



Number 11 of 1976

FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

REVISED

Updated to 4 May 2020

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 the *Emergency Measures in the Public Interest (Covid-19) Act 2020* (2/2020), enacted 27 March 2020, and all statutory instruments up to and including the *Planning and Development Act 2000 (Subsection (4) of Section 251A) (No. 2) Order 2020* (S.I. No. 165 of 2020), made 8 May 2020, were considered in the preparation of this Revised Act.

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ACTS REFERRED TO

Illegitimate Children (Affiliation Orders) Act, 1930	1930, No. 17
Guardianship of Infants Act, 1964	1964, No. 7
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Local Government Act, 1941	1941, No. 23
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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
Married Women (Maintenance in case of Desertion) Act, 1886	1886, c. 52

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*Family Law (Maintenance of
Spouses and Children) Act 1976*

[1976.]

Defence Act, 1954

1954, No. 18



Number 11 of 1976

FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

REVISED

Updated to 4 May 2020

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:

Annotations

Modifications (not altering text):

- C1** Certain orders deemed to be orders made under Act (25.11.2019) by *European Union (Hague Maintenance Convention) Regulations 2019* (S.I. No. 594 of 2019), reg. 14(4).

Enforcement in District Court of recognition order or declaration of enforceability

14. ...

(4) Where the District Court has jurisdiction to enforce an enforceable maintenance order that order shall be deemed to be an order, made on the date of the decision to which the enforceable maintenance order relates, of the District Court under section 5, 5A, 5B or 5C of the Act of 1976 as may be appropriate for the purposes of exercising that jurisdiction and an order for the purposes of —

(a) section 98(1) of the Defence Act 1954 (No. 18 of 1954), and

(b) subject to the Convention, the variation or discharge of that order under section 6 of the Act of 1976.

(5) The District Court has jurisdiction under this Regulation notwithstanding that an amount payable under an enforceable maintenance order exceeds the maximum amount the District Court has jurisdiction to award under an enactment referred to in paragraph (4).

...

- C2** Application of Act modified (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 4(2)(a), S.I. No. 288 of 1995; as substituted (10.03.2012) by *Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012* (7/2012), s. 2(1)(b), commenced on enactment.

Central Authority.

4. — ...

(2)[(a) For the purposes of section 8 of the Enforcement of Court Orders Act 1940 (as amended by section 63 of the Civil Law (Miscellaneous Provisions) Act 2011), the Acts of 1976, 1995, 1996 and 1998, the Brussels I Regulation, and the 2007 Lugano Convention, the Central Authority shall have authority to act on behalf of a maintenance creditor or of a claimant (as defined in section 13(1)), and references therein to a maintenance creditor or to such a claimant shall be construed as including references to that Authority.]

...

- C3** Power of court to discharge order made under Act and continuance of orders under certain circumstances provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 26, commenced as per s. 1(2).

Orders under Acts of 1976, 1989 and 1995.

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

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

...

is in force, an application is made to the court by a spouse to whom the 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.

- C4** Power of court to discharge order made under Act provided (1.08.1996) by *Family Law Act 1995* (26/1995), s. 44, S.I. No. 46 of 1996.

Discharge of orders under Act of 1976

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

- C5** Power of court to procure reports in family law proceedings prescribed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 47, S.I. No. 46 of 1996; as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 52(p)(a), commenced as per s. 1(2); and amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 13, S.I. No. 887 of 2004.

Social reports in family law proceedings.

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

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

[(b) such person nominated by the Health Service Executive specified in the order as the Health Service Executive may nominate, being a person who in its opinion is suitably qualified for the purpose, or]

(c) any other person specified in the order.

...

(6) [This section] applies to proceedings—

(b) under the Act of 1976,

...

- C6** Venue in relation to certain jurisdictions of Circuit Court and District Court prescribed (12.05.1982) by *Courts Act 1981* (11/1981), s. 16, commenced as per s. 33(3).

Venue in relation to certain jurisdictions of Circuit Court and District Court.

16.—(1) The jurisdiction under the Illegitimate Children (Affiliation Orders) Act, 1930, the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children) Act, 1976, and section 5 of this Act conferred on the Circuit Court shall be exercised by the judge of the circuit where any party to the proceedings ordinarily resides or carries on any profession, business or occupation.

(2) Notwithstanding anything contained in section 79 of the Courts of Justice Act, 1924, and, as respects proceedings under the Illegitimate Children (Affiliation Orders) Act, 1930, section 2 of the latter Act, proceedings under the latter Act, the Guardianship of Infants Act, 1964, and the Family Law (Maintenance of Spouses and Children) Act, 1976, may be brought, heard and determined before and by a justice of the District Court for the time being assigned to the District Court district where any party to the proceedings ordinarily resides or carries on any profession, business or occupation.

Editorial Notes:

- E1** Power granted to court, on an application under *Domestic Violence Act 2018* and another application to do so, to make an order under this Act without the institution of fresh proceedings (1.01.2019) by *Domestic Violence Act 2018* (6/2018), s. 15, S.I. No. 532 of 2018.
- E2** Proceedings under Act included in definition of “family law proceedings” (1.01.2018) by *Mediation Act 2017* (27/2017), s. 2(1), S.I. No. 591 of 2017.
- E3** Services provided under Act included in definition of “health and personal social services” (23.12.2004) by *Health Act 2004* (42/2004), s. 2 and sch. 1, S.I. No. 886 of 2004.
- E4** Circuit Court is to be known as the Circuit Family Court when exercising its jurisdiction to hear and determine proceedings under Act as provided (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), ss. 30 and 31, commenced as per s. 46(2).
- E5** Obligation imposed on Circuit Family Court to hear and determine proceedings under Act in different places or at different times or on different days from those on which the ordinary sittings of the Circuit Court are held (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), ss. 30 and 32, commenced as per s. 46(2).
- E6** Conduct of proceedings under Act in Circuit and High Courts required to be informal (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), ss. 30 and 33, commenced as per s. 46(2).
- E7** Conduct of proceedings under Act in District Court required to be informal (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 45, commenced as per s. 46(2).
- E8** Previous affecting provisions: application of Act modified (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 4(2)(a), S.I. No. 288 of 1995; as amended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 45(b), S.I. No. 46 of 1996; and substituted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 53(b), commenced as per s. 1(2); and substituted (1.12.1999) by *Jurisdiction of Courts and Enforcement of Judgments Act 1998* (52/1998), s. 22(2), S.I. No. 353 of 1999; and substituted (1.03.2002) by *European Communities (Civil and Commercial Judgment) Regulations 2002* (S.I. No. 52 of 2002), reg. 13(1)(b); and substituted as per C-note above.

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—

F1[‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;]

F2[‘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),

F1[(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,

F3[(i) an order for alimony pending suit;]

F4[(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;]

F5[(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;

F6[‘benefit’ means deserted wife’s benefit under section 100 of the Social Welfare (Consolidation) Act, 1981;]

F1[‘civil partner’ shall be construed in accordance with section 3 of the Act of 2010;]

F1[‘cohabitant’ shall be construed in accordance with section 172(1) of the Act of 2010 and includes a former cohabitant;]

F6[‘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;

F7[‘dependent child’ means any child (including a child whose parents are not married to each other) who is under the age of F8[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 F8[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;]

F9[‘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;

F10[‘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 F11[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 F11[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;

F12[‘maintenance order’ means, where the context requires, F11[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;

F13[‘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.

