



DIVORCE IN IRELAND THE CASE FOR REFORM

APRIL 2019





LAW SOCIETY
OF IRELAND

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The Family and Child Law Committee is a non-standing committee of the Law Society of Ireland. The remit of the Committee encompasses establishing standards for and providing information and guidance to the profession.

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Donagh McGowan
Aaron McKenna
Jennifer O'Brien
Aidan Reynolds
Justin Spain
Geoffrey Shannon
Grahame Toomey

Susan Webster

Consultants
Rosemary Horgan
Joan O'Mahony

This report was written by Dr. Geoffrey Shannon on behalf of the Family and Child Law Committee.

The report and its recommendations were unanimously endorsed by the Committee at a specially convened meeting on 6 March 2019.

Keith Walsh
Chair





INTRODUCTION

It is over 20 years since the introduction of divorce in Ireland and in that time, many changes have been evident in the societal and personal landscape of Irish families.

This report examines the history to the introduction of divorce in Ireland and its current operation. It identifies some areas where difficulties have occurred in practice and sets out various recommendations for consideration and/or reform.

While the topic of reform in divorce law and practice has recently focused on the constitutional requirement of living apart for a period of four years prior to the institution of proceedings, it is the Society's view that a broader review and analysis is merited. In this way, the proposed constitutional referendum to reduce this time period to two years may also serve as a basis for such a review to take place. This report is presented in this context and various recommendations for reform are made below.

It is the Society's view that any proposed changes must be carefully made with due regard and consideration to the unique nature of family law proceedings and divorce proceedings, in particular. Divorce severs a marriage and brings with it a myriad of legal, taxation and personal consequences. While difficulties have arisen in some areas of divorce law practice and procedure, it is also the case that our system of divorce is expressly designed to arrive at the fairest possible outcome for both spouses and the children, following a review of the particular facts and circumstances of each case. While criticisms are often levelled at the entirely subjective nature of this exercise, which leaves considerable scope for a variety of outcomes and diverging judicial discretion, it is also the case that

such a system is arguably the best approach in the unique circumstances of divorce. Within the current framework, however, clear and practical guidance with regard to the application of the statutory criteria for fair distribution, and the making of successive applications for provision, would certainly benefit both practitioners and clients alike.

The Society also believes that practical considerations are at the core of this matter. The key to the proper functioning of divorce in practice lies with the provision of adequate resources and facilities to both ensure that cases do not take several years to reach a conclusion and that they do so in settings which befit the private nature of family law proceedings. The role to be played by alternative dispute resolution is also important in this context. It is submitted that a review of the existing family court structure and practice will best serve the people at the heart of family law disputes, including the children.

PART 1 of this report sets out various proposals on reform of the Family Justice System. The empirical research undertaken by the Society is considered in PART 2 of this report. PART 3 considers how marriage and the Family Law (Divorce) Act 1996 have developed over the past two decades.

PART 1

CONCLUSIONS AND RECOMMENDATIONS

2. CONCLUSIONS AND RECOMMENDATIONS

Divorce has now been in operation in Ireland for over two decades. During this time Ireland has witnessed radical change that has resulted in a more secular, more modern and less traditional society. Key among these changes has been a new provision on the rights of children and the passage of the same-sex marriage and Eighth Amendment referenda. In addition to these domestic developments, Ireland has also been significantly influenced by its membership of the EU. This, it can be argued, has led to a public policy and law that is shaped, and in a number of cases directed, by European concerns rather than national ones. One of the combined effects of growing wealth and membership of an expanding EU has been increased travel between countries, the opening of borders for workers and an increasing number of economic migrants working, living and marrying in Ireland, with the various cultural expectations that this freedom of movement and diversity brings. In addition, although many Irish people still claim to be active members of the Catholic Church, it is beyond doubt that the separation of Church and State has been, if not totally achieved, then progressed substantially in the past decades.



According to the Central Statistics Office, the number of divorced persons in the State has increased from 35,100 in 2002 to 103,895 in 2016. Undoubtedly, the rise in the number of divorced persons also reflects an increasing acceptance of divorce within Irish society as a remedy to an irretrievably broken-down marriage.

It is within the context of this change that the divorce jurisdiction has operated in Ireland since its enactment in 1997. While marriage has remained popular, divorce has also become more common. According to the Central Statistics Office, the number of divorced persons in the State has increased from 35,100 in 2002 to 103,895 in 2016.¹ Undoubtedly, the rise in the number of divorced persons also reflects an increasing acceptance of divorce within Irish society as a remedy to an irretrievably broken-down marriage.

The question facing Ireland now is what type of legal framework and practice should underpin its law in this arena. What type of divorce law and practice do we want?

Throughout the past two decades of divorce, a number of unsatisfactory aspects of the law in this area have come to light, as detailed in this report.

It is clear from Part 2 of this Report that the courts are afforded considerable discretion in dealing with the cases. Such discretion allows different judges to apply the long list of factors in section 20 of the Divorce Act in very different ways, thereby producing very different results in often similar cases. In relation to property, the court must consider how, by whom and when the property was acquired, as well as whether it is an income-generating asset or not. The status of the

dependent spouse must also be considered, with an increasing recognition of the financial and non-financial contributions of the dependent spouse to the marriage. Where pensions exist, a pension adjustment order may be sought, but is by no means guaranteed.

It is clear that in divorce hearings the court must have regard to pre-existing separation agreements.² What is not clear, however, is the weight to be given to such agreements at the time of the divorce. In keeping with their broad discretionary powers in this field, the courts adopt the position that the weight to be given to a separation agreement is dependent on a number of factors, for example the passage of time since its execution, but the determining factor is whether the agreement makes proper provision.

Despite 20 years of practice and case law, it remains that most of these issues are considered in light of the unique and specific facts that exist in each individual case and that much is at the discretion of the judiciary. This contributes to the very high degree of uncertainty that faces couples when entering into divorce proceedings. Such uncertainty needs to be reduced where possible. In addition, the development of clear and applicable guidelines would assist the judiciary in making decisions, whether these be introduced by way of legislation or Supreme Court judgment.

¹ Central Statistics Office, *Census of Population 2016, Profile 4, Households and Families*, www.cso.ie/en/releasesandpublications

² Divorce Act, section 20(3).

RECOMMENDATION

2.1

A specialised family courts structure should be established.

2.1 REFORM OF FAMILY COURTS AND PROCEEDINGS

The Society is of the view that a specialised family courts structure should be established.

A dedicated family law court with specialised judges would help achieve greater uniformity of approach and outcome, while also attempting to alleviate the stress of attending the courts in their current form.

The establishment of specialised family law courts is a long-standing recommendation of many reports dating back to 1996, when the Law Reform Commission recommended reform of the courts structure and suggested unifying jurisdictions and establishing regional courts presided over by judges with appropriate expertise and experience.³

Further recommendations for the establishment of a separate family courts structure can be found in the Working Group on a Courts Commission (the Denham Commission), which reported in 1998. The Family Law Reporting Project recommended, *inter alia*, the establishment of a family court division of the Circuit Court.

In practice, there are many difficulties within the existing court structure, including excessive case-loads and consequential delay, inadequate facilities given the confidential nature of family law cases, and the considerable range in outcomes depending on the judge hearing the case.

This Report calls for the establishment of a specialised court structure. Consideration should be given to the manner in which such a structure would operate with judges having specific training, certain courts of limited jurisdiction and other courts of unlimited jurisdiction, a less adversarial approach to proceedings and other mechanisms that would enable a more efficient and skilled disposal of family law cases.

In this regard, full consideration should also be given to possible shortcomings of a specialised-court approach, for example concerns that specialist judges may become removed from legal realities in other fields and may reproduce previous decisions, thereby hampering the evolution of case law.⁴ Full consideration should therefore be given to how these courts would operate in practice. Both specialist and generalist judges should be required to meet the requirements of independence and impartiality set out in Article 6 of the European Convention on Human Rights.

³ Law Reform Commission Report on Family Courts (LRC52-1996).

⁴ The case of *Prest v Petrodel Resources Limited* [2001] 3 W.L.R. 1 concerned the practice of the English Family Division to treat the assets of a company substantially owned by the spouse as available for distribution by way of ancillary relief in divorce proceedings. In the Court of Appeal, this practice was described as amounting “almost to a separate system of legal rules unaffected by the relevant principles of English property and company law” and further stated that such practice “must now cease”, being entirely inconsistent with the relevant principles of property and company law.

The objective of a new Family Court should be to create a dedicated and integrated Family Court structure that is properly resourced to meet the particular needs of people at a very vulnerable time in their lives. This single Family Court structure must recognise and actively promote the interdisciplinary system to ensure effective communication between all the disciplines involved in family law proceedings, to include medical, legal, education, guardians *ad litem* and social services. In this regard, key services would be available to assist parties to draw up parenting plans and monitor custody and access orders when they break down and also facilitate their restoration.

It is recommended that the new structure of the family courts should consist of a lower family court of limited jurisdiction and a higher court of unlimited jurisdiction. Both courts should be staffed by judges with specific training.

It is also recommended that the new family courts be located separately from current venues with sufficient rooms for private consultations and welfare and assessment services by way of support. It is also recommended that mediation facilities be located within such new facilities.

Consideration might also be given to an enhanced pre-trial role in family law proceedings, to include attempts to effect a resolution of family disputes through pre-trial conferencing with the involvement of the judiciary.

RECOMMENDATION

2.2

The Society supports the proposal to remove the minimum living apart period for spouses seeking a divorce from the Constitution and allow the Oireachtas to amend section 5(1)(a) of the Divorce Act to reduce the minimum period to two years during the previous three years.

2.2 CONSTITUTIONAL REFERENDUM

The Society notes the proposal to amend Article 41.3.2° of the Constitution to remove the minimum living apart period for spouses seeking a divorce, with a provision allowing the Oireachtas to amend section 5(1)(a) of the Divorce Act to reduce the minimum period to two years during the previous three years.

The Society supports this proposal, noting that such a change would require to be effected by way of constitutional referendum.

While each case is unique, the requirement to live apart for a period of four years prior to the institution of divorce proceedings may now be considered to be too long and may result in a duplication of legal expenses and protracted proceedings, where parties are involved in both judicial separation and divorce proceedings over time.

RECOMMENDATION

2.3

A definition or definitions of “living apart” should be developed.

2.3 APPLICATION AND INTERPRETATION OF GROUNDS FOR DIVORCE

The three grounds for divorce, all of which must be satisfied if a decree of divorce is to be granted, have been identified and elaborated in this Report. In doing so a number of difficulties with the application of two of these - living apart and proper provision - have emerged.

The concept of “living apart” is troublesome due to the lack of a clear definition as to what it constitutes. It is recommended that the legislature or the judiciary seek to develop a definition or definitions of “living apart”, particularly as this may be achieved by couples living under the same roof. It is acknowledged that this is neither a straightforward nor simple task, as case law in this area shows, with the courts extending the definition to include psychological and social as well as physical separation. Nonetheless, the parameters that may apply to this critical ground for divorce need to be established.

The “proper provision” requirement causes difficulties in some cases owing to the fact that it is interpreted and defined by different judges in different ways. It allows for the unfettered exercise of judicial discretion. While it is accepted that such discretion is necessary in this field, it is submitted that mandatory guidelines as to its application are needed so as to instil some much-needed clarity and certainty into this area of our law. See further Section 2.4 below.

2.4 PRINCIPLES FOR THE DETERMINATION OF ANCILLARY RELIEFS

The definition or development of a clear framework for “proper provision” is absent to a large extent in the Irish case law, as has been alluded to above.

It is recommended here that a set of principles for the determination of ancillary reliefs, including all maintenance orders, lump sum payments, settlements, property adjustment orders, and pension adjustment orders be developed in order to provide greater clarity and certainty in the determination of ancillary orders. Such principles could include consideration of terms such as “fairness” and “equity” and provide guidance on how these may be applied within the context of the division of assets and income. In particular, clear principles to guide the determination of what comprises “proper provision” are needed, e.g. that all parties concerned maintain a standard of living as close to that which they enjoyed during the marriage, without undue detriment to the other parties. These principles should be developed in the context of issues to be considered in the determination of ancillary orders as set out in section 20 of the Divorce Act, the overriding necessity of the courts to serve the interests of justice,

RECOMMENDATION

2.4

A set of principles for the determination of ancillary reliefs should be developed, to include all maintenance orders, lump sum payments, settlements, property adjustment orders, and pension adjustment orders.

and with due regard to the fact that the judiciary must be allowed some discretion to adjudicate on the specific circumstances of each individual application for divorce.

Furthermore, these principles should provide a framework for the consideration of other relevant issues, including time-bound maintenance, the different levels of maintenance required by a receiving spouse in cases where there are no children or no dependent children, and the application of cut-off points for the level of assets to be received by the dependent spouse. These principles, in conjunction with the factors set out in section 20 of the Divorce Act, ought to be referred to in each and every case, albeit not necessarily applied. This would provide much needed clarity and confidence for those seeking a decree of divorce, and also support the judiciary in making decisions.

While the requirement to make proper provision is clearly stated in the Constitution and the Divorce Act, it is equally clear that this concept is determined on an entirely subjective basis in each case. While this certainly may be the best means to achieve a “bespoke” determination of fairness in each individual case, any guidance which might be provided with regard to the determination of “proper provision” would certainly be welcome. Such guidance would assist practitioners in advising their clients with regard to parameters for settlement, and hopefully reduce the need for adversarial proceedings in some cases and/or reduce the length and costs of any such proceedings. The current unpredictability of outcome may lead some clients to litigate their cases when they might otherwise be resolved out of court. From a public policy perspective, there is much to be gained from a greater certainty of outcome, so that clients who enter into settlements are not left wondering what might have happened, had the court decided the matter.

In this way, more definitive guidelines and parameters would help promote settlement and mediation as a means of reaching agreement on the division of assets, and also other issues of custody and access, for example.

In addition, some of the judiciary have adopted an interventionist approach to establishing “proper provision”, even where both parties to the divorce have agreed on terms with the assistance and advice of their legal representatives. While it is not denied that judicial discretion in such matters is necessary, it is submitted that greater regard ought to be accorded to the autonomy of the parties reaching such agreements as to what constitutes “proper provision”, particularly in relation to agreements entered into with full, free and informed consent.

RECOMMENDATION

2.5

Provision for “clean break” divorces should be put in place, in appropriate cases.

2.5 “CLEAN BREAK” PROVISION

Despite the determination through the granting of a divorce that a marriage has ended, that both parties are free to remarry, there has been little or no debate on the obligations owed by one former spouse to the other. The ongoing recourse to the courts by receiving spouses needs to be addressed. It is recommended that the law be reviewed in this respect and that provision for such “clean break” divorces be put in place, in appropriate cases.

In many cases, of course, a “clean break” cannot be achieved and an enduring connection from a financial perspective, for example payment of maintenance, is the only way to achieve proper provision. However, in appropriate cases where the capacity for achieving a dissolution of financial ties exists, consideration should be given to facilitating this, particularly where the parties also wish this to happen.

In this, the law should have due regard to the practice in England where, at a minimum, “deferred clean break” divorce is possible by limiting the time and circumstance under which a receiving spouse can return to the courts to seek further provision. In England, for example, spousal maintenance is, in most cases, expected to be for a fixed time, thereby allowing for a “clean break” between the spouses, either at the time of divorce or at a clear future date.

Closely related to this issue is the use of full and final settlement clauses in pre-existing separation agreements and also in new divorce cases. The use and role of “full and final settlement” clauses should be further explored and their position within the legislation and court practice strengthened. However, such settlements must be subject to the full discovery of all relevant assets and incomes by both parties to the divorce, consideration of the nature and timing of, and the circumstances in which the original agreement was made, the activities of the parties in the intervening period, and the current circumstances of the parties involved, including any children. Again, it is recommended here that the range of factors to be considered be clearly set out by the legislation.

In reality, this necessitates a broader and more wide-ranging discussion with regard to the aims and philosophy of our divorce legislation at the current time. It may be argued that the Divorce Act, and its application in the courts, have in fact failed to acknowledge that divorce is a point of final closure of an irretrievably broken marriage. It is a criticism of the Divorce Act that at the time of its drafting, greater consideration was not given to the underlying philosophies informing the law on ancillary relief, in particular maintenance, so as to critically consider the interaction of such with divorce. Instead, a mirror image of the ancillary relief provision as found in the 1995 Act (an Act not drafted in the contemplation of divorce) was adopt-

ed. Divorced spouses, like separated spouses, have the right to return to the court at any point, even after the death of their former spouse, to seek adjustments to any provision made at the time of the divorce hearing. Only when a former spouse remarries does their right to seek such court adjustments end.

RECOMMENDATION

2.6

The law should be reviewed to allow for the development of pre-nuptial agreements that are valid and enforceable.

2.6 PRE-NUPTIAL AGREEMENTS

The increasing use of pre-nuptial agreements is a further indication that couples entering into marriage want, in the event of divorce, to have clarity and certainty in relation to their financial matters. Pre-nuptial agreements are merely a type of contract. There is no reason why all such contracts should be *prima facie* unenforceable. A better view would be to permit such contracts but make them subject to the general rules and regulations governing contract, and the substantive principles governing ancillary relief.

Since the enactment of the Divorce Act, the path is now clear for giving effect to the enforceability of pre-nuptial agreements in limited circumstances⁵. No longer does Article 41 obstruct the enforceability of such agreements. The time is, therefore, ripe for the matter to be addressed in a comprehensive manner by the legislature. The first step in this process has already been completed through the publication of the report of the Government Study Group and legislative action on foot of this is now awaited.

While, as far as the Society is aware, there have been no reported cases where a pre-nuptial agreement has been presented to the courts for review and/or approval, it is worth noting that recent decisions of the courts in separation and divorce have given more weight to existing agreements and orders, on the basis that private distribution between the parties should be respected, where possible.

The law should be reviewed to allow for the development of pre-nuptial agreements that are valid and enforceable to the extent that they support and foster the interests of children and spouses. It should be noted, however, that even if the legislature steps in to support such agreements, the judiciary should retain a wide discretion to vary their terms.

The Society is in agreement with the recommendations proposed by the Study Group, which may be summarised as follows:

- Express statutory provision should be made for pre-nuptial agreements by way of introducing a new section 16(2)(A) of the 1995 Act and section 20(3)(A) of the Divorce Act. Provision should be made for pre-nuptial agreements to be scrutinised by the court in separation and divorce proceedings in much the same way as separation agree-

⁵ Section 202 of the Civil Partners and Certain Rights and Obligations of Cohabitants Act 2010 allows cohabitants to enter into a cohabitants' agreement to provide for financial matters during the relationship or when the relationship ends, whether through death or otherwise.

ments are currently dealt with under section 20(3) of the Divorce Act.

- Pre-nuptial agreements should be reviewable on death. The Study Group recommends the introduction of a statutory basis upon which a court may make financial provision for a spouse, notwithstanding the existence of a pre-nuptial agreement.
- Procedural safeguards should be imposed as a matter of law and these should be expressed in clear terms so that parties entering into a pre-nuptial agreement are both informed and protected. An enforceable agreement must be in writing, signed and witnessed, made after each party has received separate legal advice, made with disclosure of financial information, and made not less than 28 days before the intended marriage.

RECOMMENDATION

2.7

A review of the issue of maintenance should be prioritised... Where possible, the payment of maintenance between former spouses should seek to facilitate a smooth transition from dependence to economic independence for the financially vulnerable spouse – enabling certainty to be achieved at some point between the parties, but ensuring the dependent spouse is provided for until such time as he or she is self-sufficient.

2.7 MAINTENANCE

It is evident that the issue of spousal support post-divorce is a divisive one. Following marital breakdown, the upkeep of two households undoubtedly results in a fall in both parties' standard of living and the payment of periodical maintenance by an earning spouse to a dependent spouse is often a necessary occurrence.

In practice, the determination and payment of maintenance arises in virtually all cases before the courts, both in respect of spouses and children. In many cases, the payment of maintenance is the only means by which “proper provision” can be secured in the circumstances. Since the practice and procedure employed in the determination of maintenance cases in Ireland dates back to the Maintenance of Spouses and Children Act 1976, it is submitted that a review of the issue of maintenance, in particular, should be prioritised.

A number of competing rationales are proffered to govern the concept of maintenance ordered upon divorce – namely, to provide a “clean break” for the former spouses; to ensure the long-term financial support for the dependent spouse; to rehabilitate; or to compensate (the compensation model).

With regard to the provision of a “clean break” in the Irish context, it is clear that there is an absence of legislative provision for this. Nonetheless, as outlined above, where the resources of the parties allow for it, the courts have stated that the possibility of achieving certainty and finality is not excluded from the options available to the courts. Irish law, however, specifically allows for the long-term provision of maintenance. Further, maintenance orders made upon divorce may continue indefinitely in operation, only ceasing when the recipient spouse dies or remarries.

The compensation model might well be considered, whereby a spouse is compensated for losses and sacrifices made by him/her in favour of

the other spouse during the marriage. The amounts thereby calculated would not be arbitrary, but rather based on actual events and spousal activity during the course of the marriage. Such a formula could not only provide a form of assistance to the judiciary in making maintenance orders, but will also provide practitioners and those seeking a divorce with some degree of necessary predictability.

It is clear that no single concept alone can definitively govern the provision of maintenance post-divorce in any legal system. Where possible, it is submitted that the payment of maintenance between former spouses should seek to facilitate a smooth transition from dependence to economic independence for the financially vulnerable spouse – enabling certainty to be achieved at some point between the parties, but ensuring the dependent spouse is provided for until such time as he or she is self-sufficient.

Despite the obvious benefits of such an approach, it will not be appropriate in every case and ultimately each case must be determined in light of its own specific and individual set of circumstances. Our courts should be tasked with making “proper provision” as between the spouses and this should be the overriding consideration of the judiciary in making any ancillary orders upon divorce, including maintenance.

While the English courts have endeavoured to develop formulae by which the level of maintenance paid to one former spouse by the other is determined, no such practical formulae have been developed in the Irish courts. It is therefore recommended that, although a definite or clear-cut formula that can be applied in every case will not be possible or indeed advisable, some method or methods for the calculation of maintenance, and guidelines on their use might nonetheless be developed. In this regard and, as with the principles governing proper provision outlined above, it is recommended that the overriding requirement of fairness must always remain to ensure the fairest and most suitable outcome in family law cases.

RECOMMENDATION

2.8

The Succession Act of 1965 should be reviewed, with particular regard to the introduction of divorce and the consideration of “clean break” scenarios.

2.8 SUCCESSION

The Succession Act of 1965 has remained largely unchanged since its enactment, but has been interpreted in the light of subsequent changes in other areas of the law. The introduction of divorce, upon the granting of which spousal succession rights to the estate of the other are extinguished, is possibly one of the most significant changes in this area. Despite the extinguishing of these rights, the Divorce Act allows for applications to be made to the court under certain, mainly hardship, circumstances by the surviving spouse.⁶ Therefore complete closure cannot be attained by divorced persons even after death.

For these reasons it is recommended that the Succession Act of 1965 be reviewed with particular regard to the introduction of divorce and the consideration of “clean break” scenarios, as outlined above.

⁶ There is a 6-month limitation period. See Divorce Act, section 18(1).

RECOMMENDATION

2.9

A coherent legislative system for the recognition of foreign divorces should be drafted.

2.9 RECOGNITION OF FOREIGN DIVORCES

The Society welcomes the decision to replace the outdated Article 41.3.3° with a provision allowing the Oireachtas to legislate for the recognition of foreign divorces.

While the introduction of domestic divorce in Ireland has led to fewer Irish couples seeking foreign divorces, this is an area that remains significant as many of those who obtained foreign divorces before 1997 have remarried or wish to do so, and the recognition of this second marriage is dependent upon the recognition of the foreign divorce. In addition, couples who work abroad may marry and divorce abroad. It is important that these foreign divorces are recognised in Ireland and indeed in other jurisdictions to prevent the creation of so-called “limping marriages”, which essentially limp from recognition in one country to lack of recognition in another.

This issue of marital status, therefore, warrants careful consideration. It is not desirable, either from the perspective of the parties to a marriage or the social, economic and legal systems within which they are located, that the marriage, with all of the attendant rights, obligations and implications, can be deemed valid in one jurisdiction and invalid in another. Such “limping marriages” may be a particular cause for concern in the context of increasing international mobility. Greater clarity is needed in this area of the law and a clear statement with regard to the recognition of foreign divorces should be produced.

