Changes to Legislation: as of 3 November 2026, this Act is up to date with all changes known to be in force.

Number 33 *of* 1996

FAMILY LAW (DIVORCE) ACT 1996

REVISED

Updated to 1 August 2022

This Revised Act is an administrative consolidation of the *Family Law (Divorce) Act 1996*. 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 *Electoral Reform Act 2022* (30/2022), enacted 25 July 2022, and all statutory instruments up to and including the *European Union (Decisions in Matrimonial Matters and in Matters of Parental Responsibility and International Child Abduction) Regulations 2022* (S.I. No. 400 of 2022), made 31 July 2022, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 33 *of* 1996

FAMILY LAW (DIVORCE) ACT 1996

REVISED

Updated to 1 August 2022

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Number 33 *of* 1996

FAMILY LAW (DIVORCE) ACT 1996

REVISED

Updated to 1 August 2022

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 Basis of calculation of period of living apart for purposes of Act in relation to certain foreign marriages provided (16.11.2015) by *Marriage Act 2015* (35/2015), s. 12(5), S.I. No. 504 of 2015.

Recognition of certain foreign marriages

12. ...

(5) Where the marriage under the law of a place other than the State of two persons of the same sex is recognised and the two persons concerned live apart from one another, the period or periods during which they live apart from one another shall, for the purposes of the Judicial Separation and Family Law Reform Act 1989, the Family Law (Divorce) Act 1996, or any other enactment, be calculated from the date (notwithstanding that it occurs before the date, under *subsection (2)*, that the marriage falls to be recognised) on which they begin to live apart.

...

C2 Functions transferred and references to "Department of Equality and Law Reform" and "Minister for Equality and Law Reform" construed (8.07.1997) by *Equality and Law Reform (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (S.I. No. 297 of 1997), arts. 3, 4 and sch., in effect as per art. 1(2).

3. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 4 of this Order are hereby transferred to the Department of Justice.

(2) References to the Department of Equality and Law Reform contained in any Act or any instrument made thereunder and relating to any administration and business transferred by paragraph (1) of this Article shall, on and after the commencement of this Order, be construed as references to the Department of Justice.

4. (1) The functions vested in the Minister for Equality and Law Reform

(*a*) by or under any of the Acts mentioned in the Schedule to this Order, and

(*b*) by virtue of the Justice (Transfer of Departmental Administration and Ministerial Functions) Order, 1993 (S.I. No. 34 of 1993).

are hereby transferred to the Minister for Justice.

(2) References to the Minister for Equality and Law Reform contained in any Act or instrument made thereunder and relating to any functions transferred by this Article shall, on and after the commencement of this Order, be construed as references to the Minister for Justice.

...

SCHEDULE

Acts, functions under which are transferred from the Minister for Equality and Law Reform to the Minister for Justice.

...

Family Law (Divorce) Act 1996 (No. 33 of 1996)

...

Editorial Notes:

E1 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.

E2 Rights and incumbrances, for purposes of *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 117, confirmed to include claims under Act (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 117(4)(a), S.I. No. 356 of 2009.

E3 Central Authority authorised to act on behalf of a maintenance creditor under Act by *Maintenance Act 1994* (28/1994), s. 4(2)(a), as 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 subsequently substituted (10.03.2012) by *Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012* (7/2012), s. 2(1)(b), commenced on enactment.

E4 Exemption from deduction of income tax for payments made pursuant to an order under Act (other than under s. 17) provided (from year 1997-1998) by *Taxes Consolidation Act 1997* (39/1997), s. 1027, commenced as per s. 1097.

PART I

Preliminary and General

Short title and commencement.

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

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

Interpretation.

2.—(1) In this Act, save where the context otherwise requires—

"the Act of 1964" means the Guardianship of Infants Act, 1964;

"the Act of 1965" means the Succession Act, 1965;

"the Act of 1976" means the Family Law (Maintenance of Spouses and Children) Act, 1976;

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

"the Act of 1995" means the Family Law Act, 1995;

F1**[**...**]**

F2**[**"Act of 2018" means the Domestic Violence Act 2018;**]**

F3**[**"civil partnership" has the meaning assigned to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; **]**

"conveyance" includes a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by a will or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such disposition;

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

"decree of divorce" means a decree under *section 5*;

"decree of judicial separation" means a decree under section 3 of the Act of 1989;

"decree of nullity" means a decree granted by a court declaring a marriage to be null and void;

"dependent member of the family", in relation to a spouse, or the spouses, concerned, means any child—

(*a*) of both spouses or adopted by both spouses under the Adoption Acts, 1952 to 1991, or in relation to whom both spouses are in *loco parentis*, or

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

who is under the age of 18 years or if the child has attained that age—

(i) is or will be or, if an order were made under this Act providing for periodical payments for the benefit of the child or for the provision of a lump sum for the child, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 23 years, or

(ii) has a mental or physical disability to such extent that it is not reasonably possible for the child to maintain himself or herself fully;

"family home" has the meaning assigned to it by section 2 of the Family Home Protection Act, 1976, with the modification that the references to a spouse in that section shall be construed as references to a spouse within the meaning of this Act;

"financial compensation order" has the meaning assigned to it by *section 16*;

"Land Registry" and "Registry of Deeds" have the meanings assigned to them by the Registration of Title Act, 1964;

"lump sum order" means an order under *section 13 (1) (c)*;

"maintenance pending suit order" means an order under *section 12*;

"member", in relation to a pension scheme, means any person who, having been admitted to membership of the scheme under its rules, remains entitled to any benefit under the scheme;

