



Number 6 of 1989

JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989

REVISED

Updated to 1 December 2019

This Revised Act is an administrative consolidation of the *Judicial Separation and Family Law Reform Act 1989*. 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 *Consumer Protection (Gift Vouchers) Act 2019* (38/2019), enacted 19 November 2019, and all statutory instruments up to and including the *Family Law Act 2019 (Commencement) Order 2019* (S.I. No. 585 of 2019), made 21 November 2019, were considered in the preparation of this Revised Act.

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Introduction

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

Related legislation

This Act is not collectively cited with any other Act.

Annotations

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

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ACTS REFERRED TO

Adoption Acts, 1952 to 1988

Defence Act, 1954	1954, No. 18
Enforcement of Court Orders Act, 1940	1940, No. 23
Family Home Protection Act, 1976	1976, No. 27
Family Law Act, 1981	1981, No. 22
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11
Family Law (Protection of Spouses and Children) Act, 1981	1981, No. 21
Guardianship of Infants Act, 1964	1964, No. 7
Legitimacy Declaration Act (Ireland), 1868	1868, c. 20
Married Women's Status Act, 1957	1957, No. 5
Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870	1870, c. 110
Partition Act, 1868	1868, c. 40
Partition Act, 1876	1876, c. 17
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27



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AN ACT TO AMEND THE GROUNDS FOR JUDICIAL SEPARATION: TO FACILITATE RECONCILIATION BETWEEN ESTRANGED SPOUSES: TO PROVIDE FOR THE MAKING OF ANCILLARY ORDERS IN SEPARATION PROCEEDINGS: TO AMEND THE LAW RELATING TO THE COURTS' FAMILY LAW JURISDICTION AND TO PROVIDE FOR CONNECTED MATTERS. [19th April, 1989]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

THE OBTAINING OF A DECREE OF SEPARATION

Definition.

1.—In this Act, except where the context otherwise requires—

“the court” means the court having jurisdiction under *Part III* of this Act.

Application for a
decree of judicial
separation.

2.—(1) An application by a spouse for a decree of judicial separation from the other spouse may be made to the court having jurisdiction to hear and determine proceedings under *Part III* of this Act on one or more of the following grounds:

- (a) that the respondent has committed adultery;
- (b) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
- (c) subject to *subsection (2)* of this section, that there has been desertion by the respondent of the applicant for a continuous period of at least one year immediately preceding the date of the application;
- (d) subject to *subsection (2)* of this section, that the spouses have lived apart from one another for a continuous period of at least one year immediately preceding the date of the application [...];
- (e) [...]
- (f) that the marriage has broken down to the extent that the court is satisfied in all the circumstances that a normal marital relationship has not existed between the spouses for a period of at least one year immediately preceding the date of the application.

- (2) In considering for the purposes of *subsection (1)* of this section, whether—
- (a) in the case of *paragraph (c)* of that subsection, the period for which the respondent has deserted the applicant, or
 - (b) in the case of *paragraph (d)* [...] of that subsection, the period for which the spouses have lived apart,

has been continuous, no account shall be taken of any one period (not exceeding 6 months) or of any two or more periods (not exceeding 6 months in all) during which the spouses resumed living with each other, but no such period or periods during which the spouses lived with each other shall count as part of the period of desertion or the period for which the spouses have lived apart, as the case may be:

Provided that this subsection shall only apply where the spouses are [living apart from one another] at the time the application is made.

- (3) [(a) For the purposes of this section—
- (i) spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship, and
 - (ii) a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.]
- (b) In this section “desertion” includes conduct on the part of one spouse that results in the other spouse, with just cause, leaving and living apart from that other spouse.

Grant of decree of judicial separation, custody, etc. of children.

3.—(1) Where, on an application under *section 2* of this Act, the court is satisfied that any of the grounds referred to in *subsection (1)* of that section which have been relied on by the applicant have been proved on the balance of probabilities, the court shall, subject to *subsection (2)* of this section and *sections 5* and *6* of this Act, grant a decree of judicial separation in respect of the spouses concerned.

