



Number 11 of 1976

FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

REVISED

Updated to 18 January 2016

This Revised Act is an administrative consolidation of the *Family Law (Maintenance of Spouses and Children) Act 1976*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *International Protection Act 2015 (66/2015)*, enacted 30 December 2015, and all statutory instruments up to and including *Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016 (S.I. No. 12 of 2016)*, made 12 January 2016, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1999, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ACTS REFERRED TO

Illegitimate Children (Affiliation Orders) Act, 1930	1930, No. 17
Guardianship of Infants Act, 1964	1964, No. 7
Maintenance Orders Act, 1974	1974, No. 16
Enforcement of Court Orders Act, 1940	1940, No. 23
Local Government Act, 1941	1941, No. 23
Harbours Act, 1946	1946, No. 9
Vocational Education Act, 1930	1930, No. 29
Agriculture Act, 1931	1931, No. 8
Statute of Limitations, 1957	1957, No. 6
Courts of Justice Act, 1924	1924, No. 10
Courts Act, 1971	1971, No. 36
Adoption Act, 1952	1952, No. 25

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*Family Law (Maintenance of
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[1976.]

Married Women (Maintenance in case of Desertion) Act,
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1886, c. 52

Defence Act, 1954

1954, No. 18



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FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

REVISED

Updated to 18 January 2016

AN ACT TO MAKE PROVISION FOR PERIODICAL PAYMENTS BY A SPOUSE FOR THE SUPPORT OF THE OTHER SPOUSE AND ANY DEPENDENT CHILDREN OF THE FAMILY OF THE SPOUSES IN CERTAIN CASES OF FAILURE BY THE SPOUSE TO PROVIDE REASONABLE MAINTENANCE, TO ENABLE PAYMENTS TO BE MADE BY AN EMPLOYER, BY DEDUCTIONS FROM AN EMPLOYEE'S EARNINGS, TO A PERSON ENTITLED UNDER CERTAIN COURT ORDERS TO PERIODIC PAYMENTS FOR MAINTENANCE FROM THE EMPLOYEE, TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID AND TO AMEND IN OTHER RESPECTS THE LAW RELATING TO PARENTS AND CHILDREN. [6th April, 1976]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

- Short title. **1.**—This Act may be cited as the Family Law (Maintenance of Spouses and Children) Act, 1976.
- Commencement. **2.**—This Act shall come into operation on the day that is one month after the date of its passing.
- Interpretation. **3.**—(1) In this Act, save where the context otherwise requires—
- [‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;]
- [‘allowance’ means deserted wife’s allowance under section 195, lone parent’s allowance under section 198B or supplementary welfare allowance under section 200 of the Social Welfare (Consolidation) Act, 1981;]
- “antecedent order” means—
- (a) a maintenance order,
- (b) a variation order,
- (c) an interim order,

(d) an order under *section 8* of this Act (in so far as it is deemed under that section to be a maintenance order),

[(da) an order under *section 8A* of this Act (in so far as it is deemed under that section to be a maintenance order);]

(e) an order deemed under *section 30* of this Act to be a maintenance order,

(f) an order providing for a periodical payment under the Illegitimate Children (Affiliation Orders) Act, 1930,

(g) an order for maintenance under *section 11 (2) (b)* of the Guardianship of Infants Act, 1964,

(h) an enforceable maintenance order under the Maintenance Orders Act, 1974,

[(i) an order for alimony pending suit;]

[(j) an order for maintenance pending suit under the Judicial Separation and Family Law Reform Act, 1989, or a periodical payments order under that Act,

(k) a maintenance pending suit order under the Family Law Act, 1995, or a periodical payments order under that Act;]

[(l) a maintenance pending suit order under the Family Law (Divorce) Act, 1996, or a periodical payments order under that Act;]

“attachment of earnings order” means an order under *section 10* of this Act;

[‘benefit’ means deserted wife’s benefit under *section 100* of the Social Welfare (Consolidation) Act, 1981;]

[‘civil partner’ shall be construed in accordance with *section 3* of the Act of 2010;]

[‘cohabitant’ shall be construed in accordance with *section 172(1)* of the Act of 2010 and includes a former cohabitant;]

[‘competent authority’ has the meaning assigned to it by *section 314* of the Social Welfare (Consolidation) Act, 1981;]

“Court” shall be construed in accordance with *section 23* of this Act;

[‘dependent child’ means any child (including a child whose parents are not married to each other) who is under the age of [18] years, or, if he has attained that age—

(a) is or will be or, if an order were made under this Act providing for periodical payments for his support, 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

(b) is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully;]

[‘dependent child of the family’, in relation to a spouse or spouses, means any dependent child—

(a) of both spouses, or adopted by both spouses under the Adoption Acts, 1952 to 1976, or in relation to whom both spouses are in *loco parentis*, or

(b) of either spouse, or adopted by either spouse under the Adoption Acts, 1952 to 1976, or in relation to whom either spouse is in *loco parentis*, where the other spouse, being aware that he is not the parent of the child, has treated the child as a member of the family;]

“desertion” includes conduct on the part of one spouse that results in the other spouse, with just cause, leaving and living separately and apart from him, and cognate words shall be construed accordingly;

“earnings” means any sums payable to a person—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);
- (b) by way of pension or other like benefit in respect of employment (including an annuity in respect of past services, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment);

“interim order” means an order under *section 7* of this Act;

[‘lump sum order’ means an order under *section 21A* of this Act;]

“maintenance creditor”, in relation to an order under this Act (other than an order under *section 22* of this Act), or to proceedings arising out of such an order, means a person on whose application there has been made such an order;

“maintenance debtor”, in relation to an attachment of earnings order, or to proceedings in which a Court has power to make such an order, or to proceedings arising out of such an order, means the [person] by whom payments are required by the relevant antecedent order to be made and, in relation to any other order under this Act (other than an order under *section 22* of this Act) or to proceedings in which a Court has power to make such an order, or to proceedings arising out of such an order, means a [person] who is or, if it were made, would be required by such an order to make periodical payments for the support of persons named in the order;

[‘maintenance order’ means, where the context requires, [an order under *section 5, 5A, 5B* or *5C*] of this Act;]

“normal deduction rate” and “protected earnings rate” have the meanings respectively assigned to them by *section 10* of this Act;

[‘parent’, in relation to a dependent child, includes a person who has adopted the child under the Adoption Acts, 1952 to 1976, but does not include a person who is a parent of the child adopted under those Acts where the person is not an adopter of the child;]

“variation order” means an order under *section 6* of this Act varying a maintenance order.