"pension adjustment order" means an order under *section 17*;

"pension scheme" means—

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

(*b*) (i) an annuity contract approved by the Revenue Commissioners under section 235 of the Income Tax Act, 1967, or a contract so approved under section 235A of that Act,

(ii) a trust scheme, or part of a trust scheme, so approved under subsection (4) of the said section 235 or subsection (5) of the said section 235A, or

(iii) a policy or contract of assurance approved by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972,

or

F4**[**(*bb*) a PRSA contract within the meaning of Part X of the Pensions Act, 1990, or**]**

(*c*) any other scheme or arrangement (including a personal pension plan and a scheme or arrangement established by or pursuant to statute or instrument made under statute other than under the Social Welfare Acts) that provides or is intended to provide either or both of the following, that is to say:

(i) benefits for a person who is a member of the scheme or arrangement ("the member") upon retirement at normal pensionable age or upon earlier or later retirement or upon leaving, or upon the ceasing of, the relevant employment,

(ii) benefits for the widow, widower or dependants of the member, or for any other persons, on the death of the member;

"periodical payments order" and "secured periodical payments order" have the meanings assigned to them by *section 13*;

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

F3**[**"registration", with respect to a civil partnership, includes entering into a relationship of a class of legal relationships that is the subject of an order made under section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; **]**

"trustees", in relation to a scheme that is established under a trust, means the trustees of the scheme and, in relation to a pension scheme not so established, means the persons who administer the scheme.

(2) In this Act, where the context so requires—

(*a*) a reference to a marriage includes a reference to a marriage that has been dissolved under this Act,

(*b*) a reference to a remarriage includes a reference to a marriage that takes place after a marriage that has been dissolved under this Act,

(*c*) a reference to a spouse includes a reference to a person who is a party to a marriage that has been dissolved under this Act,

(*d*) a reference to a family includes a reference to a family as respects which the marriage of the spouses concerned has been dissolved under this Act,

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

and cognate words shall be construed accordingly.

(3) In this Act—

(*a*) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,

(*b*) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended,

(*c*) a reference to a subsection, paragraph, subparagraph or clause is a reference to the subsection, paragraph, subparagraph or clause of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Annotations

Amendments:

F1 Deleted (1.01.2019) by *Domestic Violence Act 2018* (6/2018), s. 47(a)(i), S.I. No. 532 of 2018.

F2 Inserted (1.01.2019) by *Domestic Violence Act 2018* (6/2018), s. 47(a)(ii), S.I. No. 532 of 2018.

F3 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 150, S.I. No. 648 of 2010.

F4 Inserted (7.11.2002) by *Pensions (Amendment) Act 2002* (18/2002), s. 57(2), S.I. No. 502 of 2002.

Repeal.

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

Expenses.

4.—The expenses incurred by the Minister for Equality and Law Reform, the Minister for Health or the Minister for Justice in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART II

The Obtaining of a Decree of Divorce

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

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

(*a*) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, F5**[**at least two years during the previous three years**]**,

(*b*) there is no reasonable prospect of a reconciliation between the spouses, and

(*c*) such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent members of the family,

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

F6**[**(1A) For the purposes of this section—

(*a*) 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

(*b*) a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.**]**

(2) Upon the grant of a decree of divorce, the court may, where appropriate, give such directions under section 11 of the Act of 1964 as it considers proper regarding the welfare (within the meaning of that Act), custody of, or right of access to, any dependent member of the family concerned who is an infant (within the meaning of that Act) as if an application had been made to it in that behalf under that section.

Annotations

Amendments:

F5 Substituted (1.12.2019) by *Family Law Act 2019* (37/2019), s. 3(1)(a), S.I. No. 585 of 2019, subject to transitional provision in subs. (2).

F6 Inserted (1.12.2019) by *Family Law Act 2019* (37/2019), s. 3(1)(b), S.I. No. 585 of 2019, subject to transitional provision in subs. (2).

Editorial Notes:

E5 Power granted to Court, in proceedings relating to subs. (2), to direct the HSE to undertake an investigation of a child's circumstances by *Child Care Act 1991* (17/1991), s. 20(1), as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2), and as amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 part 6, S.I. No. 887 of 2004.

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

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

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

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

(*b*) discuss with the applicant the possibility of engaging in mediation to help to effect a separation (if the spouses are not separated) or a divorce on a basis agreed between the applicant and the other spouse F7**[**, give to the applicant the names and addresses of persons who provide a mediation service for spouses who have become estranged 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 (where appropriate) of effecting a separation by means of a deed or agreement in writing executed or made by the applicant and the other spouse and providing for their separation.

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

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

(*a*) the originating document by which the proceedings under *section 5* are instituted shall be accompanied by a F7**[**statutory declaration made by the solicitor**]** indicating, if it be the case, that he or she has complied with *subsection (2)* and, if appropriate, *subsection (3)* in relation to the matter and, if the document is not so accompanied, the court may adjourn the proceedings for such period as it considers reasonable to enable the solicitor to engage in the discussions specified in *subsection (2)*, and, if appropriate, to make the applicant aware of judicial separation,

(*b*) if the solicitor has complied with *paragraph (a)*, any copy of the originating document aforesaid served on any person or left in an office of the court shall be accompanied by a copy of the F7**[**statutory declaration**]** aforesaid.

