
- (d) an order under *section 2 or 3 of the Act of 1981*,
- (e) an order for the partition of property or under the Partition Act, 1868, and the Partition Act, 1876, 20
- (f) an order under *section 11 of the Act of 1964*.

(2) The court, in exercising its jurisdiction under *subsection (1) (a)*, shall have regard to the welfare of the spouses and any dependent member of the family and, in particular, shall take into consideration— 25

- (a) that, where a decree of judicial separation is granted, it is not possible for the spouses concerned to continue to reside together, and
- (b) that proper and secure accommodation should, where practicable, be provided for a dependent spouse and any dependent member of the family. 30

10.—(1) Subject to the provisions of this section, on granting a decree of judicial separation or at any time thereafter, the court may, on application to it in that behalf by either of the spouses concerned, if it considers— 35

- (a) that the financial security of the spouse making the application ("the applicant") can be provided for either wholly or in part by so doing, or
- (b) that the forfeiture, by reason of the decree of judicial separation by the applicant of the opportunity or possibility of acquiring a benefit (for example, a benefit under a pension scheme) can be compensated for wholly or in part by so doing, 40

make a financial compensation order, that is to say, an order requiring the other spouse to do one or more of the following: 45

- (i) to effect such a policy of life insurance for the benefit of the applicant or a dependent member of the family as may be specified in the order,
- 5 (ii) to assign the whole or a specified part of the interest of the other spouse in a policy of life insurance effected by that other spouse or both of the spouses to the applicant or to such person as may be specified in the order for the benefit of a dependent member of the family,
- 10 (iii) to make or to continue to make to the person by whom a policy of life insurance is or was issued the payments which that other spouse or both of the spouses is or are required to make under the terms of the policy.
- (2) (a) 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 in deciding whether or not to make such an order it shall have regard to whether adequate and reasonable financial provision exists or can be made for the spouse concerned or the dependent member of the family concerned by orders under those sections.
- 20 (b) An order under this section shall cease to have effect on the remarriage or death of the applicant in so far as it relates to the applicant.
- (c) The court shall not make an order under this section if the spouse who is applying for the order has remarried.
- 25 (d) An order under *section 17* in relation to an order under *paragraph (i) or (ii) of subsection (1)* may make such provision (if any) as the court considers appropriate in relation to the disposal of—
 - 30 (i) an amount representing any accumulated value of the insurance policy effected pursuant to the order under the said *paragraph (i)*, or
 - (ii) the interest or the part of the interest to which the order under the said *paragraph (ii)* relates.

35 **11.—(1)** Subject to the provisions of this section, on granting a decree of judicial separation or at any time thereafter, the court may, in relation to a pension scheme, on application to it in that behalf by either of the spouses concerned during the lifetime of the spouse who is a member of the scheme (“the member spouse”), make a pension adjustment order, that is to say, an order providing for either or both of the following—

Pension adjustment orders.

- (a) (i) for the transfer of the interest (not being an interest that is a benefit payable to the member spouse’s widow, widower or dependents, or any other person, on the death of the member spouse) or a specified part thereof (the value of the interest being determined by the trustees of the scheme or, if the court should so determine, in such other manner as the court may specify) existing at the time of the making of the order for the grant of the decree, of the member spouse in the scheme to the other spouse so as to
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- 50

provide for that other spouse, at the option of those trustees, a benefit under the scheme as if that other spouse was a member of the scheme or a benefit under another scheme approved by the court within such time as may be specified in the order, or 5

- (ii) the payment of a benefit, or a specified part of a benefit, payable to the member spouse under the scheme, as on and from the time that it becomes payable or at any time thereafter, to either of the following or to both of them in such proportions as the court may determine at the time of the making of the pension adjustment order or at any time thereafter, as the court considers appropriate, that is to say: 10

- (I) the other spouse,

- (II) such person as may be specified in the order for the benefit of a dependent member of the family, 15

or

- (b) the payment of a benefit payable under the scheme, being a benefit for a widow, widower or dependents of the member spouse or any other persons on the death of the member spouse, or a specified part of such a benefit to either of the following or to both of them in such proportions as the court may determine, that is to say: 20

- (i) the other spouse,

- (ii) such other person as may be specified in the order for the benefit of a dependent member of the family, 25

the question whether any of the benefit be so paid and the amount (if any) thereof to be so paid being determined by the court pursuant to an application made to it in that behalf not more than 12 months after the time when representation is first granted under the Act of 1965, 30

and an order made under *paragraph (a)* or *(b)* shall be complied with by the trustees of the scheme.

(2) Notice of an application under *subsection (1)* or an application for an order under *section 17 (2)* in relation to an order under *paragraph (a) (ii)* or *(b)* of *subsection (1)* shall be given by the spouse concerned to the trustees of the pension scheme concerned and, in deciding whether to make the pension adjustment order, or the order under *section 17 (2)*, concerned and in determining the provisions of the order, the court shall have regard to any representations made by any person to whom notice of the application has been given under this section or *section 39*. 35 40

(3) The court may, in a pension adjustment order or in an order made under this section after the making of a pension adjustment order, give to the trustees of the pension scheme concerned such directions as it considers appropriate for the purposes of the pension adjustment order including directions compliance with which occasions non-compliance with a rule or other provision of the pension scheme concerned. 45

(4) Where, after the making of an order under *paragraph (a) (ii)* or *(b)* of *subsection (1)*, the member spouse concerned ceases to be a 50

member of the pension scheme concerned before his or her death, the trustees of the scheme may, for the purpose of complying with the order, transfer the interest of the member spouse in the scheme—

(a) to a policy or contract of assurance—

- 5 (i) under which the beneficiaries are the member spouse and any other person who, by virtue of the member spouse's membership of the scheme, is a beneficiary under the scheme, and
- 10 (ii) which has been approved by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972,

or

(b) to another pension scheme of which the member spouse is a member for his or her benefit,

15 (and, if they do so, they shall give notice to the court of the transfer).

(5) (a) The registrar or clerk of the court concerned shall—

- (i) cause a copy of or an order under *subsection (1) (a) (i)* to be served on the trustees of the pension scheme concerned, and
- 20 (ii) cause a copy of or an order under *paragraph (a) (ii)* or *(b) of subsection (1)* to be served on the trustees of the pension scheme concerned and on the trustees of any other pension scheme of which the member spouse concerned becomes a member after the date
- 25 of the making of the order.
- (b) Where a copy of an order under *paragraph (a) (ii)* or *(b) of subsection (1)* is served on the trustees of the pension scheme and the member spouse concerned ceases to be a member of the scheme before his or her death, the trustees
- 30 shall, within 10 days of the cessation, inform the court and the other spouse of that fact.

(6) Any costs incurred by the trustees of a pension scheme under *subsection (2)* or in complying with a pension adjustment order or a direction under *subsection (3)* shall be borne, as the court may

35 determine, by either of the spouses concerned or by both of the spouses and in such proportion and such manner as the court may determine.

(7) (a) The court shall not make a pension adjustment order if the spouse who is applying for the order has remarried.

40 (b) An order under *paragraph (a) (ii)* or *(b) of subsection (1)* shall cease to have effect on the death of the member spouse.

(c) Upon the death or remarriage of the spouse in whose favour an order under *subsection (1) (a) (i)* is made, the order

45 shall cease to have effect and the interest or part of an interest transferred to that spouse by the order shall revert to the member spouse concerned and any value accrued to the interest or part shall vest in the member spouse.