(2) Subject to *section 16* of this Act, the relationship of employer and employee shall be regarded as subsisting between two persons if one of them as a principal and not as a servant or agent pays earnings to the other.

(3) References in this Act to a District Court clerk include references to his successor in the office of District Court clerk and to any person acting on his behalf.

(4) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

Commencement
of periodical
payments.

[4.—A periodical payment under an order under this Act shall commence on the date that is specified in the order being a date which may be before or after the date on which the order is made but which shall not be earlier than the date of the application for the order.]

PART II

MAINTENANCE OF SPOUSES AND DEPENDENT CHILDREN

Maintenance
order.

5.—(1) (a) Subject to *subsection (4)* of this section, where it appears to the Court, on application to it by a spouse, that the other spouse has failed to provide such maintenance for the applicant spouse and any dependent children of the family as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the other spouse make to the applicant spouse periodical payments, for the support of the applicant spouse and of each of the dependent children of the family, for such period during the lifetime of the applicant spouse, of such amount and at such times, as the Court may consider proper.

(b) Subject to *subsection (4)* of this section, where a spouse—

(i) is dead,

(ii) has deserted, or has been deserted by, the other spouse, or

(iii) is living separately and apart from the other spouse,

and there are dependent children of the family (not being children who are being fully maintained by either spouse), then, if it appears to the Court, on application to it by any person, that the surviving spouse or, as the case may be, either spouse has failed to provide such maintenance for any dependent children of the family as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that that spouse make to that person periodical payments, for the support of each of those dependent children, for such period during the lifetime of that person, of such amount and at such times, as the Court may consider proper.

(c) A maintenance order [under this section] or a variation order shall specify each part of a payment under the order that is for the support of a dependent child [of the family] and may specify the period during the lifetime of the person applying for the order for which so much of a payment under the order as is for the support of a dependent child [of the family] shall be made.

(2) The Court shall not make a maintenance order for the support of a spouse where the spouse has deserted and continues to desert the other spouse [unless, having regard to all the circumstances (including the conduct of the other spouse), the Court is of opinion that it would be repugnant to justice not to make a maintenance order].

(3) [...]

[(4) The Court, in deciding whether to make a maintenance order under this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of—

(i) the spouses and any dependent children of the family, and

(ii) any other dependent children of which either spouse is a parent,

including income or benefits to which either spouse or any such children are entitled by or under statute [with the exception of a benefit or allowance or any increase in such benefit or allowance in respect of any dependent children granted to either parent of such children], and

(b) the financial and other responsibilities of—

- (i) the spouses towards each other and towards any dependent children of the family, and
 - (ii) each spouse as a parent towards any other dependent children, and the needs of any such children, including the need for care and attention.]
- [(c) 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 be repugnant to justice to disregard it.]

[Maintenance order (provision for certain dependent children).

5A.—(1) Subject to *subsection (3)* of this section, where, in respect of a dependent child whose parents are not married to each other, it appears to the Court on application to it by either parent of the child that the other parent has failed to provide such maintenance for the child as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the other parent make to the applicant parent periodical payments, for the support of the child as aforesaid, for such period during the lifetime of the applicant parent, of such amount and at such times, as the Court may consider proper.

(2) Subject to *subsections (3) and (4)* of this section, where in respect of a dependent child whose parents are not married to each other it appears to the Court, on application to it by any person other than a parent, that a parent of the child (not being a child who is being fully maintained by the other parent) has failed to provide such maintenance for the child as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the parent make to that person periodical payments for the support of the child for such period during the lifetime of that person, of such amount and at such times as the Court may consider proper.

(3) The Court, in deciding whether to make a maintenance order under this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of—

- (i) each parent,
- (ii) the dependent child in respect of whom the order is sought, and
- (iii) any other dependent children of either parent,

including income or benefits to which either parent, the dependent child as aforesaid or such other dependent children are entitled by or under statute [with the exception of a benefit or allowance or any increase in such benefit or allowance in respect of any dependent children granted to either parent of such children], and

(b) the financial and other responsibilities of each parent towards—

- [(i) a spouse or a civil partner,]
- (ii) the dependent child in respect of whom the order is sought, and
- (iii) any other dependent children of either parent,

and the needs of any dependent child as aforesaid or of any such other dependent children, including the need for care and attention.

(4) The Court shall not make a maintenance order under *subsection (2)* of this section in relation to a parent of a dependent child if a maintenance order under *subsection (1)* of this section requiring that parent to make periodical payments for the support of the child is in force or that parent has made provision for the child by an agreement

under which, at or after the time of the hearing of the application for the order under the said *subsection (2)*, payments fall to be made and in relation to which an order under *section 8A* of this Act has been made unless—

(a) the parent is not complying with the order under the said *subsection (1)* or the agreement, as the case may be, and

(b) the Court, having regard to all the circumstances, thinks it proper to do so,

but, if the Court makes the order under the said *subsection (2)*, any amounts falling due for payment under the order under the said *subsection (1)* or the agreement, as the case may be, on or after the date of the making of the order under the said *subsection (2)* shall not be payable.]

[Maintenance order (liability of cohabitant to other cohabitant in respect of child of other cohabitant)

5B. (1) This section applies to a cohabitant of a person (in this section referred to as the maintenance applicant) who is a parent of, or who is *in loco parentis* to, a dependent child who is under the age of 18 years where the cohabitant—

(a) is not the parent of the dependent child, and

(b) is a guardian of the dependent child appointed under *section 6C* of the *Guardianship of Infants Act 1964*.

(2) Subject to *subsection (3)* of this section, where it appears to the Court, on application to it by a maintenance applicant, that the applicant's cohabitant has failed to provide such maintenance for a dependent child referred to in *subsection (1)* of this section as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the cohabitant make to the maintenance applicant periodical payments, for the support of the child, for such period during the lifetime of the maintenance applicant, of such amount and at such times, as the Court may consider proper.

(3) The Court, in deciding whether to make a maintenance order under this section for the support of a dependent child referred to in *subsection (1)* of this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, in so far as is practicable, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of—

(i) the cohabitant,

(ii) the maintenance applicant,

(iii) the child, and

(iv) any other dependent children of the maintenance applicant or the cohabitant,

including income or benefits to which the maintenance applicant, the cohabitant, the child or such other dependent children are entitled by or under statute with the exception of a benefit or allowance or any increase in such benefit or allowance in respect of the child or other dependent children granted to either parent of any such children, and

(b) the financial and other responsibilities of the maintenance applicant and the cohabitant concerned towards—

(i) a spouse, civil partner or cohabitant,

(ii) the child, and

(iii) any other dependent children of the maintenance applicant or the cohabitant,

and the needs of such children, including the need for care and attention.]