- (2) (a) Where there are, in respect of the spouses concerned, any dependent children of the family, the court shall not grant a decree of judicial separation unless the court—

[(i) is satisfied that such provision exists or has been made, or]

- (ii) intends by order upon the granting of the decree to make such provision, for the welfare of those children as is proper in the circumstances.

- (b) In this subsection—

“dependent children of the family” has the same meaning as it has for the purposes of *Part II* of this Act;

“welfare” comprises the religious and moral, intellectual, physical and social welfare of the children concerned.

(3) Upon the granting of a decree of judicial separation by the court, the court may, where appropriate, by order give such directions under *section 11* of the *Guardianship of Infants Act, 1964*, as it thinks proper regarding the welfare or custody of, or right of access to, an infant (being an infant within the meaning of that Act) as if an application had been made under that section.

Supplemental provisions as to proof of adultery and unreasonable behaviour.

4.—(1) Where the spouses have lived with each other for more than 1 year after it became known to the applicant that the respondent had committed adultery the applicant shall not be entitled to rely on that adultery for the purposes of *section 2 (1) (a)* although that adultery may be one of the factors that the applicant may rely on for the purposes of *section 2 (1) (b)* together with other matters.

(2) Where the applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to cohabit with him but the spouses have cohabited for a period or periods after the date of the occurrence of the final incident relied on by the applicant and held by the court to support his allegation, such cohabitation shall be disregarded in determining for the purpose of *section 2 (1) (b)* of this Act whether the applicant cannot be reasonably expected to live with the respondent if the length of the period or of those periods of cohabitation together was or were 6 months or less.

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

5.—(1) A solicitor, if any, acting for an applicant for a decree of judicial separation shall, prior to the making of an application for a decree of judicial separation—

- (a) discuss with the applicant the possibility of reconciliation and give to him the names and addresses of persons qualified to help effect a reconciliation between spouses who have become estranged, and
- (b) discuss with the applicant the possibility of engaging in mediation to help effect a separation on an agreed basis with an estranged spouse [, give to the applicant the names and addresses of persons who provide a mediation service and inform the applicant of the matters referred to in sections 10 and 11 of the Mediation Act 2017], and
- (c) discuss with the applicant the possibility of effecting a separation by the negotiation and conclusion of a separation deed or written separation agreement.

(2) An application for judicial separation shall be accompanied by a [statutory declaration made by the solicitor], if any, acting on behalf of the applicant that he has complied with the provisions of *subsection (1)* of this section and, where a solicitor does [not so declare,] the court may adjourn the proceedings for such period as it deems reasonable for the applicant's solicitor to discuss with the applicant the matters referred to in that subsection.

(3) [...]

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

6.—(1) A solicitor, if any, acting for a respondent in an application for a decree of judicial separation shall, as soon as possible after receiving instructions from the respondent—

- (a) discuss with the respondent the possibility of reconciliation and give to him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged, and
- (b) discuss with the respondent the possibility of engaging in mediation to help effect a separation on an agreed basis with an estranged spouse [, give to the respondent the names and addresses of persons who provide a mediation service and inform the respondent of the matters referred to in sections 10 and 11 of the Mediation Act 2017], and
- (c) discuss with the respondent the possibility of effecting a separation by the negotiation and conclusion of a separation deed or written separation agreement.

(2) An Entry of Appearance or a Notice of Intention to Defend an application for judicial separation shall be accompanied by a [statutory declaration made by the solicitor], if any, acting on behalf of the respondent, that he has complied with the

provisions of *subsection (1)* of this section and where a solicitor does [not so declare,] the court may adjourn the proceedings for such period as it deems reasonable for the respondent's solicitor to discuss with the respondent the matters referred to in that subsection.

(3) [...]

