



AN BILLE UM AN DLÍ TEAGHLAIGH (COLSCARADH), 1996
FAMILY LAW (DIVORCE) BILL, 1996

EXPLANATORY MEMORANDUM

General

1. The purpose of the Bill is to give legislative effect to the amendment of the Constitution which was approved by the people in the Referendum of 24 November, 1995. The Bill sets out the machinery whereby individuals may seek a decree of divorce from the court (Circuit and High). It also enables the court to make financial, property and other ancillary orders following the granting of a decree of divorce.

Main Features

2. (a) *Part II* sets out, in line with the constitutional provisions, the criteria for obtaining a divorce (*section 4*). It also contains safeguards to ensure that both parties are aware of alternatives to divorce proceedings and to assist attempts at reconciliation (*sections 5, 6 and 7*).

(b) *Part III* enables the court to make preliminary and ancillary orders in or after proceedings for divorce. Among the more substantive provisions are those governing the court's powers to make orders in relation to periodical and lump sum payments (*section 11*), property adjustment (*section 12*), and pension adjustment (*section 15*).

(c) *Part IV* deals with taxation matters while *Part V* concerns miscellaneous provisions relating, for example, to the courts' jurisdiction in divorce proceedings.

PART I

Preliminary and General

Short title and commencement

3. *Section 1* sets out the short title and provides for the coming into operation of the Act on the day that is three months after the date of its passing.

Interpretation

4. *Section 2* sets out various definitions which are largely self-explanatory. Depending on the context, a reference to a spouse in the Bill includes a reference to a person who is a party to a marriage dissolved under the provisions of the Bill (*subsection (2) (c)*).

Expenses

5. *Section 3* provides for expenses incurred in the administration of the Bill to be paid out of moneys provided by the Oireachtas.

PART II

The Obtaining of a Decree of Divorce

Grant of a decree of divorce

6. *Section 4* provides that the court may, in exercising the jurisdiction conferred by Article 41.3.2° of the Constitution, grant decrees of divorce in respect of marriages. In exercising that jurisdiction, it must, in conformity with the terms of the constitutional amendment, be satisfied that —

- (a) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,
- (b) there is no reasonable prospect of a reconciliation between the spouses, and
- (c) such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent members of the family. (This latter concept covers the reference in the Constitution to any children of either or both of the spouses and any other person prescribed by law.)

Subsection (2) makes it plain that a court, upon granting a decree of divorce, is empowered, where appropriate, to give directions regarding the welfare of, custody of, or right of access to, a child without a separate application having to be made under section 11 of the Guardianship of Infants Act, 1964.

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

7. *Section 5* sets out the various safeguards which are designed to ensure that an applicant for a divorce decree is aware of the alternatives to divorce proceedings and also of the services which are available to assist attempts at reconciliation. Under *subsection (2)*, prior to instituting divorce proceedings, a solicitor is obliged to discuss reconciliation possibilities with an applicant and to supply that individual with the names and addresses of persons who are qualified to help effect a reconciliation between estranged spouses. Provision is made in similar terms for the possibility of mediating a divorce settlement on an agreed basis between the spouses and, where appropriate, for the effecting of a separation deed or agreement which would provide for the separation of the spouses. If the spouses have not already been granted a decree of judicial separation, a solicitor must also ensure that the applicant is aware of judicial separation as an alternative to divorce (*subsection (3)*).

8. *Subsections (4) and (5)* deal with certain formalities whereby a solicitor must certify that the provisions of *subsections (2) and (3)* have been complied with. Absence of such certification may result in court proceedings being adjourned to enable the necessary discussions between solicitor and client to take place.

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

9. *Section 6* is the mirror image of *section 5*, the only difference being that it relates to the respondent in divorce proceedings rather than to the applicant.