Annotations

Amendments:

- F1** Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 71(a) and (d), S.I. No. 12 of 2016.
- F2** Substituted (29.11.1990) by *Social Welfare Act 1990* (5/1990), s. 15, S.I. No. 271 of 1990.
- F3** Substituted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 25(1), commenced as per s. 46(2), subject to transitional provisions in s. 25(2).
- F4** Substituted and inserted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(a)(i), S.I. No. 46 of 1996.
- F5** Inserted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 27, commenced as per s. 1(2).
- F6** Inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(a), S.I. No. 273 of 1990.
- F7** Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 16(a), commenced as per s. 1(2)(b).
- F8** Substituted by *Family Law Act 1995* (26/1995), s. 43(a)(ii), as amended (27.02.1997) *Family Law (Divorce) Act 1996* (33/1996), s. 52(o)(i), commenced as per s. 1(2).
- F9** Substituted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 16(b), commenced as per s. 1(2)(b).
- F10** Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 16(c), commenced as per s. 1(2)(b).
- F11** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 71(b) and (c), S.I. No. 12 of 2016.
- F12** Substituted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 16(d), commenced as per s. 1(2)(b).
- F13** Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 16(e), commenced as per s. 1(2)(b).

Modifications (not altering text):

- C7** Meaning of term “antecedent order” extended (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 23, in effect as per reg. 1(2).

Amendment of European Communities (European Enforcement Order) Regulations 2005 (S.I. No. 648/2005)

23. (1) Notwithstanding Regulation 7 of the European Communities (European Enforcement Order) Regulations 2005 (S.I. No. 648 of 2005), where a decision relates to a claim for periodical payments of maintenance, and has been certified as a European Enforcement Order in a Member

State of origin, that decision shall be of the same force and effect as a judgment or decree of the District Court, and may be enforced, and proceedings taken on it, as if it were a judgment or decree of that Court.

(2) A decision to which paragraph (1) applies shall be deemed to be an antecedent order within the meaning of the Act of 1976.

- C8** Meaning of term “antecedent order” extended (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 8, in effect as per reg. 1(2); as amended (29.11.2011) by *European Communities (Maintenance) (Amendment) Regulations 2011* (S.I. No. 612 of 2011), reg. 5.

Enforcement of decisions given in Member States bound by the 2007 Hague Protocol

[8. (1) A decision given in a Member State bound by the 2007 Hague Protocol shall be of the same force and effect as a judgment or decree of the District Court, and may be enforced, and proceedings taken on it, as if it were a judgment or decree of that Court.

(2) Paragraph (1) applies even though an amount payable under the decision exceeds the maximum amount the District Court has jurisdiction to award under an enactment referred to in the Act of 1976.

(3) A decision to which paragraph (1) applies shall be deemed to be an antecedent order within the meaning of the Act of 1976.

(4) Subject to paragraph (5), and notwithstanding anything to the contrary in the decision, paragraphs (7), (8), (11), (13), (14), (15) and (16) of Regulation 10 shall apply, with any necessary modifications, in relation to that decision.

(5) This Regulation is without prejudice to the right of a maintenance creditor to request that any sums payable on foot of a maintenance order be paid directly to him or her.]

- C9** Meaning of term “antecedent order” extended (18.05.2011) by *European Communities (Mediation) Regulations 2011* (S.I. No. 209 of 2011), reg. 5(3)(b), in effect as per reg. 1(2).

Enforceability of agreements resulting from mediation

5. ...

(3)(a) Where an application under paragraph (2) relates to an agreement concerning— ...

(ii) maintenance,

the Master of the High Court may order that the agreement be deemed an order of the District Court and be enforceable against the parties or any of them accordingly,

(b) An order relating to subparagraph (a)(ii) shall be deemed to be an antecedent order within the meaning of the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11 of 1976).

...

- C10** References to adoptions and adopted persons under *Adoption Acts 1952 to 1998* to be read as referring to adoptions and adopted persons under the *Adoption Act 2010* as provided (1.11.2010) by *Adoption Act 2010* (21/2010), s. 156(1), S.I. No. 511 of 2010.

References to adoptions, etc.

156.— (1) Every reference in any Act or in any instrument made under any Act, however expressed, to adoptions or adoption orders or adopted persons under any or all of the Adoption Acts 1952 to 1998 shall be read as a reference to adoptions or adoption orders made under this Act, or persons adopted under an adoption order made under this Act, as the case may be.

...

Editorial Notes:

- E9** Previous affecting provision: substitution of “23” for “twenty-one” within definition of “dependent child of the family” purported to be made (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(a)(ii), S.I. No. 46 of 1996, appears not to be possible. The substitution appears to have been intended for the definition of “dependent child”. The amendment in the 1995 Act, s. 43(a)(ii), was subsequently substituted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 52(o)(i), commenced as per s. 1(2), see F-note above.
- E10** Previous affecting provision: definition of “allowance” inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(a), S.I. No. 273 of 1990; substituted as per F-note above. This provision was commenced on the same date as the substituting provision which however was enacted the following year in 1990 and is therefore assumed to supersede this amendment.
- E11** Previous affecting provision: par. (j) inserted in definition of ‘antecedent order’ (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 25(1), commenced as per s. 46(2), subject to transitional provisions in s. 25(2); substituted as per F-note above.

Commencement
of periodical
payments.

F14[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.]

Annotations**Amendments:**

- F14** Substituted (9.08.2002) by *Social Welfare (Miscellaneous Provisions) Act 2002* (8/2002), s. 16 and sch. part 10, S.I. No. 412 of 2002.

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 F15[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 F15[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 F15[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 F16[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) F17[...]

F18[(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 F19[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.]

F20[(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.]

Annotations

Amendments:

F15	Inserted (14.06.1988) by <i>Status of Children Act 1987</i> (26/1987), s. 17(a), commenced as per s. 1(2)(b).
F16	Inserted (19.10.1989) by <i>Judicial Separation and Family Law Reform Act 1989</i> (6/1989), s. 38(2)(a), commenced as per s. 46(2).
F17	Deleted (19.10.1989) by <i>Judicial Separation and Family Law Reform Act 1989</i> (6/1989), s. 38(2)(b), commenced as per s. 46(2).
F18	Substituted (14.06.1988) by <i>Status of Children Act 1987</i> (26/1987), s. 17(b), commenced as per s. 1(2)(b).

F19 Inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(b), S.I. No. 273 of 1990.

F20 Inserted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 38(2)(c), commenced as per s. 46(2).

Modifications (not altering text):

C11 Application of section extended (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 10(2) and (6), in effect as per reg. 1(2).

Enforcement of enforceable maintenance orders given in a Member State not bound by the 2007 Hague Protocol

10. ...

(2) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of—

(a) paragraph (1),

(b) section 98(1) (as amended by section 30(1) of the Act of 1976) of the Defence Act 1954 (No. 18 of 1954), and

(c) subject to the Maintenance Regulation, the variation or discharge of that order under section 6 (as amended by section 43(b) of the Act of 1995) of the Act of 1976,

to be an order made by the District Court under section 5, 5A (inserted by section 18 of the Act of 1987) or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976, as may be appropriate.

...

(6) Subject to paragraphs (3) to (5) of Regulation 9, the following shall be regarded as being payable pursuant to an order made under section 5, 5A (inserted by section 18 of the Act of 1987), or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976—

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 14(2).

...

C12 Application of section extended (1.03.2002) by *European Communities (Civil and Commercial Judgment) Regulations 2002* (S.I. No. 52 of 2002), reg. 6(3) and (7), in effect as per reg. 2.

Enforcement of enforceable maintenance orders

6. ...

(3) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of —

(a) paragraph (1),

(b) section 98(1) of the Defence Act 1954 (No. 18 of 1954), and

(c) subject to the Brussels I Regulation, the variation or discharge of that order under section 6 (as amended by the Act of 1987) of the Act of 1976,

to be an order made by the District Court under section 5, 5A or 21A of the Act of 1976, as may be appropriate.

...