Adjournment of proceedings to assist reconciliation or agreements on separation.

7.—(1) Where an application is made under this Act to the court for a decree of judicial separation, the court shall give consideration to the possibility of a reconciliation of the spouses concerned and, accordingly, may adjourn the proceedings at any time for the purpose of affording the spouses an opportunity, if they both so wish, to consider a reconciliation between themselves with or without the assistance of a third party.

(2) If during any adjournment of proceedings to which *subsection (1)* of this section relates the spouses resume living with each other, no account shall be taken of that fact for the purposes of those proceedings.

(3) Where on an application made under this Act for a decree of judicial separation it appears to the court that no reconciliation of the spouses concerned is possible, it may adjourn or further adjourn the proceedings for the purpose of affording the spouses an opportunity, if they both so wish, to establish agreement (with or without the assistance of a third party) on the terms, so far as is possible, of the separation.

(4) If an adjournment has taken place by virtue of *subsection (1)* or *(3)* of this section, either or both of the spouses may request that the hearing of the application be proceeded with and, without prejudice to *subsection (5)* of this section, the court shall resume hearing the application as soon as is practicable.

(5) The power of adjournment exercisable under *subsections (1)* and *(3)* of this section is in addition to and not in substitution for any other power of adjournment exercisable by the court.

(6) Where the court adjourns proceedings under *subsection (1)* or *(3)* of this section, it may at its discretion advise the spouses concerned to seek the assistance of a third party for the purpose set out in the appropriate subsection.

(7) [...]

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

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

Effect of judicial separation and rescission of decree of separation and ancillary orders upon reconciliation.

8.—(1) Where the court grants a decree of judicial separation it shall no longer be obligatory for the spouses who were the parties to such proceedings to cohabit.

(2) Following the granting of a decree of judicial separation the applicant and the respondent in the separation proceedings may at any future date by consent apply to the court to rescind the decree of separation granted and such order of rescission shall be made by the court upon it being satisfied that a reconciliation has taken place between the applicant and the respondent and that they have already resumed or again wish to resume cohabiting as [spouses of each other].

(3) Upon making an order of rescission under *subsection (2)* of this section the court may also make such necessary ancillary order or orders as it deems proper in the circumstances with regard to any orders previously made under *Part II* of this Act.

Abolition of
decree of divorce
a mensa et thoro,
etc.

9.—(1) After the commencement of this Act, no action shall lie for divorce *a mensa et thoro*.

(2) *Subsection (1)* of this section shall not have effect in relation to any action instituted before the commencement of this Act.

PART II

ANCILLARY FINANCIAL, PROPERTY, CUSTODY AND OTHER ORDERS

Definitions (<i>Part II</i>).	10.—[...]
Preliminary orders in judicial separation proceedings.	11.—[...]
Making of applications for preliminary orders.	12.—[...]
Maintenance pending suit, etc.	13.—[...]
Periodical payments and lump sum orders.	14.—[...]
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Miscellaneous ancillary orders.	16.—[...]
Order extinguishing succession rights.	17.—[...]
Orders for sale of property.	18.—[...]
Additional family home jurisdiction.	19.—[...]
Provisions relating to maintenance, property and other orders.	20.—[...]
Retrospective maintenance orders.	21.—[...]
Variation and discharge of financial and property orders.	22.—[...]
Child maintenance.	23.—[...]

Transmission of periodical payments through District Court clerk.

24.—[...]

Amendment of section 3 of Family Law (Maintenance of Spouses and Children) Act, 1976.

25.—(1) Subject to *subsection (2)* of this section, section 3 (1) of the Family Law (Maintenance of Spouses and Children) Act, 1976, is hereby amended by the deletion in the definition of “antecedent order” of—

“(i) an order for payment of alimony pending suit or permanent alimony;”

and the substitution of—

“(i) an order for alimony pending suit;

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

(2) *Subsection (1)* of this section shall not affect the application of the Family Law (Maintenance of Spouses and Children) Act, 1976, to an order for payment of permanent alimony in force at the commencement of this Act.