Adjournment of proceedings to assist reconciliation or agreements on the terms of the divorce

10. Section 7 (1) empowers the court to adjourn proceedings if, at any time during the hearing of the divorce proceedings, the spouses wish to attempt a reconciliation. Similarly, under subsection (2), where it seems to the court that a reconciliation cannot be effected, the court may adjourn proceedings in order to facilitate both spouses in reaching agreement on some or all of the terms of the proposed divorce. In relation to both subsections, the court has discretion to advise the spouses to seek the assistance of a third party either in effecting a reconciliation or in reaching an agreement (subsection (5)) and any communications between the spouses and the third party in such circumstances are privileged (subsection (6)). Where proceedings have been adjourned under subsections (1) or (2), it is open to either of the spouses to request a resumption of those proceedings as soon as may be (subsection (3)).

Effect of decree of divorce

11. Section 8 spells out the fact that a decree of divorce, when granted, dissolves the marriage that is the subject of the decree and enables both parties to that marriage to marry again. For the avoidance of doubt, it is also indicated that divorce does not affect the right of parents to be joint guardians of their children (section 6 of the Guardianship of Infants Act, 1964 refers).

PART III

Preliminary and Ancillary Orders in or after Proceedings for Divorce

Preliminary orders in proceedings for divorce

12. Section 9 provides that, where a divorce application is pending before the court that court may, before deciding whether to grant or refuse the divorce decree, make a number of orders, namely, barring, protection or safety orders, custody and access orders and orders concerning protection of the family home and contents.

Maintenance pending suit orders

13. Section 10 provides that the court may make an order for maintenance or a lump sum payment pending the determination of an application for a decree of divorce.

Periodical payments and lump sum orders

14. Section 11 deals with the making of periodical payments and lump sum orders in favour of either a spouse or a dependent family member. These orders may be made at the time the decree is granted. They may also be made at any time during the lifetime of the other spouse (where the spouse is the applicant) or during the lifetime of either of the spouses (where the application is on behalf of a dependent family member). Subsection (1) provides for the making of orders for periodical payments (subsection (1)(a)), secured periodical payments (subsection (1)(b)) and lump sums (subsection (1)(c)) for the support of a spouse or dependent family members.

15. Lump sum payments can be made in relation to expenses or liabilities incurred before the making of an application (subsection (2)) and any order in relation to lump sums generally may provide for them to be paid by instalments and to be secured (subsection (3)). The duration of a periodical payments order will not extend beyond the death of either of the spouses concerned (subsection (4)) and, where the creditor spouse remarries, such an order will cease to have effect in relation to that spouse (the order would retain its force insofar as dependent family members are concerned). The remarriage of either of the spouses will also terminate that spouse's right to apply for any of the maintenance orders under subsection (1) in

respect either of himself or herself. Periodical payments orders may also be the subject of an attachment of earnings order at the time the payments are ordered (*subsection (6)*). Before the court may decide whether to make or refuse to make an attachment of earnings order, the spouse concerned must be given an opportunity to make representations in relation to the matter.

Property adjustment orders

16. *Section 12(1)* provides that the court may make one or more of the following property adjustment orders:

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

The variation provisions of *section 20* do not apply to property transfer orders under *paragraph (a)*. While they are capable of application to the other orders, they may, under *subsection (2)*, be restricted or excluded by the court.

17. Under *subsection (3)* the remarriage of either of the spouses precludes that spouse from applying for a property adjustment order in favour of himself or herself. *Subsection (4)* provides for the registration, in the Land Registry or Registry of Deeds, of a certified copy of any court order under *section 12*. *Subsection (5)* covers the situation where a person might refuse to comply with a court order under this section and enables another party to execute a deed or other instrument in relation to land and, in those circumstances, the deed or instrument will have the same validity as if it were executed by the defaulting party. Any costs incurred in complying with a property adjustment order are a matter within the discretion of the court (*subsection (6)*). This section does not apply in relation to the family home where either of the former spouses, following remarriage, lives with his or her current spouse (*subsection (7)*).

Miscellaneous ancillary orders

18. *Section 13 (1)* provides that the court may make one or more of the following orders

- (a) an order conferring on one spouse the right to occupy the family home to the exclusion of the other spouse, or, an order for the sale of the family home and for disposal of the proceeds of sale between the spouses and any other person having an interest therein;
- (b) an order under section 36 of the Family Law Act, 1995 which deals with the determination of disputes between spouses in relation to property matters;
- (c) an order under section 4, 5, 7 or 9 of the Family Home Protection Act, 1976;
- (d) an order under section 2, 3, 4 or 5 of the Domestic Violence Act, 1996;
- (e) an order for the partition of property or under the Partition Act, 1868 and the Partition Act, 1876;

(f) an order under section 11 of the Guardianship of Infants Act, 1964.

