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**An Bille um an Dlí Teaghlaigh, 2019**  
**Family Law Bill 2019**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE UM AN DLÍ TEAGHLAIGH, 2019**  
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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The purposes of the Bill are:

- Following the enactment of the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Act 2019, to amend section 5(1)(a) of the Family Law (Divorce) Act 1996 to reduce the minimum living apart period specified in that Act to two years during the previous three years (from four years during the previous five years).
- To make provision for the recognition of divorces, legal separations and marriage annulments granted under the law of the United Kingdom, in the event that the UK withdraws from the European Union without an agreement that applies to this area of law.
- To give statutory certainty to the interpretation by the Irish courts of the requirement for spouses to have lived apart for specified periods in order to be eligible to apply for judicial separation or divorce. A corresponding provision will deal with dissolution of civil partnerships.
- To reduce to one year the minimum living apart period of three years that applies to judicial separation applications in cases where the respondent does not consent to the decree of judicial separation being granted.

**Provisions of the Bill**

*Short title and commencement*

*Section 1* provides for the short title of the Bill and for its commencement by order(s) to be made by the Minister for Justice and Equality.

*Amendment of section 2 of Judicial Separation and Family Law Reform Act 1989*

*Section 2* provides for the amendment of section 2 (Application for a decree of judicial separation) of the Judicial Separation and Family Law Reform Act 1989 (“Act of 1989”).

Subsection (1)(a) amends section 2(1) of the Act of 1989 to allow an application for judicial separation to be made after one year living apart, whether or not the respondent spouse consents to the decree of judicial separation being granted. Section 2(1)(d) of the Act of 1989 currently provides for a living apart period of one year immediately preceding the application where a judicial separation application is made on the basis of living apart and the respondent consents to the decree of judicial separation

being granted. Section 2(1)(e) of the Act of 1989 currently provides for a living apart period of three years immediately preceding the application where the respondent does not consent to the decree of judicial separation being granted.

Subsection (1)(b) provides for technical amendments to section 2 of the Act of 1989 consequential on the amendments provided for in subsections (1)(a) and (1)(c).

Subsection (1)(c) will clarify the meaning of the “living apart” requirement for judicial separation applications in section 2(3)(a) of the Act of 1989 by giving certainty to the interpretation that has been given by the Irish courts to that requirement. The new text of section 2(3)(a) will provide that spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship. The provision makes clear that a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.

Subsection (2) is a transitional provision to ensure that the amendments to the Act of 1989 provided for in subsection (1) shall apply not only to judicial separation proceedings instituted after the date of commencement of section 2, but also to judicial separation proceedings that have been instituted but have not been concluded prior to commencement.

Subsection (3) defines “Act of 1989” for the purposes of section 2.

#### *Amendment of section 5 of Family Law (Divorce) Act 1996*

*Section 3* provides for the amendment of section 5 (Grant of decree of divorce and custody etc., of children) of the Family Law (Divorce) Act 1996 (“Act of 1996”).

Subsection (1)(a)(i) will reduce the minimum living apart period specified in section 5(1)(a) of the Act of 1996 from four years during the previous five years to two years during the previous three years.

Subsection (1)(a)(ii) will clarify the meaning of the “living apart” requirement for divorce applications by giving certainty to the interpretation that has been given by the Irish courts to that requirement. The new subsection (1A) to be inserted into section 5 of the Act of 1996 provides that spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship. The provision makes clear that a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.

Subsection (2) is a transitional provision to ensure that the amendments to the Act of 1996 provided for in subsection (1) shall apply not only to divorce proceedings instituted after the date of commencement of section 3, but also to divorce proceedings that have been instituted but have not been concluded prior to commencement.

Subsection (3) defines “Act of 1996” for the purposes of section 3.

#### *Amendment of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*

*Section 4* provides for the amendment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (“Act of 2010”).

Subsection (1) will insert a new subsection (1A) into section 110 (Grant of decree of dissolution) of the Act of 2010. The new subsection (1A) will

clarify the meaning of the “living apart” requirement for applications for dissolution of a civil partnership to ensure consistency with the provisions on judicial separation and divorce in sections 2 and 3 of the Bill.

The new subsection (1A) provides that civil partners who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the civil partners do not live together as a couple in an intimate and committed relationship. The provision makes clear that a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.

Subsection (2) provides for the amendment of section 172 (Cohabitant and qualified cohabitant) of the Act of 2010. Section 172(6) makes particular provision for cases where one or both of the cohabitants is, or was, during the relationship concerned, married to another person. The amendments to section 172(6) are consequential on the amendments to section 5 of the Family Law (Divorce) Act 1996 provided for in section 3 of the Bill.

Subsection (2)(a) will amend section 172(6) so that it will only apply where the cohabitation relationship concerned ends before the coming into operation of section 4(2) of the Bill.

Subsection (2)(b) will amend section 172(6) to provide that the term “lived apart” in that subsection shall be construed in accordance with the new section 5(1A) of the Family Law (Divorce) Act 1996 to be inserted by section 3 of the Bill.

Subsection (3) is a transitional provision to ensure that the amendment to the Act of 2010 provided for in subsection (1) shall apply not only to proceedings for dissolution of a civil partnership instituted after the date of commencement of section 4, but also to proceedings for dissolution of a civil partnership that have been instituted but have not been concluded prior to commencement.

Subsection (4) defines “Act of 2010” for the purposes of section 4.

#### *Definitions and application (Part 3)*

*Section 5* makes general provision for Part 3 of the Bill.

Subsection (1) defines certain terms for the purposes of Part 3. “Council Regulation” is defined as meaning EU Council Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (also known as the Brussels IIa Regulation). “Relevant jurisdiction” is defined as meaning England and Wales, Scotland, Northern Ireland or Gibraltar.

Subsection (2) provides that section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not apply to a divorce to which section 6 or 7 applies.

#### *Recognition of certain divorces, legal separations and marriage annulments granted in the United Kingdom or Gibraltar before coming into operation of section*

*Section 6* provides that a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction that, prior to the coming into operation of the section, was recognised under the Council Regulation shall continue to be recognised.

*Recognition of certain divorces, legal separations and marriage annulments granted in the United Kingdom or Gibraltar after coming into operation of section*

Section 7 provides for recognition of divorces, legal separations or marriage annulments granted under the law of a relevant jurisdiction on or after the coming into operation of the section.

Subsection (1) provides that section 7 shall apply to a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction on or after the coming into operation of the section.

Subsection (2) sets out the jurisdictional criteria for recognition of a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction.

Subsection (3) sets out the grounds for refusal of recognition of a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction.

*An Roinn Dlí agus Cirt agus Comhionannais,  
Deireadh Fómhair, 2019.*