(5) F8**[**...**]**

(6) The Minister may make regulations to allow for the establishment of a Register of Professional Organisations whose members are qualified to assist the parties involved in effecting a reconciliation, such register to show the names of members of those organisations and procedures to be put in place for the organisations involved to regularly update the membership lists.

Annotations

Amendments:

F7 Substituted (1.01.2018) by *Mediation Act 2017* (27/2017), s. 26(a)(i)-(iii), S.I. No. 591 of 2017.

F8 Deleted (1.01.2018) by *Mediation Act 2017* (27/2017), s. 26(a)(iv), S.I. No. 591 of 2017.

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

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

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

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

(*b*) discuss with the respondent the possibility of engaging in mediation to help to effect a separation (if the spouses are not separated) or a divorce on a basis agreed between the respondent and the other spouse F9**[**, give to the respondent the names and addresses of persons who provide a mediation service for spouses who have become estranged 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 (where appropriate) of effecting a separation by means of a deed or agreement in writing executed or made by the applicant and the other spouse and providing for their separation.

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

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

(*a*) the memorandum or other document delivered to the appropriate officer of the court for the purpose of the entry of an appearance by the respondent in proceedings under *section 5* shall be accompanied by a F9**[**statutory declaration made by the solicitor**]** in relation to the matter and, if the document is not so accompanied, the court may adjourn the proceedings for such period as it considers reasonable to enable the solicitor to engage in the discussions specified in *subsection (2)* and, if appropriate, to make the applicant aware of judicial separation,

(*b*) if *paragraph (a)* is complied with, any copy of the document aforesaid given or sent to the other party to the proceedings or his or her solicitor shall be accompanied by a copy of the relevant F9**[**statutory declaration**]** aforesaid.

(5) F10**[**...**]**

Annotations

Amendments:

F9 Substituted (1.01.2018) by *Mediation Act 2017* (27/2017), s. 26(b)(i)-(iii), S.I. No. 591 of 2017.

F10 Deleted (1.01.2018) by *Mediation Act 2017* (27/2017), s. 26(b)(iv), S.I. No. 591 of 2018.

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

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

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

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

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

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

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

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

Effect of decree of divorce.

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

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

PART III

Preliminary and Ancillary Orders in or after Proceedings for Divorce

Annotations

Editorial Notes:

E6 Certain gifts or inheritances taken by virtue or in consequence of order made under Part confirmed exempt from capital acquisitions tax (21.02.2003) by *Capital Acquisitions Tax Consolidation Act 2003* (1/2003), s. 88(1) and (2)(d), commenced on enactment, as substituted (1.01.2011) by *Finance (No. 3) Act 2011* (18/2011), s. 3 and sch. 3 item 21, commenced as per s. 5(8)(e).

E7 Certain transactions between spouses pursuant to an order under Part confirmed exempt from stamp duty (15.12.1999) by *Stamp Duties Consolidation Act 1999* (31/1999), s. 97, commenced on enactment, as amended (10.02.2000) by *Finance Act 2000* (3/2000), s. 131, commenced as per s. 131(2), and as amended (1.01.2011) by *Finance (No. 3) Act 2011* (18/2011), s. 2 and sch. 2 items 7-11, commenced as per s. 5(8)(d).

E8 Certain disposals made by virtue or in consequence of an order made under Part or following a decree of divorce confirmed exempt from capital gains tax (1997-1998 onwards) by *Taxes Consolidation Act 1997* (39/1997), s. 1031, commenced as per s. 1097(1)(c), as amended (7.12.2005) by *Finance Act 2006* (6/2006), s. 75(1)(c), commenced as per s. 75(2).

E9 Previous affecting provision: certain gifts or inheritances taken by virtue or in consequence of an order made under Part confirmed exempt from capital acquisitions tax (10.05.1997) by *Finance Act 1997* (22/1997), s. 142(1) and (2)(d), commenced on enactment; superseded (21.02.2003) by *Capital Acquisitions Tax Consolidation Act 2003* (1/2003), s. 88(1) and (2)(d), commenced on enactment, as substituted (1.01.2011) by *Finance (No. 3) Act 2011* (18/2011), s. 3 and sch. 3 item 21, commenced as per s. 5(8)(e).

Preliminary orders in proceedings for divorce.

11.—Where an application is made to the court for the grant of a decree of divorce, the court, before deciding whether to grant or refuse to grant the decree, may, in the same proceedings and without the institution of proceedings under the Act concerned, if it appears to the court to be proper to do so, make one or more of the following orders—

F11**[**(*a*) a safety order, barring order, interim barring order or protection order under the Act of 2018,**]**

(*b*) an order under section 11 of the Act of 1964,

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

Annotations

Amendments:

F11 Substituted (1.01.2019) by *Domestic Violence Act 2018* (6/2018), s. 47(b), S.I. No. 532 of 2018.

Editorial Notes:

E10 Power granted to Court, in proceedings relating to subs. (b), to direct the HSE to undertake an investigation of a child's circumstances by *Child Care Act 1991* (17/1991), s. 20(1), as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2).

Maintenance pending suit orders.

12.—(1) Where an application is made to the court for the grant of a decree of divorce, the court may make an order for maintenance pending suit, that is to say, an order requiring either of the spouses concerned to make to the other spouse such periodical payments or lump sum payments for his or her support and, where appropriate, to make to such person as may be specified in the order such periodical payments for the benefit of such (if any) dependent member of the family and, as respects periodical payments, for such period beginning not earlier than the date of

the application and ending not later than the date of its determination, as the court considers proper and specifies in the order.