- (d) Upon the death or remarriage of the spouse in whose favour an order is made under *subsection (1) (a) (ii)* or (b), the order shall, to the extent that it applies to that spouse, cease to have effect.
- (e) The court may make a pension adjustment order in addition to or in substitution in whole or in part for orders under *sections 7 to 10* and in deciding whether or not to make such an order it shall have regard to the question whether adequate and reasonable financial provision exists or can be made for the spouse concerned or the dependent member of the family concerned by orders under those sections.
- (8) Section 54 of the Pensions Act, 1990, and any regulations under that section shall apply with any necessary modifications to a pension scheme if proceedings for a decree of judicial separation to which a spouse who is a member of the scheme is a party have been instituted.
- (9) (a) For the purposes of *paragraph (a) (i)* of *subsection (1)*, the court may, of its own motion, and shall, if so requested by either of the spouses concerned, direct the trustees concerned to provide the spouses and the court, within a specified period of time, with a calculation of the value of the interest of the member spouse in the scheme at the time of the granting of the decree of judicial separation concerned.
- (b) For the purposes of *subsection (1) (a) (i)*, the value of the interest concerned and, where an order is made under that provision, the treatment of any part of the interest remaining in the pension scheme concerned after effect has been given to the order shall, if relevant guidelines under section 10 (1) (c) of the Pensions Act, 1990, are in force, be determined in accordance with those guidelines.

Preservation of
pension
entitlements after
judicial separation.

12.—(1) Subject to the provisions of this section, on granting a decree of judicial separation or at any time thereafter, the court may, in relation to a pension scheme, on application to it in that behalf by either of the spouses concerned, make during the lifetime of the spouse who is a member of the scheme ("the member spouse") an order directing the trustees of the scheme not to regard the separation of the spouses resulting from the decree as a ground for disqualifying the other spouse for the receipt of a benefit under the scheme a condition for the receipt of which is that the spouses should be residing together at the time the benefit becomes payable.

(2) Notice of an application under *subsection (1)* shall be given by the spouse concerned to the trustees of the pension scheme concerned and, in deciding whether to make an order under *subsection (1)*, the court shall have regard to any representations made by any person to whom notice of the application has been given under this section or *section 39*.

(3) Any costs incurred by the trustees of a pension scheme under *subsection (2)* or in complying with an order under *subsection (1)* shall be borne, as the court may determine, by either of the spouses concerned or by both of the spouses and in such proportion and manner as the court may determine.

(4) The court may make an order under this section in addition to or in substitution in whole or in part for orders under *sections 7 to 10*

and, in deciding whether or not to make such an order, it shall have regard to the question whether adequate and reasonable financial provision exists or can be made for the spouse concerned by orders under those sections.

5 13.—On granting a decree of judicial separation or at any time thereafter, the court shall, on application to it in that behalf by either of the spouses concerned, make an order extinguishing the share that either of the spouses would otherwise be entitled to in the estate of the other spouse as a legal right or on intestacy under the Act of 1965
10 if—

Orders
extinguishing
succession rights on
judicial separation.

- (a) it is satisfied that adequate and reasonable financial provision exists or can be made under *section 7, 8, 9 (1) (a), 10, 11 or 12* for the spouse whose succession rights are in question (“the spouse concerned”),
- 15 (b) the spouse concerned is a spouse for the support of whom the court refused to make an order under *section 7, 8, 9 (1) (a), 10, 11 or 12*, or
- 20 (c) it is satisfied that the spouse concerned is not a spouse for whose benefit the court would, if an application were made to it in that behalf, make an order under *section 7, 8, 9 (1) (a), 10, 11 or 12*.

25 14.—(1) Where the court makes a secured periodical payments order, a lump sum order or a property adjustment order, thereupon, or at any time thereafter, it may make an order directing the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the spouses concerned has or have a beneficial interest, either in possession or reversion.

Orders for sale of
property.

30 (2) The jurisdiction conferred on the court by *subsection (1)* shall not be so exercised as to affect a right to occupy the family home of the spouse concerned that is enjoyed by virtue of an order under this Part.

35 (3) (a) An order under *subsection (1)* may contain such consequential or supplementary provisions as the court considers appropriate.

40 (b) Without prejudice to the generality of *paragraph (a)*, an order under *subsection (1)* may contain—

45 (i) a provision specifying the manner of sale and some or all of the conditions applying to the sale of the property to which the order relates,

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

55 (iii) a provision directing that the order, or a specified part of it, shall not take effect until the occurrence of a specified event or the expiration of a specified period,

60 (iv) a provision requiring the making of a payment to a specified person or persons out of the proceeds of the sale of the property to which the order relates or

payments (whether periodical payments or lump sum payments), and

- (v) a provision specifying the manner in which the proceeds of the sale of the property concerned shall be disposed of between the following persons or such of them as the court considers appropriate, that is to say, the spouses concerned and any other person having an interest therein. 5

(4) A provision in an order under *subsection (1)* providing for the making of periodical payments to one of the spouses concerned out of the proceeds of the sale of property shall, on the death or remarriage of that spouse, cease to have effect except as respects payments due on the date of the death or remarriage. 10

(5) Where a spouse has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other spouse) also has a beneficial interest in that property or those proceeds, then, in considering whether to make an order under this section or *section 9 (1) (a) (ii)* in relation to that property or those proceeds, the court shall give to that person an opportunity to make representations with respect to the making of the order and the contents thereof, and any representations made by such a person shall be deemed to be included among the matters to which the court is required to have regard under *section 15* in any relevant proceedings under a provision referred to in that section after the making of those representations. 15 20 25

Provisions relating to certain orders under *sections 6 to 12 and 17.*

15.—(1) In deciding whether to make an order under *section 6, 7, 8, 9 (1) (a), 10, 11, 12, 13 or 17* and in determining the provisions of such an order, the court shall endeavour to ensure that such financial provision is made for the spouse applying for the order and for any dependent member of the family concerned as is adequate and reasonable having regard to all the circumstances of the case. 30

(2) Without prejudice to the generality of *subsection (1)*, in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters— 35

- (a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,
- (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise), 40
- (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses separated, as the case may be, 45
- (d) the age of each of the spouses and the length of time during which the spouses lived together,
- (e) any physical or mental disability of either of the spouses,
- (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of 50

- 5 the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,
- 10 (g) the effect on the earning capacity of each of the spouses 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 that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,
- (h) any income or benefits to which either of the spouses is entitled by or under statute,
- 15 (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 of the case be unjust to disregard it,
- (j) the accommodation needs of either of the spouses,
- 20 (k) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of judicial separation concerned that spouse will forfeit the opportunity or possibility of acquiring,
- (l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.
- 25 (3) (a) The court shall not make an order under a provision referred to in *subsection (1)* for the support of a spouse if the spouse had deserted the other spouse before the institution of proceedings for the decree or, as the case may be, a decree, specified in that provision and had continued such desertion up to the time of the institution of such proceedings unless, having regard to all the circumstances of the case (including the conduct of the other spouse), the court is of opinion that it would be unjust not to make the order.
- 30
- 35 (b) A spouse who, with just cause, leaves and lives apart from the other spouse because of conduct on the part of that other spouse shall not be regarded for the purposes of *paragraph (a)* as having deserted that spouse.
- (4) Without prejudice to the generality of *subsection (1)*, in deciding whether to make an order referred to in that subsection in favour of a dependent member of the family concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:
- 40 (a) the financial needs of the member,
- (b) the income, earning capacity (if any), property and other financial resources of the member,
- 45 (c) any physical or mental disability of the member,
- (d) any income or benefits to which the member is entitled by or under statute,

(e) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained,

(f) the matters specified in *paragraphs (a), (b) and (c) of subsection (2)*,

5

(g) the accommodation needs of the member.

(5) The court shall not make an order under a provision referred to in *subsection (1)* unless it would be in the interests of justice to do so.

(6) In this section "desertion" includes conduct on the part of one of the spouses concerned that results in the other spouse, with just cause, leaving and living apart from the first-mentioned spouse.

Retrospective
periodical payments
orders.

16.—(1) Where, having regard to all the circumstances of the case, the court considers it appropriate to do so, it may, in a periodical payments order, direct that—

15

(a) the period in respect of which payments under the order shall be made shall begin on such date before the date of the order, not being earlier than the time of the institution of the proceedings concerned for the grant of a decree of judicial separation, as may be specified in the order,

20

(b) any payments under the order in respect of a period before the date of the order be paid in one sum and before a specified date, and

(c) there be deducted from any payments referred to in *paragraph (b)* made to the spouse concerned an amount equal to the amount of such (if any) payments made to that spouse by the other spouse as the court may determine, being payments made during the period between the making of the order for the grant of the decree aforesaid and the institution of the proceedings aforesaid.