As the Brussels II *bis* Regulation is binding on all Member States including Ireland, it is obviously not possible to unilaterally change its provisions. However, two recommendations relating to its application in Ireland may be made. First, it is recommended that agreement between the Irish rules on habitual residence and those of the European courts be achieved in order to reduce the uncertainty, particularly as this applies to children. A cross-European approach in this regard would be most helpful.

Second, with increasing international marriages, and therefore increasing international divorces, as well as unprecedented levels of worker mobility, Irish practitioners may find themselves with a growing number of Irish-based clients who are being divorced in a foreign jurisdiction. It is therefore recommended that awareness of and training in relation to Brussels II *bis* be encouraged and provided.

RECOMMENDATION

2.10

Alternative means of dispute resolution should be actively promoted and facilitated, wherever possible.

2.10 ALTERNATIVE DISPUTE RESOLUTION

The Society is of the view that any means of reducing the conflict and adversarial nature of family law proceedings is to be welcomed.

In this regard, it is recommended that alternative means of dispute resolution (ADR) should be actively promoted and facilitated, wherever possible, having regard to the facts and circumstances of the case and the needs of particular clients.

Early settlement discussions should be facilitated in separation and divorce cases by a rigorous case management system. Meaningful court appearances should occur which have as their objective not only preparing the case for hearing but in addition moving the parties towards resolution whether by ADR or otherwise. Consistent judicial supervision of cases should also take place to ensure that ADR is considered immediately once proceedings have issued and at all times during the currency of proceedings.

Information sessions on ADR should not be mandatory but should instead be voluntary. They should be held *in situ* in the District Court, Circuit Court and High Court nationwide. ADR specialists such as accredited mediators, conciliators and collaborative lawyers should provide such information sessions and adhere to a code of conduct. While they should not furnish legal advice in any specific case, they can usefully provide information on ADR generally.

Family law clients should also be recommended to attend either a course or an information session on shared parenting, and other family law issues arising.

Judges should also have, at their discretion, the authority to either determine or mediate a case. All relevant judges and county registrars should therefore be trained as mediators.

RECOMMENDATION

2.11

Court reporting and research rules should be amended so that any bona fide researcher with a connection to the legal profession can carry out research on family law cases. The Courts Service should also put in place procedures for the collection, collation and analysis of a wide range of statistics relating to divorce proceedings and their outcomes.

2.11 NEED FOR GREATER ANALYSIS AND INFORMATION ON THE OPERATION OF DIVORCE IN PRACTICE

Despite recent changes to allow for limited reporting on family law cases in practice, there remain substantial gaps in the information available to practitioners, researchers and the general public in relation to the operation of divorce law in Ireland. As a result, it is difficult to encourage informed public debate on the actual implications of divorce without properly collected, collated and analysed data on issues such as maintenance awards, child custody cases, the determination of “proper provision”, the duration of proceedings and the costs involved. In addition, the lack of information and statistics on the majority of divorce cases, i.e. those heard in the Circuit Family Court and the related matters that are decided in the District Court, represents a considerable gap in our knowledge of the application of divorce law.

While the vast majority of separation and divorce cases are determined in the Circuit Court, there are very few decisions of that court which might provide guidance with regard to the legal principles involved and outcomes reached. By contrast, the comparatively small number of “ample resources” or big money cases have been subject to detailed analysis at High and Supreme Court level.

In an address to the Society in 2013, the then Minister for Justice, Equality and Defence, Alan Shatter T.D. stated with regard to the operation of the *in camera* rule, that its “absolute nature ... has led to a situation that family law cases are perceived to be shrouded in secrecy ... there has been an absence of reliable information on the operation of the law in this area which is not conducive to confidence in our system of family law and child protection”.⁷

The Civil Liability and Courts Act 2004 (the “2004 Act”) has allowed persons in certain circumstances to attend family law proceedings. The Society had previously recommended that any relaxation of the *in camera* rule must balance the right to privacy with the right to a fair, transparent and accountable system of justice.

As described in section 3 below, the difficulties encountered at the outset of the Court reporting exercise, and the experience of conducting it, point to deficiencies in the 2004 Act in relation to its modification of the *in camera* rule. Taken with the Regulations made under the 2004 Act, it specifies the bodies that may conduct family law research as the various public third level institutions, the Economic and Social Research Institute and the Law Reform Commission. This excludes other *bona fide* bodies with an interest in family law research and/or legal education, notably the Law Society and the Bar Council and the King’s Inns. These exclusions should be remedied so that any *bona fide* researcher with a connection to the legal profession can carry out such research.

⁷ A New Structure for Family Courts, Address by Alan Shatter T.D. July 6, 2013.

The 2004 Act itself, as referred to below, also restricts research based on family law files by requiring the researcher to attend the proceedings to which the files relate. Because of the nature of family law proceedings, with their frequent adjournments, this makes systematic research on the outcome of cases virtually impossible. For data protection reasons it is likely to be necessary to receive permission from litigants, when they make applications, to give permission for their files to be examined for the purposes of family law research which would guarantee no identifying information was retained or published, similar to permission given for medical research. This issue needs further exploration and, if feasible, legislative amendment.

It is also recommended that the Courts Service put in place procedures for the collection, collation and analysis of a wide range of statistics relating to divorce proceedings and their outcomes for use by legal professionals, educationalists and researchers, as well as the media and the many organisations that serve the information needs of the general public. Steps should be taken to ensure that this process would in no way undermine the privacy of those who are parties to legal proceedings.

PART 2

EMPIRICAL RESEARCH – THE DIVORCE ACT IN PRACTICE

3. DIVORCE AND JUDICIAL SEPARATION JURISDICTION OF THE CIRCUIT COURT – THE CONTEMPORARY PICTURE

3.1 INTRODUCTION

There is very little empirical research on the operation of the family courts in general, and the divorce and judicial separation jurisdiction of the Circuit Court in particular. It is over 10 years since the Courts Service published its research on the family courts in its year-long pilot project in 2007-2008 (available on the Courts Service website, www.courts.ie), and little has been published since. This research included statistical data collected from Courts Service files for the full month of October 2006 and published in *Family Law Matters* both in magazine format and on the Courts Service website from 2006 to 2008, as well as a series of reports on individual proceedings.

The relevant Act permitting reporting of family law proceedings is the Civil Liability and Courts Act 2004 (the “2004 Act”), which permits researchers to attend and report on family law proceedings subject to maintaining the anonymity of the parties and to meeting the other conditions in the legislation, including Ministerial permission and nomination by one of the bodies listed in the Regulations.

The Society has recently sought to replicate, on a smaller scale, the Courts Service reporting project. A researcher on behalf of the Law Society attended various Circuit Court hearings in six Circuit Court areas in 2018, which included a total of 278 cases listed on some eleven days. While there were necessary limitations to the scope and nature of this review, as outlined below, it nonetheless presents a snapshot

in time and provides some very valuable information regarding these Circuit Court proceedings, in circumstances where this information would not otherwise be known or available. Extracts from these reports are set out in Section 3.4 below.

The data and information gathered in this research provides a useful insight into the conduct and outcome of Circuit Family Court proceedings, which is not otherwise available either to practitioners or the public.

It is hoped that, taken together, the data collected and the information gathered will cast some light on contemporary family law proceedings in our Circuit Courts.

3.2 METHODOLOGY

The 2004 Act was closely examined in the context of framing and approaching this research.

While the empirical research conducted for this report was a comparatively modest study, and subject to the necessary limitations outlined below, it was important that it be as representative as possible. According to the Courts Service annual report for 2015 (the latest available when the work began), the ten courts with the highest volumes of family law applications dealt with in 2015 were: Dublin, Cork, Limerick, Clonmel, Galway, Trim, Naas, Dundalk, Castlebar and Letterkenny, which between them accounted for 75 per cent of all divorces granted that year. Dublin accounted for half of these and Cork 15 per cent.

The researcher attended six courts: Dublin, Cork, two other provincial cities and two county towns, selected on the basis of the volumes of family law cases they dealt with. Attendance was constrained by whether they were hearing family law cases at times the researcher was available, and the fact that different Circuit Courts have family law sittings on the same week of the Court term. Dublin was attended on five days, Cork on two days, and two other provincial cities and two county towns on one day each.

In line with the 2004 Act, both the Courts Service and the President of the Circuit Court concluded that the researcher could only examine files which related to cases actually attended for the purpose of preparing the reports. This reduced the number of files that could be examined and impacted on the methodology employed.

In the first place, only cases that had concluded could yield meaningful information from the file, so all the ongoing cases, those adjourned, those dealing with interim matters and those returning to court in disputes over ancillary matters and so forth, were excluded from a statistical analysis for the purposes of this report. Secondly, the fact that the cases examined must have featured in a hearing, even a short one, on a day attended by the researcher makes scientific sampling of cases challenging.

Notes of the proceedings were taken by the research-

er, and these form the basis of the court reports summarised in Section 3.4 below. Essentially these form snapshots of a typical day or days in the court attended. It will be noted that the majority of cases listed were adjourned until a later date. A significant number of others concern ancillary matters in cases already ruled, in particular pension adjustment orders, or ongoing matters relating to discovery, vouching documentation or domestic violence.

A matter of interest was the variation between different Circuits in the manner in which proceedings were listed and dealt with. In the busier courts there is usually a special Motions Day, when motions are dealt with and consent divorces and judicial separations ruled. In other courts, all family law matters, including full hearings of disputed matters and District Court appeals, are dealt with on the same day. In some Circuits, the law firms, including the Law Centres, are listed with the applicant and respondent parties' initials, while in others, only the parties are listed. In at least one court area, the basis of the application (relating to divorce or judicial separation) is identified in the case number, in most it is not.

Where cases were concluded, the researcher filled in a data collection sheet on the main characteristics of the parties and their families, whether or not they were legally represented, and the terms of the outcome. Where necessary, the court file was consulted to supplement the information given in court. These data forms provide the basis of the statistical analysis outlined below.

Some of the questions posed in the original data collection form, included in Appendix 1 of this report, could not be answered as the information was not available either during the court proceedings or on the file. This was particularly the case in relation to earlier judicial separation proceedings. While in some cases reference was made to such earlier proceedings, according to court staff, the files for judicial separation and divorce proceedings, involving the same parties, are filed separately and the information on the judicial separation proceedings and their outcome is not necessarily available during the divorce proceedings. With these caveats, attendance at court yielded the information summarised in Section 3.3 below.

3.3 DATA ANALYSIS

As outlined above, a researcher on behalf of the Law Society attended Circuit Court hearings on eleven days in six Circuit Court areas in 2018, which had a total of 278 cases listed on those 11 days. These included one day in which just one case, which was expected to be contested, was heard (in fact, this case was settled following discussions on the day). However, only 53 of the listed cases concluded on the day they were heard, which meant that data was only available on the outcome of these cases.⁸

The data below was collected by the researcher filling in data collection forms, as set out in Appendix 1, insofar as possible. Some of the questions could not be answered either comprehensively or at all. The courts are not permitted to be made aware of what takes place in mediation discussions, if mediation has been attempted. This may explain why there were no references to any attempts at mediation in the course of the cases attended, but the researcher formed the impression, from talking to practitioners, that mediation was rarely used.

The Children and Family Relationships Act 2015 was not invoked during any of the proceedings, but many of the proceedings under review commenced in 2015 or 2016, before that legislation was in place.

As most of the concluded cases were agreed on consent, there was little information given in court that would indicate the socio-economic status of the parties. A minority of cases were part-heard before being settled, but the researcher decided it would be invidious to note the socio-economic status of the parties in these cases.

Under the “special characteristics” heading, the researcher noted if one or both of the parties had a disability (in fact this did not arise) or if they were members of an ethnic minority. Where the latter occurred, the ethnicity is not specified in order to avoid the danger of identification of the parties.

As referred to above, the manner in which family law files are kept means that there is often no connection made in a divorce file to a previous judicial or legal separation. Therefore, it is likely that there is an under-representation of the existence of previous separation orders or agreements in the statistics relating to the divorce applications, as they are only recorded where they were referred to in court. In some cases, the details of a former judicial separation agreement were not described in court.

While provision was made to note the length of time the cases took, all the consents took approximately 15 minutes. Where a case was part-heard before settlement, the longest was one day, with some adjournments for discussions. The others lasted at most a few hours, along with time spent negotiating the settlement.

With these caveats, the results of the data collection are outlined as follows.

⁸ Not all cases concluded yielded data on judicial separation or divorce as analysed in this section, as a few concerned other matters, for example, declarations of parentage or permission to lift the age restriction for marriage.

TOTAL NUMBER OF CASES ANALYSED: 50

Divorces: 39; **Judicial Separations:** 11

Applicant (divorce)

Wife: 26; Husband: 13

Applicant (judicial separation)

Wife: 10; Husband: 1

Applicant age-group (approximate – based on appearance and date of marriage):

Under 30: 0 31-40: 14 41-50: 17
51-60: 16 61+: 3

Cases where one or both parties had special characteristics (ethnicity)

Irish: 43 Non-Irish: 7

Cases with dependent children

Divorce applications: 20;

Judicial separation applications: 11

Divorce applications where legal or judicial separation in place: 1

It is not possible to show in tabular form the relationship between judicial separations and divorce applications, due to the wide variations.

Each case is summarised below:

- Case 1:** Judicial separation in place for 3 years, following 5 years' separation
- Case 2:** Judicial separation in place for 22 years, following 3 years' separation
- Case 3:** Judicial separation in place for 2 years, following 2 years' separation
- Case 4:** Judicial separation in place for 3 years, period of prior separation not known
- Case 5:** Judicial separation in place for 5 years, following 2 years' separation
- Case 6:** Judicial separation in place for 15 years, following one year's separation
- Case 7:** Judicial separation in place for 4 years, period of prior separation not known
- Case 8:** Judicial separation in place for six months, following 5 years' separation
- Case 9:** Judicial separation in place for 13 years, following one year's separation
- Case 10:** Judicial separation in place for 3 years, prior separation not known

LENGTH OF SEPARATION PRIOR TO APPLICATION:

Judicial separation applications

Two years or less: 5 cases;

Four years or less: 6 cases

Divorce applications

Four/five years: 16; 6-10 years: 15; 11-15 years: 4; 16-20 years: 0 20 years+: 4

RELIEFS UNDER DOMESTIC VIOLENCE ACT:

4 cases

Outcome

Application granted in all 50 cases

ANCILLARY ORDERS MADE IN RELATION TO:

Family home: 20

Spousal maintenance: 11

Child maintenance: 17

Lump sum orders: 3

Other assets: 3

Pension adjustment orders: 8

Custody and access: 15

No orders made: 16

Previous judicial separation orders confirmed: 8
(in two cases they were modified)

LEGAL REPRESENTATION

Judicial Separation:

Wife:

Solicitor: 1 Solr and barrister: 10

Unrepresented: 0 Not present: 0

Husband:

Solicitor: 0 Solr and barrister: 9

Unrepresented: 2 Not present: 0

Divorce

Wife:

Solicitor: 13 Solr and barrister: 13

Unrepresented: 12 Not present: 1

Husband:

Solicitor: 8 Solr and barrister: 9

Unrepresented: 10 Not present: 12

Comments

As stated earlier, this is a snapshot in time of a number of days' family law hearings in the busiest courts in the State. Nonetheless, there is no reason to believe that these days were not typical.

The sample of concluded cases is 50, of which 11 were judicial separations.

There are notable differences between judicial separation and divorce applications. All 11 of the judicial separation cases involved dependent children; only about half the divorce applications did. However, there was no significant difference in the ages of the two groups, suggesting that where there are dependent children there is more urgency about resolving matters, and the reduced waiting time for a judicial separation facilitates this. This is borne out by the fact that the longest period of separation before making a judicial separation application was four years, with five applications being made less than two years following separation.

In addition, the vast majority of applicants for judicial separation (10 out of 11) were wives. As wives outnumbered husbands two-to-one in making divorce applications, the discrepancy was not so great. The statistics of the Courts Service are more comprehensive in this regard, and also show that wives greatly outnumber husbands in making judicial separation applications.

While the ages were estimated, based on the appearance of the parties and the date of their marriage, the ages of the applicant were fairly evenly spread over the three decades between 30 and 60. Three couples appeared to be over 60.

Seven of the couples involved one or both parties who were not Irish, representing 14 per cent. This is close to the proportion of non-Irish in the population as a whole.

The length of separation prior to a divorce application is, of constitutional necessity, longer than for a judicial separation. Nonetheless, the largest group were people seeking a divorce as soon as they legally

could – following a separation of four or five years. The next largest group were those seeking a divorce after six to 10 years' separation. Together they accounted for 31 of the 39 applications. Four applications were sought after 20 years' separation.

There appeared to be no relationship between the length of separation prior to a divorce application and the existence of a prior separation agreement or judicial separation. In some cases, the divorce application followed close on the heels of a judicial separation; in others a judicial separation had been in place for many years before the divorce was sought. In only ten of the 39 cases (approximately 25 per cent) was reference made in court to a judicial or legal separation being in place prior to the divorce application being made.

Another significant difference between the divorce and judicial separation proceedings was the level of legal representation. In all the judicial separation applications both parties were legally represented, with wives represented by both solicitors and barristers in 10 out of the 11, and husbands represented by both in nine, and by solicitors only in the two other instances.

With the divorce applications it was notable that respondent husbands did not appear in court in 12 cases and husbands were not represented at all in a further 10. They were represented by a solicitor only in eight cases, and by both solicitor and barrister in nine. This is undoubtedly related to the fact that the husband was the applicant in only 13 cases and was the respondent in 26. This situation also arose in cases where consents were made, i.e. where matters had been resolved between the parties prior to the matter coming before the court.

In contrast, wives were represented by solicitors in 13 cases, and by both solicitors and barristers in a further 13. This does not indicate that in all cases where they were applicants, they were legally represented – in a number of consent divorces the applicant husband or wife represented themselves. In only one case, was the respondent wife not present in court.

In terms of ancillary orders, it is not surprising that the largest number of orders made related to the family home, where it was dealt with in 20 of the 50 cases, as this is normally a family's major asset. In eight cases, orders made under earlier judicial or legal separations were confirmed, and most of these undoubtedly also dealt with the family home. In cases which had been preceded by quite a lengthy separation, the family home issue had often been dealt with before the case came to court. In some cases, there was no family home, as the parties lived in public housing or rental property.

Child maintenance was more common than spousal maintenance, with 17 orders made for child maintenance out of the 31 cases where there were dependent children. This did not include cases where the judicial separation orders were upheld without discussion. In only 11 of the 50 cases, were orders made for spousal maintenance (invariably paid by husband to wife), though there were a further three lump sum payments ordered, and orders relating to other assets in three cases. Custody and access orders were made in 15 cases, but these, like the other orders, were made on consent. Pension adjustment orders were made in eight cases, but in a number of other cases they were adjourned while the decree was granted, as the parties were seeking only nominal orders.

In 16 cases, all divorces, no orders were made, indicating that the couple had resolved the practical matters before coming to court. They often corresponded with the cases where the respondent did not appear, and where there had been a lengthy separation prior to the application.

All these cases involved consents, even though a small number were initially contested. Therefore, they did not afford an opportunity to demonstrate the thinking of the court with regard to contentious matters. However, in the case reports summarised below, there are a number of examples of contested matters dealt with by the courts as part of ongoing cases which had not concluded at the time of reporting.

3.4 REPORTS

The following extract reports arise out of 11 days' attendance at six Circuit Courts, selected on the basis that they are among the busiest in the country, as set out in Section 3.2 above. They include Dublin, Cork, two other provincial cities and two county towns. Apart from Dublin, they are not identified in order to guard against the possible identification of the parties.

Dublin was attended on five days, Cork on two days, while the others were attended on one day each. Each day's hearing is reported separately. Data on the outcomes of the cases, where they were concluded, has been analysed and is outlined in Section 3.3 above.

It will be seen that in general only a minority of the cases listed are concluded on the day, with most cases adjourned. In a number of instances, cases were listed to last a full day or more, but were settled on the day following discussions between the parties and their lawyers outside the court. Some of the cases concerned ancillary orders or other matters that come under the family law jurisdiction of the Circuit Court.

Of the 278 cases listed on the 11 days attended, 53 were finalised, mainly by consent. This is just under 20 per cent of those listed. Of the 53, one concerned the dissolution of a civil partnership, one was a declaration of parentage and in a third case the court granted permission to marry to a couple where one was under 18. This left 50 concluded divorce or judicial separations. Data from these cases is examined in Section 3.3 above.

Extracts from reports of each day's hearing are summarised below, including cases which were not concluded. They demonstrate the manner in which cases are conducted by the courts, the issues that are likely to be contentious, and those that are readily agreed.

DUBLIN DAY 1

A divorce application where the family had considerable assets and which was expected to be contested and to be heard over two days was settled on the morning of the hearing in Dublin Circuit Court and consent terms agreed.

The couple had married in 1980 and separated in 2012. No judicial separation was in place. There were three children of the marriage, none of whom was dependent. There were four properties – the family home worth €862,000 and three

other properties worth in total €1,260,000, in addition to other assets worth €716,000.

The terms included the transfer of the family home, which was mortgage free, to the wife, along with two of the other three properties. She would also receive a lump sum of €120,000 and 50 per cent of the husband's retirement benefit, along with a survivor's pension if he died. The judge said he was happy to grant the divorce and received the consent. Pension adjustment orders were also made.

DUBLIN DAY 2

There were 30 cases on the list on one day in Dublin Circuit Family Court, including two matters relating to pension adjustment orders. Twenty-one applications were adjourned or struck out, leaving three consent divorces, one agreed mutual safety order, two disputed matters and other cases. In one case, the judge granted an application to release a Section 47 report relating to the welfare of a child.

No evidence was given in relation to the safety order application, with both husband and wife giving undertakings that neither would use violence against the other pending the resolution of the dispute. There were no children of the marriage.

In the first consent divorce, the couple were married in 1990 and had separated in 2004. The family home was sold in 2006 and the proceeds divided. There were no children of the marriage, no property and no pension. The applicant husband, who represented himself, said he was not seeking anything from his wife, who did not attend court. The decree of divorce was granted.

In the second case the applicant husband also represented himself. The wife was not present. He had provided an affidavit of means and an affidavit of welfare relating to the child of the marriage born in 2003. The couple had married in 2002 and separated in 2012, when he moved out of the family home. His interest in the family home was transferred to the wife and he was paid €60,000 for it. There was a pension.

The judge said she did not normally interfere with terms of a consent if the parties were legally represented, but they were not in this case. She commented that the issue of the transfer was vague and they may have to return to court to deal with the husband's pension. However, she said she was satisfied proper provision had been made and granted the decree of divorce.

In the third case, the parties were legally represented. The husband gave evidence that they had married in 1990, there were three children of the marriage, none of whom were dependent. They had separated in January 2014 and the house was sold and the proceeds divided. Divorce proceedings had issued just two months before the hearing. Both parties were in full-time employment and able to support themselves. There were no claims on each other's pensions. The judge said the consent terms handed into court should reflect the actual

situation. In this case they stated that the house "would be sold". After a brief adjournment to allow the lawyers amend the agreement the judge granted the decree of divorce.

In one case where the young couple was not represented and were seeking a divorce on consent, the case was adjourned as the documentation was incomplete. Both parties were from another EU country.

Two cases involved contested matters. In the first, a barrister attended representing a man who appeared to be accompanied by his father, who was asked to leave. A barrister attended representing the man's former partner. The man objected to the barrister's presence in court, but the judge said she was entitled to be there.

The man's application was for the Digital Audio Recording (DAR) of the last hour of a court hearing, as he wanted to present an appeal of the outcome to the Supreme Court, and wanted the DAR relating to the orders made in relation to the break-up of his relationship with his former partner, with whom he had lived for 12 years. The original hearing had concerned civil proceedings. The woman's barrister told the court that there was a child of the relationship, and there had been two sets of proceedings, heard in 2015.

While the judge noted that the man had appealed to the High Court in October 2017, she made an order for the release of the DAR. The judge also declined to deal with a further matter raised by the man relating to the ownership of the property in dispute, as this did not fall within the family law jurisdiction of the court.