(2) The court may provide that payments under an order under this section shall be subject to such terms and conditions as it considers appropriate and specifies in the order.

Periodical payments and lump sum orders.

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

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

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

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amount, during such period and at such times as may be so specified,

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

(i) an order that either of the spouses shall secure, to the satisfaction of the court, to the other spouse such periodical payments of such amounts, during such period and at such times as may be so specified, or

(ii) an order that either of the spouses shall secure, to the satisfaction of the court, to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amounts, during such period and at such times as may be so specified,

(*c*) (i) an order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified, or

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified.

(2) The court may—

(*a*) order a spouse to pay a lump sum to the other spouse to meet any liabilities or expenses reasonably incurred by that other spouse before the making of an application by that other spouse for an order under *subsection (1)* in maintaining himself or herself or any dependent member of the family, or

(*b*) order a spouse to pay a lump sum to such person as may be specified to meet any liabilities or expenses reasonably incurred by or for the benefit of a dependent member of the family before the making of an application on behalf of the member for an order under *subsection (1)*.

(3) An order under this section for the payment of a lump sum may provide for the payment of the lump sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The period specified in an order under *paragraph (a)* or *(b)* of *subsection (1)* shall begin not earlier than the date of the application for the order and shall end

not later than the death of the spouse, or any dependent member of the family, in whose favour the order is made or the other spouse concerned.

(5) (*a*) Upon the remarriage F12**[**or registration in a civil partnership**]** of the spouse in whose favour an order is made under *paragraph (a)* or *(b)* of *subsection (1)*, the order shall, to the extent that it applies to that spouse, cease to have effect, except as respects payments due under it on the date of the remarriage F12**[**or civil partnership registration**]**.

(*b*) If, after the grant of a decree of divorce, either of the spouses concerned remarries F12**[**or registers in a civil partnership**]**, the court shall not, by reference to that decree, make an order under *subsection (1)* in favour of that spouse.

(6) (*a*) Where a court makes an order under *subsection (1) (a)*, it shall in the same proceedings, subject to *paragraph (b)*, make an attachment of earnings order (within the meaning of the Act of 1976) to secure payments under the first mentioned order if it is satisfied that the person against whom the order is made is a person to whom earnings (within the meaning aforesaid) fall to be paid.

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

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

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

(ii) whether he or she would make the payments to which the relevant order under *subsection (1) (a)* relates.

(*d*) References in this subsection to an order under *subsection (1) (a)* include references to such an order as varied or affirmed on appeal from the court concerned or varied under *section 22*.

Annotations

Amendments:

F12 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 151, S.I. No. 648 of 2010.

Property adjustment orders.

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

(*a*) the transfer by either of the spouses to the other spouse, to any dependent member of the family or to any other specified person for the benefit of such a member of specified property, being property to which the first-mentioned spouse is entitled either in possession or reversion,

(*b*) the settlement to the satisfaction of the court of specified property, being property to which either of the spouses is so entitled as aforesaid, for the benefit of the other spouse and of any dependent member of the family or of any or all of those persons,

(*c*) the variation for the benefit of either of the spouses and of any dependent member of the family or of any or all of those persons of any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the spouses,

(*d*) the extinguishment or reduction of the interest of either of the spouses under any such settlement.

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

(3) If, after the grant of a decree of divorce, either of the spouses concerned remarries F13**[**or registers in a civil partnership**]**, the court shall not, by reference to that decree, make a property adjustment order in favour of that spouse.

(4) Where a property adjustment order is made in relation to land, a copy of the order certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to section 69 (1)(*h*) of the Registration of Title Act, 1964, in a register maintained under that Act or be registered in the Registry of Deeds.

F14**[**(4A) Where a property adjustment order lodged under *subsection (4)* and registered pursuant to section 69(1)(*h*) of the Registration of Title Act 1964 or in the Registry of Deeds has been complied with, the Property Registration Authority shall, on being satisfied that the order has been complied with—

(*a*) cancel the entry made in the register under the Registration of Title Act 1964, or

(*b*) note compliance with the order in the Registry of Deeds.**]**

(5) Where—

(*a*) a person is directed by an order under this section to execute a deed or other instrument in relation to land, and

(*b*) the person refuses or neglects to comply with the direction or, for any other reason, the court considers it necessary to do so,

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

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

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

Annotations

Amendments:

F13 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 152, S.I. No. 648 of 2010.

F14 Inserted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 75(a), S.I. No. 274 of 2008.

Editorial Notes:

E11 Form of application for cancellation of Property Adjustment Order pursuant to section prescribed (1.02.2013) by *Land Registration Rules 2012* (S.I. No. 483 of 2012), rule 103, in effect as per rule 1.

E12 Form of application for cancellation of Property Adjustment Order pursuant to section prescribed (1.11.2009) by *Registration of Deeds Rules 2009* (S.I. No. 350 of 2009), rule 3, in effect as per rule 2.

E13 Method for application for cancellation of Property Adjustment Order pursuant to section prescribed (1.11.2009) by *Land Registration Rules 2009* (S.I. No. 349 of 2009), rule 5, in effect as per rule 2.

E14 Procedure for application for registration of an order of Court pursuant to section prescribed (1.05.2008) by *Registration of Deeds Rules 2008* (S.I. No. 52 of 2008), rule 14(2), in effect as per rule 1.

Miscellaneous ancillary orders.