Subsection (2) requires that, in exercising its jurisdiction under *subsection (1) (a)*, the court must have regard to the welfare of the spouses and any dependent member of the family and, in particular, shall take into consideration the need to provide proper and secure accommodation for a dependent spouse and for any dependent family member. *Subsection (1) (a)* does not apply in relation to the family home where either of the former spouses, following remarriage, lives with his or her current spouse (*subsection (3)*).

Financial compensation orders

19. *Section 14 (1)* provides that following the granting of a decree of divorce the court is empowered to make an order requiring a spouse to take out a life insurance policy in favour of the other spouse or a dependent family member; make an order for the assignment, in whole or in part, of a spouse's interest in a life assurance policy in favour of the other spouse or a dependent family member; or make an order that the payments required under the terms of the policy continue to be made. Considerations influencing the court in making such an order would be that the financial security of a spouse or dependent family member could be safeguarded or that the loss of a particular benefit consequent upon the divorce could thereby be compensated for.

20. *Subsection (2)* provides that the court may make a financial compensation order in addition to or in substitution, in whole or in part, for orders under *sections 11, 12, 13 or 15* and that in deciding whether to make such order or orders it shall have regard to whether proper provision, having regard to the circumstances, exists or can be made for a spouse or dependent family member under those sections. Any order under this section shall cease to have effect once the person in whose favour it has been made dies. Nor can such an order be made if the spouse who is applying for it has remarried.

Pension adjustment orders

21. *Section 15* provides that a court, following the grant of a decree of divorce, may, on application to it by either of the spouses concerned or by a person on behalf of a dependent member of the family, make a pension adjustment order in favour of either of the spouses or the dependent member of the family concerned. The pension adjustment order under *subsection (2)* in respect of a retirement benefit may be made at the time of granting the decree of divorce or at any time thereafter. The pension adjustment order under *subsection (3)* in respect of a contingent benefit must be made within 12 months of the grant of the decree.

Subsection (1) sets out the various definitions for the purposes of *section 15* which are largely self-explanatory.

Subsection (2) provides that the court may make a pension adjustment order in respect of the retirement benefit of a spouse who is a member of an occupational pension scheme (the member spouse) providing for the designation ("earmarking"), as the court considers appropriate, of the whole or part of the retirement benefit, for payment to either the other spouse, or in the case of the death of that spouse, to his or her personal representative, or to a person for the benefit of a dependent member of the family. The court must specify the period of reckonable service of the member spouse to be taken into account and the percentage of the retirement benefit to be paid for the benefit of the other spouse and/or dependants.

Subsection (3) makes similar provision to *subsection (2)* in so far as a contingent benefit (i.e. a benefit payable to a dependant of the member spouse under a pension scheme on the death of the member spouse while in relevant employment and before reaching normal pensionable age) is concerned.

Subsections (4) and (5) provide that, where a court makes a pension adjustment order under *subsection (2)*, the spouse in whose favour the order is made may apply to the trustees of the pension scheme concerned to have the designated ("earmarked") portion of the benefit "split" from the main retirement benefit so as to provide a separate and independent benefit for that spouse. This separate benefit may be provided either

- within the original pension scheme following agreement between the trustees concerned and the spouse concerned or
- through the making of a payment to another occupational pension scheme as may be determined by the spouse concerned in agreement with the trustees of that occupational pension scheme, or
- through the making of a payment to a policy or contract of insurance as may be determined by the spouse concerned and that is approved by the Revenue Commissioners, and

the value of the contingent benefit is to be calculated in accordance with guidelines under the Pensions Act, 1990.