The second case also related to a property. The barrister for the wife said that she was bringing a motion in relation to breaches of an order, made when a divorce was dealt with in 2016. Orders were made relating to the sale of the house. It still had not been sold and the matter had been before the court on five or six occasions. Her motion was to attach and commit the husband for breaching the order. The judge had ordered that her client have sole possession, but the husband was refusing to leave the property. The matter was adjourned for one week to allow the man a final opportunity to make proposals to vacate the house, failing which the judge said the court would proceed on the basis of breach of the order for sale.

DUBLIN DAY 3

There were 38 cases on the list in another day in Dublin Circuit Court. However, only five concluded following evidence. Most of the remainder were adjourned, and a small number were struck out.

In an uncontested divorce application, the court heard the parties had lived separately since 2012 and had a judicial separation. The wife was seeking a divorce on the same terms as those of the judicial separation. The husband was not present, but did not oppose the application, and the divorce was granted.

In another case, a divorce had been granted in 2015, but the case returned to court because the wife claimed that the order made then did not reflect what was agreed in relation to the pension adjustment order. She claimed that it had been agreed that she should have contingency benefit from her husband's pension. The court order made by a different judge in 2015 did not reflect this. The husband's barrister said that if the husband died, a portion of his pension would go to the wife. The wife said he changed his pension in 2012 without her knowledge and wanted the issue of contingent benefit dealt with. The judge indicated that she was formally ruling on what had already been ordered in 2015.

In a third case, a man who had been separated from his wife since 1989 represented himself in seeking a divorce. He said his wife had been informed of the proceedings but had not attended at court. He had had no contact with her since the separation. The couple had married in 1985 and had a child in 1987, who was no longer dependent. He had not seen this child since he was two years old. He told the court that he had no debts and had small outgoings. He said that he had a pension adjustment order "by consent", but the judge pointed out that, as his wife had not engaged in the proceedings, it was not by consent and could be set aside if a judgment is made in default.

The man told the court he had served his wife with a civil bill at the address he had for her in another city. The wife had moved to England shortly after the separation, and he did not know how long she lived there. The couple never had any property in common, and the husband was not seeking any orders other than a divorce and pension adjustment order. The judge granted the divorce.

In another divorce application where there was no appearance by the respondent husband, the court heard that he had had a solicitor who had since retired. The applicant wife said that when she tried to serve the notice on the solicitor it had been returned, so she served it on the husband at his address. A judicial separation was in place, under which the husband had agreed to pay maintenance for the couple's daughter, who was about to graduate from college. He had ceased payments a year ago. However, the applicant was not seeking any payment. She said that she just wanted a divorce and did not seek any alteration in the terms of the judicial separation. She had bought her husband

out of the family home, she was paying the mortgage and there had been joint custody of their daughter. The court granted a decree of divorce.

A fourth divorce was granted in default of appearance by the respondent husband. The couple had married in 1979 and separated in 2004. There were no dependent children. There had been no contact since the separation and the applicant wife said she was not seeking any orders, other than divorce.

Two cases concerned disputes over access. In one case, the court heard that a doctor had recommended that a family therapist be engaged. The judge encouraged the parties to agree on the appointment of a family therapist, failing which one would be appointed by the court. Allegations had been made concerning the father's behaviour, which the judge said should be raised at a later date.

A wife was seeking sole custody of children in a further case where the Child and Family Agency/Tusla was involved. The court ordered the lifting of the in camera rule so that reports from Tusla could be exchanged, and adjourned the case.

In a case involving disputed access, a Section 47 report was sought for the children. Interim orders relating to access were made pending the completion of the Section 47 report.

An interim barring order was made in a case which had not yet been heard. The woman's barrister said that the District Court had made a protection order, but he considered that the matter should be dealt with by the Circuit Court, as it was hearing the family law proceedings. If the Circuit Court made the order, the District Court order would be vacated. He told the court that, following an attack on his client and the couple's children, the Gardaí had advised her to seek a barring order in the District Court. However, since the District Court had made a protection order, the husband had threatened to kill her and she had left the family home and was then living in a woman's refuge. A text containing the threat to her life was shown to the judge.

The judge granted an interim barring order, returnable in eight days, and instructed the woman's lawyers to contact the respondent's solicitors by email and post.

In another case, the judge told a man, who was representing himself in a case where a decree of divorce had been made but other issues were in dispute, to cease writing to the court and to engage with the wife's solicitors instead. This case was adjourned.

DUBLIN DAY 4

There were 43 cases on the list devoted to Motions on another day in Dublin Circuit Court. Two related to pension adjustment orders, most were adjourned, and three led to decisions of the court, of which only two were decrees of judicial separation or divorce.

The first case to be decided related to an application for costs by the Legal Aid Board against the wife in the case. The husband's barrister said that an order had been made by Judge Abbott in the High Court for the sale of the house in 2015. This had been appealed but the appeal had been withdrawn and enforcement proceedings begun. The property was placed on the market in October 2017 and sold for €425,000. The Legal Aid Board sought fees from the sale proceedings.

The wife's barrister said that in this case, judicial separation proceedings had commenced, and then divorce proceedings overtook them. There were cross-appeals and attempts to settle the case. There were a lot of difficulties on the husband's side, and the proceedings had led to two personal injuries actions. He said he tripped on a nail as a result of work done on the house. He was in receipt of legal aid for the personal injury action in the High Court. The judge ordered the release of a sum in part-payment of fees due to the Legal Aid Board.

In the second case, the husband represented himself in a judicial separation application. He had asked for time to instruct another solicitor. The family home was on the market and its

sale had been agreed for €655,000. The wife's barrister said his client was anxious to proceed. The judge said this case had been before her on a number of occasions but she could not progress it unless the husband filed a defence.

The husband said he had a number of problems, was receiving psychiatric care and felt overwhelmed by all the pressure of the proceedings. The wife's barrister said that she was suffering from depression and living in rented accommodation. While she recognised the husband's medical needs and had tried to facilitate him in every way, she was anxious to progress the proceedings. The judge noted the husband's consent to the sale of the house and granted the decree of separation, with an ancillary order relating to the sale of the house. The mortgage would be discharged, but there would be no further disposal of the proceeds pending the hearing of the substantive issues.

In a third case, a divorce was granted on consent on the application of the wife, who was not legally represented. The husband did not appear, but had received proper notice of the proceedings. The wife gave evidence that the couple married in 1987 and separated in 1993. They had no dependent children and the only property was the family home, which had been disposed of. The wife said there was no prospect of reconciliation and that she was working and living in local authority accommodation. She was seeking no orders from the court and the divorce was granted on this basis.

DUBLIN DAY 5

On a second day before the same judge as in Dublin Day 4, there were 46 applications on the list, four of which related to pension adjustment orders. Six divorces were granted on consent and a judicial separation was ruled. Another decree of judicial separation was set aside following a reconciliation of the couple. In all, eight of the 46 were concluded.

A hearing date that had been listed as a contested judicial separation application was vacated following a statement from the wife's barrister that the parties wanted an amicable settlement, especially for the children. They wanted to vary an access order as agreed between the parties; the wife agreed not to seek increased maintenance for the children, which remained at €500 a month; and the sale of the property was agreed. The judge commented this was a very positive outcome and made orders as outlined.

In a further case, a judicial separation granted in 2014 was set aside and all orders vacated when court was advised that there had been a reconciliation.

The first consent divorce followed a judicial separation in 2014. The wife told the court the couple had married in 2002 and had two children, now 14 and seven. Things were going well under the terms of the judicial separation, and they wished those orders to continue. The judge granted the divorce and adjourned a matter relating to an insurance policy.

In a second divorce case, the wife represented herself. The husband was living abroad in his country of origin and all documents had been served on him. The wife had spoken to his brother, who had confirmed he had received the documents but he did not wish to respond. The wife gave evidence that the couple had married in 2007, but stated the husband had deserted her in 2012. They obtained a decree of judicial separation in 2014. The judge said she was satisfied that, against the backdrop of the judicial separation, whose terms had been met, a decree of divorce should be granted.

In a consent divorce where neither party was legally represented, the husband told the court that he was earning about €700 a week and paying rent. He had a small pension. The wife said she accepted this was true. They had married in 2005 and had one dependent child who was living with her and saw the husband regularly. They had no property together and neither one was making a claim on the other's pension. The judge asked whether the couple had obtained any help with their application, and they said they had online. The court granted the divorce.

Another couple also sought a divorce on consent without representation. The husband had a house and mortgage; the wife had a county council tenancy in her own name. She told the court they had married in 1978 and separated in 1992. The husband had bought his current property about 18 years ago.

He had paid maintenance while the children were dependent. She said she had not worked while the children were young, and was now taking care of her grandchildren. The judge suggested that the wife might consult MABS (Money Advice and Budgeting Service) for help with her finances. She also enquired whether the husband wanted legal advice. The judge granted the divorce, stating that she was satisfied that proper provision was the status quo.

In a further unrepresented case, the couple said that there was no joint property. They had two teenage children, with care shared 50/50 between the parents, which was working well. They sought mutual pension adjustment orders. The judge said that whoever had given them advice on the pension adjustment orders had been incorrect, and that letters from the trustees of the pension funds would be required. After leaving court briefly to sort out the matter of the letters, the couple returned and the judge granted a decree of divorce.

In another case, the wife made the application for divorce herself. The husband did not appear. There was a judicial separation in place, which had included the transfer of the jointly-owned property to the wife's sole name. The couple had married in 2009 and separated in 2013. There were no children. The judge said she was satisfied, having heard the evidence, that a decree of divorce should be granted. Two of the adjourned cases concerned ongoing disputed matters. One related to access to a couple's two children following a divorce. The father was remarrying within weeks, and the children were going to be flower girls at the wedding.

PROVINCIAL CITY 1

Only one case was contested on one family law day in the Circuit Court in a provincial city, and it settled on the second day of a week's family law sittings. In all, five cases concluded.

Thirteen cases were on the list. Three divorce applications and one dissolution of a civil partnership were uncontested, and declarations were made by the court. Six of the cases were District Court appeals.

One of the remaining cases concerned an interim matter where a judicial separation was under appeal to the High Court, and the applicant wife was seeking arrears of maintenance. The respondent husband had been made a bankrupt. The judge lifted the in camera rule to allow the wife's solicitor contact the Official Assignee.

In another case, talks were progressed outside the court and after a number of hours an agreement was reached, which was subsequently filed in court. A third case was struck out.

The remaining case, which was contested, concerned a couple who had a judicial separation and were now seeking a divorce. They were seeking changes to the terms of the judicial separation, which had been granted four years previously. In the meantime, the wife had developed cancer, which was successfully treated, and the husband, who worked in a

The father sought increased access so that they could stay overnight on the night before and after the wedding. However, the wife's barrister said that the children did not wish to stay overnight. The husband's barrister said the children had been very excited about the wedding, and the husband was surprised they had changed their minds. The mother's barrister said a doctor seeing the children had recommended that there be no overnight access, and there had been no such access since early 2017.

The judge advised the parties to resolve the matter by agreement and urged common sense. She also asked that the current views of the children's doctor be sought. After a short adjournment, the parties advised the court that the doctor could not be contacted. As a result, the judge adjourned the matter until the following week and said the doctor's views should be obtained by then.

In another case, the lawyer for the husband asked to come off record, saying that the relationship between him and his client had broken down. Although the husband objected to the application, leave to come off record was granted by the court. The wife's barrister told the court that the Family Law Civil Bill had been issued in 2016. Vouched documents for the previous year which should have been submitted, had not been provided. The judge said that all documents should be filed two months from that date or there would be consequences, to include possible attachment and committal. The judge adjourned the matter on this basis and recommended the husband to seek legal advice.

salaried position in a third level institution and also had a private practice, had reduced his private practice.

There were three children of the marriage, two in third level education and the third in secondary school. The family home was held by both parties as tenants in common, and was due to be sold and the proceeds evenly split when the youngest child was 23, which was seven years away. A property in Spain had been transferred to the wife, as it had been paid for by her family, and she sold it and gave the money back to her parents. The husband was paying €1,600 a month in maintenance, €533 for each child, along with half the mortgage on the house. He was also paying rent for his own accommodation. There was between €215,000 and €235,000 equity in the house.

The husband had received an inheritance following the deaths of his parents. He was one of seven children, so his share in the inheritance was one-seventh, his barrister told the court. The husband was seeking to reduce the maintenance to €750 a month, and to bring the disposal of the house back to when the youngest child finished his Leaving Certificate. His barrister told the court the children were spending half their time with him, and he had accordingly reduced his independent consultancy work, which no longer generated the €20,000 a year it had at the time of the judicial separation.

The barrister said the wife was from a wealthy background. Her barrister objected, stating her parents were still alive, and submitted that this was irrelevant. The husband's barrister said that if the court looked at inheritance, it should look at her future inheritance. The wife's barrister said there had been material change in the financial circumstances of the parties which justified a change in the judicial separation orders. Her client had been diagnosed with cancer in 2015 and the chemotherapy had caused nerve damage which meant she could only work part-time. The second child had anxiety issues and may be dependent for some time. The mother was worried about the effect of disruption on this child, so accommodation for both him and his mother was a concern. Because of her health issues, she would be unable to get a mortgage, and half the value of the home would not re-house her.

At the time of the separation, both parties had accepted that the property in Spain had been bought by her parents for the whole family and put into her name. When it was sold, the proceeds went back into her father's bank account and each of the siblings received €40,000. For tax efficiency reasons, this was given to the children and grandchildren in tranches of €3,000.

She said she did not accept that the husband only earned €2,500 from consultancy work. Her barrister also said that when the eldest child had been on work placement for six months, the husband had stopped paying maintenance for him, and that meant the wife had gone into arrears on the mortgage. She said no valuations had been received for the two properties which were the subject of her husband's family's inheritance.

Giving evidence, the husband said the eldest child had almost finished his education and had a job offer when he finished. The older children divided their time between him and their mother, and the third spent one night a week and every second weekend with him.

He said he had health problems and had been out of work for seven weeks. After two months out of work he would be reduced to half salary. He said when his father died, he left the family home, worth between €325,000 and €340,000, and a holiday home, which was intended by the whole family to be a

resource for them and their children. The husband estimated his share of the inheritance, outside the holiday home, to be worth €50,000. He said that €1,600 in maintenance, plus half the mortgage and rent of €1,000 a month was very difficult out of a single salary. He said the older children were in receipt of SUSI (Student Universal Support Ireland) grants and also worked part-time. He stated that they were largely self-sufficient.

The judge said he proposed to continue the proceedings the following day. He asked each party to write out the basis of a settlement, so that he could have regard to what each side proposed. The husband's barrister said there had previously been a consent which collapsed. It would be hard to get yet more documentation, and there was the question of costs. The wife's barrister asked the husband if he was in a new relationship, and he replied that he was, with a woman living in the US, whom he visited about four times a year. Asked if he had made seven trips abroad in 2015, he agreed he did. He also agreed that he had made at least six trips abroad in 2016, including four to the US. He also agreed with the barrister he had visited the US three or four times in 2017, stopping off in Iceland on one of them, and that he had also visited southern Europe with his children. He further acknowledged that he had stopped paying the mortgage some months earlier. The judge urged the husband to engage with his legal advisors as this information placed the case in a different light.

When the case resumed the next day, the parties advised the court that they had reached a settlement. The terms included a decree of divorce, with ancillary orders as follows: the wife to pay €75,000 to the husband within six months and in return he would transfer his entire interest in the family home to her; she would take over payment of the entire mortgage immediately, and he could seek an order for sale if she fell more than three months into arrears; he would pay €400 spousal maintenance, €350 each for the two younger children and €50 a month for the oldest, who would soon be independent; the husband would keep his occupational pension, with the wife entitled to 100 per cent of his contingent death-in-service benefit or post-retirement spousal benefit on his death; and succession rights were extinguished under the Act. There was to be joint custody of the children, with access as agreed, and liberty to apply.

PROVINCIAL CITY 2

There were 30 cases listed on a Motions day in a Circuit Court in a provincial city. Twelve cases were adjourned or struck out because agreement had been reached.

Nine of these concerned divorce applications on consent or in default of the appearance of the respondent. In four of these cases, the respondent was out of the jurisdiction. Of the remaining five, one concerned a couple who already had a judicial separation, where no change from that settlement was proposed. In another, the respondent sent a letter consenting to the grant of divorce. In a third case, the respondent was in prison, and in two other cases, there was no appearance from

the respondents. Of the remaining nine cases, there were two applications for barring orders, one relating to service of notice on the respondent, and six relating to maintenance.

The barring order applications were not contested, and the most contested issue on this hearing day was that of maintenance.

In one of these cases, the wife sought an increase in interim maintenance. There had been a decree of judicial separation on consent in 2013 and an application for divorce made by the wife in 2015. The husband had not filed a defence and

the case had not progressed. There were three dependent children aged between 12 and 17, and maintenance had been agreed at €50 a week for each of them. The court heard that the husband was living with a new partner and had another child. The partner was self-employed. The wife also had a partner, who was a mature student and not contributing to the household. Her barrister said that the day-to-day expenses for the children had increased over the past five years, and the wife was seeking an increase of maintenance to €200 a week in all for the three children. The husband, a professional State employee, had a basic pay of €857 net a week, in addition to a number of additional allowances and income from a student living in his house who paid €150 a week. He also owned a flat in addition to his residence.

The husband, who represented himself, said he found it difficult to make ends meet. He had reduced the cost

of groceries and had no money in either of his two bank accounts. He had to borrow money from his mother to buy the children refreshments when they were with him. The judge made an order for maintenance in the sum of €70 per child pending the hearing of the case and urged the husband to enter a Defence to allow the proceedings to be progressed.

In a case concerning arrears of maintenance for an 18-year-old in full-time education, the lawyer for the applicant told the court that agreement had been reached to pay capitalised maintenance for the child of €14,450. The court ruled the amount, and adjourned the case to confirm that it had been paid.

Two other maintenance arrears cases were also agreed. A further case involving arrears was adjourned to allow affidavits of means be filed.

PROVINCIAL CITY 3

There were 20 cases on one day in the family law list in the Circuit Court of a provincial city, of which four were adjourned and two struck out. Terms were agreed in four cases. Three involved ancillary matters relating to children and there were four applications relating to maintenance. Five full cases were concluded.

One case before the court concerned a declaration of parentage in a case where the father of the child had died. In this case, the court heard that the father was a US citizen, who was present at the birth of the child 17 years earlier and he was named on the baptismal certificate, but not on the birth certificate because at that stage a name had not been agreed. Access was sporadic, and the father died in 2015, but the father's family had always maintained contact with the child and the father's next of kin was his father. Photographs of the child with his grandfather were shown in court, and the applicant mother said that at this stage a declaration of parentage was necessary so that the child could apply for US citizenship. The application was granted.

One of the maintenance applications concerned the alleged breach of a consent signed in May 2015, under which €325 per month was to be paid for each of two children. This was not being paid and the wife brought attachment and committal proceedings. The husband said he had been unable to work following knee surgery. He had been working abroad and came back twice a year to see the children. The judge noted that the husband had not engaged with the proceedings and that the appropriate course would be to seek to vary the order, where circumstances have changed. The matter was adjourned for two months, with an order for the husband to pay €50 a week until then, including €10 a week in respect of the arrears.

In one case where there had been a divorce, an injunction was sought relating to the sale of land that had been agreed as part of an earlier judicial separation. The wife said the husband remained in occupation of the land, with sheds and cattle on it. Three attempted sales of the land had broken down as a result, and an injunction was being sought to prevent him from interfering in the sale. The husband's barrister said that during the judicial separation, the husband had not taken independent legal advice. Both parties had significant debts and it was submitted that it was very difficult to move the farm animals quickly. The case was adjourned.

One judicial separation application went to hearing, but was adjourned to allow discussions on a settlement. The court was told the couple had married in 1987 and there were four children of the marriage, of whom one was dependent. They separated in 2015. The applicant wife was the primary carer for the children, and worked part-time. She lived in the family home. The respondent husband resided in his own property, and there were three investment properties. The mortgages had been discharged out of inheritances. The husband had a net income of €4,200 a month, and the wife had €1,700.

The case was adjourned for discussions between the parties and a judicial separation was subsequently granted and orders made on the basis of an agreement reached. These included the transfer of the wife's interest in three properties to the husband, and the transfer of the husband's interests in two properties to the wife. The husband agreed to pay the wife a lump sum of €30,000 and transfer ownership of a car to her. He was also to pay her €1,000 a month until she was 60, and thereafter she would receive 50 per cent of his pension. The income from the investment properties would go to the husband.

PROVINCIAL CITY 4

Three cases were listed for hearing over two days in a provincial city, but all three were settled during talks on the day. One was a divorce and one a judicial separation, while the third was an application for a judicial separation to be followed a

week later by a divorce application on the same terms, as the Divorce Civil Bill had not been issued at the time of the judicial separation hearing.

In the first case, the wife was seeking compliance with the terms of a Deed of Separation made in 2003, which had not been fully complied with. The applicant wife said she wanted compliance with the terms, which included the sale of the family home, worth €1.6 million, but carrying a mortgage of €800,000. She was living in another property with a small mortgage. Under the terms of the Deed of Separation, a trust had been set up for her, which paid her €2,000 a month. She had a further income of €1,000 a month from shares. The husband had an income of about €300,000 per annum. Under the terms of the consent divorce presented to the court, it was agreed that she would be paid €440,000 by the end of the year in settlement of any further claim. Failing that, the former family home would be sold. The judge granted the divorce. In the second case, the applicant wife told the court that the couple had separated in 2015. They had one child of primary school age, who was living with the wife. The husband had had a serious accident in 2014 and had not worked since. He had been paid compensation. The settlement was agreed with

the husband paying the wife €65,000, along with the sum of €13,000 for the support of the child. No orders were made on maintenance or custody and access. A judicial separation was granted, and a freezing order on the husband's assets was vacated.

In the third case, the couple had married in 1985 and been separated for four years. They had two children, one of whom was still dependent and lived with the husband. The applicant husband was working and the wife was living on social welfare. There was a family home with no mortgage, and it was agreed that it would be sold and the proceeds divided equally. The husband was paying the wife €75 a week and she would receive a portion of his lump sum when he retired. Nominal pension adjustment orders were made. The judge granted the judicial separation on this basis and also adjourned the case for a week, when it had been agreed he would grant a decree of divorce on the same terms, following the issuing of the appropriate Civil Bill.

COUNTY TOWN 1

There were 33 cases on the list in a Motions day in a county town, but most were either adjourned at the initial call over of cases or following a brief hearing of a motion, to fix a date for a full hearing, or the ruling of a consent. Eighteen were related to divorce matters and 15 to judicial separation matters. Two involved applications by solicitors to come off record, which were granted. There were three matters concerning arrears of maintenance and one application for a Section 47 report, which was granted.

Three divorces and one judicial separation were ruled on consent. In the first, there were two dependent children, one of whom had special needs. Joint custody was agreed, with €1,266 in maintenance for the dependent wife and the children, along with half of college fees and the children's health insurance. The respondent husband also agreed to pay €650 towards the mortgage on the family home, which was occupied by the wife and children. Granting the divorce, the judge said the agreement was a very sensible compromise which had paid attention to the health and educational needs of the children.

In the second consent divorce, the applicant wife told the court that none of the couple's three children was dependent. The family home was agreed to be sold, with 60 per cent of the equity going to the wife and 40 per cent to the husband. The judge remarked that the husband had more income than the wife and asked her if she was happy with that, and the wife said she was. He granted the divorce, stating that there had been an appropriate division of the family assets.

In the third case, there were two dependent children, one of whom again had special needs. The couple had been separated for 10 years. The wife worked full-time in the home. The couple had agreed on the husband, who was unemployed following a heart attack, paying €50 a week in respect of maintenance for the children.

When the judge queried the amount of maintenance, the wife replied that she was happy with it and that she also hoped to obtain work in the special needs school attended by her child. She was keen that the proceedings would be brought to a conclusion. The husband said he was living in a mobile home beside his parents and had difficulty accessing accommodation with his level of income. The judge briefly adjourned the case and when it resumed, the husband's barrister told the court that he would pay €100 a week for the children while they were dependent, and also contribute to Christmas and back-to-school costs.