[Maintenance order (liability of cohabitant to any person in respect of child of other cohabitant)

5C. (1) This section applies to a cohabitant (in this section called the relevant cohabitant) of a person who is a parent of, or who is in *loco parentis* to, a dependent child who is under the age of 18 years where the relevant cohabitant—

(a) is not the parent of the dependent child, and

(b) is a guardian of the child appointed under section 6C of the Guardianship of Infants Act 1964.

(2) Subject to *subsection (3)* of this section, where it appears to the Court, on application to it by any person, that the relevant cohabitant has failed to provide such maintenance for a dependent child referred to in *subsection (1)* of this section as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the relevant cohabitant make to the person periodical payments, for the support of the dependent child, for such period during the lifetime of that person, of such amount and at such times, as the Court may consider proper.

(3) The Court, in deciding whether to make a maintenance order under this section for the support of a dependent child referred to in *subsection (1)* of this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and, in particular, in so far as is practicable, to the following matters—

(a) the income, earning capacity (if any), property and other financial resources of—

(i) the relevant cohabitant,

(ii) the child, and

(iii) any other dependent children of the relevant cohabitant,

including income or benefits to which the relevant cohabitant, the child or such other dependent children are entitled by or under statute with the exception of a benefit or allowance or any increase in such benefit or allowance in respect of the child or other dependent children granted to either parent of such children, and

(b) the financial and other responsibilities of the relevant cohabitant towards—

(i) a spouse, civil partner or cohabitant,

(ii) the child, and

(iii) any other dependent children of the relevant cohabitant,

and the needs of any such children, including the need for care and attention.

(4) The Court shall not make a maintenance order under *subsection (2)* of this section in relation to a relevant cohabitant in respect of a dependent child referred to in *subsection (1)* of this section if a maintenance order is in force under *section 5B* of this Act requiring that cohabitant to make periodical payments for the support of the child unless—

(a) the cohabitant is not complying with the order under *section 5B* of this Act, and

(b) the Court, having regard to all the circumstances, thinks it proper to do so,

but, if the Court makes the order under the said *subsection (2)*, any amounts falling due for payment under the order under the said *section 5B* on or after the date of the making of the order under the said *subsection (2)* shall not be payable.]

Discharge, variation and termination of maintenance order.

6.—(1) The Court may—

(a) discharge a maintenance order at any time after one year from the making thereof, on the application of the maintenance debtor, where it appears to the Court that, having regard to the maintenance debtor's record of payments pursuant to the order and to the other circumstances of the case, the persons for whose support it provides will not be prejudiced by the discharge thereof, or

(b) discharge or vary a maintenance order at any time, on the application of either party, if it thinks it proper to do so having regard to any circumstances not existing when the order was made [(including 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 be repugnant to justice to disregard it)] or, if it has been varied, when it was last varied, or to any evidence not available to that party when the maintenance order was made or, if it has been varied, when it was last varied.

(2) Notwithstanding anything contained in *subsection (1)* of this section, the Court shall, on application to it under that subsection, discharge that part of a maintenance order which provides for the support of a maintenance creditor where it appears to it that the maintenance creditor, being the spouse of the maintenance debtor, has deserted and continues to desert the maintenance debtor [unless, having regard to all the circumstances (including the conduct of the other spouse), the Court is of opinion that it would be repugnant to justice to do so.]

(3) [Subject to *subsection (3A)* of this section, that part of a maintenance order] which provides for the support of a dependent child shall stand discharged when the child ceases to be a dependent child [...] by reason of his attainment of the age of [18] years or [23] years, as the case may be, and shall be discharged by the Court, on application to it under *subsection (1)* of this section, if it is satisfied that the child has for any reason ceased to be a dependent child [for the purposes of the order].

[(3A) A maintenance order made under *section 5B* or *5C* of this Act shall stand discharged when the person for whose benefit the order was made attains the age of 18 years.]

(4) [...]

(5) Desertion [by, or conduct of,] a spouse shall not be a ground for discharging or varying any part of a maintenance order that provides for the support of dependent children of the family.

Interim order.

7.—On an application to the Court for a maintenance order, the Court, before deciding whether to make or refuse to make the order, may, if it appears to the Court proper to do so having regard to the needs of the persons for whose support the maintenance order is sought and the other circumstances of the case, make an order (in this Act referred to as an interim order) for the payment to the applicant by the maintenance debtor, for a definite period specified in the order or until the application is adjudicated upon by the Court, of such periodical sum as, in the opinion of the Court, is proper.

Orders in respect of certain marital agreements.

8.—Where—

(a) the parties to a marriage enter into an agreement in writing (including a separation agreement) after the commencement of this Act that includes either or both of the following provisions, that is to say—

- (i) a provision whereby one spouse undertakes to make periodical payments towards the maintenance of the other spouse or of any dependent children of the family or of both that other spouse and any dependent children of the family,
- (ii) a provision governing the rights and liabilities of the spouses towards one another in respect of the making or securing of payments (other than payments specified in *paragraph (a) (i)* of this section), or the disposition or use of any property, and

- (b) an application is made by one or both of the spouses to the High Court or the [Circuit Court or, in relation to an agreement other than a separation agreement, the District Court] for an order making the agreement a rule of court,

the Court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of both spouses and the dependent children (if any) of the family, and such order shall, in so far as it relates to a provision specified in *paragraph (a) (i)* of this section, be deemed, for the purpose of *section 9* and *Part III* of this Act, to be a maintenance order.

[Orders in respect of certain other agreements.]

8A.—Where—

- (a) the parents of a dependent child who are not married to each other enter into an agreement in writing after the commencement of Part IV of the Status of Children Act, 1987, that includes either or both of the following provisions, that is to say—

- (i) a provision whereby a parent undertakes to make periodical payments towards the maintenance of the child,
- (ii) a provision affecting the interests of the child which governs the rights and liabilities of the parents towards one another in respect of the making or securing of payments (other than payments specified in *paragraph (a)(i)* of this section), or the disposition or use of any property,

and

- (b) an application is made by one or both of the parents to the High Court or the [Circuit Court or, in relation to an agreement other than a separation agreement, the District Court] for an order making the agreement a rule of court,

that Court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of the child and such order shall, in so far as it relates to a provision specified in *paragraph (a)(i)* of this section, be deemed, for the purposes of *section 9* and *Part III* of this Act, to be a maintenance order.]

[Preservation of pension entitlements in separation agreements.]

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

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

concerned under *section 8* of this Act and any representations made by those trustees in relation to the matter.