Subsection (6) provides specifically in relation to defined contribution schemes (i.e. a scheme which provides a retirement benefit the rate or amount of which is in total directly determined by the amount of contributions paid by or in respect of the member of the scheme concerned) that, where an application is made under *subsection (5)* to have the designated portion "split", the trustees may, at their discretion, provide an independent benefit for the spouse concerned either

- through the making of a payment to another occupational pension scheme as may be determined by the spouse concerned in agreement with the trustees of that occupational pension scheme, or
- through the making of a payment to a policy or contract of insurance as may be determined by the spouse concerned and that is approved by the Revenue Commissioners.

Subsections (7) and (8) provide for special circumstances where, after an order is made under *subsection (2)* a member spouse dies before payment of the designated benefit has commenced, or ceases to be a member of a pension scheme otherwise than on death. Specifically,

- *subsection (7)*, provides that where a member spouse dies before payment of the designated benefit has commenced, the trustees, within three months of the death of the member spouse, shall make a payment, to the person in whose favour the order is made of an amount of money equal to the value of the designated benefits, such amount being determined in accordance with guidelines under the Pensions Act, 1990.
- *subsection (8)*, provides that where the member spouse ceases to be a member of the pension scheme concerned otherwise than on death the trustees may

- (a) provide an independent benefit, within the pension scheme, for the person in whose favour the order is made equal to the actuarial value of the designated benefit or
- (b) make a payment equal to the actuarial value of the designated benefit, to another occupational pension scheme so as to create a pension benefit for the person in whose favour the order is made or
- (c) make a payment equal to the actuarial value of the designated benefit to a policy or contract of insurance that is approved by the Revenue Commissioners so as to provide a benefit for the person in whose favour the order is made, and

the value of the designated benefit shall be calculated in accordance with guidelines under the Pensions Act, 1990.

Subsection (9) and (10) provide for the payment, within 3 months of the death of the spouse in whose favour an order is made under subsection (2), to the personal representative of that spouse of an amount of money, calculated in accordance with relevant guidelines

- (a) equal to the value of the designated benefit in circumstances where the spouse dies before payment of the designated benefit has commenced and
- (b) equal to the actuarial value of the part of the designated benefit which, but for the death of the spouse, would have been payable during the lifetime of the member spouse in circumstances where the designated benefit is already in payment.

Subsection (11) provides that where a dependent member of the family dies before payment of the designated benefit the pension adjustment order shall cease to have effect in so far as it relates to that dependant.

Subsections (12) and (13) provide for notification to be given by the trustees to the person in whose favour the order is made under subsections (2) and (3) and the registrar or clerk of the court concerned, where the member spouse ceases to be a member of the scheme and where an amount is applied or paid under subsections (6) and (8).

Subsection (14) provides that benefits on foot of orders under subsections (2) and (3) shall be applied or paid out of the resources of the scheme and unless otherwise specified in the court order shall be paid in accordance with the rules of the scheme or applied in accordance with relevant guidelines.

Subsections (15) and (16) provide for reductions in designated and contingent benefits in certain circumstances.

Subsection (17) provides that where the trustees make a payment or apply an amount pursuant to an order under subsection (2), they shall be discharged from any obligation to make any further payment in respect of the benefit payable or apply any amount pursuant to the order.

Subsection (18) provides that persons applying for a pension adjustment order shall give notice to the trustees concerned and any other person specified by the court and the court shall have regard to representations made by notice parties in deciding whether to make the order and in determining the provisions of the order.

Subsection (19) provides that an order under *subsection (3)* shall cease to have effect on the death or remarriage of the spouse in whose favour it is made to the extent that it applies to that spouse.

Subsection (20) allows the court to give directions to trustees for the purpose of pension adjustment orders and provides that the trustees will not be held liable where compliance with such directions, occasions non-compliance with the rules of the pension scheme concerned or with the Pensions Act, 1990.

Subsection (21) provides that a copy of a pension adjustment order must be served by the court on the trustees of the scheme concerned.

Subsection (22), paragraph (a), sets out the rules in relation to costs incurred by trustees in complying with certain provisions of the Act and provides that such costs shall be borne, as the court may determine, by the member spouse or by the other person concerned or by both of them in such proportion as the court may determine, and, in the absence of such determination, by them equally. *Paragraph (b)* provides that where a person fails to pay an amount in accordance with *paragraph (a)*, the court, on application by the trustees, may order that the amount be deducted from the amount of any benefit payable under the pension scheme concerned or pursuant to an order under *subsection (2) or (3)*.