(7) Subject to paragraph (3) to (5) of Regulation 5, the following shall be regarded as being payable pursuant to an order made under section 5, 5A or 21A of the Act of 1976:

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 7(2).

...

- C13** Application of section modified (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 24, commenced as per s. 1(2).

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— ...

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

...

- C14** Application of section modified (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 25, commenced as per s. 1(2).

Stay on certain orders the subject of appeal.

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

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

...

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.

- C15** Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 9, commenced as per s. 25(1).

Hearing of applications under various Acts together.

9.—(1) Where an application is made to the court for an order under this Act, the court may, on application to it 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 orders referred to in subsection (2).

(2) The provisions to which subsection (1) relates are as follows, that is to say:

...

(b) an order under section 5, 5A, 6, 7 or 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (as amended by the Status of Children Act, 1987);

...

- C16** Application of section extended (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 14(3), S.I. No. 288 of 1995; as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 53(c)(i), commenced as per s. 1(2).

Application for maintenance from designated jurisdiction.

14.—(1) On receipt of a request by the Central Authority from a central authority of a designated jurisdiction on behalf of a claimant for the recovery of maintenance from a person for the time being residing in the State ("the respondent") the Central Authority may—

...

(c) if either the request is not accompanied by such an order or enforcement of the order is refused—

[(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,]

(ii) in any other case, make an application to the District Court,
for the recovery of maintenance in accordance with the request.

...

[(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.]

...

C17 Application of section extended (1.06.1988) by *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988* (3/1988), s. 7(2)(a), S.I. No. 91 of 1988; as substituted (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 11, S.I. No. 288 of 1995.

Enforcement of Community maintenance orders.

[7. — ...

(2) (a) Subject to section 8 (4) of this Act and to the restriction on enforcement contained in Article 39, the District Court shall have jurisdiction to enforce an enforceable maintenance order and—

(i) for that purpose,

(ii) for the purposes of section 98 (1) of the Defence Act, 1954, and

(iii) subject to the 1968 Convention, for the purpose of the variation or discharge of such an order under section 6 of the Family Law (Maintenance of Spouses and Children) Act, 1976, as amended by the Status of Children Act, 1987,

such an order shall, from the date on which the maintenance order was made, be deemed to be an order made by the District Court under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Family Law (Maintenance of Spouses and Children) Act, 1976, as may be appropriate.

...]

Editorial Notes:

E12 Previous affecting provision: power of court to discharge order made under section provided (19.10.1989) by *Judicial Separation and Family Law Act 1989* (6/1989), s. 39, commenced as per s. 46(2); repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3(1) and sch., S.I. No. 46 of 1996, subject to transitional provisions in s. 3(2).

F21[Maintenance order (provision for certain dependent children).

5A.—(1) Subject to *subsection (3)* of this section, where, in respect of a dependent child **F22**[whose parents are not married to each other and are not civil partners of 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 **F22**[whose parents are not married to each other and are not civil partners of 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 F23 [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—

F24 [(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.]

Annotations

Amendments:

- | | |
|------------|--|
| F21 | Inserted (14.06.1988) by <i>Status of Children Act 1987</i> (26/1987), s. 18, commenced as per s. 1(2)(b). |
| F22 | Substituted (4.05.2020) by <i>Children and Family Relationships Act 2015</i> (9/2015), s. 72(a), S.I. No. 624 of 2019. |
| F23 | Inserted (29.11.1990) by <i>Social Welfare Act 1989</i> (4/1989), s. 13(1)(c), S.I. No. 273 of 1990. |
| F24 | Substituted (18.01.2016) by <i>Children and Family Relationships Act 2015</i> (9/2015), s. 72(b), S.I. No. 12 of 2016. |

Modifications (not altering text):

- C18** Application of section extended (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 10(2) and (6), in effect as per reg. 1(2).

Enforcement of enforceable maintenance orders given in a Member State not bound by the 2007 Hague Protocol

10. ...

(2) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of—

(a) paragraph (1),

(b) section 98(1) (as amended by section 30(1) of the Act of 1976) of the Defence Act 1954 (No. 18 of 1954), and

(c) subject to the Maintenance Regulation, the variation or discharge of that order under section 6 (as amended by section 43(b) of the Act of 1995) of the Act of 1976,

to be an order made by the District Court under section 5, 5A (inserted by section 18 of the Act of 1987) or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976, as may be appropriate.

...

(6) Subject to paragraphs (3) to (5) of Regulation 9, the following shall be regarded as being payable pursuant to an order made under section 5, 5A (inserted by section 18 of the Act of 1987), or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976—

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 14(2).

...

- C19** Application of section extended (1.03.2002) by *European Communities (Civil and Commercial Judgment) Regulations 2002* (S.I. No. 52 of 2002), reg. 6(3) and (7), in effect as per reg. 2.

Enforcement of enforceable maintenance orders

6. ...

(3) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of —

(a) paragraph (1),

(b) section 98(1) of the Defence Act 1954 (No. 18 of 1954), and

(c) subject to the Brussels I Regulation, the variation or discharge of that order under section 6 (as amended by the Act of 1987) of the Act of 1976,

to be an order made by the District Court under section 5, 5A or 21A of the Act of 1976, as may be appropriate.

...

(7) Subject to paragraph (3) to (5) of Regulation 5, the following shall be regarded as being payable pursuant to an order made under section 5, 5A or 21A of the Act of 1976:

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 7(2).

...

- C20** Application of section modified (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 24, commenced as per s. 1(2).

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— ...

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

...

C21 Application of section modified (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 25, commenced as per s. 1(2).

Stay on certain orders the subject of appeal.

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

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

...

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.

C22 Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 9, commenced as per s. 25(1).

Hearing of applications under various Acts together.

9.—(1) Where an application is made to the court for an order under this Act, the court may, on application to it 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 orders referred to in subsection (2).

(2) The provisions to which subsection (1) relates are as follows, that is to say:

...

(b) an order under section 5, 5A, 6, 7 or 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (as amended by the Status of Children Act, 1987);

...

C23 Application of section extended (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 14(3), S.I. No. 288 of 1995; as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 53(c)(i), commenced as per s. 1(2).

Application for maintenance from designated jurisdiction.

14.—(1) On receipt of a request by the Central Authority from a central authority of a designated jurisdiction on behalf of a claimant for the recovery of maintenance from a person for the time being residing in the State ("the respondent") the Central Authority may—

...

(c) if either the request is not accompanied by such an order or enforcement of the order is refused—

[(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,]

(ii) in any other case, make an application to the District Court,

for the recovery of maintenance in accordance with the request.

...

[(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.]

...

- C24** Application of section extended (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 24(1), commenced as per s. 1(2)(b).

Amendment of Defence Act, 1954.

24.—(1) The reference in section 98 (1)(d) of the Defence Act, 1954, to an order made by a civil court under section 3, 6 or 7 of the Illegitimate Children (Affiliation Orders) Act, 1930, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the Act of 1976 (as amended by this Part) or an order under section 8A (inserted by this Part) of the Act of 1976 (in so far as it is deemed under that section to be a maintenance order).

...

- C25** Application of section extended (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 25(2) and (3), commenced as per s. 1(2)(b).

Repeal of the Act of 1930 and consequential provisions.

25.—(1) The Illegitimate Children (Affiliation Orders) Act, 1930 (hereafter in this section referred to as “the Act of 1930”) is hereby repealed.

(2) Any order made by a court under the provisions of the Act of 1930 and in force immediately before the commencement of this Part shall, in so far as such order could have been made under section 5A (inserted by this Part) of the Act of 1976 had it been in operation when that order was made, be deemed for all purposes to be an order made under the said section 5A.