In another case, a judicial separation was ruled following several hours of negotiation between lawyers for the couple outside the court. The respondent husband told the court there were three children of the marriage, one of whom had special needs. They were living with the mother in the family home. It had been agreed that the home would be sold and the proceeds shared equally. The husband said he would pay €160 a week in maintenance for the children, and contribute to educational expenses. There would be a pension adjustment order made granting the wife a portion of his pension, along with the contingent benefit. This agreement was to be a "full and final settlement" in the event of a divorce being sought.

COUNTY TOWN 2

There were 18 cases on the list in one family law day in a county town. Three further cases had been added on a supplementary list. Six cases were concluded.

Seven of the cases concerned pension matters and one concerned consent to lift the age limit on the marriage of a young Traveller couple. Two judicial separations and two divorces were granted on consent. Of the remaining cases, only two were contested, one a divorce application, the other an application for judicial separation. Talks were ongoing in most of the cases while the court was sitting. The divorce application was adjourned after a brief hearing, and most of the day's hearing was taken up with the contested judicial separation application.

In this case, the court heard that the applicant wife was living in the family home with the couple's 20-year-old daughter, who was working part-time. The wife was now paying the mortgage. She was working part-time in the public service, having sought but failed to obtain a full-time post. The husband was working as a professional in another EU country, where his accommodation was linked to his job. The husband's barrister said the husband had paid the mortgage on the family home in the past, and he wanted his contribution acknowledged. The wife told the court that the couple had married in 1996 in the UK. The couple moved around a lot to various EU countries, moving back to Ireland about nine years ago, but the husband moved to continental Europe again. She said all the moving had affected their daughter, who had to cope with changing schools and an additional language, and she was now attending the Child

and Adolescent Mental Health Service (CAMHS), though she had no diagnosis.

The wife's main asset was the family home. She had inherited a sum from her parents, which she used to pay the mortgage. The mortgage had been paid out of a joint account, into which she had paid her salary. She said she was currently working on a job-share, as her work was in a specialised area and no full-time job was available there. The husband said that he suffered from health problems, including stress. He had suffered a stroke and had been out of work for two months three years earlier. He acknowledged that the wife had paid the deposit on the house, and that he did not pay into the joint account when he was working abroad, but said that he did so when he was working in Ireland. His long-term earning capacity was limited, as he was nearing retirement age, and he was living in rented accommodation linked to his employment. The case was adjourned for discussions and the terms subsequently agreed.

The judge granted the judicial separation, with the following ancillary orders: the wife to pay €37,000 to the husband in respect of his interest in the family home by February 2019, and the husband was to pay €400 a month towards the mortgage until then. If the wife failed to raise the sum of €37,000, the house was to be placed on the market and the husband to be paid €45,000 out of the proceeds of the sale. The daughter would continue to live with the mother in the family home if she so wished. It was further agreed that the applicant wife would return three out of four named pieces of jewellery to the husband, along with items of furniture. Each party was to keep their own pensions.

3.5 SUMMARY

The data and information gathered in this research provides a useful insight into the conduct and outcome of Circuit Family Court proceedings, which is not otherwise available either to practitioners or the public. It is interesting, for example, that the issues most likely to be contested in divorce and judicial separation proceedings relate to financial matters. As outlined above, where the courts heard disputed matters, 20 concerned maintenance, three related to the family home being sold, four related to domestic violence, although in three the parties consented to the orders being made, and four concerned ongoing disputes about custody of and access to children.

It is hoped that these reports of snapshots of recent proceedings in the Circuit Court, when taken with the data collected on concluded cases, can inform further discussion on our family law system, and assist in the formulation of proposals for change.

Due to the dearth of research and data in this area to date, the Society believes that both practitioners and legislators should have regard to the data and information provided, particularly with regard to opportunities for both legislative and practical reform. The Society is also of the view that further and ongoing exercises of this nature should be facilitated.

The Society's recommendations in this regard are set out in Section 2.11 above.

PART 3

HOW MARRIAGE AND THE DIVORCE ACT HAVE DEVELOPED OVER TWO DECADES

4. MARRIAGE IN IRELAND

Marriage is an institution of great antiquity which, despite its widespread currency, defies easy definition. In *Hyde v Hyde and Woodmansee*,⁹ Lord Penzance defined marriage, as understood in the Christian world, as “the voluntary union for life of one man and one woman to the exclusion of all others”.

⁹ (1866) L.R. 1P. & D. 130.

Despite the recent increase in non-marital cohabiting couples, marriage remains popular in Ireland. In 2017, 21,262 opposite sex marriages and 759 same sex marriages were registered in Ireland, giving a crude (unadjusted) marriage rate of 4.6 per 1,000 population, 0.2 less than the rate in 2016.¹⁰ This marriage rate has decreased slightly over the past decade, from a figure of 5.1 per 1,000 population in 2006, which had risen from 4.3 per 1,000 population in 1997.¹¹ These figures also reflect the number of re-marriages that are occurring, as reflected by the increasing age of both brides and grooms (34.1 years and 36.1 years respectively in 2017) and the growing number of civil ceremonies. Civil marriage ceremonies numbered 5,890 (27.7%) of all opposite sex marriages and 527 (69.4%) of same sex marriages. This has grown very significantly from a figure of 928 civil marriage ceremonies taking place in 1996.¹²

¹⁰ Central Statistics Office, Statistical Release, March 29, 2018.

¹¹ See <http://www.cso.ie/statistics/bthsdthsmarriages.htm>.

¹² Central Statistics Office. Figures published May 23, 2007, see www.cso.ie.

Marriage in Ireland continues to enjoy a unique and privileged position. It is accorded a special status by Article 41.3.1° of the Irish Constitution which states:

“The State pledges itself to guard with special care the institution of Marriage on which the Family is founded and to protect it against attack.”

The Constitution views marriage as a “gold standard” and provides at Article 41.1.1° that:

“The State recognises the Family as the natural primary and fundamental unit group of Society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

For a marriage to be recognised as valid, the following formalities must be complied with:

- (a) each party must have the required age and mental capacity;
- (b) the parties must not be within the prohibited degrees of relationship, either of blood or affinity;

- (c) neither party must be a party to a prior subsisting marriage;
- (d) the parties must understand the nature, purpose and consequences of marriage and must fully and freely consent to the marriage; and
- (e) certain procedural formalities must be observed.

Any marriage solemnised between persons who are under the age of eighteen years shall not be valid.¹³

This provision applies to all marriages solemnised in the State and marriages solemnised outside the State between persons either or both of whom are ordinarily resident in this State.

5. THE INTRODUCTION OF DIVORCE

Prior to 1922, the Matrimonial Causes Act 1857 created a divorce jurisdiction in England but did not extend this Act to Ireland. Between 1857 and 1922 the only manner of obtaining a decree of divorce was by means of a private Act of Parliament. Interestingly, the 1922 Constitution did not specifically prohibit the granting of divorce decrees in Ireland and made no reference to divorce at all. At this time the Oireachtas could have enacted legislation enabling divorce decrees to be granted but did not do so. This situation remained until the introduction of the 1937 Constitution.

The 1937 Constitution introduced a ban on divorce under Article 41.3.2° which stated that “no law shall be enacted providing for the grant of a dissolution of marriage”. Notwithstanding this, however, there was a limited form of separation available in the guise of a divorce *a mensa et thoro* (divorce “from bed and board”), pursuant to the Matrimonial Causes (Ireland) Act 1870. This was a fault-based relief obtained on the grounds of adultery, cruelty or unnatural practices. The only ancillary reliefs available were limited to orders in respect of alimony and custody, and the issue of succession was dealt with by the granting of the decree, which automatically deprived the “guilty” spouse of his/her right to a share in the estate of the other spouse as provided for in the Succession Act 1965.

The court in these cases had no jurisdiction to make orders in relation to property or other issues. Accordingly, it was necessary to make separate applications under each piece of relevant legislation, for example the Married Women’s Status Act 1957. The decree of divorce *a mensa et thoro* did not alter the marital status of the parties in any way, but simply relieved them of their duty to cohabit, as became the situation with a decree of judicial separation.

This mechanism for separation was superseded by the Judicial Separation and Family Law Reform Act 1989 (the “1989 Act”) which provided for the granting of judicial separations and ancillary relief. Under this Act, Irish Courts had the power to grant exclusion orders, property adjustment orders and lump sum orders for the first time. The Family Law Act 1995 (the “1995 Act”) granted additional powers to the courts by allowing financial compensation orders and pension adjustment orders to be made.

Ireland’s first referendum to remove the ban on divorce was held in 1986. This was defeated by a large majority: the “Yes” vote carried only 36.5 per cent of the vote, with the “No” vote taking the remaining 63.5 per cent. Much debate occurred as to why this referendum was defeated, and arguments put forward included the waning, but still strong, influence of the Catholic Church, fear on behalf of the farming population in particular of the impact of divorce on the division of farms, and the lack of participation in the vote by thousands of students who were out of the country during the summer time (June) vote. However, one of the most significant aspects of the 1986 referendum on divorce was the fact that there had been overall support for the proposal in April of 1986, with polls reporting 61 per cent of the electorate in favour of the introduction of divorce. By June, when the vote took place, this had dropped to just 36.5 per cent. Referenda are typically interpreted in a time and place that is unique to them.¹⁴ In this context, two significant, even “unique”, factors can be identified. The first of these was the unpopularity of the Fine Gael and Labour Government of the day, an unpopularity that became intrinsically linked in the public’s perception with the issue of divorce.

¹³ Domestic Violence Act 2018.

¹⁴ R. Darcy and M. Laver, “Referenda Dynamics and the Irish Divorce Referendum” in *The Public Opinion Quarterly*, Vol. 54, No. 1 (Spring, 1990), pp.1-20.

The second “unique” factor was the lack of political support for the referendum, both within the Fine Gael party itself and among the opposition, most particularly Fianna Fáil.¹⁵ This led to an overall lacklustre campaign that had little hope of influencing an already increasingly alienated electorate. This subsequently became manifest in a general unwillingness, or perhaps unreadiness, of the Irish electorate to introduce change during what was one of the most significant periods of economic recession in recent history.

The second referendum on the removal of the constitutional ban on divorce occurred in November 1995. Many of the circumstances surrounding the 1986 referendum were no longer in place. While still in its infancy, there were initial signs of economic recovery, the Fianna Fáil-led government was more popular and the influence of the Catholic Church had substantially waned due to a number of emerging scandals. Nonetheless, it is important to note that this referendum was carried by the slimmest of a majority. The “Yes” vote constituted only 50.28 per cent of the vote, despite a much-increased turnout at the polls in urban centres in particular. It would appear that Irish people were prepared to lift the ban on divorce, but only just. So close was the result of the referendum that it was challenged in both the High Court and the Supreme Court, both of which dismissed the challenges.¹⁶

On foot of this referendum, the Fifteenth Amendment of the Constitution Act, 1995 was passed. Consequently, Article 41.3.2° of the Constitution was replaced by the following Article:

“A court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that:

- (i) 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;
- (ii) there is no reasonable prospect of reconciliation between the spouses;
- (iii) such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law; and

(iv) any further conditions prescribed by law are complied with.”

On November 27, 1996 the Family Law (Divorce) Act 1996 (hereinafter referred to as the “Divorce Act”) was passed and came into operation three months later, on February 27, 1997. This Act gave the court the power to dissolve a marriage and allowed parties to a marriage ceremony to remarry in a civil ceremony after the granting of a decree of divorce.

In the debate that surrounded the 1996 referendum on divorce, there was considerable speculation and concern that the introduction of divorce in Ireland would lead to the proverbial flood gates opening, resulting in the courts being inundated with applications for divorce. This, however, did not prove to be the case to any significant extent. Despite contemporaneous estimates of some 80,000 to 85,000 people in the State whose marriages had been broken down for considerable periods of time, only 93 applications for divorce were made to the courts in 1997. In 2006, 4,027 applications for divorce were received by the courts, with 3,467 decrees of divorce being granted.¹⁷ Between 1997 and the end of 2006 the total number of divorces granted was 25,179. It is interesting to note that these trends differed from other countries in which divorce had only recently become available for the first time. In both Italy and Spain, a much higher percentage of those whose marriages had broken down for some time have made applications for divorce than in Ireland.

In 2017, 3,995 applications for divorce were lodged. Of these, 3,964 were issued in the Circuit Court and 31 in the High Court.

6. THE FAMILY LAW (DIVORCE) ACT 1996

The Divorce Act comprises five parts. Part I sets out provisions concerning commencement, interpretation, repeals and expenses. While the date of the coming into operation of the 1996 Act was February 27, 1997, the first divorce granted in Ireland was on January 17, 1997, in the case of *RC v CC*¹⁸ pursuant to the provisions of Article 41.3.2° of the Constitution.

15 Mark N. Franklin, Cees van der Eijk and Michael Marsh, “Referendum Outcomes and Trust in Government: Public Support for Europe in the Wake of Maastricht”, *West European Politics*, Vol. 18, 1995.

16 *Hanafin v Minister for the Environment* [1996] 2 I.R. 321.

17 The Circuit Court granted 3,420 divorces while the High Court granted 47 divorces in 2006.

18 *RC v CC* [1997] 1 I.L.R.M. 401.

Part II of the Divorce Act deals with obtaining a decree of divorce and sets out the requirements necessary to comply with the constitutional provisions. Part III of the Divorce Act contains the comprehensive preliminary and ancillary reliefs available in divorce cases, and is considered in this report in the context of the types of orders which can be made and the factors to be applied by the court in so doing. It is interesting to note that some of the ancillary reliefs available on judicial separation are not necessary post-divorce, because of the fundamental adjustment in the marital status of the parties, specifically:

- (a) the extinguishment of spousal succession rights is no longer necessary;
- (b) there is no need for a similar provision to section 13 of the 1995 Act in the context of pensions (i.e. preservation of pension entitlements after separation); and
- (c) there is no need for provisions similar to those contained in section 4 of the Family Home Protection Act 1976 or section 54(3) of the 1995 Act, as spousal consent to the sale of a family home is no longer necessary.

Part IV of the Divorce Act introduces the necessary taxation reforms to deal with divorce, addressing income and capital taxes, probate and stamp duty. Part V sets out a number of miscellaneous provisions, and amendments to existing legislation.

With the Divorce Act, Ireland adopted a no-fault system. The scheme of divorce entered into continues the old common law tradition of a life-long spousal support obligation. The origins of this doctrine can be traced back to the underlying philosophy of marriage being a status institution, as opposed to a contract. This acknowledgement that marriage may create permanent support obligations can be viewed as incompatible with the so-called “clean break” doctrine, although recent judicial pronouncements might suggest otherwise as shall be discussed below.

6.1 JURISDICTION

Concurrently with the High Court, the Circuit Family Court can grant divorce decrees under Article 41.3.2° of the Constitution and section 38(1) of the Di-

vorce Act. Both the Circuit Court and the High Court therefore have an original concurrent jurisdiction to hear divorce applications.¹⁹ The court may grant a decree of divorce if either spouse is domiciled²⁰ in the State on the date of the institution of the proceedings concerned, or alternatively, either spouse was ordinarily resident in the State throughout the period of one year ending on that date.²¹ The introduction of the EU Regulation known as Brussels II bis also brought with it important changes regarding jurisdiction for the institution of family law proceedings and the choice of jurisdiction in relevant cases. At the time of writing, the impact of Brexit on family law relationships and jurisdiction involving the United Kingdom is unknown and a cause of considerable concern for both practitioners and clients.

Most divorce applications are initiated in the Circuit Court from the point of view of geographical convenience and a concern regarding costs. Typically, High Court proceedings are instituted in cases involving significant value assets and/or due to the complexity of legal issues arising.

6.2 CONSEQUENCES OF A DECREE OF DIVORCE

The most obvious effect or result of the granting of a decree of divorce is set out in section 10 of the Divorce Act, which is that the marriage ceases to exist, and the parties are, therefore, free to remarry.

7. GROUNDS FOR DIVORCE

Part II of the Divorce Act comprises sections 5 to 10, which deal with obtaining a decree of divorce, pursuant to the provisions of Article 41.3.2° of the Constitution. This part of the Divorce Act also sets out what are referred to as “safeguards” to ensure that the parties are informed of the alternatives to divorce proceedings and also assists in facilitating reconciliation.

¹⁹ 1996 Act, section 38(1).

²⁰ “Domiciled” has the same meaning as that used in considering the validity of foreign divorces under the Domicile and Recognition of Foreign Divorces Act 1986, i.e. “living in a place with the *intention* of residing in that place permanently”.

²¹ 1996 Act, section 39(1).

Section 5 of the Divorce Act provides that a court designated by law may grant a divorce decree where, on application to it by either spouse, it is 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.

It can be seen from the foregoing that no element of fault needs to be ascribed to either party in order to qualify for a divorce under the section.²² The parties need only satisfy the requirements of section 5 for a decree to be granted, none of which make any reference to fault or blame, although the issue of conduct arises in the context of matters to which the court shall have regard in deciding whether to make an order for ancillary relief.²³ Issues relating to conduct may be set out in detail in the family law proceedings, but no matter how awful the circumstances, they will not prevent the granting of the divorce if the terms of section 5 are adhered to.

This can of course lead to divorces being granted where one of the parties is very much opposed to it, and where that party may not consider the marriage to be at an end, despite the duration of the separation. It is open to a spouse in such circumstances to plead under section 5(1)(b) of the Divorce Act that there may be a prospect of reconciliation. In such a situation, the court may adjourn the proceedings under section 8 of the Divorce Act, to enable attempts to be made by the spouses to effect a reconciliation.

²² The White Paper on marital breakdown (1992) had suggested five possible approaches to a constitutional amendment. Some of these approaches suggested that a decree of divorce could be granted on a “no fault” basis. Others contained detailed examples of behaviour, such as adultery and desertion, which could be used as grounds for the granting of a decree. Ultimately the “no fault” option was adopted despite there being several fault-based grounds for the granting of a judicial separation.

²³ Family Law (Divorce) Act 1996, section 20(2)(i).

7.1 LIVING APART

Under section 5 of the Divorce Act, the applicant spouse must prove that he or she has lived apart from the other spouse for the relevant period, that is, for four of the previous five years. This four-year period must have elapsed “at the date of the institution of the proceedings” and before the issuing and serving of the proceedings. The absence of a definition of “living apart” has caused particular difficulty. Living apart was first introduced into Irish law in the Judicial Separation and Family Law Reform Act 1989 as a ground for judicial separation. The Act contained an explanation of living apart in section 2(3) such that: “spouses shall be treated as living apart from each other unless they are living with each other in the same household, and references to spouses living with each other shall be construed as references to their living with each other in the same household”. In addition, English and Welsh jurisprudence in this field is informative, if not persuasive.

Some, but relatively little, ambiguity exists where applications involve couples who have lived apart in separate homes for the required four year period. These in fact represent the majority of applications. However, in a minority of cases a spouse has argued that he or she has lived apart from the other spouse while still sharing the same house or dwelling. In these cases, the applicant spouse must satisfy the courts, through the provision of specific evidence that he or she has lived a separate life to his/her spouse whilst residing under the same roof. Examples include eating separate meals, limited interaction while in the house, and not holidaying or socialising together. Only when the court is satisfied of this “separateness” can a decree of divorce be granted.

The seminal case is *McA v McA*²⁴ where McCracken J held that the matrimonial relationship cannot be dictated purely by reference to the location of the parties involved or by whether the spouses lived under the one roof. The court must also consider the mental and intellectual attitude of the parties regarding their relationship and separation. In this case, the court was satisfied that the “living apart”

²⁴ High Court, January 21, 2000, [2000] 2 I.L.R.M 48.

requirement had been met, even though the parties were sharing the same house, due to their leading separate lives and effectively living apart, while under the same roof.

7.2 NO REASONABLE PROSPECT OF RECONCILIATION

Section 5(1)(b) of the Divorce Act sets out the second imperative for qualification for a decree of divorce. The court must be satisfied that “there is no reasonable prospect of a reconciliation between the spouses”, something that seems to be set out more in hope than expectation in light of the current requirement for a four-year separation. The direction to the court is, however, enshrined in the Constitution. Therefore, there is a duty on the court to establish in each case that there is no possibility of a reconciliation.²⁵ In granting a divorce decree in *JCN v RTN*,²⁶ McGuinness J. stated: “There is clearly no prospect of a reconciliation; the husband lived in a permanent second relationship since 1978”.²⁷

As with the issue of living apart, it is likely that each case will turn on its own facts, and the degree of acrimony or amicability in each case will assist the court in deciding the issue. In the later case of *Moorehead v Tiilikainen*,²⁸ one of the issues to be determined was whether a reconciliation had been effected between the parties, although this was in the context of a previous separation agreement. In this case, it was held that the intention of the parties was relevant in determining whether a reconciliation had taken place, which could be seen as the flipside of the *McA* decision above.

7.3 PROPER PROVISION FOR THE SPOUSE AND DEPENDENT MEMBERS OF THE FAMILY

Section 5(1)(c) of the Divorce Act provides the court must be satisfied that 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.

On the introduction of divorce, the courts were granted unfettered discretion to deal with the economically valuable assets of the parties to the marriage. This discretion is exercisable within a framework of criteria, as well as the constitutional and statutory requirement that proper provision be made for the spouses and dependent children of the marriage. Section 20 of the Divorce Act sets out those individual factors which must be taken into account by the court before deciding to make any order of ancillary relief. The specific criteria contained in section 20 apply to the making of orders under sections 12, 13, 14, 15(1)(a), 16, 17, 18 and 22 of the Divorce Act.

What is “proper”?

The requirement of “proper provision” acts as a condition precedent to the granting of a divorce in this jurisdiction. What constitutes proper provision is not defined in the legislation.

It is thought that this stipulation was inserted into the constitutional amendment so as to quell the fears of those who argued that the introduction of divorce would lead to the so-termed “feminisation of poverty”, namely that women would find themselves in a financially vulnerable position following divorce. This is discussed further below in the context of a “clean break” divorce.

The Supreme Court decision in *DT v CT*²⁹ is authority for the proposition that the appropriate stage at which proper provision is to be determined is the date of the divorce hearing. In *WA v MA*, however, Hardiman J., in determining if proper provision was made at the time of the divorce hearing essentially backdated this consideration to 11 years earlier, due to the fact that the learned judge deemed it

²⁵ See *EP v CP*, unreported, High Court, November 22, 1998, where McGuinness J. was satisfied that the breakdown of the marriage was irretrievable when she stated: “Both parties accept that there is no reasonable prospect of a reconciliation”.

²⁶ Unreported, High Court, January 15, 1999.

²⁷ *JCN v RTN*, unreported, High Court, January 15, 1999 at 2.

²⁸ Unreported, High Court, O’Sullivan J., June 17, 1999.

²⁹ [2002] 3 I.R. 334.

inappropriate to alter the pre-existing separation agreement.³⁰ Nonetheless, it would appear that this decision represents the exception rather than the rule as the principle set out in *DT v CT* has been followed in subsequent decisions. In *RG v CG*,³¹ Finlay Geoghegan J. stated:

“The proper provision for the parties must exist at the date of the hearing of the application for the Decree of Divorce. Further, it must be based upon the value of the assets of the parties at that date and the circumstances as they then exist. The acknowledgement included in the Consent of the 7th of November, 2000 if it is to relate to a proper construction of the Act of 1996 must be considered to be an acknowledgement of potential proper provision at a future unknown date. What if divorce proceedings had not been brought for a period of ten years? When so properly construed it appears too uncertain to be a matter this Court should take into account.”

If proper provision does not exist at the time of the application for the divorce decree, it is probable that it will be brought about by the court by way of orders for ancillary relief. If a court is not satisfied as to proper provision, it may re-examine and amend previous agreements or orders, regardless of whether these were operating to the satisfaction of the parties or not. This is one of the most controversial aspects of the Divorce Act. Indeed, it was suggested by Murphy J., dissenting in *DT v CT*, that this is contrary to the provisions of the Act.

The *DT v CT* decision is also authority for the proposition that there is no yardstick or calculation for the determination of “proper provision” under the Divorce Act. This was further clarified in *C v C*³² where O’Higgins J. stated that the concept of one-third as a “check on fairness” was not useful in that case, where the property assets of the parties had been inherited and brought to the marriage by the husband.