Subsection (23) provides that (a) no pension adjustment order shall be made if the applicant spouse has remarried, (b) the court can make a pension adjustment order in addition to or in substitution for an order or orders under *sections 11 to 14* of the Act and also sets out the financial circumstances to be considered by the court in deciding whether or not to make such an order or orders.

Subsection (24) refers to the application, with any necessary modifications, of section 54 of the Pensions Act, 1990 and any regulations made under that section, to a pensions scheme on the institution of proceedings for a decree of divorce.

Subsection (25) provides that the court may direct trustees of a scheme to provide certain calculations in respect of a retirement benefit or a contingent benefit to either of the spouses or to any other person concerned.

Subsection (26) enables a court to restrict or exclude the application of *section 20* of the Act in relation to an order under this section.

Orders for provision for spouse out of estate of other spouse

22. *Section 16 (1)* provides that where one of the parties to a divorce dies the other party may apply to the court for financial provision to be made for him or her out of the deceased spouse's estate. Such application must be made within six months from the time that the grant of representation has been obtained under the Succession Act, 1965 and no such application can be entertained if the applicant has remarried (*subsection (2)*). In deciding to make any order, the court must have regard to the rights of any other interested party and must be satisfied that it was not possible to make proper provision, having regard to the circumstances, for the applicant during the lifetime of the deceased spouse. In particular, the court must have regard to any lump sum payments or property adjustment orders made in favour of the applicant and any devise or bequest made by the deceased spouse to the applicant spouse (*subsection (3)*). Furthermore, the provision which the court can make under this

section, together with any lump sum payments or property adjustment orders, must not exceed in total any share in the estate of the deceased spouse to which the applicant would have been entitled under the Succession Act, 1965 if the marriage had not been dissolved (*subsection (4)*).

23. If the deceased spouse has remarried, notice of any application must be given to the existing spouse and to such other person as the court may direct and the court must have regard to any representations made by those persons before deciding whether or not to make an order under the section (*subsection (5)*). *Subsection (6)* puts the personal representative of the deceased under a duty to make a reasonable attempt to inform any former spouse of the relevant death and also makes it mandatory upon the personal representative, where an application is made under this section, not to distribute any of the deceased's estate without leave of the court until such time as the court has made its determination. It is open to the court, following a decree of divorce, to make an order which disentitles either or both spouses from applying for an order under this section (*subsection (7)*).

Orders for sale of property

24. *Section 17* provides that where a court makes a secured periodical payments order, a lump sum order or a property adjustment order, it may additionally make a further order for the sale of any property in which either spouse has a beneficial interest (*subsection 1*). The power to order the sale of property may not be exercised so as to interfere with a right to occupy the family home conferred by virtue of *Part III* (*subsection (2)*). Nor, will the power apply in relation to the family home where either of the former spouses, following remarriage, lives with his or her current spouse (*subsection (6)*). The order for sale may include provisions relating to the manner and time of sale, any conditions which might attach to the sale and directions as to how the proceeds of sale are to be disposed of (*subsection (3)*). Under (*subsection (4)*), where an order has provided for the making of periodical payments to one of the spouses out of the sale proceeds, that order shall cease to have effect on the death or remarriage of that spouse. Also, where a person, other than one of the spouses, has a beneficial interest in the property concerned, the court must give that person an opportunity to make representations and must take those representations into account before deciding whether to make an order for sale (*subsection (5)*). (Equivalent provisions also govern property adjustment orders (*section 12*) and orders directing the sale of the family home so that the proceeds may be divided between the spouses and any other person having an interest therein (*section 13 (1) (a)*).