(3) Any proceedings initiated under the provisions of the Act of 1930 and not completed before the commencement of this Part shall, in so far as such proceedings could have been initiated under section 5A of the Act of 1976 had it been in operation at such initiation, be deemed for all purposes to be proceedings under the said section 5A and may be continued accordingly.

(4) Subsections (2) and (3) of this section are without prejudice to any proceedings initiated, or any order or part of such order made, under the Act of 1930 to which those subsections do not relate.

- C26** Application of section extended (1.06.1988) by *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988* (3/1988), s. 7(2)(a), S.I. No. 91 of 1988; as substituted (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 11, S.I. No. 288 of 1995.

Enforcement of Community maintenance orders.

[7. — ...

(2) (a) Subject to section 8(4) of this Act and to the restriction on enforcement contained in Article 39, the District Court shall have jurisdiction to enforce an enforceable maintenance order and—

(i) for that purpose,

(ii) for the purposes of section 98 (1) of the Defence Act, 1954, and

(iii) subject to the 1968 Convention, for the purpose of the variation or discharge of such an order under section 6 of the Family Law (Maintenance of Spouses and Children) Act, 1976, as amended by the Status of Children Act, 1987,

such an order shall, from the date on which the maintenance order was made, be deemed to be an order made by the District Court under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Family Law (Maintenance of Spouses and Children) Act, 1976, as may be appropriate.

...]

F25[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.]

Annotations

Amendments:

F25 Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 73, S.I. No. 12 of 2016.

F26[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.]

Annotations**Amendments:**

- F26** Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 73, S.I. No. 12 of 2016.

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 F27[(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 F28[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) F29[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 F30[...] by reason of his attainment of the age of F31[18] years or F31[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 F32[for the purposes of the order].

F33[(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) F34[...]

(5) Desertion F35[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.

Annotations**Amendments:**

- F27** Inserted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 38(3)(a), commenced as per s. 46(2).
- F28** Inserted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 38(3)(b), commenced as per s. 46(2).

- F29** Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 74(a), S.I. No. 12 of 2016.
- F30** Deleted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 19(a), commenced as per s. 1(2)(b).
- F31** Substituted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(b), S.I. No. 46 of 1996.
- F32** Substituted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 19(b), commenced as per s. 1(2)(b).
- F33** Inserted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 74(b), S.I. No. 12 of 2016.
- F34** Deleted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 38(3)(c), commenced as per s. 46(2).
- F35** Substituted (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 38(3)(d), commenced as per s. 46(2).

Modifications (not altering text):

- C27** Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 9, commenced as per s. 25(1).

Hearing of applications under various Acts together.

9.—(1) Where an application is made to the court for an order under this Act, the court may, on application to it 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 orders referred to in subsection (2).

(2) The provisions to which subsection (1) relates are as follows, that is to say:

...

(b) an order under section 5, 5A, 6, 7 or 21A of the *Family Law (Maintenance of Spouses and Children) Act, 1976* (as amended by the *Status of Children Act, 1987*);

...

- C28** Application of section extended (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 24(1), commenced as per s. 1(2)(b).

Amendment of Defence Act, 1954.

24.—(1) The reference in section 98 (1)(d) of the *Defence Act, 1954*, to an order made by a civil court under section 3, 6 or 7 of the *Illegitimate Children (Affiliation Orders) Act, 1930*, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the *Act of 1976* (as amended by this Part) or an order under section 8A (inserted by this Part) of the *Act of 1976* (in so far as it is deemed under that section to be a maintenance order).

...

Editorial Notes:

- E13** Previous affecting provision: power of court to discharge order made under section provided (19.10.1989) by *Judicial Separation and Family Law Act 1989* (6/1989), s. 39, commenced as per s. 46(2); repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3(1) and sch., S.I. No. 46 of 1996, subject to transitional provisions in s. 3(2).

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.

Annotations

Modifications (not altering text):

- C29** Application of section modified (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 24, commenced as per s. 1(2).

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— ...

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

...

- C30** Application of section modified (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 25, commenced as per s. 1(2).

Stay on certain orders the subject of appeal.

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

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

...

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.

- C31** Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 9, commenced as per s. 25(1).

Hearing of applications under various Acts together.

9.—(1) Where an application is made to the court for an order under this Act, the court may, on application to it 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 orders referred to in subsection (2).

(2) The provisions to which subsection (1) relates are as follows, that is to say: ...

(b) an order under section 5, 5A, 6, 7 or 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (as amended by the Status of Children Act, 1987);

...

- C32** Application of section extended (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 14(4), S.I. No. 288 of 1995; as substituted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 45(c)(iii), S.I. No. 46 of 1996.

Application for maintenance from designated jurisdiction

14. — ...

(4) The court, on an application to it under subsection (1)(c) may, subject to subsection (5)—

...

[(e) pending the final determination of the application, make an interim order under section 7 of the Act of 1976 or an order under section 24 of the Act of 1995.]

...

C33 Application of section extended (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 24(1), commenced as per s. 1(2)(b).

Amendment of Defence Act, 1954.

24.—(1) The reference in section 98 (1)(d) of the Defence Act, 1954, to an order made by a civil court under section 3, 6 or 7 of the Illegitimate Children (Affiliation Orders) Act, 1930, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the Act of 1976 (as amended by this Part) or an order under section 8A (inserted by this Part) of the Act of 1976 (in so far as it is deemed under that section to be a maintenance order).

...

Editorial Notes:

E14 Previous affecting provision: power of court to discharge order made under section provided (19.10.1989) by *Judicial Separation and Family Law Act 1989* (6/1989), s. 39, commenced as per s. 46(2); repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3(1) and sch., S.I. No. 46 of 1996, subject to transitional provisions in s. 3(2).

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 F36[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.

Annotations

Amendments:

F36 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 15(a), commenced as per s. 1(2).

Modifications (not altering text):

C34 Application of section modified by *Guardianship of Infants Act 1964* (7/1964), s. 30(3) and (4); as inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, commenced as per s. 1(2).

Jurisdiction.

30. — ...

(3) Where an application is made to the court for an order under section 24, the court may, in the same proceedings, if it appears to it to be proper to do so, make an order under section 8 or 8A of the Act of 1976 without the institution of proceedings under that Act.

(4) Where an application is made to the court for an order under section 8 or 8A of the Act of 1976, the court may, in the same proceedings, if it appears to it to be proper to do so, make an order under section 24 without the institution of proceedings under this Act.

C35 Application of section extended (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 14(10), S.I. No. 288 of 1995.

Application for maintenance from designated jurisdiction.

14. — ...

(10) Section 8 and section 8A (inserted by the Status of Children Act, 1987) of the Act of 1976 shall apply and have effect in relation to any agreement in writing which contains a provision mentioned in paragraph (a) of either section and is made—

(a) between a claimant and respondent, notwithstanding that one of them may at the time of the making of the agreement be resident outside the State, and

(b) between a respondent and a person or body in the State where such a person or body has been authorised to enter into such an agreement on behalf of the claimant,

and an application may be made by the Central Authority to the Circuit Court under paragraph (b) of either section for an order making such an agreement a rule of court.

...

F37[Orders in
respect of certain
other
agreements.

8A.—Where—

(a) the parents of a dependent child **F38**[who are not married to each other and are not civil partners of 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 **F39**[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.]

Annotations

Amendments:

F37 Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 20, commenced as per s. 1(2)(b).

F38 Substituted (4.05.2020) by *Children and Family Relationships Act 2015* (9/2015), s. 75, S.I. No. 624 of 2019.

F39 Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 15(b), commenced as per s. 1(2).

Modifications (not altering text):

C36 Application of section modified by *Guardianship of Infants Act 1964* (7/1964), s. 30(3) and (4); as inserted (9.01.1998) by *Children Act 1997* (40/1997), s. 11, commenced as per s. 1(2).

Jurisdiction.