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

(*a*) an order—

(i) providing for the conferral on one spouse either for life or for such other period (whether definite or contingent) as the court may specify of the right to occupy the family home to the exclusion of the other spouse, or

(ii) directing the sale of the family home subject to such conditions (if any) as the court considers proper and providing for the disposal of the proceeds of the sale between the spouses and any other person having an interest therein,

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

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

F15**[**(*d*) an order under section 6, 7, 8 or 10 of the Act of 2018,**]**

(*e*) F16**[**under section 31 of the Land and Conveyancing Law Reform Act 2009**]**,

(*f*) an order under section 11 of the Act of 1964,

and, for the purposes of this section, in *paragraphs (b), (c)* and *(d)*, a reference to a spouse in a statute referred to in *paragraph (b), (c)* or (*d*) shall be construed as including a reference to a person who is a party to a marriage that has been dissolved under this Act.

(2) The court, in exercising its jurisdiction under *subsection (1) (a)*, shall have regard to the welfare of the spouses and any dependent member of the family and, in particular, shall take into consideration—

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

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

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

Annotations

Amendments:

F15 Substituted (1.01.2019) by *Domestic Violence Act 2018* (6/2018), s. 47(c), S.I. No. 532 of 2018.

F16 Substituted (1.12.2009) by *Land and Conveyancing Law Reform Act 2009* (27/2009), s. 8 and sch. 1, S.I. No. 356 of 2009.

Financial compensation orders.

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

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

(*b*) that the forfeiture, by reason of the decree of divorce, by the applicant or the member, as the case may be, of the opportunity or possibility of acquiring a benefit (for example, a benefit under a pension scheme) can be compensated for wholly or in part by so doing,

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

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

(ii) to assign the whole or a specified part of the interest of the other spouse in a policy of life insurance effected by that other spouse or both of the spouses to the applicant or to such person as may be specified in the order for the benefit of the member,

(iii) to make or to continue to make to the person by whom a policy of life insurance is or was issued the payments which that other spouse or both of the spouses is or are required to make under the terms of the policy.

(2) (*a*) The court may make a financial compensation order in addition to or in substitution in whole or in part for orders under *section 13*, *14*, *15* or *17* and in deciding whether or not to make such an order it shall have regard to whether proper provision having regard to the circumstances exists or can be made for the spouse concerned or the dependent member of the family concerned by orders under those sections.

(*b*) An order under this section shall cease to have effect on the re-marriage F17**[**, registration in a civil partnership**]** or death of the applicant in so far as it relates to the applicant.

(*c*) The court shall not make an order under this section in favour of a spouse who has remarried F17**[**or registered in a civil partnership**]**.

(*d*) An order under *section 22* in relation to an order under *paragraph (i)* or *(ii)* of *subsection (1)* may make such provision (if any) as the court considers appropriate in relation to the disposal of—

(i) an amount representing any accumulated value of the insurance policy effected pursuant to the order under the said *paragraph (i)*, or

(ii) the interest or the part of the interest to which the order under the said *paragraph (ii)* relates.

Annotations

Amendments:

F17 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 153, S.I. No. 648 of 2010.

Pension adjustment orders.

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

"the Act of 1990" means the Pensions Act, 1990;

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

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

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

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

F18**[**"defined contribution scheme" has the same meaning as in the Pensions Act 1990;**]**

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

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

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

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

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

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

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

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

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

"scheme" means a pension scheme;

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

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

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

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

(*b*) such person as may be specified in the order for the benefit of a person who is, and for so long only as he or she remains, a dependent member of the family, of a benefit consisting, either, as the court may determine, of the whole, or such part as the court considers appropriate, of that part of the retirement benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme and has accrued at the time of the making of the order for the decree and, for the purpose of determining the benefit, the order shall specify—

(i) the period of reckonable service of the member spouse prior to the granting of the decree to be taken into account, and

(ii) the percentage of the retirement benefit accrued during that period to be paid to the person referred to in *paragraph (a)* or *(b)*, as the case may be.

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

(*a*) the other spouse, and

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

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

(4) Where the court makes an order under *subsection (2)* in favour of a spouse and payment of the designated benefit concerned has not commenced, the spouse in

whose favour the order is made shall be entitled to the application in accordance with *subsection (5)* of an amount of money from the scheme concerned (in this section referred to as a "transfer amount") equal to the value of the designated benefit, such amount being determined by the trustees of the scheme in accordance with relevant guidelines.

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

(*a*) on application to them in that behalf at the time of the making of the order or at any time thereafter by the spouse in whose favour the order was made ("the spouse"), and

(*b*) on the furnishing to them by the spouse of such information as they may reasonably require,

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

(i) if the trustees and the spouse so agree, in providing a benefit for or in respect of the spouse under the scheme aforesaid that is of the same actuarial value as the transfer amount concerned, or

(ii) in making a payment either to—

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

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

as may be determined by the spouse.

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

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

(*b*) in the discharge of any payment falling to be made by the trustees under such other approved arrangement,

as may be determined by the trustees.

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

(*a*) the court makes an order under *subsection (2)*, and

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

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

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

(*a*) the court makes an order under *subsection (2)*, and

(*b*) the member spouse concerned ceases to be a member of the scheme otherwise than on death,

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

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

(ii) in making a payment, either to—

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

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

as may be determined by the trustees.

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

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

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

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

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

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

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

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

(11) Where—

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

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

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

(12) Where—

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

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

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

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

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

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

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

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

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

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

(18) A person who makes an application under *subsection (2)* or *(3)* or an application for an order under *section 22 (2)* in relation to an order under *subsection (2)* shall give notice thereof to the trustees of the scheme concerned and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by any person to whom notice of the application has been given under this section or *section 40*.