25

30

(2) The jurisdiction conferred on the court by *subsection (1) (b)* is without prejudice to the generality of *section 7 (1) (c)*.

Variation, etc., of
certain orders under
this Part.

17.—(1) This section applies to the following orders—

(a) a maintenance pending suit order,

(b) a periodical payments order,

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(c) a secured periodical payments order,

(d) a lump sum order if and in so far as it provides for the payment of the lump sum concerned by instalments or requires the payment of any such instalments to be secured,

40

(e) an order under *paragraph (b), (c) or (d) of section 8 (1)* in so far as such application is not restricted or excluded pursuant to *section 8 (2)*,

(f) an order under *subparagraph (i) or (ii) of section 9 (1) (a)*,

- (g) a financial compensation order,
- (h) an order under *paragraph (a) (ii) or (b) of section 11 (1)*,
- (i) an order under *section 12*,
- (j) an order under this section.

5 (2) Subject to the provisions of this section, any restriction pursuant
to *section 8 (2)*, and *section 15*, and without prejudice to *section 10*
10 (2) (d), the court may, on application to it in that behalf by either of
the spouses concerned or, in the case of the death of either of the
spouses, by any other person who, in the opinion of the court, has a
sufficient interest in the matter, if it considers it proper to do so having
regard to any change in the circumstances of the case and to any new
evidence, by order vary or discharge an order to which this section
applies, suspend any provision of such an order or any provision of
15 such an order temporarily, revive the operation of such an order or
provision so suspended, further vary an order previously varied under
this section or further suspend or revive the operation of an order or
provision previously suspended or revived under this section; and,
without prejudice to the generality of the foregoing, an order under
this section may require the divesting of any property vested in a
20 person under or by virtue of an order to which this section applies.

(3) Without prejudice to the generality of *section 6* or *7*, that part
of an order to which this section applies which provides for the making
of payments for the support of a dependent member of the family
shall stand discharged if the member ceases to be a dependent member
25 of the family by reason of his or her attainment of the age of 16 years
or 23 years, as may be appropriate, and shall be discharged by the
court, on application to it under *subsection (2)*, if it is satisfied that
the member has for any reason ceased to be a dependent member of
the family.

30 (4) The power of the court under *subsection (2)* to make an order
varying, discharging or suspending an order referred to in *subsection*
(1) (e) shall be subject to any restriction or exclusion specified in that
order and shall (subject to the limitation aforesaid) be a power—

35 (a) to vary the settlement to which the order relates in any
person's favour or to extinguish or reduce any person's
interest under that settlement, and

(b) to make such supplemental provision (including a further
property adjustment order or a lump sum order) as the
court thinks appropriate in consequence of any variation,
40 extinguishment or reduction made pursuant to *paragraph*
(a),

and *section 14* shall apply to a case where the court makes such an
order as aforesaid under *subsection (2)* as it applies to a case where
the court makes a property adjustment order with any necessary
45 modifications.

(5) The court shall not make an order under *subsection (2)* in
relation to an order referred to in *subsection (1) (e)* unless it appears
to it that the order will not prejudice the interests of any person
who—

50 (a) has acquired any right or interest in consequence of the order
referred to in *subsection (1) (e)*, and

(b) is not a party to the marriage concerned or a dependent member of the family concerned.

(6) This section shall apply, with any necessary modifications, to instruments executed pursuant to orders to which this section applies as it applies to those orders.

5

(7) Where the court makes an order under *subsection (2)* in relation to a property adjustment order relating to land a copy of the order under *subsection (2)* certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to section 69 (1) (h) of the Registration of Title Act, 1964, in a register maintained under that Act or be registered in the Registry of Deeds.

10

Restriction in relation to orders for benefit of dependent members.

18.—In deciding whether—

(a) to include in an order under *section 6* a provision requiring the making of periodical payments for the benefit of a dependent member of the family,

15

(b) to make an order under *paragraph (a) (ii), (b) (ii) or (c) (ii) of section 7 (1),*

(c) to make an order under *section 17* varying, discharging or suspending a provision referred to in *paragraph (a)* or an order referred to in *paragraph (b),*

20

the court shall not have regard to conduct by the spouse or spouses concerned of the kind specified in *subsection (2) (i) of section 15* or desertion referred to in *subsection (3)* of that section.

Transmission of periodical payments through District Court clerk.

19.—Notwithstanding anything in this Act, section 9 of the Act of 1976 shall apply in relation to an order (“the relevant order”), being a maintenance pending suit order, a periodical payments order or a secured periodical payments order or any such order as aforesaid as affected by an order under *section 17*, with the modifications that—

25

(a) 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 relevant order concerned are required to be made,

30

(b) the other references in the said *section 9* to the maintenance creditor shall be construed as references to the person on whose application the relevant order was made, and

35

(c) the reference in *subsection (3)* of the said *section 9* to the maintenance debtor shall be construed as a reference to the person to whom payments under the relevant order are required by that order to be made,

40

and with any other necessary modifications.

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

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

- 5 21.—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 Act of 1976), to an order shall be construed as including references to a maintenance pending suit order and a periodical payments order.

Amendment of Enforcement of Court Orders Act, 1940.

10

PART III

RELIEF AFTER DIVORCE OR SEPARATION OUTSIDE STATE

- 22.—(1) This section applies to a marriage that has been dissolved, or as respects which the spouses have been legally separated, after the commencement of this section under the law of a country or jurisdiction other than the State, being a divorce or legal separation that is entitled to be recognised as valid in the State.

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

- 20 (2) (a) Subject to the provisions of this Part, the court may, in relation to a marriage to which this section applies, on application to it in that behalf by either of the spouses concerned, make any order under *Part II* (other than an order under *section 5* or a maintenance pending suit order) (in this Act referred to as a relief order) that it could have made if the court had granted a decree of judicial separation in relation to the marriage.

- 25 (b) *Part II* shall apply and have effect in relation to relief orders and applications therefor as it applies and has effect in relation to orders under *Part II* and applications therefor with the modifications that—

- 30 (i) *subsections (4) and (5) of section 7* and *section 12* shall not apply in relation to a marriage that has been dissolved under the law of a country or jurisdiction other than the State,

- 35 (ii) *section 14* shall not apply in relation to a family home in which, following the dissolution of the marriage under such a law, either spouse, having remarried, ordinarily resides with his or her spouse, and

- (iii) the modifications specified in *paragraph (c)* and any other necessary modifications.

- 40 (c) *Section 15* shall apply in relation to a relief order subject to the modifications that—

- (i) it shall be construed as including a requirement that the court should have regard to the duration of the marriage,

- 45 (ii) the reference in *subsection (2) (k)* to the forfeiture of the opportunity or possibility of acquiring any benefit shall be construed as a reference to such forfeiture by reason of the divorce or legal separation concerned, and

(iii) the reference in *subsection (3)* to proceedings shall be construed as a reference to the proceedings for the divorce concerned or, as the case may be, for the legal separation concerned.

(d) Where a spouse whose marriage has been dissolved in a country or jurisdiction other than the State has remarried, the court may not make a relief order in favour of that spouse in relation to a previous marriage of that spouse.

(3) (a) An application shall not be made to the court by a spouse for a relief order unless, prior to the application, the court, on application to it *ex parte* in that behalf by that spouse, has by order granted leave for the making of the first-mentioned application and the court shall not grant such leave unless it considers that there is a substantial ground for so doing and a requirement specified in *section 26* is satisfied.

(b) The court may make the grant of leave under this subsection subject to such (if any) terms and conditions as it considers appropriate and specifies in its order.

(c) The court may grant leave under this subsection to a spouse notwithstanding that an order has been made by a court of a country or jurisdiction other than the State requiring the other spouse concerned to make a payment or transfer property to the spouse.