30. — ...

(3) Where an application is made to the court for an order under section 24, the court may, in the same proceedings, if it appears to it to be proper to do so, make an order under section 8 or 8A of the Act of 1976 without the institution of proceedings under that Act.

(4) Where an application is made to the court for an order under section 8 or 8A of the Act of 1976, the court may, in the same proceedings, if it appears to it to be proper to do so, make an order under section 24 without the institution of proceedings under this Act.

C37 Application of section extended (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 14(10), S.I. No. 288 of 1995.

Application for maintenance from designated jurisdiction.

14. — ...

(10) Section 8 and section 8A (inserted by the Status of Children Act, 1987) of the Act of 1976 shall apply and have effect in relation to any agreement in writing which contains a provision mentioned in paragraph (a) of either section and is made—

(a) between a claimant and respondent, notwithstanding that one of them may at the time of the making of the agreement be resident outside the State, and

(b) between a respondent and a person or body in the State where such a person or body has been authorised to enter into such an agreement on behalf of the claimant,

and an application may be made by the Central Authority to the Circuit Court under paragraph (b) of either section for an order making such an agreement a rule of court.

...

C38 Application of section extended (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 24(1), commenced as per s. 1(2)(b).

Amendment of Defence Act, 1954.

24.—(1) The reference in section 98 (1)(d) of the Defence Act, 1954, to an order made by a civil court under section 3, 6 or 7 of the Illegitimate Children (Affiliation Orders) Act, 1930, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the Act of 1976 (as amended by this Part) or an order under section 8A (inserted by this Part) of the Act of 1976 (in so far as it is deemed under that section to be a maintenance order).

...

F40[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.]

Annotations

Amendments:

F40 Inserted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(c), S.I. No. 46 of 1996.

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 F41[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.

Annotations**Amendments:**

F41 Inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(d), S.I. No. 273 of 1990.

Modifications (not altering text):

C39 Application of section extended with modifications (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 28, commenced as per s. 1(2).

Transmission of periodical payments through District Court clerk.

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—

- (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,
- (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.

C40 Application of section extended with modifications (1.08.1996) by *Family Law Act 1995* (26/1995), s. 20, S.I. No. 46 of 1996.

Transmission of periodical payments through District Court clerk.

20.—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 18, with the modifications that—

- (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,
- (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.

C41 Application of section extended with modifications (3.05.1993) by *Criminal Justice Act 1993* (6/1993), s. 7(2), commenced as per s. 14(2).

Payment of compensation to District Court clerks for transmission, and attachment of earnings orders.

7.—(1) Subject to subsection (2), payments under a compensation order or an order under section 6 (8) shall be made, for transmission to the injured party concerned, to such District Court clerk as may be determined from time to time by the court which made the order.

(2) For the purposes of subsection (1) and of securing compliance with compensation orders and orders under section 6(8)—

(a) subsections (2), (4), (5) and (6) of section 9 (which relates to the transmission of maintenance order payments through District Court clerks),

...

of the Family Law (Maintenance of Spouses and Children) Act, 1976, shall apply to those orders with the following modifications and any other necessary modifications, that is to say:

(i) in the said subsections (2) and (4)—

(I) the references to payments shall be construed as including payments under a compensation order or an order under section 6(8) to a District Court clerk pursuant to subsection (1), and

(II) the references to the maintenance creditor shall be construed as references to the injured party,

...

C42 Application of section extended with modifications (19.10.1989) by *Judicial Separation and Family Law Reform Act 1989* (6/1989), s. 24, commenced as per s. 46(2).

Transmission of periodical payments through District Court clerk.

24.—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 order for maintenance pending suit, to a periodical payments order or a secured periodical payments 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 be made 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 periodical payments order was made.

Editorial Notes:

E15 *Maintenance Orders Act 1974* (16/1974) referred to in subss. (7) and (8) was repealed (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 25.

PART III

ATTACHMENT OF EARNINGS

Annotations

Modifications (not altering text):

C43 Application of Part extended with modifications (3.05.1993) by *Criminal Justice Act 1993* (6/1993), s. 7(2)(b), commenced as per s. 14(2).

Payment of compensation to District Court clerks for transmission, and attachment of earnings orders.

7.—(1) Subject to subsection (2), payments under a compensation order or an order under section 6 (8) shall be made, for transmission to the injured party concerned, to such District Court clerk as may be determined from time to time by the court which made the order.

(2) For the purposes of subsection (1) and of securing compliance with compensation orders and orders under section 6(8)— ...

(b) Part III (which relates to attachment of earnings), and

...

of the Family Law (Maintenance of Spouses and Children) Act, 1976, shall apply to those orders with the following modifications and any other necessary modifications, that is to say: ...

(ii) in the said Part III—

(I) in section 10—

(A) subparagraphs (i) and (ii) of subsection (1) (a) shall not apply,

(B) the reference to the District Court in subsection (1)(a)(iii)(I) shall be construed as a reference to a court, and

(C) in subsection (2), paragraph (a) shall be deleted and the following paragraph shall be substituted for paragraph (b):

“(b) in any other case, to the District Court clerk specified by the attachment of earnings order for transmission to the injured party concerned”,

(II) the references to an antecedent order shall be construed as references to a compensation order and an order under section 6(8),

(III) the references to the maintenance creditor shall be construed as references to the injured party, and

(IV) the references to the maintenance debtor shall be construed as references to the convicted person or, in a case to which section 99 of the Children Act, 1908, applies, to his parent or guardian,

...

F42[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.]

Annotations

Amendments:

- F42** Inserted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011 (23/2011)*, s. 31, commenced on enactment.

F42[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.]

Annotations**Amendments:**

F42 Inserted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 31, commenced on enactment.

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.

F43[(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 F44[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 F45[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 F46[or, where appropriate, to the competent authority].

F47[(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) F48[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.

Annotations

Amendments:

F43 Inserted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(d)(i), S.I. No. 46 of 1996.

F44 Inserted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(d)(ii), S.I. No. 46 of 1996.

F45 Inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(e), S.I. No. 273 of 1990.

F46 Inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(f), S.I. No. 273 of 1990.

F47 Substituted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(d)(iii), S.I. No. 46 of 1996.

F48 Substituted (18.01.2016) by *Children and Family Relationships Act 2015* (9/2015), s. 76, S.I. No. 12 of 2016.

Modifications (not altering text):

C44 Application of section extended (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 10(9), in effect as per reg. 1(2); as substituted (29.11.2011) by

European Communities (Maintenance) (Amendment) Regulations 2011 (S.I. No. 612 of 2011), reg. 7.

Enforcement of enforceable maintenance orders given in a Member State not bound by the 2007 Hague Protocol

10. ...

(9) Where a sum payable under an enforceable maintenance order is not duly paid—

(a) the maintenance creditor may, in writing, request the district court clerk concerned to make an application to the District Court respecting that sum under section 10 (as amended by section 43 of the Act of 1995) of the Act of 1976, or

...

C45 Application of section extended (1.03.2002) by *European Communities (Civil and Commercial Judgment) Regulations 2002* (S.I. No. 52 of 2002), reg. 6(10), in effect as per reg. 2.

Enforcement of enforceable maintenance orders

6. ...

(10) If a sum payable under an enforceable maintenance order is not duly paid and if the maintenance creditor so requests in writing, the district court clerk concerned shall make an application respecting that sum under— ...

(b) section 10 (which relates to the attachment of certain earnings) of the Act of 1976.

...

C46 Application of section modified (3.05.1993) by *Criminal Justice Act 1993* (6/1993), s. 7(2)(b), commenced as per s. 14(2).

Payment of compensation to District Court clerks for transmission, and attachment of earnings orders.