(19) An order under *subsection (3)* shall cease to have effect on the death or remarriage F19**[**or registration in a civil partnership**]** of the person in whose favour it was made in so far as it relates to that person.

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

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

(22) (*a*) Any costs incurred by the trustees of a scheme under *subsection (18)* or in complying with a pension adjustment order or a direction under *subsection*

(20) or *(25)* shall be borne, as the court may determine, by the member spouse or by the other person concerned or by both of them in such proportion as the court may determine and, in the absence of such determination, those costs shall be borne by them equally.

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

(23) (*a*) The court shall not make a pension adjustment order in favour of a spouse who has remarried F19**[**or registered in a civil partnership**]**.

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

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

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

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

(*b*) with a calculation of the amount of the contingent benefit concerned that is payable (or which, but for the making of the order for the decree of divorce concerned, would have been payable) under the scheme.

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

Annotations

Amendments:

F18 Substituted (14.04.2008) by *Social Welfare and Pensions Act 2008* (2/2008), s. 31, S.I. No. 84 of 2008.

F19 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 154, S.I. No. 648 of 2010.

Editorial Notes:

E15 Information to be furnished in relation to pension adjustment orders prescribed (27.04.2007) by *Trust Racs (Disclosure of Information) Regulations 2007* (S.I. No. 182 of 2007), reg. 14, in effect as per reg. 1(2).

E16 Information to be furnished in relation to pension adjustment orders prescribed (1.01.2007) by *Occupational Pension Schemes (Disclosure Of Information) Regulations 2006* (S.I. No. 301 of 2006), reg. 17, in effect as per reg. 1(2)(c), as amended (12.06.2012) by *Occupational Pension Schemes (Disclosure of Information) (Amendment) (No. 3) Regulations 2012* (S.I. No. 203 of 2012), reg. 3(h).

E17 Pensions Board allocated function to issue guidelines or guidance notes generally on the operation of *Pensions Act 1990* (25/1990) and on the provisions of this Act relating to pension schemes (within the meaning of s. 2) by *Pensions Act 1990* (25/1990), s. 10(1)(cc), as substituted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 47(c), commenced as per s. 1(2), and amended (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 148, S.I. No. 648 of 2010.

E18 Minister granted power to make regulations specifying guidelines for purposes of section by *Pensions Act 1990* (25/1990), s. 5(4), as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 47(a) and (b), commenced as per s. 1(2), and amended (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 148, S.I. No. 648 of 2010. Power to make regulations under *Pensions Act 1990* (25/1990), s. 5, as amended, was exercised (27.02.1997) by *Pension Schemes (Family Law) Regulations 1997* (S.I. No. 107 of 1997), in effect as per reg. 1(2), and (18.07.2012) by *Pension Schemes (Family Law) (Amendment) Regulations 2012* (S.I. No. 254 of 2012).

E19 Previous affecting provision: information to be furnished in relation to pension adjustment orders prescribed (1.01.2007) by *Occupational Pension Schemes (Disclosure Of Information) Regulations 2005* (S.I. No. 633 of 2005), reg. 17, commenced as per reg. 1(2)(d); revoked (1.06.2006) by *Occupational Pension Schemes (Disclosure Of Information) Regulations 2006* (S.I. No. 301 of 2006), reg. 2(2), in effect as per reg. 1(2)(b).

E20 Previous affecting provision: information to be furnished in relation to pension adjustment orders prescribed (1.10.1998) by *Occupational Pension Schemes (Disclosure of Information) (No. 2) Regulations 1998* (S.I. No. 349 of 1998), reg. 15, in effect as per reg. 1(2)(a); revoked (1.01.2007) by *Occupational Pension Schemes (Disclosure Of Information) Regulations 2006* (S.I. No. 301 of 2006), reg. 2(1)(c), in effect as per reg. 2(1)(c).

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

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

(2) The court shall not make an order under this section in favour of a spouse who has remarried F20**[**or registered in a civil partnership**]** since the granting of the decree of divorce concerned.

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

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

(*b*) any devise or bequest made by the deceased spouse to the applicant.

(4) The provision made for the applicant concerned by an order under this section together with any provision made for the applicant by an order referred to in *subsection (3) (a)* (the value of which for the purposes of this subsection shall be its value on the date of the order) shall not exceed in total the share (if any) of the applicant in the estate of the deceased spouse to which the applicant was entitled

or (if the deceased spouse died intestate as to the whole or part of his or her estate) would have been entitled under the Act of 1965 if the marriage had not been dissolved.

(5) Notice of an application under this section shall be given by the applicant to the spouse F20**[**, civil partner or former civil partner**]** (if any) of the deceased spouse F20**[**, civil partner or former civil partner**]** concerned and to such (if any) other persons as the court may direct and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by the spouse F20**[**, civil partner or former civil partner**]** of the deceased spouse F20**[**, civil partner or former civil partner**]** and any other such persons as aforesaid.

(6) The personal representative of a deceased spouse in respect of whom a decree of divorce has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse shall not, without the leave of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section.

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

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

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

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

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

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

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

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

Annotations

Amendments:

F20 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 155, S.I. No. 648 of 2010.

Orders for sale of property.

19.—(1) Where the court makes a secured periodical payments order, a lump sum order or a property adjustment order, thereupon, or at any time thereafter, it may make an order directing the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the spouses concerned has or have a beneficial interest, either in possession or reversion.