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

(4) In this section 'pension scheme' has the meaning assigned to it by the Family Law Act, 1995.]

Transmission of
payments
through District
Court clerk.

9.—(1) Where the Court makes a maintenance order, a variation order or an interim order under this Act, the Court shall—

(a) thereupon direct that payments under the order shall be made to the District Court clerk, unless the maintenance creditor requests it not to do so and the Court considers that it would be proper not to do so, and

(b) in a case in which the Court has not given a direction under paragraph (a) of this subsection, direct, at any time thereafter on the application of the maintenance creditor, that the payments aforesaid shall be made to the District Court clerk.

(2) Where payments to the District Court clerk under this section are in arrear, the District Court clerk shall, if the maintenance creditor so requests in writing, take such steps as he considers reasonable in the circumstances to recover the sums in arrear whether by proceeding in his own name for an attachment of earnings order or otherwise.

(3) Where a direction has been given under *subsection (1)* of this section, the Court, on the application of the maintenance debtor and having afforded the maintenance creditor an opportunity to oppose the application, may, if it is satisfied that, having regard to the record of the payments made to the District Court clerk and all the other circumstances, it would be proper to do so, discharge the direction.

(4) The District Court clerk shall transmit any payments made to him by virtue of this section to the maintenance creditor [or, where appropriate, to the competent authority].

(5) Nothing in this section shall affect any right of a person to take proceedings in his own name for the recovery of any sum payable, but not paid, to the District Court clerk by virtue of this section.

(6) References in this section, in relation to any proceedings, to the District Court clerk are references to such District Court clerk in such District Court district as may be determined from time to time by the Court concerned.

(7) Nothing in *subsection (1)* or *(2)* of this section shall affect paragraph (a) or (b) of section 14 (8) of the Maintenance Orders Act, 1974.

(8) Section 14 (8) of the Maintenance Orders Act, 1974, is hereby amended by the insertion in paragraph (b) after "application under" of "section 10 of the Family Law (Maintenance of Spouses and Children) Act, 1976, or" and by the substitution of "the said section 8" for "that section" and the said paragraph (b), as so amended, is set out in the Table to this section.

TABLE

(b) The district court clerk shall, if any sum payable by virtue of an enforceable maintenance order is not duly paid and if the maintenance creditor so requests in writing, make an application under section 10 of the Family Law (Maintenance of Spouses and Children) Act, 1976, or section 8 (which relates to the enforcement of certain maintenance orders) of the Enforcement of

Court Orders Act, 1940, and for that purpose the references in the said section 8 (other than subsections (4) and (5)) to the applicant shall be construed as references to the district court clerk.

PART III

ATTACHMENT OF EARNINGS

[Failure to make payments to be contempt of court.]

9A.— (1) Subject to this section it shall be contempt of court for a maintenance debtor to fail to make a payment due under an antecedent order.

(2) As respects a contempt of court arising pursuant to this section, a judge of the District Court shall, subject to this section, have such powers, including the power to impose a sanction, as are exercisable by a judge of the High Court in relation to contempt of court in proceedings before the High Court.

(3) Where a payment under an antecedent order made by the District Court has not been made, the maintenance creditor may apply to the District Court clerk concerned for the issue of a summons directing the maintenance debtor to appear before the District Court.

(4) A summons referred to in *subsection (3)* shall—

(a) be issued by the District Court clerk concerned,

(b) contain a statement that failure to make a payment in accordance with the order concerned constitutes a contempt of court and giving details of the consequences of the court finding that a contempt of court has taken place including in particular the possibility of imprisonment,

(c) state that the maintenance debtor may be arrested if he or she fails to appear before the District Court as directed in the summons, and

(d) be served on the maintenance debtor personally, or in such other manner authorised by a judge of the District Court.

(5) If the maintenance debtor fails, without reasonable excuse, to appear before the court in answer to the summons, the judge of the District Court, on the application of the maintenance creditor, shall, if satisfied that the debtor was served with the summons, issue a warrant for the arrest of the maintenance debtor.

(6) A maintenance debtor arrested pursuant to a warrant issued under *subsection (5)* shall be brought as soon as practicable before the District Court.

(7) Where a maintenance debtor is arrested and brought before the District Court under *subsection (6)*, the judge shall fix a new date for the hearing of the summons and direct that the creditor be informed by the District Court by notice in writing of the date so fixed, and shall explain to the debtor in ordinary language—

(a) that he or she is required to attend before the court at the date next fixed for the hearing of the summons,

(b) that failure to attend may in itself constitute a contempt of court and the consequences of such contempt, including in particular the possibility of imprisonment, and that such contempt and the consequences which may follow are in addition to the consequences arising by reason of failure to make a payment under the antecedent order, and

(c) that he or she is entitled to apply for legal advice and legal aid under the Civil Legal Aid Act 1995.

(8) At the hearing of the summons, before hearing evidence from any party the judge shall explain to the debtor in ordinary language—

- (a) the consequences, and in particular the possibility of imprisonment, which may follow a failure to make a payment in accordance with an antecedent order, and
- (b) unless the maintenance debtor has already been so informed under *subsection (7)*, that he or she is entitled to apply for legal advice and legal aid under the Civil Legal Aid Act 1995.

(9) On the hearing of the summons, having given to the maintenance debtor the explanations referred to in *subsection (8)*, having given the maintenance debtor an opportunity to apply for legal advice and legal aid, and having heard such evidence as may be adduced by the maintenance creditor and the maintenance debtor, if the judge is satisfied that the payment concerned has not been made, and—

- (a) that the failure to make the payment concerned is due to—
 - (i) the inability of the maintenance debtor to make the payment concerned by reason of a change in his or her financial circumstances which occurred since the antecedent order or an order varying that order was last made (whichever is the later), or
 - (ii) some other reason not attributable to any act or omission of the maintenance debtor,

the judge may, where he or she believes that to do so would improve the likelihood of the payment concerned being made within a reasonable period, adjourn the hearing—

- (I) to enable the outstanding payment to be made, or
 - (II) to enable an application to be made for an attachment of earnings order under *section 10*,
- (b) that the failure to make the payment concerned is due to the inability of the maintenance debtor to make the payment concerned by reason of a change in his or her financial circumstances which occurred since the antecedent order or an order varying that order was last made (whichever is the later) the judge may, where the antecedent order was made by the District Court, treat the hearing as an application to vary the antecedent order, and having heard evidence as to the financial circumstances of both the maintenance debtor and the maintenance creditor, make an order varying the antecedent order.