Provisions relating to certain orders under sections 10, 11, 12, 13, 14, 15, 16 and 20

25. *Section 18 (1)* provides that the court, in deciding whether to make an order under *sections 10, 11, 12, 13 (1) (a), 14, 15, 16 or 20*, shall endeavour to ensure that such provision as the court considers proper having regard to the circumstances is made for the spouses and for any dependent family members. *Subsection (2)* lists the matters (e.g. income, earning capacity, property, financial resources, likely future obligations, age and conduct of the spouses) to which the court must have particular regard when deciding on the making of orders. The court must take into account any contribution made by either spouse to the welfare of the family. This allows the court to consider contributions which are non-monetary in nature and which would involve either of the spouses in looking after a home or caring for a family. Under *subsection (3)* the court must have regard to the terms of any separation agreement entered into by the spouses which

is still in force. *Subsection (4)* lists a number of factors to which the court must have regard in making orders in relation to a dependent family member (e.g. financial need, earning capacity, if any, and the manner in which an individual is being or is likely to be trained or educated).

Retrospective periodical payments orders

26. *Section 19* provides that the court may, if appropriate, order periodical payments to be paid with effect from a date that is earlier than the date of the order for periodical payments but not earlier than the date of the institution of the divorce proceedings concerned. Such backdated payments may be by way of a single lump sum and could take into account any payments made to a spouse during the period between the institution of the divorce proceedings and the granting of the divorce decree.

Variation, etc., of certain orders under this Part

27. *Section 20 (1)* lists by name the various orders to which the general provisions of the section are to apply. They are as follows:—

- an order for maintenance pending suit;
- a periodical payments order (secured or unsecured);
- a lump sum order requiring payment by instalments or requiring such instalments to be secured;
- a property adjustment order made under *section 12 (1) (b), (c) or (d)* except insofar as that order restricts or excludes the application of this section to its provisions;
- an order relating to the occupation of the family home or to its sale (*section 13 (1) (a)*);
- a financial compensation order;
- an order under *section 15 (2)* which relates to the preservation of a divorced spouse's pensions entitlements in the other spouse's pension scheme except insofar as that order restricts or excludes the application of this section to its provision; and
- a variation order under this section.

28. Under *subsection (2)*, the court is empowered to vary or discharge any order to which this section applies and to suspend temporarily or to revive any provisions of such orders. In making its decision, the court will have regard to a range of matters, including the general criteria specified in *section 18* as well as to any change in the circumstances of the case or to any new evidence tendered. Those eligible to apply for a variation order include either of the parties to the divorce, a person who, following the death of either of those parties has in the opinion of the court a sufficient interest in the matter or who is making the application on behalf of a dependent family member and, if either of the parties has remarried, that party's spouse. *Subsection (3)* deals with the discharge of orders which provide for the making of payments for the support of a dependent member of the family if that member ceases to be dependent.

29. Both *subsections (4) and (5)* relate specifically to the court's powers under this section in relation to property adjustment orders and indicate that a variation order should not be made where third party interests are unfairly prejudiced. *Subsection (6)* applies the section to instruments executed pursuant to orders which are now being varied and *subsection (7)* deals with the registration of true copies of any variation orders which concern property adjustment orders relating to land.

Restriction in relation to orders for benefit of dependent family members

30. *Section 21* provides that the court, in making provision for a dependent family member in a maintenance pending suit order, an unsecured or secured periodical payments order, a lump sum order, or, a variation order relating to such orders, shall not have regard to the conduct of either of the spouses concerned. (Under *section 18 (2) (i)* the court in making such orders is to have regard to the conduct of each of the spouses where that conduct is such that it would be unjust to disregard it.)

Orders under Acts of 1976, 1989 and 1995

31. Where a spouse in respect of whom a specified order is in force under any of the above Acts applies to the court for a divorce, *section 22(1)* empowers the court to discharge that order from a particular date. However, *subsection (2)* provides that, where such orders are in force at the time the divorce decree is granted, they shall, unless discharged under *subsection (1)*, continue in force as if they were orders "made under a corresponding provision of this Act" and the variation provisions of *section (20)* would apply accordingly.

Amendment of section 3 of Act of 1976

32. *Section 23* effects a technical amendment to the Family Law (Maintenance of Spouses and Children) Act, 1976, the effect of which is that orders for maintenance pending suit and periodical payments under provisions in the Bill can be enforced under Part III of the Family Law (Maintenance of Spouses and Children) Act, 1976.