(2) The jurisdiction conferred on the court by *subsection (1)* shall not be so exercised as to affect a right to occupy the family home of the spouse concerned that is enjoyed by virtue of an order under this Part.

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

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

(i) a provision specifying the manner of sale and some or all of the conditions applying to the sale of the property to which the order relates,

(ii) a provision requiring any such property to be offered for sale to a person, or a class of persons, specified in the order,

(iii) a provision directing that the order, or a specified part of it, shall not take effect until the occurrence of a specified event or the expiration of a specified period,

(iv) a provision requiring the making of a payment or payments (whether periodical payments or lump sum payments) to a specified person or persons out of the proceeds of the sale of the property to which the order relates, and

(v) a provision specifying the manner in which the proceeds of the sale of the property concerned shall be disposed of between the following persons or such of them as the court considers appropriate, that is to say, the spouses concerned and any other person having an interest therein.

(4) A provision in an order under *subsection (1)* providing for the making of periodical payments to one of the spouses concerned out of the proceeds of the sale of property shall, on the death or remarriage F21**[**or registration in a civil partnership**]** of that spouse, cease to have effect except as respects payments due on the date of the death or remarriage F21**[**or civil partnership registration**]**.

(5) Where a spouse has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other spouse) also has a beneficial interest in that property or those proceeds, then, in considering whether to make an order under this section or *section 14* or *15 (1) (a)* in relation to that property or those proceeds, the court shall give to that person an opportunity to make representations with respect to the making of the order and the contents thereof, and any representations made by such a person shall be deemed to be included among the matters to which the court is required to have regard under *section 20* in any relevant proceedings under a provision referred to in that section after the making of those representations.

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

Annotations

Amendments:

F21 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 156, S.I. No. 648 of 2010.

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

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

(2) Without prejudice to the generality of *subsection (1)*, in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

(*a*) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,

(*b*) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage F22**[**or registration in a civil partnership**]** of the spouse or otherwise),

(*c*) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be,

(*d*) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,

(*e*) any physical or mental disability of either of the spouses,

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

(*g*) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,

(*h*) any income or benefits to which either of the spouses is entitled by or under statute,

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

(*j*) the accommodation needs of either of the spouses,

(*k*) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring,

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

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

(4) Without prejudice to the generality of *subsection (1)*, in deciding whether to make an order referred to in that subsection in favour of a dependent member of the

family concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

(*a*) the financial needs of the member,

(*b*) the income, earning capacity (if any), property and other financial resources of the member,

(*c*) any physical or mental disability of the member,

(*d*) any income or benefits to which the member is entitled by or under statute,

(*e*) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained,

(*f*) the matters specified in *paragraphs (a), (b)* and *(c)* of *subsection (2)* and in *subsection (3)*,

(*g*) the accommodation needs of the member.

(5) The court shall not make an order under a provision referred to in *subsection (1)* unless it would be in the interests of justice to do so.

Annotations

Amendments:

F22 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 157, S.I. No. 648 of 2010.

Retrospective periodical payments orders.

21.—(1) Where, having regard to all the circumstances of the case, the court considers it appropriate to do so, it may, in a periodical payments order, direct that—

(*a*) the period in respect of which payments under the order shall be made shall begin on such date before the date of the order, not being earlier than the time of the institution of the proceedings concerned for the grant of a decree of divorce, as may be specified in the order,

(*b*) any payments under the order in respect of a period before the date of the order be paid in one sum and before a specified date, and

(*c*) there be deducted from any payments referred to in *paragraph (b)* made to the spouse concerned an amount equal to the amount of such (if any) payments made to that spouse by the other spouse as the court may determine, being payments made during the period between the making of the order for the grant of the decree aforesaid and the institution of the proceedings aforesaid.

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

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

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

(*a*) a maintenance pending suit order,

(*b*) a periodical payments order,

(*c*) a secured periodical payments order,

(*d*) a lump sum order if and in so far as it provides for the payment of the lump sum concerned by instalments or requires the payment of any such instalments to be secured,

(*e*) an order under *paragraph (b), (c)* or *(d)* of *section 14 (1)* in so far as such application is not restricted or excluded pursuant to *section 14 (2)*,

(*f*) an order under *subparagraph (i)* or (*ii*) of section 15 (1) (a),

(*g*) a financial compensation order,

(*h*) an order under *section 17 (2)* insofar as such application is not restricted or excluded pursuant to *section 17 (26)*,

(*i*) an order under this section.

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

(*a*) by either of the spouses concerned,

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

(*c*) in the case of the remarriage of either of the spouses, by his or her spouse,

if it considers it proper to do so having regard to any change in the circumstances of the case and to any new evidence, by order vary or discharge an order to which this section applies, suspend any provision of such an order or any provision of such an order temporarily, revive the operation of such an order or provision so suspended, further vary an order previously varied under this section or further suspend or revive the operation of an order or provision previously suspended or revived under this section; and, without prejudice to the generality of the foregoing, an order under this section may require the divesting of any property vested in a person under or by virtue of an order to which this section applies.

(3) Without prejudice to the generality of *section 12* or *13*, that part of an order to which this section applies which provides for the making of payments for the support of a dependent member of the family shall stand discharged if the member ceases to be a dependent member of the family by reason of his or her attainment of the age of 18 years or 23 years, as may be appropriate, and shall be discharged by the court, on application to it under *subsection (2)*, if it is satisfied that the member has for any reason ceased to be a dependent member of the family.