(10) Where on the hearing of the summons, having given to the maintenance debtor the explanations referred to in *subsection (8)*, having given the maintenance debtor an opportunity to apply for legal advice and legal aid, and having heard such evidence as may be adduced by the maintenance creditor and the maintenance debtor, the judge is satisfied that the payment concerned has not been made and that the failure to make the payment concerned is not due to—

- (a) the inability of the maintenance debtor to make the payment concerned by reason of a change in his or her financial circumstances which occurred since the antecedent order or an order varying that order was last made (whichever is the later), or
- (b) some other reason not attributable to any act or omission of the maintenance debtor,

the judge may treat the failure by the maintenance debtor to make the payment concerned as constituting contempt of court and the judge may deal with the matter accordingly.

(11) Where a maintenance debtor to whom *subsection (7)* applies does not attend court on the date fixed for the hearing of the summons the judge may treat such failure to attend court as constituting contempt of court and the judge may deal with the matter accordingly.

(12) In this section ‘financial circumstances’ means, in relation to a person—

- (a) the amount of the person’s annual income,
- (b) the aggregate value of all property (real and personal) belonging to the person,
- (c) the aggregate of all liabilities of the person including any duty (moral or legal) to provide financially for members of his or her family or other persons,
- (d) the aggregate of all monies owing to the person, the dates upon which they fall due to be paid and the likelihood of their being paid, and
- (e) such other circumstances as the court considers appropriate.

(13) This section does not apply unless the antecedent order concerned was actually made by the District Court.]

[Certificate of outstanding payments.

9B.— Where, pursuant to *section 9*, a court has made a maintenance order, a variation order or an interim order and directed that payments under the order be made to the District Court clerk, in any proceedings under this Act or under the Enforcement of Court Orders Acts 1926 to 2009, a certificate purporting to be signed by the relevant District Court clerk as to the amount of monies outstanding on foot of such order shall, until the contrary is shown, be evidence of the matters stated in the certificate.]

Attachment of earnings order.

10.—(1) (a) On application—

- (i) to the High Court by a person on whose application the High Court has made an antecedent order,
- (ii) to the Circuit Court by a person on whose application the Circuit Court has made an antecedent order,
- (iii) to the District Court—
 - (I) by a person on whose application the District Court has made an antecedent order, or
 - (II) by a District Court clerk to whom payments under an antecedent order are required to be made,

the Court to which the application is made (subsequently referred to in this section as “the Court”) may, to secure payments under the antecedent order, if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid, make an attachment of earnings order.

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

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

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

(2) An attachment of earnings order shall be an order directed to a person who (at the time of the making of the order or at any time thereafter) has the maintenance debtor in his employment [or is a trustee (within the meaning of the Family Law Act, 1995) of a pension scheme (within the meaning aforesaid) under which the maintenance debtor is receiving periodical pension benefits] and shall operate as a direction to that person to make, at such times as may be specified in the order, periodical deductions of such amounts (specified in the order) as may be appropriate, having regard to the normal deduction rate and the protected earnings rate, from the maintenance debtor's earnings and to pay the amounts deducted, at such times as the Court may order—

(a) in case the relevant antecedent order is an enforceable maintenance order, to the District Court clerk specified by the attachment of earnings order for transmission to the person entitled to receive payments made under the relevant antecedent order [or, where appropriate, to the competent authority],

(b) in any other case, to the person referred to in paragraph (a) of this subsection or, if the Court considers proper, to the District Court clerk specified by the attachment of earnings order for transmission to that person [or, where appropriate, to the competent authority].

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

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

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

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

(4) An attachment of earnings order shall—

(a) specify the normal deduction rate, that is to say, the rate at which the Court considers it reasonable that the earnings to which the order relates should be applied in satisfying the relevant antecedent order, not exceeding the rate appearing to the Court to be necessary for the purpose of—

(i) securing payment of the sums falling due from time to time under the relevant antecedent order, and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the relevant antecedent order and any costs incurred in proceedings relating to the relevant antecedent order which are payable by the maintenance debtor,

(b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the maintenance debtor, the Court considers it proper that the relevant earnings should not be reduced by a payment made in pursuance of the attachment of earnings order,

(c) contain so far as they are known to the Court such particulars as it considers appropriate for the purpose of enabling the maintenance debtor to be identified by the person to whom the order is directed.

(5) Payments under an attachment of earnings order shall be in lieu of payments of the like total amount under the relevant antecedent order that have not been

made and that, but for the attachment of earnings order, would fall to be made under the relevant antecedent order.

Compliance with attachment of earnings order.

11.—(1) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall, if it has been served upon him, comply with it; but he shall be under no liability for non-compliance therewith before ten days have elapsed since the service.

(2) Where an attachment of earnings order is served on any person and the maintenance debtor is not in his employment or the maintenance debtor subsequently ceases to be in his employment, that person shall (in either case), within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to the Court.

(3) On any occasion when a person makes, in compliance with an attachment of earnings order, a deduction from a maintenance debtor's earnings, he shall give to the maintenance debtor a statement in writing of the total amount of the deduction.

(4) Such court registrar or court clerk as may be specified by an attachment of earnings order shall cause the order to be served on the employer to whom it is directed and on any subsequent employer of the maintenance debtor concerned of whom the registrar or clerk so specified becomes aware and such service may be effected by leaving the order or a copy of the order at, or sending the order or a copy of the order by registered prepaid post to, the residence or place of business in the State of the person to be served.

Application of sums received by District Court clerk.

12.—Any payments made to a District Court clerk under an attachment of earnings order shall, when transmitted by him to the person entitled to receive those payments [or, where appropriate, to the competent authority], be deemed to be payments made by the maintenance debtor so as to discharge—

(a) firstly, any sums payable under the relevant antecedent order, and

(b) secondly, any costs in proceedings relating to the relevant antecedent order payable by the maintenance debtor when the attachment of earnings order was made or last varied.

Statement as to earnings.

13.—(1) In relation to an attachment of earnings order or an application for such an order, the Court that made the order or to which the application is made may, before or at the hearing or while the order is in force—

(a) order the maintenance debtor to give to the Court, within a specified period, a statement in writing signed by him of—

(i) the name and address of any person by whom earnings are paid to him,

(ii) specified particulars as to his earnings and expected earnings and as to his resources and needs, and

(iii) specified particulars for enabling the maintenance debtor to be identified by any employer of his,

(b) order any person appearing to the Court to have the maintenance debtor in his employment to give to the Court, within a specified period, a statement signed by that person, or on his behalf, of specified particulars of the maintenance debtor's earnings and expected earnings.