In that case, the court was also of the view that proper provision must exist in the particular facts and circumstances of each case, and must be viewed in the context and totality of those circumstances.

O’Higgins J. stated:

“In the circumstances of this case, it is my view that the provision of appropriate maintenance together with provision of a lump sum to purchase suitable accommodation is the best way to ensure proper provision for both of the spouses and the children. It appears to me that such an approach is the best way to ensure the future of the business – which is the parties’ main source of income – while at the same time being fair to both the applicant and the respondent. It also takes into account the fact that the properties were inherited by the applicant and brought into the marriage by him.”

In other words, even if the capital sum ordered in favour of the wife by the court might be considered to be somewhat low in the context of the husband’s significant assets, this was tempered by the fact that the order of maintenance was a very generous one.

This case again came before the Court of Appeal in 2016, by way of appeal from the order made by Abbott J on divorce, in *CC v NC*³³. In his judgment, Abbott J. had made the granting of a decree of divorce conditional upon the payment of the wife’s legal costs by the husband. This aspect of the decision was appealed by the husband. Hogan J. confirmed that, once the constitutional and statutory requirements for a decree of divorce (including proper provision) had been fulfilled, either party had in effect a constitutional right to a divorce decree. In those circumstances, the court had no jurisdiction to impose a further pre-condition prior to the taking effect of any such divorce decree, namely that the husband discharge his wife’s costs. However, Hogan J. further stated that, while this aspect of the order was wrong for that reason, it was nonetheless correct in substance. Given the magnitude of the legal costs to be discharged in this case, proper provision for the wife required that the costs would be discharged by the husband. Hogan J. further stated:

“Once these costs have been discharged by the husband, then – and only then – will the four conditions specified in Article 41.3.2 be satisfied and the divorce decree can issue.”

This judgment is also instructive with regard to the concept of proper provision, having regard to the relevant constitutional and statutory provisions. The court emphasised the need to focus on the particular

30 *WA v MA* [2005] 1 I.R. 1.

31 *RG v CG* [2005] 2 I.R. 418, 428.

32 [2005] I.E.H.C. 276, O’Higgins J.

33 Court of Appeal (Article 64 Transfer), October 26, 2016. See further Section 10 below.

facts and circumstances of the case and the practical consequences of any orders which might be made, noting that much of the land in the case was illiquid and difficult to sell. Furthermore, even if it could be sold, this would destroy the income-generating abilities of the husband, thereby detrimentally affecting the wife.

8. PRELIMINARY AND ANCILLARY RELIEF UPON THE GRANTING OF A DECREE OF DIVORCE

Pursuant to the Divorce Act, the courts are empowered to make a wide range of orders, with regard to the spouses and their children. The reliefs available under the Divorce Act are as follows:

- Periodical payments and lump sum orders (section 13);
- Property adjustment orders (section 14);
- Miscellaneous ancillary orders, including an order for sale of the family home (section 15);
- Financial compensation orders (section 16);
- Pension adjustment orders (section 17);
- Orders for provision of the spouse from the estate of the other spouse (section 18);
- Orders for sale of property (section 19); and
- Retrospective periodical payments orders (section 21)

The courts are also vested with the authority to make preliminary orders before the full hearing of a divorce application, under sections 11 and 12 of the Divorce Act. Where the full hearing of the application for divorce will not take place for some time, these orders allow for the provision of preliminary or immediate relief where required in the period between the application for divorce and the full hearing of that application. Any preliminary orders granted cease to have effect once the application for divorce has been concluded. The alternative to such preliminary relief would involve the more burdensome application for relief under different pieces of legislation, such as the Guardianship of Infants Act 1964 (as amended) or the Family Law (Maintenance of Spouses and Children) Act 1976.

Section 22 of the Divorce Act also provides for variation of certain orders made prior to or at the time of granting a decree of divorce.

9. FACTORS TO BE CONSIDERED BY THE COURT IN CALCULATING ANCILLARY RELIEF

The introductory requirement set out in section 20(1) of the Divorce Act requires the court to:

“... ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.”

This general standard is not defined any more clearly by the legislature, thus increasing the level of discretion afforded to the judiciary in these cases. This is a general standard which affords a certain amount of discretion to the court in deciding whether to make ancillary relief orders, and the nature of any such ancillary relief orders to be made.

Without having an adverse effect on the generality of section 20(1) of the Divorce Act and the obvious need for adequate and reasonable provision to be provided where possible, section 20(2)(a) to (l) contains a list of 12 factors, to which the court is obliged to pay particular regard. The mandatory nature of the guidelines laid down in section 20 was emphasised by the Supreme Court in *MK v JP (otherwise SK)*.³⁴ In the course of her judgment, McGuinness J. (with whom the other members of the court agreed) stated:

“The provisions of the 1996 Act leave a considerable area of discretion to the court in making proper financial provision for spouses in divorce cases. This discretion however, is not to be exercised at large. The statute lays down mandatory guidelines. The court must have regard to all the factors set out in section 20, measuring their relevance and weight according to the facts of the individual case. In giving the decision of the court, a judge should give reasons for the way in which his or her discretion has been exercised in the light of the statutory guidelines.”

34 [2003] 1 I.R. 326.

In the case of *JD v DD*,³⁵ the court examined the broadly similar provisions of section 16 of the 1995 Act, and stated that:

“Even given these guidelines however, the court still has a wide area of discretion, particularly in cases where there are considerable financial assets”.

The comments of O’Higgins J in *MP v AP*,³⁶ should also be noted:

“The analysis of previous cases and the comparison with the present case of the factors to which the Court is obliged to have regard by virtue of the provisions of section 20(1)(a) to (l) of the Family Law (Divorce) Act 1996 is of limited value, because of the number of those provisions, their varying importance from case to case, and the fact that those factors have no particular hierarchy of importance.”

Each factor as set out in section 20(2)(a) to (l) shall now be considered in turn.

9.1 ACTUAL AND POTENTIAL FINANCIAL RESOURCES

“(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”

This requirement directs attention to the actual and potential financial resources of each party. Under this subsection, the court is obliged to have regard to all income from whatever source and all property, whether bought, inherited or otherwise acquired. The “marital cake” which must be divided up on separation and/or divorce, includes anything that is capable of being owned, such as farms, livestock, milk quotas, forestry, fishing rights, holiday homes, investment property, businesses, shares in private and publicly quoted companies, investments, furniture, antiques, artworks, etc.

The scope of this section was considered by O’Neill J. in *MK v JP (otherwise SK)*,³⁷ where he observed as follows:

“Section 20(2)(a) in no way delimits the property or the financial resources which should be taken into account nor does it limit in any way a time period outside of which assets are to be ignored. On the contrary, the subsection explicitly provides that the

court must have regard to income, earning capacity, property and other financial resources which each spouse has, ‘or is likely to have in the foreseeable future’. Thus, it seems clear that all property to which a spouse is beneficially entitled and all income and other financial resources which are currently enjoyed or which are likely to become available must be considered and taken into account.”

O’Neill J. went on to state that the depth of incursion into the property, income and other financial resources would naturally vary in accordance with the many factors which must additionally be taken into account under section 20(2). Moreover, the length of disconnection between the spouses would be a relevant factor to be taken into account.

9.2 FINANCIAL NEEDS, OBLIGATIONS AND RESPONSIBILITIES

“(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 remarriage or otherwise)”

In *S v S*,³⁸ Ormrod L.J. stated that, when attention is concentrated primarily on the actual needs of the parties involved, the calculation of financial provision then becomes easier, more logical and constructive. Thus, the courts are likely to place a greater emphasis on the needs of the spouses when determining the orders to be made. In assessing these needs the court will take account of the parties’ obligations and responsibilities to one another. The primary financial need of any spouse is to be supported and maintained. If there are dependent children, they will also be included in this calculation of needs. The needs stated can be met by both regular maintenance payments and infrequent payments such as educational expenses every September or an annual payment for car insurance and/or a summer holiday.

In practice, where the parties have a family home but little else available for distribution, the court is concerned with ensuring the basic needs of the parties and the dependent children. In the reported cases of this type, little can be extracted in terms of principles.

³⁵ [1997] 3 I.R. 64.

³⁶ Unreported, High Court, O’Higgins J., March 2, 2005.

³⁷ [2003] 1 I.R. 326.

³⁸ [1977] 1 All E.R. 56.

9.3 STANDARD OF LIVING

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

One of the practical realities of divorce, in particular where the parties are of limited or average means, is that both parties will inevitably face a reduction in living standards following the grant of the decree. This was recognised in the Supreme Court by Finlay C.J. in *RH v NH*³⁹ where he stated that the parties suffering a significant diminution in their overall standard of living was inevitable, particularly, he noted, where there are children involved.

Where a decree of divorce/separation is granted, two houses will be necessary and both spouses will inevitably suffer financially. This is repeatedly recognised by the courts. In *HD v ED*,⁴⁰ Costello J. noted that “[a] broken marriage inevitably means a lowering of the living standards of both parties which can be very considerable in some instances.” Similarly, in *BF v VF*,⁴¹ Lynch J. stated:

“It is inevitable that all the parties will suffer a significant diminution in the overall standard of living. The necessity for two separate residences to be maintained and two households to be provided for makes this an inescapable consequence of the separation.”

9.4 AGE OF SPOUSES AND LENGTH OF MARRIAGE

“(d) The age of each of the spouses and the length of time during which the spouses have lived together”

The importance of these factors will vary with the particular facts of each case. In *CO’R v MO’R*,⁴² the fact that both husband and wife were still relatively young and that the marriage had only lasted three and a half years were among the factors which O’Donovan J. cited in refusing to direct the transfer of the family home to the wife.

In *Gengler v Gengler*,⁴³ it was held that to attempt to state when a marriage should be classed as short, not very short, long or not very long, is rather like trying to define the length of a piece of string. The age of the spouses will also be relevant as this will shed light on the financial position of each spouse and particularly on their future earning capacity. Age may have a substantive bearing on their employability or, if already employed, will determine the likely length of future employment. The longer the future employment period, the more likely the applicant spouse will be capable of self-support. An older applicant has a greater need for financial security for his or her future. In addition, the type of financial relief afforded to the parties may be influenced by the age of the parties, i.e. periodical payments or a lump sum order. In *Page v Page*,⁴⁴ when considering the amount of capital provision which could reasonably be made for an elderly wife, the court noted that her requirements might be provided for by a smaller capital sum than would be needed by a younger wife with a greater life expectancy.

9.5 PHYSICAL OR MENTAL DISABILITY

“(e) Any physical or mental disability of either of the spouses”

Where one or other of the parties to the proceedings suffers from a physical or mental disability, the court is likely to regard this as a burden of that spouse, which necessitates greater financial provision. Certainly, a disability which prevents or inhibits a spouse from working will result in the making of a greater periodical payments or lump sum order in favour of the dependent spouse.

39 [1986] I.L.R.M. 352.

40 Unreported, High Court, January 1, 1994.

41 Unreported, High Court, May 20, 1993.

42 Unreported, High Court, September 19, 2000.

43 [1976] 2 All E.R. 81.

44 Reported in *The Times*, January 30, 1981.

9.6 SPOUSAL CONTRIBUTIONS

“(f) The contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contributions made by either of them by looking after the home or caring for the family”

Section 20(2)(f) is broadly drafted to include both contributions made by the “breadwinner” spouse to the financial well-being of the family, and the “homemaker” or non-earning spouse to the general well-being of the family. This is a relatively new concept and had its origin in the Judicial Separation and Family Law Reform Act 1989.

Section 20(2) of the 1989 Act is worded very similarly to section 20(2)(f) of the Divorce Act and when introduced in 1989 was viewed as a major development in the area of family law. The High Court case of *JD v DD*⁴⁵ is an excellent example of a scenario where the applicant wife remained in the family home to rear the children and provide for the respondent husband while he worked outside the home. McGuinness J. ordered “... a reasonably equal division of the accumulated assets ...” as the application for an order of judicial separation followed a 30-year marriage and was so ordered because of the husband’s long-term acceptance of their respective traditional roles as financial provider and homemaker.

9.7 EARNING CAPACITY

“(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 with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or forgone the opportunity of remunerative activity in order to look after the home or care for the family”

This provision clearly authorises the court, in making ancillary orders, to take account of, and to compensate accordingly, a spouse’s past and future earnings lost due to his/her assumption of marital and domestic responsibilities.

45 [1997] 3 I.R. 64.

9.8 STATUTORY ENTITLEMENTS

“(h) Any income or benefits to which either of the spouses is entitled by or under statute”

In order to ensure the making of a fair and appropriate periodical payments or lump sum order, the court is obliged to take all income which is received by both parties into account. This subsection includes all welfare payments as well as child benefit, old age pension and other benefit payments. This section, particularly as it deals with welfare payments, is relevant in cases where the parties to the proceedings are of limited means. Where there are little or no assets available for distribution, the parties may ultimately rely for the most part on State payments after the granting of the decree of divorce.

9.9 CONDUCT

“(i) The conduct of each of the spouses, if the conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it”

This provision, which mirrors the equivalent provision in the 1995 Act, is a broader version than that contained in the Judicial Separation and Family Law Reform Act 1989, which required the court to disregard the conduct of each spouse, unless it would in all the circumstances of the case be repugnant to justice to do so. In *EM v WM*,⁴⁶ McGuinness J. considered that the respondent husband’s behaviour was relevant to her decision. Similarly, Budd J. in *MY v AY*⁴⁷ approved of the approach taken by Costello J. in *ED v FD*⁴⁸ in relation to the issue of misconduct when determining the issue of maintenance:

“Where a husband deserts his wife and children, the court should be concerned to ensure that their financial position is protected, even if this means causing a drop in the husband’s living standards.”⁴⁹

46 [1994] 3 Fam. L.J. 93.

47 Unreported, High Court, December 11, 1995.

48 Unreported, High Court, October 23, 1980.

49 *ED v FD* unreported, High Court, October 23, 1980 at 4.

9.10 ACCOMMODATION NEEDS

“(j) The accommodation needs of either spouse”

In circumstances where a decree of divorce is granted, two homes are generally required to replace one. This fact will invariably have a great bearing on the financial orders to be made by the court, which is statutorily obliged under section 15(2)(b) to ensure that:

“... proper and secure accommodation should, where practicable, be provided for a spouse who is wholly or mainly dependent on the other spouse and for any dependent member of the family.”

This requirement to consider the accommodation needs of each spouse will not necessarily result in a right of residence or complete transfer being awarded automatically to one spouse. The needs of both spouses must be considered, which can result in the sale of the family home and the division of the net proceeds. This was deemed by McGuinness J. to be both the appropriate and necessary measure in the case of *O’L v O’L*:⁵⁰

“In all the circumstances I am satisfied that common sense and justice require that the family home be sold and that the proceeds of sale be divided so as to provide as far as possible for the purchase by the wife of a smaller house ... and to provide for the husband something towards a deposit on the purchase by him of suitable accommodation for himself.”

In this case, it should be noted that the learned judge believed the child would be relatively unharmed by the move. Alternatively, where the facts of a case necessitate minimal change, the sale of the family home can be postponed or deferred to a more appropriate future time, for example, when the children have attained the age of 18 years.

9.11 LOSS OF FUTURE BENEFITS

“(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 divorce concerned that spouse will forfeit the opportunity or possibility of acquiring”

This subsection, which requires the court when making an order for divorce to take account of the loss of a benefit such as a pension scheme, was a significant legislative development. As a factor to be considered by the court prior to the making of any ancillary orders, it includes not only benefits already received by either spouse but also those that the spouse may possibly acquire in the future. The term “benefit” is not defined in the Divorce Act and has resulted in a broad approach being adopted by the courts. In effect, the courts are likely to compensate a spouse for the loss of most potential benefits. Financial and/or actuarial experts are often retained to give evidence to the court as to the value of these future losses.

9.12 RIGHTS OF OTHER PARTIES

“(l) The rights of any person other than the spouses but including a person to whom either spouse is remarried”

The final factor contained in section 20 is subsection (2)(l), which requires the court to take account of “the rights of any person other than the spouses but including a person to whom either spouse is remarried”. The remedy of divorce by its very nature permits both parties to remarry once the decree is granted.

9.13 EXISTING SEPARATION AGREEMENTS

An additional factor set out in section 20 of the Divorce Act is that the court “shall” have regard to the terms of any separation agreement which has been entered into by the spouses and which is still in force (section 20(3)).

This has given rise to considerable difficulty in practice and is discussed further in Section 10 below.

⁵⁰ [1996] 2 Fam. L.J. 63.

9.14 DEPENDENT FAMILY MEMBERS

Without prejudice to the generality of section 20(1) of the Divorce Act and to the extensive factors to be considered by the court as outlined in section 20(2)(a)-(l), section 20(4)(a)-(g) requires the court to take account of seven further elements when considering whether to make any ancillary orders in favour of a dependent member of the family.

As well as the financial needs, status, income and earning capacity of the dependent member, this subsection also refers to specific matters, such as education, disabilities and accommodation. Furthermore, section 20(4)(f) requires the court to consider section 20(2)(a)-(c) and section 20(3) specifically in light of the needs of the dependent person.

9.15 ULTIMATE NECESSITY OF JUSTICE

Finally, section 20(5) of the Divorce Act forbids the making of any order that is not in the interests of justice. Although the legislature outlined almost 20 independent factors to be considered, this is not an exhaustive list and, ultimately, the decision of the court can only be made if it complies with this overriding requirement. Clearly, although the inclusion by the legislature of specific matters to be considered ensures that all specific aspects of the case are dealt with, the ultimate necessity for justice to be done is a requirement which must be met in all cases.

10. CLEAN BREAK DIVORCE

A “clean break” divorce is one whereby the parties to a divorce are no longer dependent on each other by any means. Such a divorce brings finality to the relationship. Initially, it was widely accepted that there was no possibility of obtaining a “clean break” upon divorce under the Divorce Act.⁵¹ The reasoning behind this was alluded to by the then Attorney General David Byrne, SC:

⁵¹ Indeed, no reference was made to the possibility of a ‘clean break’ divorce in the White Paper on Divorce in the run up to the 1995 Referendum, despite substantial international material on this topic. See in general Ward, *Divorce: Who Should Bear the Cost?* (Cork University Press, 1993).

“The Irish people ascribe a very high value to the institution of marriage...generally the Irish people, although in favour of the introduction of divorce, did not regard divorce as an easy solution to the problem of marital breakdown. They do not see it as a neat, clean or painless process and recognise that it will have enduring consequences.”⁵²

It was historically thought that a “clean break” divorce would result, in particular, in the “feminisation of poverty”.⁵³ This was a genuinely held fear that wives who worked in the home would be discriminated against under such a system, as they would have sacrificed their earning capacity so as to benefit the family, and then upon a “clean break” divorce would be left financially desolate. To quell such fears, the Divorce Act was drafted in such a manner that it was thought to prohibit the granting of a clean break divorce.

In practice, however, this fear has not materialised and in 2004, for example, approximately two-thirds of applications for divorce were made by women.⁵⁴ This trend is in contradiction to that anticipated by many at the time of the 1996 referendum, when it was feared that women would be impoverished by virtue of a majority of men seeking divorce.

The various provisions of the Divorce Act in particular lean strongly against the notion of a “clean break” on divorce: the idea, in other words, that divorce can in appropriate circumstances be accompanied by a final resolution of the couple’s affairs, binding for all time. Periodical payments orders, property adjustment orders and financial compensation orders - to name but a few of the ancillary orders available on divorce - may be made on the granting of divorce *or at any time thereafter* (emphasis added). These orders and others, moreover, even when made, are liable to subsequent variation under section 22 of the Divorce Act.

It has generally been considered that the structure of section 20 of the Divorce Act, theoretically permitting an infinite number of court applications

⁵² Shannon ed., *The Divorce Act in Practice* (Dublin: Round Hall, 1999) at viii.

⁵³ This phrase originates from the seminal work of Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (Free Press/MacMillan, 1985).

⁵⁴ McDonald, “Divorce figures debunk ‘bye bye daddy’ myth” *The Sunday Times*, November 20, 2005.

for ancillary relief, precluded any possibility for a “clean break”.

“The reality is that financial certainty on divorce is not there for the asking, not facilitated on the face of things by the legislation and by judicial pronouncement, and not something for which there would necessarily be widespread approval.”⁵⁵

When the possibility of a “clean break” came before the courts in a substantive manner it was declared unattainable under Irish law.

However, it is noted that the Irish courts have since adopted a more flexible approach to the granting of a clean break divorce, where possible, and this is now a distinct possibility, but only where it can be achieved in a particular case. The judgment in *DT v CT*⁵⁶ is authority for the proposition that certain aspects of a clean break divorce, where achievable, may be applied in a case so as to ensure proper provision.

A number of cases have now come before the Irish courts seeking a “second bite of the cherry” (as these cases became known).

The important decision of *YG v NG*⁵⁷ sets out seventeen general principles which are relevant in cases where either party is seeking to vary an existing separation agreement, and also the determination of proper provision generally. In that case, the parties had entered into a separation agreement on a full and final settlement basis but, many years later, the wife sought further provision in the course of divorce proceedings by way of capital payments following divorce.

These “general principles” which are fully set out in the judgment of Denham J. may be summarised as follows.

(i) A separation agreement is an extant legal document, entered into with consent of both parties, and it should be given significant weight. This is so, especially if the separation agreement was intended to be a full and final settlement of all matters arising.

- (ii) Irish divorce law does not establish a right to a “clean break”. However, it is a legitimate aspiration.
- (iii) The constitutional and legislative scheme provides a specific jurisdiction and duty under the Divorce Act.
- (iv) The duty pursuant to section 20 of the Divorce Act requires the court to make proper provision, having regard to all the circumstances. A deed of separation stated to be in full and final settlement is a significant factor.
- (v) If the circumstances are the same as when the separation agreement was signed, then prima facie the provision made by the court would be the same, as long as it was considered to be proper provision.
- (vi) If the circumstances of either or both spouses have changed significantly, the court is required to consider all the circumstances carefully. However, the requirement is to make proper provision and it is not a requirement for the redistribution of wealth.
- (vii) Relevant changed circumstances may include the changed needs of a spouse. If there is a new or different need, that may be relevant, for example illness.
- (viii) The changed circumstances which may be relevant also include the bursting of a property bubble which has altered the value of the assets so as to render an earlier provision unjust.
- (ix) If a spouse acquires wealth after a separation, and the wealth is unconnected to any joint project by the spouses during their married life, then that is not a factor of itself to vest in the other spouse a right to further monies or assets.
- (x) If, in the period subsequent to the conclusion of a separation agreement, one spouse becomes very wealthy, there is no right to an automatic increase in money or other assets for the other spouse.

⁵⁵ Coggans, “Maintenance, Property and Discovery” in Shannon ed., *The Divorce Act in Practice* (Round Hall, 1999), p.26.

⁵⁶ [2002] 3 I.R. 334.

⁵⁷ [2011] 3 I.R. 717.

- (xi) If a party seeks additional funds, the court’s duty is to look at all the circumstances so as to make proper provision, not to enter into a redistribution of wealth.
- (xii) The facts and circumstances to be considered will include the length of time since the separation agreement was entered into. The greater the length of time which has passed, barring catastrophic circumstances, the less likely a court will be to alter the existing arrangements.
- (xiii) The standard of living of a dependent spouse should be commensurate with that enjoyed when the marriage ended.
- (xiv) If a party has new needs, for example a debilitating illness, that will be a factor to be considered by the court in all the circumstances of the case.
- (xv) Assets which are inherited will not be treated as assets obtained by both parties in a marriage.
- (xvi) A party should not be compensated for their own incompetence or indiscretions to the detriment of the other party.
- (xvii) An exceptional change in the value of assets, which was unforeseen at the time of the judicial separation, is a relevant factor, as not to take account of such a factor would result in an injustice.

This decision was followed by the case of *CC v NC*⁵⁸ where Hogan J. set out the above principles and also provided guidance in cases where either spouse is seeking additional financial relief following a decree of judicial separation. In this case, the wealth of a formerly “enormously wealthy” couple had been dissipated by the massive costs generated in successive and ongoing court proceedings, the erosion of property values and improvident spending on certain capital assets by the wife.