(4) In determining, for the purposes of this section, the financial resources of a spouse or a dependent member of the family in a case in which payments are required to be made or property is required to be transferred to the spouse or to the member by the other spouse under an order of a court of a country or jurisdiction other than the State or an agreement in writing, the court shall have regard to the extent to which the order or agreement has been complied with or, if payments are required to be made, or property is required to be transferred, after the date of the order made by virtue of this section under *Part II*, is likely to be complied with.

(5) The period specified in a periodical payments order made by virtue of this section under *paragraph (a)* or *(b)* of *section 7 (1)* shall begin not earlier than the date of the application for the order and shall end not later than the death of either of the spouses concerned or, if the order is made on or after the dissolution or annulment of the marriage, the remarriage of the spouse in whose favour the order was made.

(6) (a) Where, by virtue of this section, the court makes a periodical payments order or a secured periodical payments order on or after the dissolution of the marriage of the spouse in whose favour the order is made, it may direct that that spouse shall not apply for an order under *section 17* extending the period specified in the order and, if the court so directs, such an order under *section 17* shall not be made.

(b) Where, by virtue of this section, the court makes a periodical payments order or a secured periodical payments order other than on or after the dissolution of the marriage of the spouse in whose favour the order is made and the

marriage is dissolved subsequently, the order, if then in force, shall cease to have effect on the remarriage of that spouse, except as respects payments due under it on the date of the remarriage.

- 5 (c) If, after the dissolution of a marriage to which this section applies, either of the spouses concerned remarries, the court shall not, by reference to that dissolution, make by virtue of this section such an order as aforesaid, or a property adjustment order, in favour of that spouse.

- 10 23.—(1) Where leave is granted to a spouse under section 22 (3) for the making of an application for a relief order and it appears to the court that the spouse or a dependent member of the family is in immediate need of financial assistance, the court may, subject to subsection (3), make an order for maintenance pending relief, that is to say, an order requiring the other spouse to make to the applicant such periodical payments or lump sum payments for his or her support or, as may be appropriate, to make to such person as may be specified in the order, such periodical payments for the benefit of such (if any) dependent member of the family and, as respects periodical payments, 15 for such period beginning not earlier than the date of such grant and ending not later than the date of the determination of the application as it considers proper.

Maintenance pending relief orders.

- 25 (2) The court may provide that payments under an order under this section shall be subject to such terms and conditions as it considers appropriate and specifies in the order.

(3) The court shall not make an order under this section in a case where neither of the requirements specified in paragraphs (a) and (b) of section 26 (1) is satisfied.

- 30 24.—(1) Subject to the provisions of this section, where a spouse whose marriage has been dissolved in a country or jurisdiction other than the State dies, the court, on application to it in that behalf by the other spouse ("the applicant") not more than 12 months after representation was first granted under the Act of 1965 in respect of the estate of the deceased spouse, may by order make such provision 35 for the applicant out of the estate of the deceased spouse as it considers appropriate having regard to the rights of any other person having an interest in the matter and specifies in the order if it is satisfied that it was not possible to provide adequate and reasonable financial provision for the applicant during the lifetime of the deceased spouse under sections 7 to 11 for any reason (other than conduct referred to in subsection (2) (i) of section 15 or desertion referred to in subsection (3) of that section by the applicant).

Orders for provision for spouse out of estate of other spouse.

- 45 (2) The court shall not make an order under this section if the applicant concerned has remarried since the granting of the decree of divorce concerned.

(3) In considering whether to make an order under this section, the court shall have regard to all the circumstances of the case including—

- 50 (a) any order under paragraph (c) of section 7 (1) or a property adjustment order in favour of the applicant, (b) if relevant, the matters referred to in section 15 (2) in so far as they relate to the applicant, and

(c) any devise or bequest made by the deceased spouse to the applicant.

(4) The provision made for the applicant concerned by an order under this section together with any provision made for the applicant by an order referred to in subsection (3) (a) (the value of which for the purposes of this subsection shall be its value on the date of the order) shall not exceed in total the share (if any) of the applicant in the estate of the deceased spouse to which the applicant was entitled or (if the deceased spouse died intestate as to the whole or part of his or her estate) would have been entitled under the Act of 1965 if the marriage had not been dissolved.

(5) Section 121 of the Act of 1965 shall apply with any necessary modifications to a disposition referred to in subsection (1) of that section in respect of which the court is satisfied that it was made for the purpose of defeating or substantially diminishing the provision which the court would make for the applicant concerned under this section if the disposition had not been made.

(6) Notice of an application under this section shall be given by the applicant to the spouse (if any) of the deceased spouse concerned and to such (if any) other persons as the court may direct and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by the spouse of the deceased spouse and any other such persons as aforesaid.

(7) Where an application is made under this section, the personal representative of the deceased spouse concerned shall not, without the leave of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section.

Appropriateness of making relief orders in State.

25.—The court shall not make a relief order unless it is satisfied that in all the circumstances of the particular case it is appropriate that such an order should be made by a court in the State and, without prejudice to the generality of the foregoing, in deciding whether to make a relief order, the court shall, in particular, have regard to the following matters:

(a) the connection which the spouses concerned have with the State,

(b) the connection which the spouses have with the country or jurisdiction other than the State in which the marriage concerned was dissolved or in which they were legally separated,

(c) the connection which the spouses have with any country or jurisdiction other than the State,

(d) any financial benefit which the spouse applying for the making of the order ("the applicant") or a dependent member of the family has received, or is likely to receive, in consequence of the divorce or legal separation concerned or by virtue of any agreement or the operation of the law of a country or jurisdiction other than the State,

(e) in a case where an order has been made by a court in a country or jurisdiction other than the State requiring the other spouse to make any payment or transfer any property for the benefit of the applicant or a dependent

member of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with,

- 5 (f) any right which the applicant has, or has had, to apply for financial relief from the other spouse under the law of any country or jurisdiction other than the State and, if the applicant has omitted to exercise any such right, the reason for that omission,
- 10 (g) the availability in the State of any property in respect of which a relief order in favour of the applicant could be made,
- (h) the extent to which the relief order is likely to be enforceable,
- (i) the length of time which has elapsed since the date of the divorce or legal separation concerned.

15 26.—(1) Subject to *subsection (2)*, the court may make a relief order if, but only if, at least one of the following requirements is satisfied: Jurisdiction of court to make relief orders.

- 20 (a) either of the spouses concerned was domiciled in the State on the date of the application for an order under *section 22 (3)* in relation to the relief order or was so domiciled on the date on which the divorce or judicial separation concerned took effect in the country or jurisdiction in which it was obtained,
- 25 (b) either of the spouses was ordinarily resident in the State throughout the period of one year ending on either of the dates aforesaid,
- 30 (c) on the date of the institution of the proceedings aforesaid either or both of the spouses had a beneficial interest in possession in a family home of the spouses situated in the State.

(2) *Subsection (1)* does not apply in relation to a case to which the Jurisdiction of Courts and Enforcement of Judgments Acts, 1988 and 1993, apply.

35 27.—(1) Where the jurisdiction of the court to make a relief order is conferred by virtue only of *section 26 (1) (c)*, the court may make any of the following relief orders, but no others: Restriction of jurisdiction of court to make relief orders.

- (a) a lump sum order,
- 40 (b) a property adjustment order providing for one or more of the matters specified in *paragraphs (b), (c) and (d)* of *section 8 (1)*,
- (c) an order under *section 13*,
- (d) an order under *section 24*,
- (e) an order directing the sale of the interest of either of the spouses concerned in the family home concerned.

(2) Where, in the circumstances referred to in *subsection (1)*, the court makes one or more lump sum orders, the amount or aggregate amount of the sum or sums to which the order or orders relate shall not exceed—

- (a) in case the interest of the spouse liable to make the payment or payments under the order or orders in the family home concerned is sold whether in pursuance of an order of the court or otherwise, the amount of the proceeds of the sale after deduction therefrom of the costs thereof, or 5
- (b) in any other case, such amount as, in the opinion of the court, represents the value of that interest. 10

(3) The reference in *subsection (1) (e)* to the interest of either of the spouses concerned shall, in relation to a case where the interest of a spouse in the family home concerned is held under a joint tenancy or a tenancy in common with another person or other persons, be construed as including a reference to the interest of the other person or persons in the home. 15

PART IV

DECLARATIONS AS TO MARITAL STATUS

Declarations as to marital status.