(2) Notice of an application for an attachment of earnings order served on a maintenance debtor may include a requirement that he shall give to the Court, within the period and in the manner specified in the notice, a statement in writing of the matters referred to in *subsection (1) (a)* of this section and of any other matters which are or

may be relevant to the determination of the normal deduction rate and the protected earnings rate to be specified in the order.

(3) In any proceedings in relation to an attachment of earnings order, a statement given to the Court in compliance with an order under *paragraph (a) or (b) of subsection (1)* of this section or with a requirement under *subsection (2)* of this section shall be admissible as evidence of the facts stated therein, and a document purporting to be such a statement shall be deemed, unless the contrary is shown, to be a statement so given.

Notification of changes of employment and earnings.

14.—Where an attachment of earnings order is in force:

- (a) the maintenance debtor shall notify in writing the Court that made the order of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than ten days from the date on which he does so,
- (b) the maintenance debtor shall, on any occasion on which he becomes employed or re-employed, include in his notification under *paragraph (a)* of this section particulars of his earnings and expected earnings from the relevant employment,
- (c) any person who becomes an employer of the maintenance debtor and knows that the order is in force and by what Court it was made shall, within ten days of his becoming the maintenance debtor's employer or of acquiring that knowledge (whichever is the later), notify that Court in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and expected earnings.

Power to determine whether particular payments are earnings.

15.—(1) Where an attachment of earnings order is in force, the Court that made the order shall, on the application of the employer concerned or the maintenance debtor or the person to whom payments are being made under the order, determine whether payments (or any portions thereof) to the maintenance debtor of a particular class or description specified by the application are earnings for the purpose of the order, and the employer shall give effect to any determination for the time being in force under this section.

(2) Where an application under this section is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments (or any portions thereof) of the class or description specified by the application which are made by him to the maintenance debtor while the application or any appeal in consequence thereof or any decision in relation to the application or appeal is pending, but this shall not, unless the Court otherwise orders, apply as respects such payments (or any portions thereof) if the employer subsequently withdraws the application or, as the case may be, abandons the appeal.

Persons in service of State, local authority etc.

16.—(1) Where a maintenance debtor is in the service of the State, a local authority for the purposes of the Local Government Act, 1941, a harbour authority within the meaning of the Harbours Act, 1946, [the Health Service Executive], [the Child and Family Agency,] [an education and training board,] or a committee of agriculture established by the Agriculture Act, 1931, or is a member of either House of the Oireachtas—

- (a) in a case where a maintenance debtor in the service of the State is employed in a department, office, organisation, service, undertaking or other body, its chief officer (or such other officer as the Minister of State by whom the department, office, organisation, service, undertaking or other body is administered may from time to time designate) shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment,

- (b) in a case where a maintenance debtor is in the service of such an authority, board or committee, its chief officer shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment,
- (c) in any other case, where a maintenance debtor is paid out of the Central Fund or out of moneys provided by the Oireachtas, the Secretary of the Department of Finance (or such other officer of the Minister for Finance as that Minister may from time to time designate) shall, for the purposes of this Act, be regarded as having the maintenance debtor in his employment, and
- (d) any earnings of a maintenance debtor paid out of the Central Fund or out of moneys provided by the Oireachtas shall be regarded as paid by the chief officer referred to in *paragraph (a)* or *(b)*, as the case may be, of this subsection, the Secretary of the Department of Finance or such other officer as may be designated under *paragraph (a)* or *(c)*, as the case may be, of this subsection, as may be appropriate.

(2) If any question arises in proceedings for or arising out of an attachment of earnings order as to what department, office, organisation, service, undertaking or other body a maintenance debtor in the service of the State is employed in for the purposes of this section, the question may be referred to and determined by the Minister for the Public Service, but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the Court.

(3) A document purporting to contain a determination of the Minister for the Public Service under *subsection (2)* of this section and to be signed by an officer of the Minister for the Public Service shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and be deemed, unless the contrary is shown, to contain an accurate statement of that determination.

(4) In this section references to a maintenance debtor in the service of the State include references to a maintenance debtor to whom earnings are paid directly out of moneys provided by the Oireachtas.

Discharge, variation and lapse of attachment of earnings order.

17.—(1) The Court that made an attachment of earnings order may, if it thinks fit, on the application of the maintenance creditor, the maintenance debtor or the District Court clerk on whose application the order was made, make an order discharging or varying that order.

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, if it has been served upon him, comply with it, but he shall be under no liability for non-compliance before ten days have elapsed since the service.

(3) Where an employer affected by an attachment of earnings order ceases to have the maintenance debtor in his employment, the order shall, in so far as that employer is concerned, lapse (except as respects deductions from earnings paid after the cesser by that employer and payment to the person in whose favour the order was made of deductions from earnings made at any time by that employer).

(4) The lapse of an order under *subsection (3)* of this section shall not prevent its remaining in force for other purposes.

Cesser of attachment of earnings order.

18.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the relevant antecedent order, except as regards payments under the attachment of earnings order in respect of any time before the date of the discharge.

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the Court that made the order shall give notice of the cesser to the employer.

Provisions in relation to alternative remedies.

19.—(1) Where an attachment of earnings order has been made, any proceedings commenced under section 8 (1) of the Enforcement of Court Orders Act, 1940, for the enforcement of the relevant antecedent order shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect.

(2) An attachment of earnings order shall cease to have effect upon the making of an order under section 8 (1) of the Enforcement of Court Orders Act, 1940, for the enforcement of the relevant antecedent order.

Enforcement.

20.—(1) Where, without reasonable excuse, a person—

(a) fails to comply with *subsection (1) or (2) of section 11 or section 14 or an order under section 13 or section 17 (2) of this Act, or*

(b) gives to a Court a statement pursuant to *section 13 (1) of this Act, or a notification under section 14 of this Act, that is false or misleading,*

and a maintenance creditor as a result fails to obtain a sum of money due under an attachment of earnings order, that sum may be sued for as a simple contract debt in any court of competent jurisdiction by the maintenance creditor or the District Court clerk to whom such sum falls to be paid, and that court may order the person to pay to the person suing such amount (not exceeding the sum aforesaid) as in all the circumstances the court considers proper for distribution in such manner and in such amounts as the court may specify amongst the persons for whose benefit the attachment of earnings order was made.

(2) Where a person gives to a Court—

(a) a statement pursuant to *section 13 of this Act, or*

(b) a notification under *section 14 of this Act,*

that is to his knowledge false or misleading, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both.

(3) A person who contravenes *section 11 (3) of this Act* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

PART IV

MISCELLANEOUS

Property in household allowance.