Transmission of periodical payments through District Court clerk

33. *Section 24* provides that maintenance pending suit payments and periodical payments (secured or unsecured) under provisions in the Bill can be ordered to be transmitted through the local District Court clerk in the same way that such payments are currently made under *section 9* of the Family Law (Maintenance of Spouses and Children) Act, 1976.

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

34. *Section 25* provides that an order for the payment of alimony under the Defence Forces Act 1954 shall be construed as including maintenance pending suit and periodical payments orders (secured and unsecured) under this Bill.

Amendment of Enforcement of Court Orders Act, 1940

35. *Section 26* provides that references to an order in *sections 8 (1) and 8 (7)* of the Enforcement of Court Orders Act, 1940 (as amended) shall be construed as including maintenance pending suit and periodical payments orders made under this Bill.

PART IV

Income Tax, Capital Acquisitions Tax, Capital Gains Tax, Probate Tax and Stamp Duty.

Payments to be made without deduction of income tax

36. *Section 27* provides that payments of money made pursuant to an order under the provisions of the Bill, other than a pensions adjustment order under *section 15*, shall be made without deduction of income tax.

Income tax treatment of divorced persons

37. Section 28 provides that, in certain circumstances, couples who obtain a decree of divorce in this jurisdiction may, similar to separated couples, opt for joint assessment for income tax purposes. To avail of the provision, both of the parties to the dissolved marriage must be resident in the State for tax purposes for the relevant year of assessment and neither spouse must have remarried. The net effect of the section is that through opting for joint assessment, where one party to a dissolved marriage is paying enforceable maintenance for the benefit of the other party the party making the maintenance payment, and not the recipient, will bear any tax referable to the maintenance payments. If the recipient has no other income, the paying party will be granted the personal allowances and tax bands appropriate to a married person. If the recipient has other income, the tax assessed on the parties will be apportioned between them but the tax referable to the maintenance payments will still be borne by the payer.

Exemption of certain charges from stamp duty

38. Under section 29, transfers of property between former spouses, on foot of a court order under *Part III* of this Bill, are exempt from stamp duty. The section also means that the relevant instruments of transfer do not have to be adjudicated on by the Revenue Commissioners (hence the reference to section 74 (2) of the Finance (1909-10) Act, 1910).

Exemption of certain transfers from capital acquisitions tax

39. The effect of section 30 is to exempt from capital acquisitions tax any transfers to a former spouse which arise on foot of a court order under *Part III* of the Bill.

Capital gains tax treatment of certain disposals by divorced persons

40. Under section 31, the disposal of an asset from one former spouse to the other (except where assets which form, or are intended to form, part of the trading stock of a trade are disposed of from one former spouse to another), where that disposal is pursuant to a court order under *Part III* of the Bill, is treated on a no gain/no loss basis, ie, as if the former spouses were still living together as husband and wife. An individual who acquires any asset in this way is treated, for the purposes of determining the charge to tax on any future disposal of the asset, as if he or she had acquired that asset at the same date and for the same consideration as the disposing former spouse originally acquired it.

Abatement and postponement of probate tax on property the subject of an order under section 16

41. Under section 32, no probate tax will be payable in respect of any provision which a court might make in favour of a former spouse consequent upon section 16 of this Bill. (That section empowers the court, in certain circumstances, to make provision for such a spouse out of the estate of the deceased party to the dissolved marriage.)

PART V

Miscellaneous

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

42. The broad purpose of section 33 is to provide the court with the power necessary to restrain an individual from attempting to prevent or limit the relief which the court would otherwise be able to grant under various specified orders or from frustrating or impeding the enforcement of an order granting such relief. Under

subsection (1), dispositions carried out in this context, whether by a spouse or by another person, are referred to as "reviewable dispositions". The term does not include a disposition made for valuable consideration (other than marriage) to a third party acting in good faith and without notice of the other spouse's intention to defeat the relief being claimed.