28.—(1) The court may, on application to it in that behalf by either of the spouses concerned or by any other person who, in the opinion of the court, has a sufficient interest in the matter, by order make one or more of the following declarations in relation to a marriage, that is to say: 20

- (a) a declaration that the marriage was at its inception a valid marriage, 25
- (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 the inception of the marriage, 30
- (d) a declaration that the validity of a divorce, annulment or legal separation obtained under the civil law of any other country or jurisdiction in respect of the marriage is entitled to recognition in the State, 35
- (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.

(2) The court may grant an order under *subsection (1)* if, but only if, either of the spouses concerned— 40

- (a) is domiciled in the State on the date of the application,
- (b) has been ordinarily resident in the State throughout the period of one year ending on that date, or
- (c) died before that date and either—
 - (i) was at the time of death domiciled in the State, or 45
 - (ii) had been ordinarily resident in the State throughout the period of one year ending on that date.

(3) The other spouse or the spouses concerned or the personal representative of the spouse or each spouse, within the meaning of the Act of 1965, shall be joined in proceedings under this section.

5 (4) The court may, at any stage of proceedings under this section of its own motion or on application to it in that behalf by a party thereto, order that notice of the proceedings be given to the Attorney General or any other person and that such documents relating to the proceedings as may be necessary for the purposes of his or her functions shall be given to the Attorney General.

10 (5) The court shall, on application to it in that behalf by the Attorney General, order that he or she be added as a party to any proceedings under this section and, in any such proceedings, he or she shall, if so requested by the court, whether or not he or she is so added to the proceedings, argue any question arising in the proceedings specified by the court.

20 (6) Where notice of proceedings under this section is given to a person (other than the Attorney General), the court may, of its own motion or on application to it in that behalf by the person or a party to the proceedings, order that the person be added as a party to the proceedings.

25 (7) Where a party to proceedings under this section alleges that the marriage concerned is or was void, or that it is voidable, and should be annulled, the court may treat the application under *subsection (1)* as an application for a decree of nullity of marriage and may forthwith proceed to determine the matter accordingly and may postpone the determination of the application under *subsection (1)*.

30 (8) A declaration under this section shall be binding on the parties to the proceedings concerned and on any person claiming through such a party and, if the Attorney General is a party to the proceedings, the declaration shall also be binding on the State.

(9) A declaration under this section shall not prejudice any person if it is subsequently proved to have been obtained by fraud or collusion.

35 (10) Where proceedings under this section, and proceedings in another jurisdiction, in relation to the same marriage have been instituted but have not been finally determined, the court may stay the first-mentioned proceedings until the other proceedings have been finally determined.

40 29.—(1) Rules of court may make provision as to the information to be given in an application under *section 28 (1)* including particulars of any previous or pending proceedings in relation to any marriage concerned or to the matrimonial status of a party to any such marriage.

Provisions
supplementary to
section 28.

45 (2) The court may make such order (if any) as it considers just for the payment of all or part of any costs incurred by the Attorney General in proceedings under this section by other parties to the proceedings.

(3) Without prejudice to the law governing the recognition of decrees of divorce granted by courts outside the State, a declaration under *section 28* conflicting with a previous final judgment or decree

of a court of competent jurisdiction of a country or jurisdiction other than the State shall not be made unless the judgment or decree was obtained by fraud or collusion.

(4) Notification of a declaration under *section 28* (other than a declaration relating to a legal separation) shall be given by the registrar of the court to an tArd Chláraitheoir. 5

PART V

MARRIAGE

Age of marriage.

30.—(1) (a) (i) A marriage solemnised, after the commencement of this section, between persons either of whom is under the age of 18 years shall not be valid in law. 10

(ii) *Subparagraph (i)* applies to any marriage solemnised—

(I) in the State, irrespective of where the spouses or either of them are or is ordinarily resident, or 15

(II) outside the State, if at the time of the solemnisation of the marriage, the spouses or either of them are or is ordinarily resident in the State. 20

(b) *Paragraph (a)* does not apply if exemption from it was granted under *section 32* before the marriage concerned.

(c) The requirement in relation to marriage arising by virtue of *paragraph (a)* is hereby declared to be a substantive requirement for marriage. 25

(2) Any person to whom application is made in relation to the solemnisation of an intended marriage may, if he or she so thinks fit, request the production of evidence of age with respect to either or both of the parties concerned. 30

(3) Where a request is made under *subsection (2)*—

(a) refusal or failure to comply with the request shall be a proper reason for refusal of the application concerned, and

(b) if the request is complied with and the evidence shows that either or both of the parties is or are under the age of 18 years, the application shall be refused. 35

(4) Where a person knowingly—

(a) solemnises or permits the solemnisation of a marriage which, consequent on the provisions of this section, is not valid in law, or 40

(b) is a party to such a marriage,

Abolition of right to
petition for
jactitation of
marriage.

33.—No person shall after the commencement of this Act be entitled to petition a court for jactitation of marriage.

PART VI

MISCELLANEOUS

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

34.—(1) In this section—

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“disposition” means any disposition of property howsoever made other than a disposition made by a will or codicil;

“relief” means the financial or other material benefits conferred by—

(a) an order under *section 6, 7 or 8, paragraph (a) or (b) of section 9 (1) or section 10, 11, 12, 16, 17* (other than an order made pursuant to an application under *subsection (4) thereof*), *23 or 24*, or

10

(b) a relief order (other than an order under *section 17* made pursuant to an application under *subsection (4) of that section*),

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and references to defeating a claim for relief are references to—

(i) preventing relief being granted to the person concerned, whether for the benefit of the person or a dependent member of the family concerned,

(ii) limiting the relief granted, or

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(iii) frustrating or impeding the enforcement of an order granting relief;

“reviewable disposition”, in relation to proceedings for the grant of relief brought by a spouse, means a disposition made by the other spouse concerned or any other person but does not include such a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition acted in good faith and without notice of an intention on the part of the respondent to defeat the claim for relief.

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(2) (a) The court, on the application of a person (“the applicant”) who—

30

(i) has instituted proceedings that have not been determined for the grant of relief,

(ii) has been granted leave under *section 22 (3)* to institute such proceedings, or

35

(iii) intends to apply for such leave upon the completion of one year’s ordinary residence in the State—

may—

(I) if it is satisfied that the other spouse concerned or any other person, with the intention of defeating the claim for relief, proposes to make any disposition of 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

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that other spouse or other person from so doing or otherwise for protecting the claim,

5 (II) if it is satisfied that that other spouse or other person has, with that intention, made a reviewable disposition and that, if the disposition were set aside, relief or different relief would be granted to the applicant, make an order setting aside the disposition.

10 (b) Where relief has been granted by the court and the court is satisfied that the other spouse concerned or another person has, with the intention aforesaid, made a reviewable disposition, it may make an order setting aside the disposition.

15 (c) An application under *paragraph (a)* shall, in a case in which proceedings for relief have been instituted, be made in those proceedings.

(3) Where the court makes an order under *paragraph (a)* or *(b)* of subsection (2), it shall include in the order such provisions (if any) as it considers necessary for its implementation (including provisions requiring the making of any payments or the disposal of any property).

(4) In a case where neither of the conditions specified in *paragraphs (a)* and *(b)* of section 26 (1) is satisfied, the court shall not make an order under subsection (2) in respect of any property other than the family home concerned.

25 (5) Where an application is made under subsection (2) with respect to a disposition that took place less than 3 years before the date of the application or with respect to a disposition or other dealing with property that the other spouse concerned or any other person proposes to make and the court is satisfied—

30 (a) in case the application is for an order under subsection (2) (a) (I), that the disposition or other dealing concerned would (apart from this section) have the consequence, or

35 (b) in case the application is for an order under *paragraph (a)* (II) or *(b)* of subsection (2), that the disposition has had the consequence,

of defeating the applicant's claim for relief, it shall be presumed, unless the contrary is shown, that that other spouse or other person disposed of or otherwise dealt with the property concerned, or, as the case may be, proposes to do so, with the intention of defeating the applicant's claim for relief.