Payments to be made without deduction of income tax.

26.—[...]

Application of maintenance and periodical payments orders to men of Defence Forces.

27.—[...]

Amendment of Enforcement of Court Orders Act, 1940.

28.—[...]

Voidance of transactions intended to prevent or reduce financial relief.

29.—[...]

PART III

COURT JURISDICTION

Definition (*Part III*).

30.—In this Part “family law proceedings”, in relation to a court, means proceedings before a court of competent jurisdiction under—

(a) this Act,

(b) the Adoption Acts, 1952 to 1988,

(c) the Family Home Protection Act, 1976,

(d) the Family Law (Maintenance of Spouses and Children) Act, 1976,

(e) the Family Law (Protection of Spouses and Children) Act, 1981,

(f) the Family Law Act, 1981,

(g) the Guardianship of Infants Act, 1964,

(h) the Legitimacy Declaration Act (Ireland), 1868,

(i) the Married Women's Status Act, 1957, or

(j) the Status of Children Act, 1987, [and includes proceedings relating to nullity of marriage]

or between spouses under the Partition Act, 1868, and the Partition Act, 1876, where the fact that they are married to each other is of relevance to the proceedings.

Courts, jurisdiction and venue.

31.—(1) The Circuit Court shall be known as “the Circuit Family Court” when exercising its jurisdiction to hear and determine family law proceedings or, where provided for, when transferring family law proceedings to the High Court.

(2) Subject to the other provisions of this section, the Circuit Family Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Act for a decree of judicial separation.

(3) Where in proceedings under this Act for a decree of judicial separation an order could be made in respect of land whose rateable valuation exceeds £200 and an application commencing those proceedings is made to the Circuit Family Court, that Court shall, if the respondent so requires before the hearing thereof, transfer those proceedings to the High Court, but any order made (including an interim order) or act done in the course of those proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

(4) The jurisdiction referred to in *subsection (2)* of this section shall only be exercisable where either of the spouses is domiciled in the State on the date of the application commencing proceedings or is ordinarily resident in the State throughout the period of one year ending on that date.

(5) The jurisdiction referred to in *subsection (2)* of this section shall, in the Circuit Family Court, be exercised by the judge of the circuit where either spouse to the proceedings ordinarily resides or carries on any profession, business or occupation.

Hearing of proceedings.

32.—The Circuit Family Court shall sit to hear and determine proceedings instituted under this Act and under the Acts [and proceedings] referred to in *section 30* of this Act in a different place or at different times or on different days from those on which the ordinary sittings of the Circuit Court are held.

Conduct of family proceedings in Circuit and High Courts.

33.—(1) Circuit Family Court proceedings shall be as informal as is practicable and consistent with the administration of justice.

(2) Neither judges sitting in the Circuit Family Court nor barristers nor solicitors appearing in such courts shall wear wigs or gowns.

(3) Family law proceedings before the High Court shall be as informal as is practicable and consistent with the administration of justice.

(4) In hearing and determining such proceedings as are referred to in *subsection (3)* of this section neither judges sitting in the High Court nor barristers nor solicitors appearing in such proceedings shall wear wigs or gowns.

Privacy.

34.—Proceedings under this Act shall be heard otherwise than in public.

Costs.

35.—The costs of any proceedings under this Act shall be at the discretion of the court.

Rules of court. **36.—**(1) Rules of court shall provide for the documentation required for the commencement of proceedings under this Act in a summary manner.

(2) The rules of court, and any established form or course of pleading, practice or procedure, for the purposes of any enactment or jurisdiction affected by this Act shall, pending the due making of rules of court, apply for such purposes with such adaptations as may be necessary.

PART IV

MISCELLANEOUS

Saver for existing law. **37.—**Save in so far as otherwise provided in this Act, the law relating to proceedings for divorce *a mensa et thoro* shall, so far as applicable, apply in relation to proceedings for judicial separation.