11. PRE-NUPTIAL AGREEMENTS

A marital agreement is an agreement between two persons who propose to marry each other (“pre-nuptial agreement”), or who have been married to each other (“post-nuptial agreement”), in respect of property, maintenance and custody arrangements should the marriage break down. Pre-nuptial agreements are of increased practical importance since the passing of the Divorce Act, in view of its potential for property ownership adjustment and redistribution.

The most common purpose of the pre-nuptial agreement is to ensure the protection of property in an agreed way, in the event of subsequent spousal disagreement and/or marriage breakdown. Pre-nuptial agreements are agreements by which a couple who are intending to marry seek to “opt out” of the current system of matrimonial law, in the hope that they can remain subject to the legal provisions which would have pertained had they remained as legal strangers. Such agreements, however, have not been tested in recent times in the Irish courts, as far as the Society is aware.

In the recent case of *GR v NR*,⁵⁹ O’Hanlon J. held that the court had the power to amend a post-nuptial agreement. The parties in this case had entered into a post-nuptial agreement and the matter came before the court in the context of a divorce application seeking ancillary relief. In holding that it had the power to amend or vary the agreement, the court also upheld the practice of Irish courts to take account of, but not be bound by, pre- or post-nuptial agreements.

Traditionally, pre-nuptial agreements entered into were objected to on the following grounds:

- (a) the broad ground of public policy at common law that the marital union was for life and an agreement that envisaged a breakdown or the dissolution of that contract was contrary to the common good;
- (b) the lack of consideration and intention to create legal relations;
- (c) the narrow and distinctively Irish theocratic constitutional ground that Article 41 expressly provided that any agreement which envisaged

⁵⁸ Court of Appeal (Article 64 Transfer), October 26, 2016.

⁵⁹ [2015] I.E.H.C. 856.

such a dissolution was contrary to the Constitution; and

- (d) the legislature had enacted legislation permitting the judiciary to consider and, if necessary, vary the terms of such agreements in certain cases. Marital agreements expressly purport to exclude the jurisdiction of the courts. This is in breach of the constitutional provision which enshrines the primacy of the courts.

The nature of the family in Ireland, however, has changed dramatically over the past decades. The immense social, cultural, and economic changes since the 1970s have altered family structures. Today, the reality mirrors that of our European partners. That includes an increase in the incidence of marital breakdown. Heretofore, an attempt by the legislature to introduce any legislation to dilute the paramount position of the family or encourage people to walk away from what most would accept as the ideal family unit would have been deemed unconstitutional by the Supreme Court. That is no longer the case following the insertion of Article 41.3.2° into the Irish Constitution.

11.1 PRE-NUPTIAL AGREEMENTS POST THE DIVORCE ACT

Despite the inroads otherwise made by those Acts, the provisions of the 1995 Act and the Divorce Act do not seem significantly to have altered the non-enforceability of pre-nuptial agreements. While it is true to say that the issue is not explicitly addressed by either Act, there are, in each Act, several provisions that seem to cast some light on the question of the enforceability of pre-nuptial agreements. What is immediately evident from a survey of the legislation, and of cases interpreting its content, is that neither Act is underpinned by much concern to promote spousal autonomy.

In short, the provisions of the 1995 Act and Divorce Act effectively preclude the enforcement of pre-nuptial agreements as such. This is not to say, however, that such agreements are not at least of relevance to the courts' task of granting financial relief upon marriage breakdown. Section 20 of the Divorce Act, for instance, requires that:

“(1) In deciding whether to make an order ... and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.”

In the absence of legislation and case law, the prudent view would be to assume that pre-nuptial agreements are recognisable in Irish law, although not necessarily enforceable *per se*. This was the conclusion of the Governmental Study Group (hereinafter referred to as the “Group”) established to analyse the law in respect to pre-nuptial agreements.⁶⁰ The Group concluded that:

“[P]re-nuptial agreements are enforceable and capable of variation under existing Irish statute law. The weight to be attached to an agreement would be determined by the courts in light of the requirement for proper provision and the relevant statutory criteria.”⁶¹

The Group recommended that provision should be made for pre-nuptial agreements in the Divorce Act. Specifically, it recommended that a new section 20(3) (A) be inserted into the Divorce Act. The rationale for this is that pre-nuptial agreements ought to be treated in a manner akin to pre-existing separation agreements, but cognisance should be had to the differences between pre-nuptial agreements and separation agreements.⁶² Importantly, the Group also recommended that a number of procedural safeguards be set down and followed in order for such agreements to be legally recognisable, as follows:

1. The agreement should be in written form, signed by both parties and witnessed (although not necessarily by a solicitor);
2. The parties should each have received separate legal advice as to the effect and meaning of the agreement;
3. Each of the parties should have made disclosure of all relevant financial information; and
4. The agreement should be executed not less than 28 days before the marriage.⁶³

⁶⁰ Department of Justice, Equality and Law Reform, *Report of the Study Group on Pre-nuptial Agreements*, April 2007. Available at <http://www.justice.ie/en/JELR/PrenupRpt.pdf/Files/PrenupRpt.pdf>

⁶¹ *Ibid.*, p.5.

⁶² *Ibid.*, Ch.9.

⁶³ *Ibid.*, Ch.12.

12. CHILDREN AND DIVORCE: GUARDIANSHIP, CUSTODY, WELFARE AND ACCESS

Divorce may come as a shock for many children and has a major impact on their lives. Shaffer, an international expert on the psychological impact of divorce, in considering the impact of divorce on children in his 1993 research stated:

“In the short run at any rate divorce does constitute a high risk situation which can give rise to considerable upset and bewilderment...It is not always easy for parents caught up in their own turmoil, to bear in mind that children badly need psychological support in such a situation, and even if they are aware of it they may find it difficult under the circumstances to provide such support.”⁶⁴

In considering guardianship, custody and access issues in the context of divorce, the Irish courts have explicitly referred on innumerable occasions to the fact that such issues are determined by having regard to the best interests of the child. The best interests principle is not coterminous with, but very closely related to the welfare of the child. It now has a constitutional footing pursuant to Article 42A of the Constitution.

The ostensible rule (although this has been qualified by the constitutional preference for the marital family), is that where there is a conflict between the welfare of the child and other considerations (such as the rights of parents), the welfare of the child takes precedence over all other matters. This is sometimes known as the “best interests test”, although the Divorce Act refers specifically to the welfare of the child.⁶⁵ The principle that the best interests of the child must take precedence in all matters concerning the child’s welfare, is in line with Ireland’s international obligations, in particular with the UN Convention on the Rights of the Child 1989.⁶⁶

64 H.R. Shaffer, *Making Decisions about Children: Psychological questions and answers* (Oxford: Blackwell, 1993) at pp.155-168. See generally M.A. Murch and G. Keehan, *The Voice of the Child in Private Family Law Proceedings* (Bristol: Jordans, 2003).

65 See Walsh J. in *G v An Bord Uchtála* [1980] I.R. 32 at 76, who appears to suggest that the two terms may differ in meaning in certain contexts. It is submitted, with the utmost respect, that the distinction suggested is perhaps rather fine.

66 The UN Convention on the Rights of the Child 1989 was ratified by Ireland on September 21, 1992.

12.1 GUARDIANSHIP

On divorce, both spouses continue to be guardians of the children:

“[T]he grant of a decree of divorce shall not affect the right of the father and mother of an infant...to be guardians of the infant jointly.”⁶⁷

Guardianship effectively means the rights and duties of parents in relation to the upbringing of their children. A guardian has the right to make all major decisions affecting the child’s life, including education, medical treatment and religious matters.

12.2 CUSTODY

It is possible to make an order for custody not only in proceedings taken under the Guardianship of Infants Act, 1964 (as amended) (the “1964 Act”), but also in the course of divorce proceedings. Custody effectively means the day to day care and control of a child, while access refers to time spent with a non-custodial parent, or a parent with joint custody in some circumstances.

In particular, it is not necessary in such proceedings, where custody or access is sought, for a separate application to be made under section 11 of the 1964 Act. In divorce proceedings, the court is empowered to make, prior to deciding whether to grant or refuse a divorce decree, a preliminary order relating to custody or access or any other matter relating to the welfare of a child.⁶⁸ On the granting of a decree of divorce, the court is empowered to make ancillary orders by section 15 of the Divorce Act. This allows the court, upon divorce, to give directions as if an application under section 11 of the 1964 Act had been made. These would relate to any matter regarding the welfare, custody of, or access to, any dependent member of the family who is a child within the meaning of relevant legislation.

Section 11A of the 1964 Act,⁶⁹ as amended by the Children and Family Relationships Act 2015, makes it clear that, should any doubt exist, it is possible on

67 Section 10 (2) of the Divorce Act.

68 Section 11 of the Divorce Act.

69 As inserted by section 9 of the Children Act 1997.

divorce, to award custody to both the father and-mother jointly (“joint custody”). Joint custody involves a child residing with each parent for a stipulated period of time, e.g. spending weekdays with the mother and weekends with the father, or whatever particular practical arrangement is reached in the case. Such orders are made in the majority of cases before the courts. The typical order for joint custody states that the child shall have his or her primary place of residence with one parent, with provision for access to the other parent. Each case is different and must, of course, be determined according to the individual facts and circumstances of the case.

Considering the upheaval often caused by divorce, it is obvious that the court should concern itself with ensuring maximum stability for the children in question. As a general rule, the courts tend to prefer not to split up siblings, if possible, allowing them to remain in the family home.

Even in rare cases where sole custody is awarded, the non-custodial parent can apply for (and generally will be granted) access and of course, as a guardian, will retain the right to make decisions concerning the overall upbringing and welfare of the child. It is difficult, nonetheless, to shake the perception that custody is an “all or nothing” factor within marital breakdown. The prevalence of this perception has, it is submitted, led to many heated and protracted custody disputes.

The question of parental capacity is a key factor, although it relies on the surer footing of individual characteristics rather than resorting to crude gender stereotypes. The court is required to ensure that the parent being granted guardianship, custody or access has sufficient mental and physical resources to perform the duties envisaged. This is not to say that the more capable spouse will always be granted custody. Nor should it suggest that parents with needs of their own, owing for instance to disabilities, should be denied custody.

Where a parent, however, is manifestly incapable of carrying out the parenting role, the court will lean heavily against such an order. In *C(C) v C(P)*,⁷⁰

McGuinness J. declined to make an order of custody in favour of a father. The evidence showed that the roles of child and parent had largely reversed in this case. In response to his father’s difficulties, the child, it seemed, had taken on the role of parent, generally looking out for and protecting his father. In such a case there was a danger, in the judge’s words, of the child becoming “parentified”, taking on the mantle of responsibility for a family well before his time.

Where a decree of divorce is granted by a court, the court is further enabled to make an order as to the unfitness of either of the spouses to have custody of a dependent child of the family.⁷¹ The court may thus declare either of the spouses unfit to have custody “of any dependent member of the family who is a minor.” This will have the effect of precluding an order granting custody to the person so named. Even on the death of the other spouse, a spouse in respect of whom such a declaration is made will not be entitled as of right to the custody of his/her child.

This is a draconian remedy and is only likely to be ordered in the most extreme of circumstances, such as child abuse.

12.3 ACCESS

Where a parent does not obtain custody (or in circumstances of joint custody in practice), he or she may nonetheless apply for access to the child. Access may conveniently be described as a right and duty of visitation, allowing the person with access to visit and communicate with a child on a temporary basis. Access should not be confused with joint custody; the latter confers a right and duty, albeit shared, to the care of a child. By contrast, the care-giving functions involved in access rights are merely incidental, and it is clear that the parent in question is neither obliged nor entitled to usurp the role of the primary care-giver.

Access is properly regarded as a right of the child to enjoy time and contact with his or her parent(s).

⁷⁰ [1994] 3 Fam. L.J. 1985.

⁷¹ Section 41 of the Divorce Act.

12.4 ACCESS TO PARTIES OTHER THAN PARENTS

In the context of divorce proceedings, it is often forgotten that the granting of sole custody may effectively preclude access by a child or children to their grandparents, and other persons related to the non-custodial parent. Until January 9, 1998, only a parent or guardian of a child could apply for access to a child. Since the commencement of section 9 of the Children Act 1997, however, certain additional persons were permitted to apply to the court to be afforded access to a child. These persons included a relative of a child or a person who has acted *in loco parentis* in respect of the relevant child. This was made possible by section 11B of the 1964 Act.⁷² By virtue of S.I. No. 125 of 1999, Ord.58, r.3, such application had to “be preceded by the issue and service of a notice ... upon each guardian of the child”. Form Number 58.19 of Sch.C outlines the form that such notice should take.⁷³

The Children and Family Relationships Act, 2015 has now greatly enhanced the rights of grandparents in cases of access.

12.5 VARIATION OF CUSTODY AND ACCESS ORDERS

All custody and access decisions are interlocutory by nature. Thus, a decision on custody and access during divorce proceedings is never final and conclusive but is open to variation, should the welfare of the child so demand.

General variations may arise as the children involved grow older and as their circumstances evolve. A variation may also be sought in more specific circumstances and where difficulties and/or breaches of an order may have occurred.

Where a custodial parent wishes to move away from the country to live elsewhere, the decision is rarely accompanied with the blessing of the divorced parent exercising access, unless provision is made

⁷² As inserted by section 9 of the Children Act 1997.

⁷³ It did not seem to be required that the applicants notify the non-marital natural father of the child unless he has been appointed guardian of the child. This was arguably in conflict with the spirit of the judgment of the European Court of Human Rights in *Keegan v Ireland* (1994) 18 E.H.R.R. 341.

for some other form of access which preserves the relationship between the absent parent and the child. This can often be achieved by arrangements for generous holiday access, provision for the absent parent to exercise access in the new country of residence, and generous indirect contact. Where there is disagreement, however, the advice must be “apply, don’t fly”.⁷⁴

12.6 HEARING THE VOICE OF THE CHILD

Considering that the court must act in the best interests of a child who is the subject of an application under the Divorce Act, it seems self-evident that, where the child is of sufficient age and maturity, the court should have regard to his or her wishes. The Children and Family Relationships Act 2015 has now reinforced the concept of hearing the voice of the child in practice and allows for children to be consulted and “heard” in applications for guardianship, custody and access.

13. RECOGNITION OF FOREIGN DIVORCES AND OTHER MATTERS

The introduction of divorce in Ireland has made the issue of the recognition of foreign divorces less significant as fewer couples married in Ireland now seek a divorce abroad unless to avail of the provisions of European Parliament and Council Regulation (EC) 2201/2003 (“Brussels II bis”). Nonetheless, the legal recognition of foreign divorces remains important for those couples who obtained foreign divorces prior to the introduction of divorce in Ireland and have now remarried or other circumstances. The validity of that second marriage in Ireland will depend on whether the previous foreign divorce is recognised.

The current position in relation to the recognition of foreign divorces by the Irish courts is that the common law rules of recognition govern foreign divorces obtained prior to October 2, 1986, while the Domicile and Recognition of Foreign Divorces Act, 1986⁷⁵ governs divorces obtained after that date.

⁷⁴ Sec Article 5 of the 1980 Hague Convention.

⁷⁵ No 24 of 1986.

The principal basis for the recognition of foreign divorces in the Irish courts is whether or not the court granting the divorce had proper jurisdiction to do so, which was traditionally based on the law of domicile, although it is now moving towards habitual residence.

For cases within the EU (except Denmark), the EU Regulation known as Brussels II *bis* applies. Council Regulation 1347/00 (“Brussels II”) which came into force in Ireland on 1 March 2001 was updated and replaced by Council Regulation 2201/2003 (“Brussels II *bis*”) on 1 March 2005. It governs the status of divorces obtained in all EU Member States (except Denmark) and allows for the acquisition of a decree of divorce in any Member State where one or both of the parties is habitually resident (among other grounds), and that this divorce must be recognised throughout all other Member States. The Regulation also addresses issues of parental responsibility, which includes custody and access. Interestingly, a no deal Brexit may lead to domicile being applied to UK divorces.

14. CONCLUSION: IRISH DIVORCE IN THE 21ST CENTURY

In considering divorce legislation and its interpretation in the courts, Irish divorce proceedings can be seen to have one striking characteristic, that is, the overwhelming discretionary powers of the courts to determine divorce cases on the basis of the unique facts of each case. This approach can be seen to have both positive and negative aspects. On the positive side, those seeking a divorce have an opportunity to put their specific case, with all its unique circumstances, to the courts for their consideration. On the basis of these the judiciary can make wide-ranging decisions in many areas, but overall must adhere to the principles of justice. On the negative side, this discretion of the courts has resulted in a high degree of uncertainty for those seeking a decree of divorce. It also leaves the judiciary with relatively few guidelines and supports when making decisions in what are often very complex and potentially emotive cases. It would therefore be to the advantage of the judiciary, the legal profession and those seeking the

remedy of divorce were the existing legislation and practice to be reviewed to consider this situation.

The emerging use of full and final settlement clauses is evidence of the desire of the parties themselves to achieve finality and certainty in relation to their financial circumstances. It is to be expected that nothing less is desired by many Irish divorcees, the majority of whom simply wish to move on with their lives with a degree of certainty that the financial provisions for their former spouse and dependent children have finally been settled. Although this ultimate objective has been deemed desirable by the courts, such a clause in a separation agreement cannot, and indeed does not, override the jurisdiction of the court to review the arrangements between the parties in determining whether proper provision has been achieved.

Finally, we must look back over the first 20 years of domestic divorce in Ireland, and consider the type of Irish society that barely allowed this relatively restrictive legislation to become possible in 1995, at the changes that have occurred since, as well as at impending national and international developments and trends. In this broad context we must ask ourselves if this legislative regime is one befitting our rapidly modernising, rapidly secularising, increasingly global society. Public policy, legislation and the practice of the courts should not wish, nor be allowed, to become irrelevant or even obsolete to those it purports to serve. With that in mind, we must now engage in mature and informed debate on the issues that arise as a result of divorce in the 21st century - the distribution of assets and income, the custody and care of children, and the need to allow those once party to a marriage entered into in good faith to move forward with a degree of certainty, having had the level of their responsibilities and rights with respect to that marriage determined once and for all.

APPENDIX

1

Data Collection Form



DATA COLLECTION FORM

Court location	
Judge	
Date of hearing	
Case Number	
Date initial application made:	
Whether case contested or not: Y/N	
Length of hearing:	
Applicant: husband or wife: H/W	
Age-group (20-30, 31-40, 41-50, 51-60, 61-70, 71+); husband: wife:	
Special characteristics of either party (e.g. ethnic minority, disability, etc.)	
Number of dependent children, if any:	
Rights under Children and Family Relationships Act invoked:	
Reliefs under Domestic Violence Act sought: Y/No	
Length of separation prior to application:	
Whether legal or judicial separation in place: Y/N	
If so, for how long:	
How soon did it come into force after separation?	
Mediation attempted: Y/N Outcome:	
Family assets: family home: Y/N; other property: Y/N, details:	
Pension: Y/N; other:	
Family liabilities:	
Legal representation for each party (solicitor and counsel) Husband: Wife:	
Outcome (granted/refused):	
Ancillary orders made relating to - maintenance: spousal Y/N; children Y/N - family home: transfer; joint tenancy; disposal - lump sum payment - other assets - children – custody and access: Y/N - other	

APPENDIX

2

Family Law (Divorce) Act,
1996





Number 33 of 1996

FAMILY LAW (DIVORCE) ACT, 1996

AN ACT TO MAKE PROVISION FOR THE EXERCISE BY THE COURTS OF THE JURISDICTION CONFERRED BY THE CONSTITUTION TO GRANT DECREES OF DIVORCE, TO ENABLE THE COURTS TO MAKE CERTAIN PRELIMINARY AND ANCILLARY ORDERS IN OR AFTER PROCEEDINGS FOR DIVORCE, TO PROVIDE, AS RESPECTS TRANSFERS OF PROPERTY OF DIVORCED SPOUSES, FOR THEIR EXEMPTION FROM, OR FOR THE ABATEMENT OF, CERTAIN TAXES (INCLUDING STAMP DUTY) AND TO PROVIDE FOR RELATED MATTERS. [27th November, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Family Law (Divorce) Act, 1996. Short title and commencement.

(2) This Act shall come into operation on the day that is 3 months after the date of its passing.

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 1989” means the Judicial Separation and Family Law Reform Act, 1989;

“the Act of 1995” means the Family Law Act, 1995;

“the Act of 1996” means the Domestic Violence Act, 1996;

“conveyance” includes a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by a will

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or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such disposition;

“the court” shall be construed in accordance with *section 38*;

“decree of divorce” means a decree under *section 5*;

“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;

“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

(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,

who is under the age of 18 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

(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;

“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 16*;

“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 13 (1) (c)*;

“maintenance pending suit order” means an order under *section 12*;

“member”, 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;

“pension adjustment order” means an order under *section 17*;

“pension scheme” means—

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

- (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:
- (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,
- (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 13*;

“property adjustment order” has the meaning assigned to it by *section 14*;

“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 this Act,
- (b) a reference to a remarriage includes a reference to a marriage that takes place after a marriage that has been dissolved under this Act,
- (c) a reference to a spouse includes a reference to a person who is a party to a marriage that has been dissolved under this Act,
- (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 this Act,

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- (e) a reference to an application to a court by a person on behalf of a dependent member of the family includes a reference to such an application by such a member and a reference to a payment, the securing of a payment, or the assignment of an interest, to a person for the benefit of a dependent member of the family includes a reference to a payment, the securing of a payment, or the assignment of an interest, to such a member,

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,
- (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,
- (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.

Repeal.

3.—Section 14 (2) of the Censorship of Publications Act, 1929, is hereby repealed.

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.

PART II

THE OBTAINING OF A DECREE OF DIVORCE

Grant of decree of divorce and custody etc., of children.

5.—(1) Subject to the provisions of this Act, where, on application to it in that behalf by either of the spouses concerned, the court is 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,

the court may, in exercise of the jurisdiction conferred by Article 41.3.2° of the Constitution, grant a decree of divorce in respect of the marriage concerned.

(2) Upon the grant of a decree of divorce, the court may, where appropriate, give such directions under section 11 of the Act of 1964

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as it considers proper regarding the welfare (within the meaning of that Act), custody of, or right of access to, any dependent member of the family concerned who is an infant (within the meaning of that Act) as if an application had been made to it in that behalf under that section.

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6.—(1) In this section “the applicant” means a person who has applied, is applying or proposes to apply to the court for the grant of a decree of divorce.

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

(2) If a solicitor is acting for the applicant, the solicitor shall, prior to the institution of the proceedings concerned under *section 5*—

- (a) discuss with the applicant the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to help to effect a reconciliation between spouses who have become estranged,
- (b) discuss with the applicant the possibility of engaging in mediation to help to effect a separation (if the spouses are not separated) or a divorce on a basis agreed between the applicant and the other spouse and give to the applicant the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged, and
- (c) discuss with the applicant the possibility (where appropriate) of effecting a separation by means of a deed or agreement in writing executed or made by the applicant and the other spouse and providing for their separation.

(3) Such a solicitor shall also ensure that the applicant is aware of judicial separation as an alternative to divorce where a decree of judicial separation in relation to the applicant and the other spouse is not in force.

(4) If a solicitor is acting for the applicant—

- (a) the originating document by which the proceedings under *section 5* are instituted shall be accompanied by a certificate signed by the solicitor indicating, if it be the case, that he or she has complied with *subsection (2)* and, if appropriate, *subsection (3)* in relation to the matter and, if the document is not so accompanied, the court may adjourn the proceedings for such period as it considers reasonable to enable the solicitor to engage in the discussions specified in *subsection (2)*, and, if appropriate, to make the applicant aware of judicial separation,
- (b) if the solicitor has complied with *paragraph (a)*, any copy of the originating document aforesaid served on any person or left in an office of the court shall be accompanied by a copy of the certificate aforesaid.

(5) A certificate under *subsection (4) (a)* shall be in a form prescribed by rules of court or a form to the like effect.

(6) The Minister may make regulations to allow for the establishment of a Register of Professional Organisations whose members are qualified to assist the parties involved in effecting a reconciliation, such register to show the names of members of those organisations

and procedures to be put in place for the organisations involved to regularly update the membership lists.