35.—(1) Either spouse may apply to the court in a summary manner to determine any question arising between them as to the title to or possession of any property.

Determination of questions between spouses in relation to property.

(2) On application to it under subsection (1), the court may—

45 (a) make such order with respect to the property in dispute (including an order that it be sold or partitioned) and as to the costs consequent upon the application, and

(b) direct such inquiries, and give such other directions, in relation to the application,

as the court considers proper.

(3) Either spouse or a child of a deceased spouse (in this section referred to subsequently as "the plaintiff spouse") may make an application specified in *subsection (1)* where it is claimed that the other spouse (in this section referred to subsequently as "the defendant spouse") has had in his or her possession or under his or her control— 5

(a) money to which, or to a share of which, the plaintiff spouse was beneficially entitled whether by reason of the fact that it represented the proceeds of property to which, or to an interest in which, the plaintiff spouse was beneficially entitled or for any other reason, or 10

(b) property (other than money) to which, or to an interest in which, the plaintiff spouse was beneficially entitled,

and that either that money or other property has ceased to be in the possession or under the control of the defendant spouse or that the plaintiff spouse does not know whether it is still in the possession or under the control of the defendant spouse. 15

(4) Where an application under *subsection (1)* is made by virtue of *subsection (3)* and the court is satisfied that— 20

(a) (i) the defendant spouse concerned has had in his or her possession or under his or her control money or other property to which *paragraph (a) or (b) of subsection (3)* relates, or

(ii) the defendant spouse has in his or her possession or under his or her control property that represents the whole or part of the money or other property aforesaid, 25

and

(b) the defendant spouse has not made to the plaintiff spouse concerned such payment or disposition (not being a testamentary disposition) as would have been appropriate in all the circumstances, 30

the court may make an order under *subsection (2)* in relation to the application and may, in addition to or in lieu of such an order, make an order requiring the defendant spouse to pay to the plaintiff spouse either, as the case may be— 35

(i) such sum in respect of the money to which the application relates, or the plaintiff spouse's share thereof, or

(ii) such sum in respect of the value of the property (other than money) referred to in *paragraph (a)*, or the plaintiff spouse's interest therein, 40

as the court considers proper.

(5) In any proceedings under this section, a person (other than the plaintiff spouse concerned or the defendant spouse concerned) who is a party thereto shall, for the purposes of costs or any other matter, be treated as a stakeholder only. 45

(6) This section is without prejudice to section 2 (which prescribes

the legal capacity of married women) of the Married Women's Status Act, 1957.

(7) (a) Where a marriage—

(i) has been annulled under the law of the State, or

5 (ii) has been annulled or dissolved under the law of a country or jurisdiction other than the State and is, by reason of that annulment or divorce, not or no longer a subsisting valid marriage under the law of the State,

10 an application under this section shall not be made by either of the spouses more than 3 years after the date of the annulment or divorce.

15 (b) Where a marriage is void but has not been so declared under the law of the State or another state, an application shall not be made under this section by either of the spouses more than 3 years after the parties have ceased to be ordinarily resident together.

(8) In this section references to a spouse include references to—

(a) a personal representative of a deceased spouse,

20 (b) either of the parties to a void marriage, whether or not it has been declared to be void under the law of the State or a country or jurisdiction other than the State,

(c) either of the parties to a voidable marriage that has been annulled under the law of the State,

25 (d) either of the parties to a marriage that has been annulled under the law of another state and that is, by reason of the annulment, not a subsisting valid marriage under the law of the State, and

30 (e) either of the parties to a marriage that has been dissolved under the law of another state and that is, by reason of the divorce, no longer a subsisting valid marriage under the law of the State.

36.—Payments of money pursuant to an order under this Act (other than under *section 11*) shall be made without deduction of income tax.

Payments to be made without deduction of income tax.

35 37.—(1) Subject to the provisions of this section, the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Act and shall, in relation to that jurisdiction, be known as the Circuit Family Court.

Jurisdiction of courts and venue.

40 (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 for a decree of nullity.

45 (3) Where the rateable valuation of the land to which proceedings in the Circuit Court under this Act relate exceeds £200, that Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such

proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

(4) The jurisdiction conferred on the Circuit Family Court by this Act may be exercised by the judge of the circuit in which any of the parties to the proceedings ordinarily resides or carries on any business, profession or occupation. 5

(5) The Circuit Family Court may, for the purposes of *subsection (3)* and section 31 (3) of the Act of 1989 in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, £200. 10

(6) Section 32 of the Act of 1989 shall apply to proceedings under this Act in the Circuit Family Court and sections 33 to 36 of that Act shall apply to proceedings under this Act in that Court and in the High Court. 15

(7) In proceedings under *section 7, 8, 9 (1) (a), 10, 11, 12, 13, 17, 22 or 24—*

(a) each of the spouses concerned shall give to the other spouse and to, or to a person acting on behalf of, any dependent member of the family concerned, and 20

(b) any dependent member of the family concerned shall give to, or to a person acting on behalf of, any other such member and to each of the spouses concerned,

such particulars of his or her property and income as he or she may reasonably require for the purposes of the proceedings. 25

Exercise of jurisdiction by court in relation to nullity.

38.—(1) The court may grant a decree of nullity if, but only if, one of the following requirements is satisfied:

(a) either of the spouses concerned was domiciled in the State on the date of the institution of the proceedings concerned,

(b) either of the spouses was ordinarily resident in the State throughout the period of one year ending on that date, 30

(c) either of the spouses died before that date and—

(i) was at the time of death domiciled in the State, or

(ii) had been ordinarily resident in the State throughout the period of one year ending on that date. 35

(2) Where proceedings are pending in a court in respect of an application for the grant of a decree of nullity or in respect of an appeal from the determination of such an application and the court has or had, by virtue of *subsection (1)*, jurisdiction to determine the application, the court 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 Act of 1989. 40

Notice of proceedings under Act.

39.—Notice of any proceedings under this Act shall be given by the person bringing the proceedings to— 45

- (a) the other spouse concerned or, as the case may be, the spouses concerned,
- (b) any other person appearing to have an interest in the matter,
- (c) any other person specified by the court.

5 **40.**—Where, in proceedings under any other Act, the court or the District Court makes an order providing for the payment— Secured maintenance orders.

- (a) by a spouse to the other spouse of periodical payments for the support or maintenance of that other spouse, or
- 10 (b) by a parent to the other parent or to another person specified in the order of periodical payments for the support or maintenance of a child—
 - (i) of both parents or adopted by both parents under the Adoption Acts, 1952 to 1991, or in relation to whom both parents are *in loco parentis*, or
 - 15 (ii) of either parent or adopted by either parent under those Acts or in relation to whom either parent is *in loco parentis* where the other parent being aware that he or she is not the parent of the child has treated the child as a member of the family,
- 20 the court by which the order was made may in those proceedings or subsequently, on application to it by any person having an interest in the proceedings, order the spouse or parent liable to make the payments under the order to secure them to the other spouse or parent or the other person specified in the order to the satisfaction of
- 25 the court.

30 **41.**—(1) Where, in proceedings under any other Act, an order providing for the periodical payments referred to in *paragraph (a) or (b) of section 40* would, apart from this section, fall to be made, the court may in addition to, or instead of such an order, make an order providing for the making by the person concerned to the person concerned of a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be specified in the order. Lump sum maintenance orders.

35 (2) The amount or aggregate amount of a lump sum payment or of lump sum payments to a person under an order under this section shall be—

- 40 (a) if the order is instead of an order for the making of periodical payments to the person, such amount as the court considers appropriate having regard to the amount of the periodical payments that would have been made, and the periods during which and the times at which they would have been made, but for this section, and
- 45 (b) if the first-mentioned order is in addition to an order for the making of periodical payments to the person, such amount as the court considers appropriate having regard to the amount of the periodical payments and the periods during which and the times at which they will be made.