7.—(1) Subject to subsection (2), payments under a compensation order or an order under section 6 (8) shall be made, for transmission to the injured party concerned, to such District Court clerk as may be determined from time to time by the court which made the order.

(2) For the purposes of subsection (1) and of securing compliance with compensation orders and orders under section 6(8)— ...

(b) Part III (which relates to attachment of earnings), and

...

of the Family Law (Maintenance of Spouses and Children) Act, 1976, shall apply to those orders with the following modifications and any other necessary modifications, that is to say:

...

(ii) in the said Part III—

(I) in section 10—

(A) subparagraphs (i) and (ii) of subsection (1) (a) shall not apply,

(B) the reference to the District Court in subsection (1)(a)(iii)(I) shall be construed as a reference to a court, and

(C) in subsection (2), paragraph (a) shall be deleted and the following paragraph shall be substituted for paragraph (b):

“(b) in any other case, to the District Court clerk specified by the attachment of earnings order for transmission to the injured party concerned”,

(II) the references to an antecedent order shall be construed as references to a compensation order and an order under section 6(8),

(III) the references to the maintenance creditor shall be construed as references to the injured party, and

(IV) the references to the maintenance debtor shall be construed as references to the convicted person or, in a case to which section 99 of the Children Act, 1908, applies, to his parent or guardian,

...

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 F49[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.

Annotations

Amendments:

F49 Inserted (29.11.1990) by *Social Welfare Act 1989* (4/1989), s. 13(1)(g), S.I. No. 273 of 1990.

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](#), F50[[the Health Service Executive](#)], F51[[the Child and Family Agency](#)], F52[[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.

Annotations

Amendments:

- F50** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 5, S.I. No. 887 of 2004.
- F51** Inserted (1.01.2014) by *Child and Family Agency Act 2013* (40/2013), s. 97 and sch. 2 part 2 item 1, S.I. No. 502 of 2013.
- F52** Substituted (1.07.2013) by *Education and Training Boards Act 2013* (11/2013), s. 72 and sch. 6 item 6, S.I. No. 211 of 2013.

Editorial Notes:

- E16** The functions of the Minister for Public Service under subss. (2) and (3) were transferred to the Minister for Finance (19.03.1987) by *Public Service (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 81 of 1987), art. 4(1)(a). These functions were further transferred from the Minister for Finance to the Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1 part 2.

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.

Annotations

Editorial Notes:

- E17** The fine specified in subs. (2) was converted to a Class C fine (4.01.2011) by *Fines Act 2010* (8/2010), s. 6(2), S.I. No. 662 of 2010.
- E18** The fine specified in subs. (3) was converted to a Class E fine (4.01.2011) by *Fines Act 2010* (8/2010), s. 8(2), S.I. No. 662 of 2010.

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.

Annotations

Modifications (not altering text):

- C47** Application of section affected (12.07.1976) by *Family Home Protection Act 1976* (27/1976), s. 9(2) and (3), commenced on enactment; as amended (23.07.1981) by *Family Law (Protection of Spouses and Children) Act 1981* (21/1981), s. 17(1), commenced as per s. 18.

Restriction on disposal of household chattels.

9. — ...

(2) Where matrimonial proceedings have been instituted by either spouse, neither spouse shall sell, lease, pledge, charge or otherwise dispose of or remove any of the household chattels in the family home until the proceedings have been finally determined, unless—

- (a) the other spouse has consented to such sale, lease, pledge, charge or other disposition or removal, or
- (b) the court before which the proceedings have been instituted, on application to it by the spouse who desires to make such disposition or removal, permits that spouse to do so, which permission may be granted on such terms as the court may see fit.

(3) In subsection (2) “matrimonial proceedings” includes proceedings under section 12 of the Married Women’s Status Act, 1957, under the Guardianship of Infants Act, 1964, or under section 21 [...] of the Family Law (Maintenance of Spouses and Children) Act, 1976.

F53[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

F54[(b) in relation to a dependent child whose parents are not married to each other and are not civil partners of 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 F55[€4,000], but no such order shall direct the payment of an amount exceeding F55[€2,000] in respect of the birth of a child to whom this section relates or F55[€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.]

Annotations

Amendments:

F53 Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 21, commenced as per s. 1(2)(b).

F54 Substituted (4.05.2020) by *Children and Family Relationships Act 2015* (9/2015), s. 77, S.I. No. 624 of 2019.

F55 Substituted (1.10.2002) by *Courts and Court Officers Act 2002* (15/2002), s. 19, S.I. No. 407 of 2002.

Modifications (not altering text):

C48 Application of section extended (18.06.2011) by *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011), reg. 10(2) and (6), in effect as per reg. 1(2).

Enforcement of enforceable maintenance orders given in a Member State not bound by the 2007 Hague Protocol

10. ...

(2) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of—

(a) paragraph (1),

(b) section 98(1) (as amended by section 30(1) of the Act of 1976) of the Defence Act 1954 (No. 18 of 1954), and

(c) subject to the Maintenance Regulation, the variation or discharge of that order under section 6 (as amended by section 43(b) of the Act of 1995) of the Act of 1976, to be an order made by the District Court under section 5, 5A (inserted by section 18 of the Act of 1987) or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976, as may be appropriate.

...

(6) Subject to paragraphs (3) to (5) of Regulation 9, the following shall be regarded as being payable pursuant to an order made under section 5, 5A (inserted by section 18 of the Act of 1987), or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976—

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 14(2).

...

C49 Application of section affected (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 51(2), S.I. No. 923 of 2005.

Supplementary provisions.

51. — ...

(2) In deciding whether or not to make an order under section 21A (inserted by the Status of Children Act 1987) of the Family Law (Maintenance of Spouses and Children) Act 1976, in so far as any such order relates to the payment of expenses incidental to the birth of a child, the Circuit Court or the District Court, as the case may be, shall not take into consideration the fact that the mother of the child is entitled to maternity benefit.

C50 Application of section extended (1.03.2002) by *European Communities (Civil and Commercial Judgment) Regulations 2002* (S.I. No. 52 of 2002), reg. 6(3) and (7), in effect as per reg. 2.

Enforcement of enforceable maintenance orders

6. ...

(3) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of —

(a) paragraph (1),

(b) section 98(1) of the Defence Act 1954 (No. 18 of 1954), and

(c) subject to the Brussels I Regulation, the variation or discharge of that order under section 6 (as amended by the Act of 1987) of the Act of 1976,

to be an order made by the District Court under section 5, 5A or 21A of the Act of 1976, as may be appropriate.

...

(7) Subject to paragraph (3) to (5) of Regulation 5, the following shall be regarded as being payable pursuant to an order made under section 5, 5A or 21A of the Act of 1976:

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 7(2).

...

C51 Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 9, commenced as per s. 25(1).

Hearing of applications under various Acts together.

9.—(1) Where an application is made to the court for an order under this Act, the court may, on application to it 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 orders referred to in subsection (2).

(2) The provisions to which subsection (1) relates are as follows, that is to say: ...

(b) an order under section 5, 5A, 6, 7 or 21A of the Family Law (Maintenance of Spouses and Children) Act, 1976 (as amended by the Status of Children Act, 1987);

...

C52 Application of section extended (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 14(3), S.I. No. 288 of 1995; as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 53(c)(i), commenced as per s. 1(2).

Application for maintenance from designated jurisdiction.

14.—(1) On receipt of a request by the Central Authority from a central authority of a designated jurisdiction on behalf of a claimant for the recovery of maintenance from a person for the time being residing in the State ("the respondent") the Central Authority may— ...

(c) if either the request is not accompanied by such an order or enforcement of the order is refused—

[(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,]

(ii) in any other case, make an application to the District Court,

for the recovery of maintenance in accordance with the request.

...

[(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.]

...