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

7.—(1) In this section “the respondent” means a person who is the respondent in proceedings in the court under *section 5*.

(2) If a solicitor is acting for the respondent, the solicitor shall, as soon as may be after receiving instructions from the respondent in relation to the proceedings concerned under *section 5*—

(a) discuss with the respondent the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to effect a reconciliation between spouses who have become estranged,

(b) discuss with the respondent the possibility of engaging in mediation to help to effect a separation (if the spouses are not separated) or a divorce on a basis agreed between the respondent and the other spouse and give to the respondent the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged, and

(c) discuss with the respondent the possibility (where appropriate) of effecting a separation by means of a deed or agreement in writing executed or made by the applicant and the other spouse and providing for their separation.

(3) Such a solicitor shall also ensure that the respondent is aware of judicial separation as an alternative to divorce where a decree of judicial separation is not in force in relation to the respondent and the other spouse.

(4) If a solicitor is acting for the respondent—

(a) the memorandum or other document delivered to the appropriate officer of the court for the purpose of the entry of an appearance by the respondent in proceedings under *section 5* shall be accompanied by a certificate signed by the solicitor indicating, if it be the case, that the solicitor has complied with *subsection (2)* and, if appropriate, *subsection (3)* in relation to the matter and, if the document is not so accompanied, the court may adjourn the proceedings for such period as it considers reasonable to enable the solicitor to engage in the discussions specified in *subsection (2)* and, if appropriate, to make the applicant aware of judicial separation,

(b) if *paragraph (a)* is complied with, any copy of the document aforesaid given or sent to the other party to the proceedings or his or her solicitor shall be accompanied by a copy of the relevant certificate aforesaid.

(5) A certificate under *subsection (4) (a)* shall be in a form prescribed by rules of court or a form to the like effect.

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8.—(1) Where an application is made to the court for the grant of a decree of divorce, the court shall give consideration to the possibility of a reconciliation between the spouses concerned and, accordingly, may adjourn the proceedings at any time for the purpose of enabling attempts to be made by the spouses, if they both so wish, to effect such a reconciliation with or without the assistance of a third party.

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

(2) Where, in proceedings under *section 5*, it appears to the court that a reconciliation between the spouses cannot be effected, it may adjourn or further adjourn the proceedings for the purpose of enabling attempts to be made by the spouses, if they both so wish, to reach agreement, with or without the assistance of a third party, on some or all of the terms of the proposed divorce.

(3) If proceedings are adjourned pursuant to *subsection (1)* or *(2)*, either or both of the spouses may at any time request that the hearing of the proceedings be resumed as soon as may be and, if such a request is made, the court shall, subject to any other power of the court to adjourn proceedings, resume the hearing.

(4) The powers conferred by this section are additional to any other power of the court to adjourn proceedings.

(5) Where the court adjourns proceedings under this section, it may, at its discretion, advise the spouses concerned to seek the assistance of a third party in relation to the effecting of a reconciliation between the spouses or the reaching of agreement between them on some or all of the terms of the proposed divorce.

9.—An oral or written communication between either of the spouses concerned and a third party for the purpose of seeking assistance to effect a reconciliation or to reach agreement between them on some or all of the terms of a separation or a divorce (whether or not made in the presence or with the knowledge of the other spouse), and any record of such a communication, made or caused to be made by either of the spouses concerned or such a third party, shall not be admissible as evidence in any court.

Non-admissibility as evidence of certain communications relating to reconciliation, separation or divorce.

10.—(1) Where the court grants a decree of divorce, the marriage, the subject of the decree, is thereby dissolved and a party to that marriage may marry again.

Effect of decree of divorce.

(2) For the avoidance of doubt, it is hereby declared that the grant of a decree of divorce shall not affect the right of the father and mother of an infant, under *section 6* of the Act of 1964, to be guardians of the infant jointly.

PART III

PRELIMINARY AND ANCILLARY ORDERS IN OR AFTER PROCEEDINGS FOR DIVORCE

11.—Where an application is made to the court for the grant of a decree of divorce, 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 divorce.

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- (a) a safety order, a barring order, an interim barring order or a protection order under the Act of 1996,
- (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.

Maintenance pending suit orders.

12.—(1) Where an application is made to the court for the grant of a decree of divorce, 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 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.

(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.

Periodical payments and lump sum orders.

13.—(1) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse, or, as the case may be, the spouse concerned, make one or more of the following orders, that is to say—

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

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

- (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,

(c) (i) an order that either of the spouses shall make to the

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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, or

- (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.

(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
- (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)*.

(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.

(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 the spouse, or any dependent member of the family, in whose favour the order is made or the other spouse concerned.

(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.

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

(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.

(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

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regard to any such representations made by that spouse.

- (c) The representations referred to in *paragraph (b)* 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 under *subsection (1) (a)* relates.
- (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 22*.

Property
adjustment orders.

14.—(1) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make a property adjustment order, that is to say, an order providing for one or more of the following matters:

- (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,
- (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,
- (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.

(2) An order under *paragraph (b), (c) or (d)* may restrict to a specified extent or exclude the application of *section 22* in relation to the order.

(3) If, after the grant of a decree of divorce, either of the spouses concerned remarries, the court shall not, by reference to that decree, make a property adjustment order in favour of that spouse.

(4) 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.

(5) Where—

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- (a) a person is directed by an order under this section to execute a deed or other instrument in relation to land, and
- (b) the person refuses or neglects to comply with the direction or, for any other reason, the court considers it necessary to do so,

the court may order another person to execute the deed or instrument in the name of the first-mentioned person; and a deed or other instrument executed by a person in the name of another person pursuant to an order under this subsection shall be as valid as if it had been executed by that other person.

(6) Any costs incurred in complying with a property adjustment order shall be borne, as the court may determine, by either of the spouses concerned, or by both of them in such proportions as the court may determine, and shall be so borne in such manner as the court may determine.

(7) This section shall not apply in relation to a family home in which, following the grant of a decree of divorce, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.

15.—(1) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders: Miscellaneous ancillary orders.

(a) an order—

- (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 of the right to occupy the family home to the exclusion of the other spouse, or
- (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,

(b) an order under section 36 of the Act of 1995,

(c) an order under section 5, 7 or 9 of the Family Home Protection Act, 1976,

(d) an order under section 2, 3, 4 or 5 of the Act of 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 Act of 1964,

and, for the purposes of this section, in *paragraphs (b), (c) and (d)*, a reference to a spouse in a statute referred to in *paragraph (b), (c)*

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or (d) shall be construed as including a reference to a person who is a party to a marriage that has been dissolved under this Act.

(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—

(a) that, where a decree of divorce is granted, it is not possible for the spouses concerned to reside together, and

(b) that proper and secure accommodation should, where practicable, be provided for a spouse who is wholly or mainly dependent on the other spouse and for any dependent member of the family.

(3) *Subsection (1) (a)* shall not apply in relation to a family home in which, following the grant of a decree of divorce, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.

Financial
compensation
orders.

16.—(1) Subject to the provisions of this section, on granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, if it considers—

(a) that the financial security of the spouse making the application (“the applicant”) or the dependent member of the family (“the member”) can be provided for either wholly or in part by so doing, or

(b) that the forfeiture, by reason of the decree of divorce, by the applicant or the member, as the case may be, 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,

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

(i) to effect such a policy of life insurance for the benefit of the applicant or the member as may be specified in the order,

(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 the member,

(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 *section 13, 14, 15 or 17* and in deciding whether or not to make such an order it shall have

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regard to whether proper provision having regard to the circumstances exists or can be made for the spouse concerned or the dependent member of the family concerned by orders under those sections. Pr.III S.16

- (b) An order under this section shall cease to have effect on the re-marriage 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 in favour of a spouse who has remarried.
- (d) An order under *section 22* 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—
 - (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.

17.—(1) In this section, save where the context otherwise requires— Pension adjustment orders.

“the Act of 1990” means the Pensions Act, 1990;

“active member” in relation to a scheme, means a member of the scheme who is in reckonable service;

“actuarial value” means the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) under a scheme calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to normal pensionable age and thereafter in accordance with normal life expectancy on the assumption that the member concerned of the scheme, at the effective date of calculation, is in a normal state of health having regard to his or her age;

“approved arrangement”, in relation to the trustees of a scheme, means an arrangement whereby the trustees, on behalf of the person for whom the arrangement is made, effect policies or contracts of insurance that are approved of by the Revenue Commissioners with, and make the appropriate payments under the policies or contracts to, one or more undertakings;

“contingent benefit” means a benefit payable under a scheme, other than a payment under *subsection (7)* to or for one or more of the following, that is to say, the widow or the widower and any dependants of the member spouse concerned and the personal representative of the member spouse, if the member spouse dies while in relevant employment and before attaining any normal pensionable age provided for under the rules of the scheme;

“defined contribution scheme” means a scheme which, under its rules, provides retirement benefit, the rate or amount of which is in total directly determined by the amount of the contributions paid by or in respect of the member of the scheme concerned and includes a scheme the contributions under which are used, directly or indirectly, to provide—

- (a) contingent benefit, and

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(b) retirement benefit the rate or amount of which is in total directly determined by the part of the contributions aforesaid that is used for the provision of the retirement benefit;

“designated benefit”, in relation to a pension adjustment order, means an amount determined by the trustees of the scheme concerned, in accordance with relevant guidelines, and by reference to the period and the percentage of the retirement benefit specified in the order concerned under *subsection (2)*;

“member spouse”, in relation to a scheme, means a spouse who is a member of the scheme;

“normal pensionable age” means the earliest age at which a member of a scheme is entitled to receive benefits under the rules of the scheme on retirement from relevant employment, disregarding any such rules providing for early retirement on grounds of ill health or otherwise;

“occupational pension scheme” has the meaning assigned to it by section 2 (1) of the Act of 1990;

“reckonable service” means service in relevant employment during membership of any scheme;

“relevant guidelines” means any relevant guidelines for the time being in force under paragraph (c) or (cc) of section 10 (1) of the Act of 1990;

“relevant employment”, in relation to a scheme, means any employment (or any period treated as employment) or any period of self-employment to which a scheme applies;

“retirement benefit”, in relation to a scheme, means all benefits (other than contingent benefits) payable under the scheme;

“rules”, in relation to a scheme, means the provisions of the scheme, by whatever name called;

“scheme” means a pension scheme;

“transfer amount” shall be construed in accordance with *subsection (4)*;

“undertaking” has the meaning assigned to it by the Insurance Act, 1989.

(2) Subject to the provisions of this section, where a decree of divorce (“the decree”) has been granted, the court, if it so thinks fit, may, in relation to retirement benefit under a scheme of which one of the spouses concerned is a member, on application to it in that behalf at the time of the making of the order for the decree or at any time thereafter during the lifetime of the member spouse by either of the spouses or by a person on behalf of a dependent member of the family, make an order providing for the payment, in accordance with the provisions of this section, to either of the following, as the court may determine, that is to say—

(a) the other spouse and, in the case of the death of that spouse, his or her personal representative, and

(b) such person as may be specified in the order for the benefit of a person who is, and for so long only as he or she remains, a dependent member of the family,

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of a benefit consisting, either, as the court may determine, of the whole, or such part as the court considers appropriate, of that part of the retirement benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme and has accrued at the time of the making of the order for the decree and, for the purpose of determining the benefit, the order shall specify—

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- (i) the period of reckonable service of the member spouse prior to the granting of the decree to be taken into account, and
- (ii) the percentage of the retirement benefit accrued during that period to be paid to the person referred to in *paragraph (a) or (b)*, as the case may be.

(3) Subject to the provisions of this section, where a decree of divorce (“the decree”) has been granted, the court, if it so thinks fit, may, in relation to a contingent benefit under a scheme of which one of the spouses concerned is a member, on application to it in that behalf not more than one year after the making of the order for the decree by either of the spouses or by a person on behalf of a dependent member of the family concerned, make an order providing for the payment, upon the death of the member spouse, to either of the following, or to both of them in such proportions as the court may determine, that is to say—

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

of, either, as the court may determine, the whole, or such part (expressed as a percentage) as the court considers appropriate, of that part of any contingent benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme.

(4) Where the court makes an order under *subsection (2)* in favour of a spouse and payment of the designated benefit concerned has not commenced, the spouse in whose favour the order is made shall be entitled to the application in accordance with *subsection (5)* of an amount of money from the scheme concerned (in this section referred to as a “transfer amount”) equal to the value of the designated benefit, such amount being determined by the trustees of the scheme in accordance with relevant guidelines.

(5) Subject to *subsection (17)*, where the court makes an order under *subsection (2)* in favour of a spouse and payment of the designated benefit concerned has not commenced, the trustees of the scheme concerned shall, for the purpose of giving effect to the order—

- (a) on application to them in that behalf at the time of the making of the order or at any time thereafter by the spouse in whose favour the order was made (“the spouse”), and
- (b) on the furnishing to them by the spouse of such information as they may reasonably require,

apply in accordance with relevant guidelines the transfer amount calculated in accordance with those guidelines either—

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- (i) if the trustees and the spouse so agree, in providing a benefit for or in respect of the spouse under the scheme aforesaid that is of the same actuarial value as the transfer amount concerned, or
- (ii) in making a payment either to—
 - (I) such other occupational pension scheme, being a scheme the trustees of which agree to accept the payment, or
 - (II) in the discharge of any payment falling to be made by the trustees under any such other approved arrangement,

as may be determined by the spouse.

(6) Subject to *subsection (17)*, where the court makes an order under *subsection (2)* in relation to a defined contribution scheme and an application has not been brought under *subsection (5)*, the trustees of the scheme may, for the purpose of giving effect to the order, if they so think fit, apply in accordance with relevant guidelines the transfer amount calculated in accordance with those guidelines, in making a payment to—

- (a) such other occupational pension scheme, being a scheme the trustees of which agree to accept the payment, or
- (b) in the discharge of any payment falling to be made by the trustees under such other approved arrangement,

as may be determined by the trustees.

(7) Subject to *subsection (17)*, where—

- (a) the court makes an order under *subsection (2)*, and
- (b) the member spouse concerned dies before payment of the designated benefit concerned has commenced,

the trustees shall, for the purpose of giving effect to the order, within 3 months of the death of the member spouse, provide for the payment to the person in whose favour the order was made of an amount that is equal to the transfer amount calculated in accordance with relevant guidelines.

(8) Subject to *subsection (17)*, where—

- (a) the court makes an order under *subsection (2)*, and
- (b) the member spouse concerned ceases to be a member of the scheme otherwise than on death,

the trustees may, for the purpose of giving effect to the order, if they so think fit, apply, in accordance with relevant guidelines, the transfer amount calculated in accordance with those guidelines either, as the trustees may determine—

- (i) if the trustees and the person in whose favour the order is made (“the person”) so agree, in providing a benefit for or in respect of the person under the scheme aforesaid that is of the same actuarial value as the transfer amount concerned, or

(ii) in making a payment, either to—

(I) such other occupational pension scheme, being a scheme the trustees of which agree to accept the payment, or

(II) in the discharge of any payment falling to be made under such other approved arrangement,

as may be determined by the trustees.

(9) Subject to *subsection (17)*, where—

(a) the court makes an order under *subsection (2)* in favour of a spouse (“the spouse”),

(b) the spouse dies before the payment of the designated benefit has commenced,

the trustees shall, within 3 months of the death of the spouse, provide for the payment to the personal representative of the spouse of an amount equal to the transfer amount calculated in accordance with relevant guidelines.

(10) Subject to *subsection (17)*, where—

(a) the court makes an order under *subsection (2)* in favour of a spouse (“the spouse”), and

(b) the spouse dies after payment of the designated benefit has commenced,

the trustees shall, within 3 months of the death of the spouse, provide for the payment to the personal representative of the spouse of an amount equal to the actuarial value, calculated in accordance with relevant guidelines, of the part of the designated benefit which, but for the death of the spouse, would have been payable to the spouse during the lifetime of the member spouse.

(11) Where—

(a) the court makes an order under *subsection (2)* for the benefit of a dependent member of the family (“the person”), and

(b) the person dies before payment of the designated benefit has commenced,

the order shall cease to have effect in so far as it relates to that person.

(12) Where—

(a) the court makes an order under *subsection (2)* or (3) in relation to an occupational pension scheme, and

(b) the trustees of the scheme concerned have not applied the transfer amount concerned in accordance with *subsection (5), (6), (7), (8) or (9)*, and

(c) after the making of the order, the member spouse ceases to be an active member of the scheme,

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the trustees shall, within 12 months of the cessation, notify the registrar or clerk of the court concerned and the other spouse of the cessation.

(13) Where the trustees of a scheme apply a transfer amount under *subsection (6) or (8)*, they shall notify the spouse (not being the spouse who is the member spouse) or other person concerned and the registrar or clerk of the court concerned of the application and shall give to that spouse or other person concerned particulars of the scheme or undertaking concerned and of the transfer amount.

(14) Where the court makes an order under *subsection (2) or (3)* for the payment of a designated benefit or a contingent benefit, as the case may be, the benefit shall be payable or the transfer amount concerned applied out of the resources of the scheme concerned and, unless otherwise provided for in the order or relevant guidelines, shall be payable in accordance with the rules of the scheme or, as the case may be, applied in accordance with relevant guidelines.

(15) Where the court makes an order under *subsection (2)*, the amount of the retirement benefit payable, in accordance with the rules of the scheme concerned to, or to or in respect of, the member spouse shall be reduced by the amount of the designated benefit payable pursuant to the order.

(16) (a) Where the court makes an order under *subsection (3)*, the amount of the contingent benefit payable, in accordance with the rules of the scheme concerned in respect of the member spouse shall be reduced by an amount equal to the contingent benefit payable pursuant to the order.

(b) Where the court makes an order under *subsection (2)* and the member spouse concerned dies before payment of the designated benefit concerned has commenced, the amount of the contingent benefit payable in respect of the member spouse in accordance with the rules of the scheme concerned shall be reduced by the amount of the payment made under *subsection (7)*.

(17) Where, pursuant to an order under *subsection (2)*, the trustees of a scheme make a payment or apply a transfer amount under *subsection (5), (6), (7), (8), (9) or (10)*, they shall be discharged from any obligation to make any further payment or apply any transfer amount under any other of those subsections in respect of the benefit payable pursuant to the order.

(18) A person who makes an application under *subsection (2) or (3)* or an application for an order under *section 22 (2)* in relation to an order under *subsection (2)* shall give notice thereof to the trustees of the scheme concerned 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 any person to whom notice of the application has been given under this section or *section 40*.

(19) An order under *subsection (3)* shall cease to have effect on the death or remarriage of the person in whose favour it was made in so far as it relates to that person.

(20) The court may, in a pension adjustment order or by order made under this subsection after the making of a pension adjustment order, give to the trustees of the 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 the rules of the scheme concerned or the Act of 1990; and a trustee of a scheme shall not be liable in any court or other tribunal for any loss or damage caused by his or her non-compliance with the rules of the scheme or with the Act of 1990 if the non-compliance was occasioned by his or her compliance with a direction of the court under this subsection.

(21) The registrar or clerk of the court concerned shall cause a copy of a pension adjustment order to be served on the trustees of the scheme concerned.

(22) (a) Any costs incurred by the trustees of a scheme under *subsection (18)* or in complying with a pension adjustment order or a direction under *subsection (20)* or *(25)* 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, those costs shall be borne by them equally.

(b) Where a person fails to pay an amount in accordance with *paragraph (a)* to the trustees of the scheme concerned, the court may, on application to it in that behalf by the trustees, order that the amount be deducted from the amount of any benefit payable to the person under the scheme or pursuant to an order under *subsection (2)* or *(3)* and be paid to the trustees.

(23) (a) The court shall not make a pension adjustment order in favour of a spouse who has remarried.

(b) The court may make a pension adjustment order in addition to or in substitution in whole or in part for an order or orders under *section 13, 14, 15* or *16* and, in deciding whether or not to make a pension adjustment order, the court shall have regard to the question whether proper provision, having regard to the circumstances, exists or can be made for the spouse concerned or the dependent member of the family concerned by an order or orders under any of those sections.

(24) Section 54 of the Act of 1990 and any regulations under that section shall apply with any necessary modifications to a scheme if proceedings for the grant of a decree of divorce to which a member spouse is a party have been instituted and shall continue to apply notwithstanding the grant of a decree of divorce in the proceedings.

(25) For the purposes of this Act, the court may, of its own motion, and shall, if so requested by either of the spouses concerned or any other person concerned, direct the trustees of the scheme concerned to provide the spouses or that other person and the court, within a specified period of time—

(a) with a calculation of the value and the amount, determined in accordance with relevant guidelines, of the retirement benefit, or contingent benefit, concerned that is payable (or which, but for the making of the order for the decree of divorce concerned, would have been payable) under the scheme and has accrued at the time of the making of that order, and

(b) with a calculation of the amount of the contingent benefit concerned that is payable (or which, but for the making

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of the order for the decree of divorce concerned, would have been payable) under the scheme.

(26) An order under this section may restrict to a specified extent or exclude the application of *section 22* in relation to the order.

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

18.—(1) Subject to the provisions of this section, where one of the spouses in respect of whom a decree of divorce has been granted dies, the court, on application to it in that behalf by the other spouse (“the applicant”) not more than 6 months after representation is first granted under the Act of 1965 in respect of the estate of the deceased spouse, may by order make such provision 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 proper provision in the circumstances was not made for the applicant during the lifetime of the deceased spouse under *section 13, 14, 15, 16 or 17* for any reason (other than conduct referred to in *subsection (2) (i) of section 20* of the applicant).

(2) The court shall not make an order under this section in favour of a spouse who 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—

(a) any order under *paragraph (c) of section 13 (1)* or a property adjustment order in favour of the applicant, and

(b) 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) 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.

(6) The personal representative of a deceased spouse in respect of whom a decree of divorce has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse 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.

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(7) Where the personal representative of a deceased spouse in respect of whom a decree of divorce has been granted gives notice of his or her death to the other spouse concerned (“the spouse”) and—

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- (a) the spouse intends to apply to the court for an order under this section,
- (b) the spouse has applied for such an order and the application is pending, or
- (c) an order has been made under this section in favour of the spouse,

the spouse shall, not later than one month after the receipt of the notice, notify the personal representative of such intention, application or order, as the case may be, and, if he or she does not do so, the personal representative shall be at liberty to distribute the assets of the deceased spouse, or any part thereof, amongst the parties entitled thereto.

(8) The personal representative shall not be liable to the spouse for the assets or any part thereof so distributed unless, at the time of such distribution, he or she had notice of the intention, application or order aforesaid.

(9) Nothing in *subsection (7)* or *(8)* shall prejudice the right of the spouse to follow any such assets into the hands of any person who may have received them.

(10) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, if it considers it just to do so, make an order that either or both spouses shall not, on the death of either of them, be entitled to apply for an order under this section.

19.—(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.

(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.

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

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

- (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,

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- (ii) a provision requiring any such property to be offered for sale to a person, or a class of persons, specified in the order,
- (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,
- (iv) a provision requiring the making of a payment or payments (whether periodical payments or lump sum payments) to a specified person or persons out of the proceeds of the sale of the property to which the order relates, 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.

(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.

(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 14* or *15 (1) (a)* 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 20* in any relevant proceedings under a provision referred to in that section after the making of those representations.

(6) This section shall not apply in relation to a family home in which, following the grant of a decree of divorce, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.

Provisions relating to certain orders under *sections 12* to *18* and *22*.

20.—(1) In deciding whether to make an order under *section 12*, *13*, *14*, *15 (1) (a)*, *16*, *17*, *18* or *22* and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.

(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:

- (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), Pr.III S.20
- (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be,
- (d) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,
- (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 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,
- (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 with one another 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,
- (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,
- (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 divorce 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.

(3) In deciding whether to make an order under a provision referred to in *subsection (1)* and in determining the provisions of such an order, the court shall have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.

(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:

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- (a) the financial needs of the member,
- (b) the income, earning capacity (if any), property and other financial resources of the member,
- (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) and in subsection (3),*
- (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.

Retrospective periodical payments orders.

21.—(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—

- (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 divorce, as may be specified in the order,
- (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.

(2) The jurisdiction conferred on the court by *subsection (1) (b)* is without prejudice to the generality of *section 13 (1) (c)*.