21.—Any allowance made by one spouse to the other spouse after the commencement of this Act for the purpose of meeting household expenses, and any property or interest in property acquired out of such allowance, shall, in the absence of any agreement, whether express or implied, between them to the contrary, belong to the spouses as joint owners.

[Birth and funeral expenses of dependent child.

21A.—(1) The Court may make an order (in this Act referred to as a lump sum order) where it appears to the Court on application by—

(a) in relation to a dependent child of the family, a spouse, or

(b) in relation to a dependent child whose parents are not married to each other, a parent,

that the other spouse or parent, as the case may be, has failed to make such contribution as is proper in the circumstances towards the expenses incidental to either or both—

- (i) the birth of a child who is a dependent child or who would have been a dependent child were he alive at the time of the application for a lump sum order,
- (ii) the funeral of a child who was a dependent child or who would have been a dependent child had he been born alive,

and any lump sum order shall direct the respondent spouse or parent, as the case may be, to pay to the applicant a lump sum not exceeding [€4,000], but no such order shall direct the payment of an amount exceeding [€2,000] in respect of the birth of a child to whom this section relates or [€2,000] in respect of the funeral of such a child.

(2) *Section 5 (4)* (as amended by the Status of Children Act, 1987) or *5A (3)* (inserted by the said Act) of this Act, as may be appropriate, shall apply for the purpose of determining the amount of any lump sum under this section as it applies for the purpose of determining the amount of any payment under *section 5* or *5A* of this Act, as appropriate.

- (3) (a) Nothing in this section, apart from this subsection, shall prejudice any right of a person otherwise to recover moneys expended in relation to the birth or funeral of a child.
- (b) Where an application for a lump sum order has been determined, the applicant shall not be entitled otherwise to recover from the respondent moneys in relation to matters so determined.]

Barring of spouse
from family
home.

22.—[...]

Jurisdiction of
Courts.

[23. (1) Subject to *subsection (2)* of this section, the Circuit Court and the District Court shall have jurisdiction to hear and determine [proceedings under *section 5, 5A, 5B, 5C, 6, 7, 9* and *21A* of this Act].

- (2) (a) The District Court and the Circuit Court, on appeal from the District Court, shall not have jurisdiction to make an order under this Act for the payment of a periodical sum at a rate greater than [€500] per week for the support of a spouse or [€150] per week for the support of a child.
- (b) Subject to *paragraph (d)* of this subsection, nothing in *subsection (1)* of this section shall be construed as conferring on the District Court or the Circuit Court jurisdiction to make an order or direction [under *section 5, 5A, 5B, 6, 7* or *9*] of this Act in any matter in relation to which the High Court has made an order or direction under any of those sections.
- (c) Subject to *paragraph (d)* of this subsection, nothing in *subsection (1)* of this section shall be construed as conferring on the District Court jurisdiction to make an order or direction [under *section 5, 5A, 5B, 6, 7* or *9*] of this Act in any matter in relation to which the Circuit Court (except on appeal from the District Court) has made an order or direction under any of those sections.
- (d) The District Court and the Circuit Court may vary or revoke an order or direction made by the High Court under *section 5, 6, 7* or *9* of this Act before the commencement of *section 12* of the Courts Act, 1981, if—
 - (i) the circumstances to which the order or direction of the High Court related have changed other than by reason of such commencement, and

(ii) in the case of a variation or revocation of such an order or direction by the District Court, the provisions of the order or direction would have been within the jurisdiction of that Court if the said section 12 had been in operation at the time of the making of the order or direction.]

[(3) In proceedings under this Act, each party to the proceedings shall give to the other party such particulars of his or her financial circumstances, including property and income, and in so far as is practicable, the financial circumstances of his or her dependent children, 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.]

Payments to be without deduction of income tax.

24.—A periodical payment of money pursuant to a maintenance order, a variation order, an interim order, an order under *section 8* [or *8A*] of this Act (in so far as it is deemed under [either of those sections] to be a maintenance order), or an attachment of earnings order shall be made without deduction of income tax.

Conduct of Court proceedings.

25.—(1) Proceedings under this Act shall be conducted in a summary manner and shall be heard otherwise than in public.

(2) Proceedings in the High Court and the Circuit Court under this Act shall be heard in chambers.

Costs.

26.—The costs of any proceedings under this Act shall be in the discretion of the Court.

Voidance of certain provisions of agreements.

27.—An agreement shall be void in so far as it would have the effect of excluding or limiting the operation of any provision of this Act (other than *section 21*).

Amendment of Illegitimate Children (Affiliation Orders) Act, 1930, and Courts Act, 1971.

28.—(1) The Illegitimate Children (Affiliation Orders) Act, 1930, is hereby amended—

(a) by the insertion in section 1 of the following definition:

“‘child’ means any child who is under the age of sixteen years, or, if he has attained that age—

(i) is or will be or, if an order were made under this Act providing for periodical payments for his support, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of twenty-one years, or

(ii) is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully.”;

(b) by the substitution in section 2 of the following subsection for subsection (2):

“(2) An application for the issue of a summons or other process under this section may be made only—

(a) before the birth of the illegitimate child in respect of whom the application is made, or

(b) within three years after the birth of the child, or

(c) where the alleged father of the child contributed to the maintenance of the child within three years after the date of the birth of the child, at any time after the contribution, or

- (d) where the alleged father of the child was not resident in the State at the date of the birth of the child, at any time not later than three years after the alleged father first takes up residence in the State after that date, or
- (e) where the alleged father of the child was resident in the State at the date of the birth of the child but ceased to be so resident within three years after that date, at any time not later than three years after the alleged father first takes up residence in the State after that date.”;
- (c) by the substitution in section 3 (1) (a) of “two hundred pounds” for “fifty pounds” (inserted by the Courts Act, 1971);
- (d) by the substitution for section 3 (5) of the following subsection:
- “(5) Proceedings under this Act shall be conducted otherwise than in public.”;
- (e) by the substitution for section 3 (6) of the following subsection:
- “(6) It shall not be lawful to print or publish or cause to be printed or published any material relating to proceedings under this Act which would tend to identify the parties to the proceedings.”;
- (f) by the deletion of sections 3 (7) and 9 (2);
- (g) by the insertion in section 3, after subsection (9) of the following subsection:
- “(10) Notwithstanding anything in this Act, the provisions of section 9 of the Family Law (Maintenance of Spouses and Children) Act, 1976, shall apply in relation to an affiliation order subject to the modifications that 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 order would, apart from this section, be made by virtue of subsections (3) and (4) of section 9 of this Act and the other references in the said section 9 to the maintenance creditor shall be construed as references to the person on whose application the affiliation order was made.”;
- (h) by the substitution for section 4 of the following sections:
- “4.—(1) A periodical payment under an order under this Act shall commence on such date, not being earlier than the date on which the order is made, as may be specified in the order.
- (2) Every periodical sum payable by a putative father under an affiliation order shall, subject to subsection (3) of this section and to any variation in the amount thereof made under this Act, continue to be payable for such period as may be specified in the order.
- (3) Every periodical sum payable by a putative father under an affiliation order shall cease to be payable on the happening of whichever of the following events first happens, that is to say:
- (a) the death of the child in respect of whom the said periodical sum is payable;
- (b) the commutation under this Act of such periodical sum by payment of a lump sum;
- (c) the termination of the said periodical sum by an order under section 5;
- (d) the attainment by such child of the age of sixteen years, unless at the time of the making of the order or at any time thereafter before the attainment by the child of the age of sixteen years, the District Court,

on account of the educational needs of such child or on account of a physical or mental disability of the child, has ordered otherwise;