C53 Application of section extended (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 24(1), commenced as per s. 1(2)(b).

Amendment of Defence Act, 1954.

24.—(1) The reference in section 98 (1)(d) of the Defence Act, 1954, to an order made by a civil court under section 3, 6 or 7 of the Illegitimate Children (Affiliation Orders) Act, 1930, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the Act of 1976 (as amended by this Part) or an order under section 8A (inserted by this Part) of the Act of 1976 (in so far as it is deemed under that section to be a maintenance order).

...

C54 Application of section extended (1.06.1988) by *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988* (3/1988), s. 7(2)(a), S.I. No. 91 of 1988; as substituted (25.11.1995) by *Maintenance Act 1994* (28/1994), s. 11, S.I. No. 288 of 1995.

Enforcement of Community maintenance orders.

[7. — ...

(2) (a) Subject to section 8 (4) of this Act and to the restriction on enforcement contained in Article 39, the District Court shall have jurisdiction to enforce an enforceable maintenance order and—

(i) for that purpose,

(ii) for the purposes of section 98 (1) of the Defence Act, 1954, and

(iii) subject to the 1968 Convention, for the purpose of the variation or discharge of such an order under section 6 of the Family Law (Maintenance of Spouses and Children) Act, 1976, as amended by the Status of Children Act, 1987,

such an order shall, from the date on which the maintenance order was made, be deemed to be an order made by the District Court under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Family Law (Maintenance of Spouses and Children) Act, 1976, as may be appropriate.

...]

Editorial Notes:

E19 Previous affecting provision: application of section affected (16.11.1993) by *Social Welfare (Consolidation) Act 1993* (27/1993), s. 41(2), S.I. No. 335 of 1993; as substituted (9.06.1997) by *Social Welfare Act 1997* (10/1997), s. 10, S.I. No. 248 of 1997; repealed (1.12.2005) by *Social Welfare (Consolidation) Act 2005* (26/2005), s. 360 and sch. 7, S.I. No. 923 of 2005.

E20 Previous affecting provision: application of section affected by *Social Welfare (Consolidation) Act 1981* (1/1981), s. 28(2); as substituted (6.04.1992) by *Social Welfare Act 1992* (5/1992), s. 19, S.I. No. 81 of 1992; repealed (16.11.1993) by *Social Welfare (Consolidation) Act 1993* (27/1993), s. 300 and sch. 5, S.I. No. 335 of 1993.

Barring of spouse
from family
home. **22.—F56[...]**

Annotations

Amendments:

F56 Repealed (23.07.1981) by *Family Law (Protection of Spouses and Children) Act 1981* (21/1981), s. 17(1), commenced as per s. 18, subject to transitional provisions in s. 17(2) to (5).

Editorial Notes:

E21 Previous affecting provision: application of section potentially affected (12.07.1976) by *Family Home Protection Act 1976* (27/1976), s. 9(2) and (3), commenced on enactment.

Jurisdiction of
Courts.

F57[23. (1) Subject to subsection (2) of this section, the Circuit Court and the District Court shall have jurisdiction to hear and determine F58[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 F59[€500] per week for the support of a spouse or F59[€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 F58[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 F58[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.]

F58[(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.]

F60[(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.]

Annotations

Amendments:

- F57** Substituted (12.05.1982) by *Courts Act 1981* (11/1981), s. 12, commenced as per s. 33(3).
- F58** Substituted (18.01.2016) by *Child and Family Relationships Act 2015* (9/2015), s. 78, S.I. No. 12 of 2016.
- F59** Substituted (1.10.2002) by *Courts and Court Officers Act 2002* (15/2002), s. 20, S.I. No. 407 of 2002.
- F60** Inserted by *Family Law Act 1995* (26/1995), s. 43(e), as substituted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 52(o)(ii), commenced as per s. 1(2).

Editorial Notes:

- E22** Previous affecting provision: subs. (3) inserted by *Family Law Act 1995* (26/1995), s. 43(e), as substituted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 52(o)(ii), commenced as per s. 1(2); substituted as per F-note above.
- E23** Previous affecting provision: subs. (4) inserted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 43(e), S.I. No. 46 of 1996. At the time this subs. (4) was inserted there was no subs. (3). s. 43(e) was subsequently substituted and numbering regularised as per F-note above.
- E24** Previous affecting provision: amounts specified in subs. (2)(a) substituted (15.08.1991) by *Courts Act 1991* (20/1991), s. 11, commenced as per s. 23(3); substituted as per F-note above.

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* F61[or 8A] of this Act (in so far as it is deemed under F62[*either of those sections*] to be a maintenance order), or an attachment of earnings order shall be made without deduction of income tax.

Annotations**Amendments:**

- F61** Inserted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 23, commenced as per s. 1(2)(b).
- F62** Substituted (14.06.1988) by *Status of Children Act 1987* (26/1987), s. 23, commenced as per s. 1(2)(b).

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.

Annotations**Modifications (not altering text):**

- C55** Application of section restricted (31.03.2005) by *Civil Liability and Courts Act 2004* (31/2004), s. 40, S.I. No. 544 of 2004; as amended (1.08.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 31, S.I. No. 274 of 2008; and as amended (11.01.2014) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 5, S.I. No. 5 of 2014.

Proceedings heard otherwise than in public.

40. —(1) ...

(2) For the purposes of this section each of the following shall be a “relevant enactment”— ...

(c) section 25 of the Family Law (Maintenance of Spouses and Children) Act 1976 ;

...

(3) Nothing contained in a relevant enactment shall operate to prohibit—

(a) the preparation by a barrister at law or a solicitor or a person falling within any other class of persons specified in regulations made by the Minister and publication of a report of proceedings to which the relevant enactment relates, or

(b) the publication of the decision of the court in such proceedings,

in accordance with rules of court, provided that the report or decision does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified and, accordingly, unless in the special circumstances of the matter the court, for reasons which shall be specified in the direction, otherwise directs, a person referred to in paragraph (a) may, for the purposes of preparing [such a report —

(i) attend the proceedings, and

(ii) have access to any relevant documents,

subject to any directions the court may give in that behalf.]

[(3A) (a) Subject to paragraph (b), nothing contained in a relevant enactment shall operate to prohibit bona fide representatives of the Press from attending proceedings to which the relevant enactment relates.

(b) Subject to paragraphs (c) and (d), where, in proceedings under a relevant enactment, a court is satisfied that it is necessary to do so—

(i) in order to preserve the anonymity of a party to the proceedings or any child to whom the proceedings relate,

(ii) by reason of the nature or circumstances of the case, or

(iii) as it is otherwise necessary in the interests of justice,

the court may, on its own motion, or on application to it by a party to the proceedings or by a person on behalf of a child to whom the proceedings relate, by order—

(I) exclude, or otherwise restrict the attendance of, bona fide representatives of the Press from the court during the hearing or particular parts of it, or

(II) prohibit or restrict the publication or broadcasting of any evidence given or referred to during the proceedings or any part of such evidence,

and any such order may, with regard to any restriction, contain such conditions as the court considers appropriate.

(c) In determining whether or not to make an order under paragraph (b), a court shall have regard to the desirability of promoting public confidence in the administration of justice and to any other matter that appears to it to be relevant and shall, in particular, have regard to the following:

- (i) the best interests of a child to whom the proceedings relate;
- (ii) the views, if any, of—
 - (I) a party to the proceedings, and
 - (II) a child to whom the proceedings relate who is, in the opinion of the court, capable of forming his or her own views;
- (iii) whether information given or likely to be given in evidence is sensitive personal information;
- (iv) the extent to which the attendance of bona fide representatives of the Press might inhibit or cause undue distress to a party to the proceedings or a child to whom the proceedings relate by reason of the emotional condition or any medical condition, physical impairment or intellectual disability of the party or the child concerned;
- (v) the need to protect a party to the proceedings or a child to whom the proceedings relate against coercion, intimidation or harassment;
- (vi) whether information given or likely to be given in evidence might be prejudicial to a criminal investigation or criminal proceedings;
- (vii) whether information given or likely to be given in evidence is commercially sensitive information; and
- (viii) whether information of the type referred to in subparagraphs (iii), (vi) and (vii) when taken together with other information would, if published or broadcast, be likely to lead members of the public to identify a party to the proceedings or a child to whom the proceedings relate.