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

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

- (a) a maintenance pending suit order,
- (b) a periodical payments order,
- (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,

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- (e) an order under *paragraph (b), (c) or (d) of section 14 (1)* in so far as such application is not restricted or excluded pursuant to *section 14 (2)*, Pr.III S.22
- (f) an order under *subparagraph (i) or (ii) of section 15 (1) (a)*,
- (g) a financial compensation order,
- (h) an order under *section 17 (2)* insofar as such application is not restricted or excluded pursuant to *section 17 (26)*,
- (i) an order under this section.

(2) Subject to the provisions of this section and *section 20* and to any restriction or exclusion pursuant to *section 14 (2) or 17 (26)* and without prejudice to *section 16 (2) (d)*, the court may, on application to it in that behalf—

- (a) by either of the spouses concerned,
- (b) in the case of the death of either of the spouses, by any other person who has, in the opinion of the court, a sufficient interest in the matter or by a person on behalf of a dependent member of the family concerned, or
- (c) in the case of the remarriage of either of the spouses, by his or her spouse,

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 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 person under or by virtue of an order to which this section applies.

(3) Without prejudice to the generality of *section 12 or 13*, 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 of the family by reason of his or her attainment of the age of 18 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.

(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—

- (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

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court thinks appropriate in consequence of any variation, extinguishment or reduction made pursuant to *paragraph (a)*,

and *section 19* 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 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—

(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.

(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.

Restriction in relation to orders for benefit of dependent members of family.

23.—In deciding whether—

(a) to include in an order under *section 12* a provision requiring the making of periodical payments for the benefit of a dependent member of the family,

(b) to make an order under *paragraph (a) (ii)*, (*b) (ii)* or (*c) (ii)* of *section 13 (1)*,

(c) to make an order under *section 22* varying, discharging or suspending a provision referred to in *paragraph (a)* or an order referred to in *paragraph (b)*,

the court shall not have regard to conduct by the spouse or spouses concerned of the kind specified in *subsection (2) (i)* of *section 20*.

Method of making payments under certain orders.

24.—(1) The court may by order provide that a payment under an order to which this section applies shall be made by such method as is specified in the order and be subject to such terms and conditions as it considers appropriate and so specifies.

(2) This section applies to an order under—

(a) section 11 (2) (*b*) of the Act of 1964,

(b) section 5, 5A or 7 of the Act of 1976,

(c) section 7, 8 or 24 of the Act of 1995, and

(d) *section 12, 13, 19* or *22*.

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25.—Where an appeal is brought from an order under—

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Stay on certain orders the subject of appeal.

(a) section 11 (2) (b) of the Act of 1964,

(b) section 5, 5A or 7 of the Act of 1976,

(c) section 7, paragraph (a) or (b) of section 8 (1) or section 24 of the Act of 1995, or

(d) section 12, paragraph (a) or (b) of section 13 (1) or paragraph (a), (b) or (c) of section 22 (1),

the operation of the order shall not be stayed unless the court that made the order or to which the appeal is brought directs otherwise.

26.—(1) Where, while an order (“the first-mentioned order”), being—

Orders under Acts of 1976, 1989 and 1995.

(a) a maintenance order, an order varying a maintenance order, or an interim order under the Act of 1976,

(b) an order under section 14, 15, 16, 18 or 22 of the Act of 1989,

(c) an order under section 8, 9, 10, 11, 12, 13, 14, 15 or 18 of the Act of 1995,

is in force, an application is made to the court by a spouse to whom the first-mentioned order relates for an order granting a decree of divorce or an order under this Part, the court may by order discharge the first-mentioned order as on and from such date as may be specified in the order.

(2) Where, on the grant of a decree of divorce an order specified in subsection (1) is in force, it shall, unless it is discharged by an order under subsection (1), continue in force as if it were an order made under a corresponding provision of this Act and section 22 shall apply to it accordingly.

27.—Section 3 (1) of the Act of 1976 is hereby amended by the insertion in the definition of “antecedent order” after paragraph (k) (inserted by the Act of 1995) of the following paragraph:

Amendment of section 3 of Act of 1976.

“(l) a maintenance pending suit order under the *Family Law (Divorce) Act, 1996*, or a periodical payments order under that Act;”.

28.—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 22, with the modifications that—

Transmission of periodical payments through District Court clerk.

(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,

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(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

(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,

and with any other necessary modifications.

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

29.—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.

Amendment of Enforcement of Court Orders Act, 1940.

30.—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 and section 22 of the Act of 1995), to an order shall be construed as including references to a maintenance pending suit order and a periodical payments order.

PART IV

INCOME TAX, CAPITAL ACQUISITIONS TAX, CAPITAL GAINS TAX,
PROBATE TAX AND STAMP DUTY

Payments to be made without deduction of income tax.

31.—Payments of money pursuant to an order under this Act (other than under *section 17*) shall be made without deduction of income tax.

Income tax treatment of divorced persons.

32.—Where a payment to which section 3 of the Finance Act, 1983, applies is made in a year of assessment (within the meaning of the Income Tax Acts) by a spouse who was a party to a marriage that has been dissolved for the benefit of the other spouse and—

(a) both spouses are resident in the State for tax purposes for that year of assessment, and

(b) neither spouse has entered into another marriage,

then, the provisions of section 4 of the Finance Act, 1983, shall, with any necessary modifications, have effect in relation to the spouses for that year of assessment as if their marriage had not been dissolved.

Exemption of certain transfers from stamp duty.

33.—(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.

(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 an order under *Part III*.

(b) *Subsection (1)* does not apply in relation to an instrument referred to in that subsection by which any part of or

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beneficial interest in the property concerned is transferred to a person other than the spouses concerned. Pr.IV S.33

34.—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 under *Part III* 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.

35.—(1) Notwithstanding the provisions of the Capital Gains Tax Acts, where, by virtue or in consequence of an order made under *Part III* on or following the granting of a decree of divorce either of the spouses concerned disposes of an asset to the other spouse, both spouses shall be treated for the purpose 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: Capital gains tax treatment of certain disposals by divorced persons.

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.

(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.

36.—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)— Abatement and postponement of probate tax on property the subject of an order under *section 18*.

(a) shall apply to a spouse in whose favour an order has been made under *section 18* as it applies to a spouse referred to in the said section 115A, and

(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,

with any necessary modifications.

PART V

MISCELLANEOUS

37.—(1) In this section— Powers of court in relation to transactions intended to prevent or reduce relief.

“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

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an order under *section 12, 13 or 14, paragraph (a) or (b) of section 15 (1) or section 16, 17, 18 or 22* (other than an order affecting an order referred to in *subsection (1) (e)* thereof) and references to defeating a claim for relief are references to—

- (a) preventing relief being granted to the person concerned, whether for the benefit of the person or a dependent member of the family concerned,
- (b) limiting the relief granted, or
- (c) 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.

(2) (a) The court, on the application of a person (“the applicant”) who has instituted proceedings that have not been determined for the grant of relief, 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 that other spouse or other person from so doing or otherwise for protecting the claim,
- (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.

(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.

(c) An application under *paragraph (a)* shall be made in the proceedings for the grant of the relief concerned.

(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) 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—

- (a) in case the application is for an order under *subsection (2)*

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(a) (i), that the disposition or other dealing concerned would (apart from this section) have the consequence, or

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(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.

38.—(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.

(2) Where the rateable valuation of any land to which proceedings in the Circuit Family 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.

(3) 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.

(4) The Circuit Family Court may, for the purposes of *subsection (2)* 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.

(5) 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.

(6) In proceedings under *section 13, 14, 15 (1) (a), 16, 17, 18 or 22—*

(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

(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 may reasonably be required for the purposes of the proceedings.

(7) Where a person fails or refuses to comply with *subsection (6)*, the court on application to it in that behalf by a person having an interest in the matter, may direct the person to comply with that subsection.

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Exercise of jurisdiction by court in relation to divorce.

39.—(1) The court may grant a decree of divorce 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.

(2) Where proceedings are pending in a court in respect of an application for the grant of a decree of divorce 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, notwithstanding section 31(4) of the Act of 1989 or section 39 of the Act of 1995, as the case may be, 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.

(3) 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 section 39 of the Act of 1995, jurisdiction to determine the application, the court shall, notwithstanding *subsection (1)*, have jurisdiction to determine an application for the grant of a decree of divorce in respect of the marriage concerned.

(4) Where proceedings are pending in a court in respect of an application for the grant of a decree of judicial separation or in respect of an appeal from the determination of such an application and the court has or had, by virtue of section 31 (4) of the Act of 1989, jurisdiction to determine the application, the court shall, notwithstanding *subsection (1)*, have jurisdiction to determine an application for the grant of a decree of divorce in respect of the marriage concerned.

Notice of proceedings under Act.

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

(a) the other spouse concerned or, as the case may be, the spouses concerned, and

(b) any other person specified by the court.

Custody of dependent members of family after decree of divorce.

41.—Where the court makes an order for the grant of a decree of divorce, 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.

Social reports in family law proceedings.

42.—Section 47 of the Act of 1995 shall apply to proceedings under this Act.

Cost of mediation and counselling services.

43.—The cost of any mediation services or counselling services provided for a spouse who is or becomes a party to proceedings under this Act, the Act of 1964 or the Act of 1989 or for a dependent

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member of the family of such a spouse shall be in the discretion of the court concerned. Pr.V S.43

44.—Where an agreement to marry is terminated, section 36 of the Act of 1995 shall apply, as if the parties to the agreement were married to each other, to any dispute between them, or claim by one of them, in relation to property in which either or both of them had a beneficial interest while the agreement was in force. Determination of questions between persons formerly engaged to each other in relation to property.

45.—The Act of 1989 is hereby amended—

Amendment of Act of 1989.

(a) in section 3 (2) (a), by the substitution of the following subparagraph for subparagraph (i):

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

(b) in section 7, by the deletion of subsection (7), and

(c) by the insertion of the following section before section 8:

“Non-admissibility as evidence of certain communications relating to reconciliation or separation.

7A.—An oral or written communication between either of the spouses concerned and a third party for the purpose of seeking assistance to effect a reconciliation or to reach agreement between them on some or all of the terms of a separation (whether or not made in the presence or with the knowledge of the other spouse), and any record of such a communication, made or caused to be made by either of the spouses concerned or such a third party, shall not be admissible as evidence in any court.”.

46.—Section 117 (6) of the Act of 1965 is hereby amended by the substitution of “6 months” for “twelve months”. Amendment of Act of 1965.

47.—The Pensions Act, 1990, is hereby amended as follows:

Amendment of Pensions Act, 1990.

(a) in subsection (4) (a) (inserted by the Pensions (Amendment) Act, 1996) of section 5, by the substitution of “paragraph (c) or (cc) of section 10 (1)” for “section 10 (1) (c),”,

(b) subsection (4) (inserted by the Pensions (Amendment) Act, 1996) of section 5 shall apply and have effect in relation to section 17 as it applies and has effect in relation to section 12 of the Act of 1995 with the modifications that—

(i) the reference to the said section 12 shall be construed as a reference to section 17,

(ii) the reference in paragraph (c) to the Family Law Act, 1995, shall be construed as a reference to the *Family Law (Divorce) Act, 1996*,

(iii) the references to subsections (1), (2), (3), (5), (6), (7), (8), (10) and (25) of the said section 12 shall be construed as references to subsections (1), (2), (3), (5),

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(6), (7), (8), (10) and (25), respectively, of *section 17*,
and

(iv) the reference to section 2 of the Act of 1995 shall be construed as a reference to *section 2*,

and

(c) in section 10 (1), by the substitution for paragraph (cc) (inserted by the Pensions (Amendment) Act, 1996) of the following paragraph:

“(cc) to issue guidelines or guidance notes generally on the operation of this Act and on the provisions of the Family Law Act, 1995, and the *Family Law (Divorce) Act, 1996*, relating to pension schemes (within the meaning of section 2 of the Family Law Act, 1995 and *section 2* of the *Family Law (Divorce) Act, 1996*);”.

Amendment of
Criminal Damage
Act, 1991.

48.—Section 1 (3) of the Criminal Damage Act, 1991, is hereby amended—

(a) in paragraph (a), by the insertion after “1976,” of the following:

“or a dwelling, within the meaning of section 2 (2) of the Family Home Protection Act, 1976, as amended by section 54 (1) (a) of the Family Law Act, 1995, in which a person, who is a party to a marriage that has been dissolved under the *Family Law (Divorce) Act, 1996*, or under the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State, ordinarily resided with his or her former spouse, before the dissolution”,

and

(b) in paragraph (b), by the substitution of the following subparagraph for subparagraph (i):

“(i) is the spouse of a person who resides, or is entitled to reside, in the home or is a party to a marriage that has been dissolved under the *Family Law (Divorce) Act, 1996*, or under the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State, and”.

Amendment of
Criminal Evidence
Act, 1992.

49.—Section 20 of the Criminal Evidence Act, 1992, is hereby amended in section 20—

(a) by the insertion of the following definition:

“ ‘decree of divorce’ means a decree under *section 5* of the *Family Law (Divorce) Act, 1996* or any decree that was granted under the law of a country or jurisdiction other than the State and is recognised in the State;”.

and

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(b) by the substitution of the following definition for the definition of former spouse: Pr.V S.49

“ ‘former spouse’ includes a person who, in respect of his or her marriage to an accused—

(a) has been granted a decree of judicial separation, or

(b) has entered into a separation agreement, or

(c) has been granted a decree of divorce;”.

50.—The Powers of Attorney Act, 1996, is hereby amended—

Amendment of Powers of Attorney Act, 1996.

(a) in section 5 (7), by the substitution of the following paragraph for paragraph (a):

“(a) the marriage is annulled or dissolved either—

(i) under the law of the State, or

(ii) under the law of another state and is, by reason of that annulment or divorce, not or no longer a subsisting valid marriage under the law of the State,”.

(b) in Part I of the Second Schedule, by the insertion of the following paragraph:

“2A. The expiry of an enduring power of attorney effected in the circumstances mentioned in section 5 (7) shall apply only so far as it relates to an attorney who is the spouse of the donor.”.

51.—The references in sections 2 and 3 of the Act of 1996 to a spouse shall be construed as including references to a person who is a party to a marriage that has been dissolved under this Act or under the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State. Amendment of Act of 1996.

52.—The Act of 1995 is hereby amended—

Amendment of Act of 1995.

(a) in section 8—

(i) in subsection (1), by the insertion of “or at any time thereafter” after “separation”,

(ii) in paragraph (c) (i) of that subsection, by the insertion of “or” after “so specified”, and

(iii) in subsection (4), by the substitution of “the spouse, or any dependent member of the family, in whose favour the order is made or the other spouse concerned” for “either of the spouses concerned”,

(b) in section 9 (1), by the insertion of “or at any time thereafter” after “separation”,

(c) in section 10—

- (i) in subsection (1), by the insertion of “or at any time thereafter” after “separation”, and
- (ii) by the insertion after subsection (2) of the following subsection:

“(3) Subsection (1) (a) shall not apply in relation to a family home in which, following the grant of a decree of judicial separation, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.”,

(d) in sections 11 (2) (a), 12 (23) (b) and 25 (1), by the substitution of “proper provision, having regard to the circumstances,” for “adequate and reasonable financial provision”, in each place where it occurs,

(e) in section 12—

- (i) in subsection (1), in the definition of “relevant guidelines”, by the substitution of “paragraph (c) or (cc) of section 10 (1)” for “section 10 (1) (c)”, and
- (ii) in subsection (18), by the substitution of “40” for “41”,

(f) in section 15—

- (i) in subsection (5), by the substitution of “10 (1) (a)” for “10 (1) (a) (ii)”, and
- (ii) by the insertion of the following subsection after subsection (5):

“(6) This section shall not apply in relation to a family home in which, following the grant of a decree of judicial separation, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.”,

(g) by the insertion of the following section after section 15:

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

15A.—(1) Subject to the provisions of this section, where, following the grant of a decree of judicial separation, a court makes an order under section 14 in relation to the spouses concerned and one of the spouses dies, the court, on application to it in that behalf by the other spouse (‘the applicant’) not more than 6 months after representation is first granted under the Act of 1965 in respect of the estate of the deceased spouse, may by order make such provision 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 proper provision in the circumstances was not made for the applicant during the lifetime of the deceased spouse under section 8, 9, 10 (1) (a), 11 or 12 for any reason (other than conduct referred to in subsection (2) (i) of section 16 of the applicant).

(2) The court shall not make an order under this section if the applicant concerned has remarried since the granting of the decree of judicial separation concerned. Pr.V S.52

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

(a) any order under paragraph (c) of section 8 (1) or a property adjustment order in favour of the applicant, and

(b) 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 court had not made an order under section 14.

(5) 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.

(6) The personal representative of a deceased spouse in respect of whom a decree of judicial separation has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse 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.

(7) Where the personal representative of a deceased spouse in respect of whom a decree of judicial separation has been granted gives notice of his or her death to the other spouse concerned ('the spouse') and—

(a) the spouse intends to apply to the court for an order under this section,

(b) the spouse has applied for such an order and the application is pending, or

(c) an order has been made under this section in favour of the spouse,

the spouse shall, not later than one month after the receipt of the notice, notify the personal representative of such intention, application or order, as the case may be, and, if he or she does not do so, the personal representative shall be at liberty to distribute the assets of the deceased spouse, or any part thereof, amongst the parties entitled thereto.

(8) The personal representative shall not be liable to the spouse for the assets or any part thereof so distributed unless, at the time of such distribution, he or she had notice of the intention, application or order aforesaid.

(9) Nothing in subsection (7) or (8) shall prejudice the right of the spouse to follow any such assets into the hands of any person who may have received them.

(10) On granting a decree of judicial separation or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, if it considers it just to do so, make an order that either or both spouses shall not, on the death of either of them, be entitled to apply for an order under this section.”,

(h) in section 16 (1)—

(i) by the insertion of “15A,” after “14,”,

(ii) by the substitution of “exists or will be made” for “is made”, and

(iii) by the substitution of “proper” for “adequate and reasonable”,

(i) in section 18, in subsection (1) (h), by the insertion of “insofar as such application is not restricted or excluded by section 12 (26)” after “section 12”,

(j) in section 25—

(i) in subsection (1), by the substitution, as respects applications under that section made after the commencement of the *Family Law (Divorce) Act, 1996*, of “6 months” for “12 months”, and

(ii) by the substitution of the following subsections for subsection (7):

“(7) The personal representative of a deceased spouse in respect of whom a decree of divorce has been granted in a country or jurisdiction other than the State shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse shall not, without the leave

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of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section. Pr.V S.52

(8) Where the personal representative of a deceased spouse in respect of whom a decree of divorce has been granted in a country or jurisdiction other than the State gives notice of his or her death to the other spouse concerned ('the spouse') and—

- (a) the spouse intends to apply to the court for an order under this section,
- (b) the spouse has applied for such an order and the application is pending, or
- (c) an order has been made under this section in favour of the spouse,

the spouse shall, not later than one month after the receipt of the notice, notify the personal representative of such intention, application or order, as the case may be, and, if he or she does not do so, the personal representative shall be at liberty to distribute the assets of the deceased spouse, or any part thereof, amongst the parties entitled thereto.

(9) The personal representative shall not be liable to the spouse for the assets or any part thereof so distributed unless, at the time of such distribution, he or she had notice of the intention, application or order aforesaid.

(10) Nothing in subsection (8) or (9) shall prejudice the right of the spouse to follow any such assets into the hands of any person who may have received them.”,

(k) in section 29, by the insertion of the following subsection after subsection (10):

“(11) In this section a reference to a spouse includes a reference to a person who is a party to a marriage that has been dissolved under the *Family Law (Divorce) Act, 1996.*”,

(l) in section 35 (1)—

- (i) by the insertion in the definition of “relief”, of “15A,” after “13,”, and
- (ii) by the insertion in that definition, after paragraph (a), of the following paragraph:

“(aa) an order under section 11 (2) (b) of the Act of 1964 or section 5, 5A or 7 of the Act of 1976, or”,

(m) in section 36—

- (i) in subsection (7) (a) (i), by the insertion of “or dissolved”, after “annulled”, and
- (ii) in subsection (8), after paragraph (c), by the insertion of the following paragraph:

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“(cc) either of the parties to a marriage that has been dissolved under the law of the State,”

(n) in section 38 (7), by the insertion of “15A,” after “14,”

(o) in section 43—

(i) in paragraph (a), by the substitution of the following subparagraph for subparagraph (ii):

“(ii) in the definition of ‘dependent child’ the substitution of ‘18’ for ‘sixteen’ and ‘23’ for ‘twenty-one’, and”

and

(ii) by the substitution of the following paragraph for paragraph (e):

“(e) in section 23, after subsection (2), the insertion of the following subsections:

‘(3) In proceedings under this Act—

(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

(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 may reasonably be required for the purpose of the proceedings.

(4) Where a person fails or refuses to comply with subsection (3), the Court, on application to it in that behalf by a person having an interest in the matter, may direct the person to comply with that subsection.’”

and

(p) in section 47—

(a) in subsection (6), by the substitution of “This section” for “Subsection (1)”, and

(b) in subsection (7), by the substitution of “(1) (b)” for “(2)”.

Amendment of Maintenance Act, 1994.

53.—The Maintenance Act, 1994 (as amended by the Act of 1995), is hereby amended—

(a) in section 3, in subsection (1), by the insertion of the following definition:

“‘the Act of 1996’ means the *Family Law (Divorce) Act, 1996*,”

(b) in section 4, by the substitution of the following paragraph for paragraph (a) of subsection (2):

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“(a) For the purposes of section 8 of the Enforcement of Court Orders Act, 1940, the Act of 1976, the Act of 1988, the Act of 1993 (as amended by this Act), the Act of 1995, *the Act of 1996* and this Act, the Central Authority shall have authority to act on behalf of, as the case may be, a maintenance creditor or claimant, within the meaning of section 13 (1), and references in those enactments to a maintenance creditor or such a claimant shall be construed as including references to the Central Authority.”,

(c) in section 14—

(i) in subsection (1) (c), by the substitution of the following subparagraph for subparagraph (i):

“(i) if the amount of the maintenance sought to be recovered exceeds the maximum amount which the District Court has jurisdiction to award under the Act of 1976 or the request is for a relief order (within the meaning of the Act of 1995) or a maintenance pending suit order, a periodical payments order, a secured periodical payments order or a lump sum order (within the meaning, in each case, of *the Act of 1996*), make an application to the Circuit Court,”,

and

(ii) by the substitution of the following subsection for subsection (3):

“(3) An application referred to in subsection (1) (c) shall be deemed to be an application for a maintenance order under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Act of 1976, or the appropriate order referred to in subsection (1) (c) (i), as may be appropriate, and to have been made on the date on which the request of the claimant for the recovery of maintenance was received by the Central Authority of the designated jurisdiction concerned.”.

ACTS REFERRED TO

Adoption Acts, 1952 to 1991	
Capital Acquisitions Tax Act, 1976	1976, No. 8
Capital Gains Tax Acts	
Censorship of Publications Act, 1929	1929, No. 21
Criminal Damage Act, 1991	1991, No. 31
Criminal Evidence Act, 1992	1992, No. 12
Defence Act, 1954	1954, No. 18
Domestic Violence Act, 1996	1996, No. 1
Enforcement of Court Orders Act, 1940	1940, No. 23
Family Home Protection Act, 1976	1976, No. 27
Family Law Act, 1995	1995, No. 26
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11
Finance (1909-10) Act, 1910	1910, c. 8
Finance Act, 1972	1972, No. 19
Finance Act, 1983	1983, No. 15
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
Income Tax Acts	
Insurance Act, 1989	1989, No. 3
Judicial Separation and Family Law Reform Act, 1989	1989, No. 6
Maintenance Act, 1994	1994, No. 28
Partition Act, 1868	1868, c. 40
Partition Act, 1876	1876, c. 17
Pensions Act, 1990	1990, No. 25
Pensions (Amendment) Act, 1996	1996, No. 18
Powers of Attorney Act, 1996	1996, No. 12
Registration of Title Act, 1964	1964, No. 16
Social Welfare Acts	
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27



Blackhall Place
Dublin 7

T +353 1 672 4800

F +353 1 672 4801

E general@lawsociety.ie

W www.lawsociety.ie