43. In the circumstances described above, the court may, on application by the spouse who has instituted proceedings seeking the particular relief, restrain a person from disposing of property or from transferring it out of the jurisdiction. It may also make an order setting aside the disposition where it is satisfied that, by so doing, relief or different relief would be granted to the applicant. Where relief has already been granted, an order setting aside the disposition is also possible (*subsection (2)*). *Subsection (3)* empowers the court to make such consequential provisions in the order as it considers necessary to assist in the implementation of that order. The effect of *subsection (4)* is that dispositions made less than three years before the application or which are proposed to be made are presumed, unless the contrary is shown, to be intended to defeat the applicant's claim for relief.

Jurisdiction of courts and venue

44. *Section 34(1)* provides that the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under the Bill and that in relation to that jurisdiction it shall be known as the Circuit Family Court. *Subsection (2)* requires the Circuit Court, on application by any person having an interest in the proceedings, to transfer the proceedings to the High Court where the rateable valuation (RV) of the land exceeds £200. If the land in question has not been given an RV, or is the subject with other land of a single RV, the Circuit Court, under *subsection (4)*, is empowered to determine that its RV would or would not exceed £200. *Subsection (3)* is a standard provision under which the jurisdiction conferred on the Circuit Family Court under the Bill 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. The effect of *subsection (5)* is that proceedings under the Bill shall be heard otherwise than in public and be as informal as is practicable and consistent with the administration of justice. *Subsection (6)* concerns the disclosure of information regarding property and income which might be relevant in certain proceedings under *Part III* of the Bill and *subsection (7)* allows the court to direct a person to comply with the terms of the previous subsection where they fail or refuse to so do.

Exercise of jurisdiction by court in relation to divorce

45. *Section 35 (1)* provides that the court may grant a decree of divorce where either of the spouses was domiciled in the State on the date of the institution of the proceedings or where either of the spouses was ordinarily resident in the State throughout the period of one year ending on that date. Under *subsection (2)* a court dealing with proceedings for a decree of divorce shall have jurisdiction to determine an application for the grant of a decree of judicial separation or a decree of nullity in respect of the marriage concerned, notwithstanding that such jurisdiction is not conferred by section 31 (4) of the Judicial Separation and Family Law Reform Act, 1989 or by section 39 of the Family Law Act, 1995. *Subsections (3) and (4)* are equivalent provisions which would allow a court entertaining a nullity petition or an application for a judicial separation also to determine an application for the grant of a divorce decree in respect of the marriage concerned.

Notice of proceedings under Act

46. Section 36 provides for notice to be given to other parties of proceedings under the Bill.

Custody of dependent members of family after decree of divorce

47. Section 37 provides that the court, in making an order for the grant of a decree of divorce, may declare either of the spouses concerned to be unfit to have custody of any children of the family.

Social reports in family law proceedings

48. Section 38 applies section 47 of the Family Law Act, 1995 to proceedings under this Act. That section provides for social reports in a wide variety of family law cases.

Amendment of Act of 1995

49. Section 39 contains a number of minor amendments to the Family Law Act, 1995.

Amendment of Maintenance Act, 1994

50. Section 40 amends the Maintenance Act, 1994 to provide, *inter alia*, for the recovery of maintenance payments due to be paid under a court order to a party to a divorce in this jurisdiction who is living abroad.

Implications for Women

51. The provisions of the Bill apply equally to men and women. The powers given to the court to deal with the financial consequences of divorce will ensure that the interests of the spouse who is in the weaker financial position can be safeguarded.

Financial Implications

52. The provisions in the Bill will give rise to financial and staffing implications for the Legal Aid Board, Counselling and Mediation Services, the courts, the Probation and Welfare Service and the health boards. Already strategic plans are being developed in each of these areas to meet the demands of a divorce jurisdiction. While it is assumed that, in the longer term, divorce will generally operate as an alternative to judicial separation, the first few years of its operation will result in increased workloads for the courts. However, while there may as a result be certain initial costs it is not considered that, in the longer term, the resources necessary to provide for a divorce jurisdiction will be significantly greater than the resources necessary for the long term maintenance of the existing judicial separation jurisdiction.

*An Roinn Comhionannais agus Athchóirithe Dlí,
Meitheamh, 1996.*

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An Roman Catholic Appeal against the Bill

Meitavish, 1996.