Amendment of sections 5 and 6 of Family Law (Maintenance of Spouses and Children) Act, 1976. **38.—**(1) In this section “the Act of 1976” means the Family Law (Maintenance of Spouses and Children) Act, 1976.

(2) Section 5 of the Act of 1976 is hereby amended—

(a) by the insertion in subsection (2) after “the other spouse” of the following:

“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”,

(b) by the deletion of subsection (3), and

(c) by the insertion of the following paragraph after paragraph (b) of subsection (4):

“(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.”.

(3) Section 6 of the Act of 1976 is hereby amended—

(a) by the insertion in paragraph (b) of subsection (1), after “any circumstances not existing when the order was made”, of the following:

“(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)”,

(b) by the insertion in subsection (2), after “and continues to desert the maintenance debtor”, of the following:

“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.”,

(c) by the deletion of subsection (4), and

(d) by the deletion of “or adultery by” in subsection (5) and the substitution of “by, or conduct of,”.

Discharge of orders under Family Law (Maintenance of Spouses and Children) Act, 1976.

39.—[...]

Reports on children in guardianship cases.

40.—[...]

Custody of dependent children.

41.—[(1) In this section ‘dependent member of the family’ has the meaning assigned to it by section 2 of the Family Law Act, 1995.

(2) Where the court grants a decree of judicial separation, it may declare either of the spouses concerned to be unfit to have custody of any dependent member of the family who is a minor and, if it does so and the spouse to whom the declaration related is a parent of a dependent member of the family who is a minor, that spouse shall not, on the death of the other spouse, be entitled as of right to the custody of that minor.]

(3) Section 18 (1) of the Guardianship of Infants Act, 1964, is hereby repealed except in relation to an action instituted before the commencement of this Act.

Amendment of section 120 (2) of Succession Act, 1965.

42.—(1) Section 120 (2) of the Succession Act, 1965 is hereby amended by the deletion of the words from “against whom the deceased obtained a decree of divorce *a mensa et thoro*,” to “and a spouse”.

(2) *Subsection (1)* of this section shall not have effect in relation to a decree of divorce *a mensa et thoro* granted in proceedings instituted before the commencement of this Act.

Divorce *a mensa et thoro* decrees and alimony orders.

43.—Any order made by either the Circuit Court or the High Court granting a decree of divorce *a mensa et thoro* in proceedings issued before the commencement of this Act shall not be affected by this Act save that any alimony order made subsequent to the granting of such decree shall be deemed for all purposes to be an order made under *section 14 (1) (a)* of this Act.

Collusion, condonation, recrimination, connivance.

44.—(1) Collusion between the spouses in connection with an application for a judicial separation or, subject to *subsection (2)* of this section, any conduct (including condonation or recrimination) on the part of the applicant shall not be a bar to the grant of a decree of judicial separation.

(2) Where an application for a decree of judicial separation is made on the ground of adultery and the respondent proves that the adultery was committed with the connivance of the applicant the court may refuse the application.

Conduct of District Court family proceedings.

45.—(1) Proceedings before the District Court under the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children) Act, 1976, the Family Home Protection Act, 1976, section 9 of the Family Law Act, 1981, the Family Law (Protection of Spouses and Children) Act, 1981 and the [, *the Status of Children Act, 1987, and the Child Abduction and Enforcement of Custody Orders Act, 1991,*] shall be as informal as is practicable and consistent with the administration of justice.

(2) Neither district justices hearing and determining such proceedings as are referred to in *subsection (1)* of this section nor barristers nor solicitors appearing in such proceedings shall wear wigs or gowns.

Short title and commencement.

46.—(1) This Act may be cited as the Judicial Separation and Family Law Reform Act, 1989.

(2) This Act shall come into operation on the day that is 6 months after the date of the passing of this Act.