(3) In this section “the court” includes the District Court.

(4) The amount or aggregate amount of a lump sum payment or of lump sum payments provided for in an order of the District Court under this section shall not exceed £5,000.

Amendment of Act
of 1976.

42.—The Act of 1976 is hereby amended by—

(a) in section 3—

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(i) in the definition of “antecedent order”, the substitution of the following paragraph for paragraph (i) (inserted by the Act of 1989);

“(i) a maintenance pending suit order under the *Family Law Act, 1995*, or a periodical payments order under that Act;”, and

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(ii) in the definition of “dependent child of the family”, the substitution of “23” for “twenty-one”.

(b) the insertion of the following section after section 8A (inserted by the Status of Children Act, 1987):

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“Preservation of
pension
entitlements in
separation
agreements.

8B—(1) Subject to the provisions of this section, on an application to the High Court or the Circuit Court under section 8 of this Act, the Court may, on application to it in that behalf by either of the spouses concerned, make an order directing the trustees of a pension scheme of which either or both of the spouses are members, not to regard the separation of the spouses by agreement as a ground for disqualifying either of them for the receipt of a benefit under the scheme a condition for the receipt of which is that the spouses should be residing together at the time when the benefit becomes payable.

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(2) Notice of an application under subsection (1) shall be given by the spouse concerned to the trustees of the pension scheme concerned and, in deciding whether to make an order under subsection (1), the Court shall have regard to any order made, or proposed to be made, by it in relation to the application by the spouse or spouses concerned under section 8 of this Act and any representations made by those trustees in relation to the matter.

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(3) Any costs incurred by the trustees of a pension scheme under subsection (2) or in complying with an order under subsection (1) shall be borne, as the court may determine, by either of the spouses concerned or by both of the spouses and in such proportions and such manner as the Court may determine.

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(4) In this section ‘pension scheme’ has

the meaning assigned to it by the *Family Law Act, 1995*.”

(c) in section 10—

(i) the insertion of the following subsection after subsection (1):

“(1A) (a) Where a court has made an antecedent order, it shall in the same proceedings, subject to subsection (3), make an attachment of earnings order in order to secure payments under the antecedent order if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid.

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

and

(ii) in subsection (2), the insertion, after “employment” of “or is a trustee (within the meaning of the *Family Law Act, 1995*) of a pension scheme (within the meaning aforesaid) under which the maintenance debtor is receiving periodical pension benefits”,

and

(iii) the substitution for subsection (3) of the following subsection:

“(3) (a) Before deciding whether to make or refuse to make an attachment of earnings order, the court shall give the maintenance debtor concerned an opportunity to make the representations specified in paragraph (b) in relation to the matter and shall have regard to any such representations made by the maintenance debtor.

(b) The representations referred to in paragraph (a) are representations relating to the questions—

(i) whether the spouse concerned is a person to whom such earnings as aforesaid fall to be paid, and

(ii) whether he or she would make the payments to which the relevant order relates.”

43.—Where, while a maintenance order, an order varying a maintenance order, or an interim order, under the Act of 1976 is in force, an application is made to the court by a spouse to whom the order aforesaid relates for an order granting a decree of nullity or a decree of judicial separation or an order under *Part II* or *III*, the court may by order discharge the order aforesaid under the Act of 1976 as on and from such date as may be specified in the order.

Discharge of orders under Act of 1976.

Custody of dependent members of the family after decree of nullity.

44.—Where the court makes an order for the grant of a decree of nullity, it may declare either of the spouses concerned to be unfit to have custody of any dependent member of the family who is a minor and, if it does so and the spouse to whom the declaration relates is a parent of any dependent member of the family who is a minor, that spouse shall not, on the death of the other spouse, be entitled as of right to the custody of that minor. 5

Social reports in family law proceedings.

45.—(1) In proceedings to which this section applies, the court may, of its own motion or on application to it in that behalf by a party to the proceedings, by order give such directions as it thinks proper for the purpose of procuring a report in writing on any question affecting the welfare of a party to the proceedings or any other person to whom they relate from— 10

(a) such probation and welfare officer (within the meaning of the Child Abduction and Enforcement of Custody Orders Act, 1991) as the Minister for Justice may nominate, 15

(b) such person nominated by a health board specified in the order as that board may nominate, being a person who, in the opinion of that board, is suitably qualified for the purpose, or 20

(c) any other person specified in the order.

(2) In deciding whether or not to make an order under *subsection (1)*, the court shall have regard to any submission made to it in relation to the matter by or on behalf of a party to the proceedings concerned or any other person to whom they relate. 25

(3) A copy of a report under *subsection (1)* shall be given to the parties to the proceedings concerned and (if he or she is not a party to the proceedings) to the person to whom it relates and may be received in evidence in the proceedings.

(4) The fees and expenses incurred in the preparation of a report under *subsection (1)* shall be paid by such parties to the proceedings concerned and in such proportions, or by such party to the proceedings, as the court may determine. 30

(5) The court or a party to proceedings to which this section applies may call as a witness in the proceedings a person who prepared a report under *subsection (1)* pursuant to an order under that subsection in those proceedings. 35

(6) *Subsection (1)* applies to proceedings—

(a) under the Act of 1964,

(b) under the Act of 1976, 40

(c) under the Family Home Protection Act, 1976,

(d) under the Act of 1981,

(e) under the Status of Children Act, 1987,

(f) under the Act of 1989,

(g) under the Child Abduction and Enforcement of Custody Orders Act, 1991, and

(h) in relation to an application for a decree of nullity.

(7) The function conferred on a health board by *subsection (2)* shall be a function of the chief executive officer of the board.

46.—For the avoidance of doubt, it is hereby declared that the reference in section 5 (1) of the Family Law Act, 1981, to the rules of law relating to the rights of spouses in relation to property in which either or both of them has or have a beneficial interest shall relate and be deemed always to have related only to the rules of law for the determination of disputes between spouses, or a claim by one of them, in relation to the beneficial ownership of property in which either or both of them has or have a beneficial interest and, in particular, does not relate, and shall be deemed never to have related, to the rules of law relating to the rights of spouses under the Act of 1965, the Family Home Protection Act, 1976, or the Act of 1989.

Property of engaged couples.

47.—(1) Subject to *subsection (3)*, stamp duty shall not be chargeable on an instrument by which property is transferred pursuant to an order to which this subsection applies by either or both of the spouses who were parties to the marriage concerned to either or both of them.

Exemption of certain transfers from stamp duty.

(2) Section 74 (2) of the Finance (1909-10) Act, 1910, shall not apply to a transfer to which *subsection (1)* applies.

(3) (a) *Subsection (1)* applies to a relief order made following the dissolution of a marriage.

(b) *Subsection (1)* does not apply in relation to an instrument referred to in that subsection by which any part of or beneficial interest in the property concerned is transferred to a person other than the spouses concerned.

48.—(1) Notwithstanding the provisions of the Capital Acquisitions Tax Act, 1976, a gift or inheritance (within the meaning, in each case, of that Act) taken by virtue or in consequence of an order to which this subsection applies by a spouse who was a party to the marriage concerned shall be exempt from any capital acquisitions tax under that Act and shall not be taken into account in computing such a tax.

Exemption of certain transfers from capital acquisitions tax.

(2) *Subsection (1)* applies to—

(a) a relief order or an order under *section 24* made following the dissolution of a marriage,

(b) a maintenance pending relief order made following the granting of leave under *section 22 (3)* to a spouse whose marriage has been dissolved, and

(c) an order referred to in *section 40 (a)*, or an order under *section 41 (1)* made in addition to or instead of an order under *section 40 (a)*, in favour of a spouse whose marriage has been dissolved.

Capital gains tax
treatment of certain
disposals by
spouses.