(d) In considering the views of a child referred to in clause (II) of paragraph (c)(ii), a court shall take account of the age and level of maturity of the child concerned.

(e) Where evidence in proceedings to which a relevant enactment relates concerns a matter referred to in subparagraph (vi) of paragraph (c), an application under paragraph (b) may be made by or on behalf of the Director of Public Prosecutions.

(f) In this subsection—

‘commercially sensitive information’ means—

- (i) financial, commercial, scientific, technical or other information the disclosure of which could reasonably be expected to result in a material financial loss or gain to the person to whom it relates, or could prejudice the competitive position of that person in the conduct of his or her business or otherwise in his or her occupation, or
- (ii) information the disclosure of which could prejudice the conduct or outcome of contractual or other negotiations of the person to whom it relates;

‘party to the proceedings’ includes a witness in the proceedings;

‘sensitive personal information’ means information about a person that would, in the ordinary course of events, be known only to the person or members of the family, or friends, of the person, and includes but is not limited to—

- (i) information relating to the medical, psychiatric or psychological history of the person,
- (ii) information relating to the tax affairs of the person,

(iii) information relating to the sexual conduct or sexual orientation of the person.]

(4) Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from supplying copies of, or extracts from, orders made in the proceedings to such persons and in accordance with such conditions (if any) as may be prescribed by order of the Minister.

(5) Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from being accompanied, in such proceedings, in court by another person subject to the approval of the court and any directions it may give in that behalf.

(6) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the production of a document prepared for the purposes or in contemplation of such proceedings or given in evidence in such proceedings, to—

- (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
- (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(7) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the giving of information or evidence given in such proceedings to—

- (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
- (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(8) A court hearing proceedings under a relevant enactment shall, on its own motion or on the application of one of the parties to the proceedings, have discretion to order disclosure of documents, information or evidence connected with or arising in the course of the proceedings to third parties if such disclosure is required to protect the legitimate interests of a party or other person affected by the proceedings.

(9) A hearing, inquiry or investigation referred to in subsection (6) or (7) shall, in so far as it relates to a document referred to in subsection (6) or information or evidence referred to in subsection (7), be conducted otherwise than in public and no such document, information or evidence shall be published.

(10) This section shall apply to proceedings brought, and decisions of a court made, whether before or after the commencement of this section.

[(11) In subsection (3), 'relevant documents', in relation to any proceedings referred to in that subsection—

- (a) subject to paragraph (b), means—
 - (i) the petition, summons or other originating document in the proceedings,
 - (ii) pleadings and other documents (including the terms of settlement, if any) produced to or lodged with the court, or included in the book of pleadings, in the course of the proceedings, and
 - (iii) any order made by the court in the proceedings,
- (b) does not include any document the contents of which are expressed to be without prejudice or in terms having a like effect.]

Editorial Notes:

- E25** Section designated a relevant enactment (for purposes of *in camera* rule) by *Civil Liability and Courts Act 2004* (31/2004), s. 39; as amended (1.01.2014) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 4, S.I. No. 5 of 2014.

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 cesser.”;

(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.

Annotations

Editorial Notes:

- E26** *Illegitimate Children (Affiliation Orders) Act 1930* (17/1930) was repealed (14.01.1988) by *Status of Children Act 1987* (26/1987), s. 25, commenced as per s. 1(2)(a). The amendment by subs. (3) of the *Courts Act 1971* (36/1971), s. 19(3)(a) is now redundant as that provision referred only to orders under the 1930 Act.

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.

Annotations

Modifications (not altering text):

- C56** Application of section extended with modifications (3.05.1993) by *Criminal Justice Act 1993* (6/1993), s. 7, commenced as per s. 14(2).

Payment of compensation to District Court clerks for transmission, and attachment of earnings orders.

7.—(1) Subject to subsection (2), payments under a compensation order or an order under section 6 (8) shall be made, for transmission to the injured party concerned, to such District Court clerk as may be determined from time to time by the court which made the order.

(2) For the purposes of subsection (1) and of securing compliance with compensation orders and orders under section 6(8)— ...

(c) section 29 (which amends the Enforcement of Court Orders Act, 1940), of the Family Law (Maintenance of Spouses and Children) Act, 1976, shall apply to those orders with the following modifications and any other necessary modifications, that is to say:

...

(iii) in the said section 29 the reference to a maintenance order shall be construed as including a reference to a compensation order and an order under section 6(8).

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.



Number 11 of 1976

FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

REVISED

Updated to 4 May 2020

About this Revised Act

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 annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Domestic Violence Act 2018* (6/2018)
- *Mediation Act 2017* (27/2017)
- *Children and Family Relationships Act 2015* (9/2015)
- *Child and Family Agency Act 2013* (40/2013)
- *Education and Training Boards Act 2013* (11/2013)

- *Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012* (7/2012)
- *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011)
- *Adoption Act 2010* (21/2010)
- *Fines Act 2010* (8/2010)
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008)
- *Social Welfare Consolidation Act 2005* (26/2005)
- *Health Act 2004* (42/2004)
- *Civil Liability and Courts Act 2004* (31/2004)
- *Courts and Court Officers Act 2002* (15/2002)
- *Social Welfare (Miscellaneous Provisions) Act 2002* (8/2002)
- *Children Act 1997* (40/1997)
- *Social Welfare Act 1997* (10/1997)
- *Family Law (Divorce) Act 1996* (33/1996)
- *Domestic Violence Act 1996* (1/1996)
- *Family Law Act 1995* (26/1995)
- *Maintenance Act 1994* (28/1994)
- *Social Welfare Act 1993* (27/1993)
- *Criminal Justice Act 1993* (6/1993)
- *Social Welfare Act 1992* (5/1992)
- *Courts Act 1991* (20/1991)
- *Social Welfare Act 1990* (5/1990)
- *Judicial Separation and Family Law Reform Act 1989* (6/1989)
- *Social Welfare Act 1989* (4/1989)
- *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988* (3/1988)
- *Status of Children Act 1987* (26/1987)
- *Age of Majority Act 1985* (2/1985)
- *Family Law (Protection of Spouses and Children) Act 1981* (21/1981)
- *Courts Act 1981* (11/1981)
- *Social Welfare (Consolidation) Act 1981* (1/1981)
- *Family Home Protection Act 1976* (27/1976)
- *Guardianship of Infants Act 1964* (7/1964)

All Acts up to and including *Emergency Measures in the Public Interest (Covid-19) Act 2020* (2/2020), enacted 27 March 2020, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (Hague Maintenance Convention) Regulations 2019* (S.I. No. 594 of 2019)
- *European Communities (Maintenance) (Amendment) Regulations 2011* (S.I. No. 612 of 2011)
- *European Communities (Maintenance) Regulations 2011* (S.I. No. 274 of 2011)
- *European Communities (Mediation) Regulations 2011* (S.I. No. 209 of 2011)
- *European Communities (Civil and Commercial Judgment) Regulations 2002* (S.I. No. 52 of 2002)

All statutory instruments up to and including *Planning and Development Act 2000 (Subsection (4) of Section 251A) (No. 2) Order 2020* (S.I. No. 165 of 2020), made 8 May 2020, were considered in the preparation of this revision.