(e) the attainment by such child of the age of twenty-one years, where the Court, on account of the educational needs of such child, has ordered that payments be made on his behalf after he has attained the age of sixteen years.

(4) (a) Where an affiliation order, whether made before or after the commencement of the Family Law (Maintenance of Spouses and Children) Act, 1976, has been discharged by the District Court under section 5 of this Act or where payments under an affiliation order have ceased to be payable by virtue of this Act, the District Court may, at any time thereafter, notwithstanding anything in this Act, by order direct the making by the putative father of payments of such amount, at such times and for such period as the District Court may specify while the person for whose benefit the order was made is a child.

(b) An order under this subsection shall be deemed, for the purposes of section 3 (10) of this Act, subsection (1) of this section, sections 5 and 6 of this Act and section 31 (1) of the Adoption Act, 1952, to be an affiliation order.

(5) On the death of a putative father liable to pay a periodical sum under an order under this Act, the liability for the payment of such periodical sum shall attach to his estate as a civil debt and such periodical sum shall be recoverable accordingly by the person to whom it is for the time being payable.

4A.—Where it appears to the Court on application to it by any person, that a parent of a child has failed to provide such maintenance for the child as is proper in the circumstances, the Court may make an order that the parent make to that person periodical payments for the support of the child for such period during the lifetime of that person, of such amount and at such times as the Court may consider proper.

(2) The provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976, relating to maintenance orders shall apply, with any necessary modifications and adaptations, in relation to an order under this section.

(3) The Court shall not make an order in relation to a parent of a child under this section if an affiliation order or an order under section 4 (4) of this Act requiring that parent to make payments for the benefit of the child is in force or that parent has made provision for the child by an agreement under which, at or after the time of the hearing of the application for the order under this section payments fall to be made and in relation to which an order under section 10 of this Act has been made unless—

(a) the parent is not complying with the affiliation order or the order under the said section 4 (4) or the agreement, as the case may be, and

(b) the Court, having regard to all the circumstances thinks it proper to do so,

but, if the Court makes the order under this section, any amounts falling due for payment under the affiliation order, the order under the said section 4 (4) or the agreement, as the case may be, on or after the date of the making of the order under this section shall not be payable.

(4) In this section—

'Court' shall be construed in accordance with section 23 of the Family Law (Maintenance of Spouses and Children) Act, 1976; 'parent', in relation to a child, means the mother of the child, the putative father of the child, or a person who has made provision for the child by an agreement in relation to which an order has been made under section 10 of this Act;"

(i) by the insertion in section 5 of the following subsection:

"(3) A Justice of the District Court, on the application of the person by whom a periodical sum is payable under an affiliation order, shall discharge the order if it is satisfied that the person for whose benefit the order was made has ceased to be a child."

(j) by the substitution in section 6 (1) and 7 of "two hundred pounds" for "fifty pounds" (inserted in the said section 7 by the Courts Act, 1971);

and the said sections 3 (1) (a), 6 (1) and 7, as so amended, are set out in the Table to this section.

(2) References in the said Illegitimate Children (Affiliation Orders) Act, 1930, to a weekly payment shall be construed as references to a periodical payment.

(3) Section 19 (3) (a) of the Courts Act, 1971, is hereby amended by the substitution of £15 for £5, and the said section 19 (3) (a), as so amended, is set out in the Table to this section.

TABLE

(a) if such child has died before the making of such order, the funeral expenses, as measured by the Justice, of such child to an amount not exceeding two hundred pounds, or

6.—(1) Upon an application under this section in relation to an illegitimate child under the age of sixteen years in respect of whom a weekly sum is then payable under an affiliation order or in relation to an illegitimate child of the age of sixteen years in respect of whom a weekly sum was payable under an affiliation order immediately before he attained that age, a Justice of the District Court may order the putative father of such child or the personal representative of such putative father to pay such sum not exceeding two hundred pounds as the Justice shall fix for the purpose of apprenticing such child to a trade.

7.—Where an illegitimate child in respect of whom an affiliation order has been made dies while a weekly sum is payable in respect of it under such order, a Justice of the District Court may, upon the application within two months after the death of such child of the person representative of such putative father to pay the funeral expenses, as measured by such Justice, of such child to an amount not exceeding two hundred pounds,

(a) The District court shall not have jurisdiction to make an order under the said Act for the payment of a weekly sum exceeding £15 for the maintenance and education of a child.

Amendment of Enforcement of Court Orders Act, 1940.

29.—The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act, 1940, to an order shall be construed as including references to a maintenance order, a variation order, an interim order, an order under *section 8* of this Act (in so far as it is deemed under that section to be a maintenance order) or a direction under *section 9* of this Act.

Repeals.

30.—(1) The Married Women (Maintenance in case of Desertion) Act, 1886, section 13 of the Illegitimate Children (Affiliation Orders) Act, 1930, section 7 of the Enforcement of Court Orders Act, 1940, and section 18 of the Courts Act, 1971, are hereby repealed, and the reference in section 98 (1) (a) of the Defence Act, 1954, to an order made by a civil court under section 1 of the said Married Women (Maintenance in case of Desertion) Act, 1886, shall be construed as a reference to an order under *section 5, 6, or 7* of this Act or an order under *section 8* of this Act (in so far as it is deemed under that section to be a maintenance order).

(2) (a) Any order made by a Court under the provisions repealed by this section and in force immediately before the commencement of this Act shall continue in force as if it was, and shall be deemed for all purposes to be, a maintenance order or an attachment of earnings order, as the case may be.

(b) Any proceedings initiated under the provisions repealed by this section and not completed before the repeal shall be deemed for all purposes to be proceedings under the corresponding provisions of this Act and may be continued accordingly.