49.—(1) Notwithstanding the provisions of the Capital Gains Tax Acts, where, by virtue or in consequence of—

(a) an order made under *Part II* on or following the granting of a decree of judicial separation, or

(b) a relief order made following the dissolution of a marriage, 5

either of the spouses concerned disposes of an asset to the other spouse, both spouses shall be treated for the purposes of those Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal: 10

Provided that this subsection shall not apply if, until the disposal, the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset. 15

(2) Where *subsection (1)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (1)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset. 20

Abatement and
postponement of
probate tax on
property the
subject of an order
under *section 24*.

50.—Subsection (1) of section 115A of the Finance Act, 1993 (which was inserted by the Finance Act, 1994, and provides for the abatement or postponement of probate tax payable by a surviving spouse)— 25

(a) shall apply to a spouse in whose favour an order has been made under *section 24* as it applies to a spouse referred to in the said section 115A, and 30

(b) shall apply to property or an interest in property the subject of such an order as it applies to the share of a spouse referred to in the said section 115A in the estate of a deceased referred to in that section or the interest of such a spouse in property referred to in that section, 35

with any necessary modifications.

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

51.—(1) The Family Home Protection Act, 1976, is hereby amended:

(a) in section 2, by the substitution of the following subsection for subsection (2): 40

“(2) in subsection (1), ‘dwelling’ means any building or part of a building occupied as a separate dwelling and includes any garden or other land usually occupied with the dwelling, being land that is subsidiary and ancillary to it, is required for amenity or convenience and is not being used or developed primarily for commercial purposes, and includes a structure that is not permanently attached to 45

the ground and a vehicle, or vessel, whether mobile or not.”,

(b) in section 3—

5 (i) by the substitution in subsection (1) of “subsections (2), (3) and (8)” for “subsections (2) and (3)”, and

(ii) by the insertion of the following subsections after subsection (7):

10 “(8) (a) (i) Proceedings shall not be instituted to have a conveyance declared void by reason only of subsection (1) after the expiration of 6 years from the date of the conveyance.

15 (ii) Subparagraph (i) does not apply to any such proceedings instituted by a spouse who has been in actual occupation of the land concerned from immediately before the expiration of 6 years from the date of the conveyance concerned until the institution of the proceedings.

20 (iii) Subparagraph (i) is without prejudice to any right of the other spouse referred to in subsection (1) to seek redress for a contravention of that subsection otherwise than by proceedings referred to in that subparagraph.

25 (b) A conveyance shall be deemed not to be and never to have been void by reason of subsection (1) unless—

30 (i) it has been declared void by a court by reason of subsection (1) in proceedings instituted,

35 (I) before the passing of the *Family Law Act, 1995*, or

(II) on or after such passing and complying with paragraph (a),

or

40 (ii) subject to the rights of any other person concerned, it is void by reason of subsection (1) and the parties to the conveyance or their successors in title so state in writing before the expiration of 6 years from the date of the conveyance.

45 (9) If a spouse gives a general consent in writing to any future conveyance of any interest in a dwelling that is or was the family home of that spouse and the deed for any such conveyance is

executed after the date of that consent, the consent shall be deemed, for the purposes of subsection (1), to be a prior consent in writing of the spouse to that conveyance.”, and

- (c) in section 10, by the substitution of the following subsection 5
for subsection (5)—

“(5) (a) The District Court shall, subject to subsection (3), have all the jurisdiction of the High Court to hear and determine proceedings under this Act where the rateable valuation of the land to which the proceedings relate does not exceed 10
£20.

(b) The District Court shall, subject to subsection (3), have jurisdiction to deal with a question arising under section 9 where the value of the household chattels intended to be disposed of or removed or actually disposed of or removed, as the case may be, does not exceed £5,000 or 15
where such chattels are or immediately before such disposal or removal, were in a family home the rateable valuation of which does not exceed £20.

(c) The District Court may, for the purpose of determining whether it has jurisdiction in proceedings under this Act in relation to a family home that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, £20.”. 20 25

- (2) The amendment effected by *subsection (1) (a)* does not apply in relation to—

(a) any conveyances referred to in section 3 of the Family Home Protection Act, 1976, the dates of which are,

(b) any proceedings under or referred to in that Act which are 30
instituted,

(c) any thing referred to in section 6 of that Act which is done, and

(d) any transactions referred to in section 14 of that Act which occur, 35

before the commencement of this section.

(3) Where a court, when granting a decree of judicial separation under the Act of 1989, orders that the ownership of the family home shall be vested in one of the spouses, it shall, unless it sees reason to the contrary, order that section 3 (1) (prior consent of spouse to conveyance of interest in family home) of the Family Home Protection Act, 1976, shall not apply to any conveyance by that spouse of an interest in the home and, if the court so orders, the said section 3 (1) shall have effect accordingly. 40

Amendment of
Child Abduction
and Enforcement of
Custody Orders
Act, 1991.

52.—Section 2 of the Child Abduction and Enforcement of Custody 45
Orders Act, 1991, shall be amended as follows:

(a) “‘the Minister’ means the Minister for Equality and Law Reform” shall be substituted for the definition of “the Minister”, and

(b) "the Minister for Justice" shall be substituted for "the Minister" in the definition of "probation and welfare officer".

SCHEDULE ENACTMENTS REPEALED

Section 3.

5	Year & Chapter or Number & Year	Short Title	Extent of Repeal
10	1844, c.81	Marriages (Ireland) Act, 1844	In section 9, " , and that they are both of the full age of twenty-one years, or, when either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such party is a widower or widow, as the case may be"
15			Sections 19 and 25
20			In section 22, " , and that they are both of the full age of twenty-one years, or, where either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such party is a widower or widow, as the case may be"
25			
30			
35			
40			
45	1868, c.20	Legitimacy Declaration Act, (Ireland), 1868	Section 1
50	1863, c. 27	Marriage Law (Ireland) Amendment Act, 1863	In section 4, the words from "and when either of the Parties intending marriage" to "whose consent to such Marriage is by Law required;"
55			In Schedule (B), the fourth paragraph

Year & Chapter or Number & Year	Short Title	Extent of Repeal
1870, c.110	Matrimonial Causes and Marriage Law (Ireland) Amend- ment Act, 1870	In section 35, the words "Whenever a marriage shall not be had within three cal- endar months after the notice shall have been so given to the person so appointed as aforesaid, the notice, and any licence which may have been granted thereupon, shall be utterly void." and the words "and that they are both of the full age of twenty- one years, or, where either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such person is a widower or widow, as the case may be" Section 41
No. 5 of 1957	Married Women's Status Act, 1957	Section 12
No. 30 of 1972	Marriages Act, 1972	Sections 1 and 18
No. 6 of 1989	Judicial Separation and Family Law Reform Act, 1989	Part II and sections 39 and 40

BILLE

dá ngairtear

Acht do dhéanamh socrú breise i ndáil le dlínse na gCúirteanna réamhorduithe agus orduithe coimhdeacha a dhéanamh i gcásanna ina dtagann céilí chun bheith idirscartha go breithiúnach faoi dhlí an Stáit, dá chumasú orduithe den sórt sin a dhéanamh i gcásanna áirithe ina scaoiltear póstaí nó ina dtagann na céilí chun bheith idirscartha go breithiúnach ina leith, faoi dhlí stáit eile, do dhéanamh socrú breise i ndáil le cothabháil faoin Acht um an Dlí Teaghlaigh (Cothabháil Céilí agus Leanaí), 1976, agus i ndáil le pósadh agus do dhéanamh socrú i dtaobh nithe a bhaineann leis sin.

*An tAire Comhionannais agus Athchóirithe Dlí a
thíolaic*

*Ritheadh ag Dáil Éireann,
1 Feabhra, 1995*

BILL

entitled

An Act to make further provision in relation to the jurisdiction of the Courts to make preliminary and ancillary orders in cases where spouses become judicially separated under the law of the State, to enable such orders to be made in certain cases where marriages are dissolved, or as respects which the spouses become judicially separated, under the law of another state, to make further provision in relation to maintenance under the Family Law (Maintenance of Spouses and Children) Act, 1976, and in relation to marriage and to provide for connected matters.

*Presented by the Minister for Equality and Law
Reform*

*Passed by Dáil Éireann,
1st February, 1995*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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