(4) The power of the court under *subsection (2)* to make an order varying, discharging or suspending an order referred to in *subsection (1) (e)* shall be subject to any restriction or exclusion specified in that order and shall (subject to the limitation aforesaid) be a power—

(*a*) to vary the settlement to which the order relates in any person's favour or to extinguish or reduce any person's interest under that settlement, and

(*b*) to make such supplemental provision (including a further property adjustment order or a lump sum order) as the court thinks appropriate in consequence of any variation, extinguishment or reduction made pursuant to *paragraph (a)*,

and *section 19* shall apply to a case where the court makes such an order as aforesaid under *subsection (2)* as it applies to a case where the court makes a property adjustment order with any necessary modifications.

(5) The court shall not make an order under *subsection (2)* in relation to an order referred to in *subsection (1) (e)* unless it appears to it that the order will not prejudice the interests of any person who—

(*a*) has acquired any right or interest in consequence of the order referred to in *subsection (1) (e)*, and

(*b*) is not a party to the marriage concerned or a dependent member of the family concerned.

(6) This section shall apply, with any necessary modifications, to instruments executed pursuant to orders to which this section applies as it applies to those orders.

(7) Where the court makes an order under *subsection (2)* in relation to a property adjustment order relating to land, a copy of the order under *subsection (2)* certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to section 69 (1) (*h*) of the Registration of Title Act, 1964, in a register maintained under that Act or be registered in the Registry of Deeds.

F23**[**(8) Where a property adjustment order lodged under *section 14(4)* and duly registered pursuant to section 69(1)(*h*) of the Registration of Title Act 1964 is varied, discharged, suspended or revived by an order under *subsection (2)* and the second-mentioned order has been duly lodged for registration pursuant to *subsection (7)*, the Property Registration Authority shall—

(*a*) amend or cancel the entry made in the register, pursuant to *section 14(4)*, under the Registration of Title Act 1964 accordingly, or

(*b*) note the position in the Registry of Deeds.**]**

Annotations

Amendments:

F23 Inserted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 75(b), S.I. No. 274 of 2008.

Editorial Notes:

E21 Form of application for cancellation of Property Adjustment Order pursuant to section prescribed (1.02.2013) by *Land Registration Rules 2012* (S.I. No. 483 of 2012), rule 103, in effect as per rule 1.

E22 Procedure for application for registration of an order of Court pursuant to section prescribed (1.05.2008) by *Registration of Deeds Rules 2008* (S.I. No. 52 of 2008), rule 14(2), in effect as per rule 1.

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

23.—In deciding whether—

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

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

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

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

Method of making payments under certain orders.

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

(2) This section applies to an order under—

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

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

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

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

Stay on certain orders the subject of appeal.

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

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

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

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

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

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

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,

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

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

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

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

Amendment of section 3 of Act of 1976.

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

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

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.

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

29.—The reference in section 98 (1) (*h*) of the Defence Act, 1954, to an order for payment of alimony shall be construed as including a reference to a maintenance pending suit order, a periodical payments order and a secured periodical payments order.

Amendment of Enforcement of Court Orders Act, 1940.

30.—The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act, 1940 (as amended by section 29 of the Act of 1976 and section 22 of the Act of 1995), to an order shall be construed as including references to a maintenance pending suit order and a periodical payments order.

Annotations

Editorial Notes:

E23 Previous affecting provision: references in *Enforcement of Court Orders Act 1940* (23/1940), s. 8(1) and (7) (as previously amended by *Family Law (Maintenance of Spouses and Children) Act 1976*, s. 29, *Family Law Act 1995*, s. 22 and this section) to an order was required to be construed as including references to an antecedent order (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 65, S.I. No. 648 of 2010. The 1940 Act, s. 8, is now substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 63, commenced on enactment.

PART IV

Income Tax, Capital Acquisitions Tax, Capital Gains Tax, Probate Tax and Stamp Duty

Payments to be made without deduction of income tax.

31.—F24**[**...**]**

Annotations

Amendments:

F24 Repealed (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), s. 1098 and sch. 30, commenced as per s. 1098(1), subject to transitional provisions in ss. 1098(2), 1102 and 1103.

Income tax treatment of divorced persons.

32.—F25**[**...**]**

Annotations

Amendments:

F25 Repealed (6.04.1997) by *Finance Act 1997* (22/1997), s. 5(b), commenced as per s. 166(9).

Exemption of certain transfers from stamp duty.

33.—F26**[**...**]**

Annotations

Amendments:

F26 Repealed (10.05.1997) by *Finance Act 1997* (22/1997), s. 127(4), commenced on enactment.

Exemption of certain transfers from capital acquisitions tax.

34.—F27**[**...**]**

Annotations

Amendments:

F27 Repealed (10.05.1997) by *Finance Act 1997* (22/1997), s. 142(3), commenced on enactment.

Capital gains tax treatment of certain disposals by divorced persons.

35.—F28**[**...**]**

Annotations

Amendments:

F28 Repealed (10.05.1997) by *Finance Act 1997* (22/1997), s. 71(4), commenced as per s. 71(5).

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

36.—F29**[**...**]**

Annotations

Amendments:

F29 Repealed (10.05.1997) by *Finance Act 1997* (22/1997), s. 143(2), commenced on enactment.

PART V

MISCELLANEOUS

Powers of court in relation to transactions intended to prevent or reduce relief.

37.—(1) In this section—

"disposition" means any disposition of property howsoever made other than a disposition made by a will or codicil;

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

(*a*) preventing relief being granted to the person concerned, whether for the benefit of the person or a dependent member of the family concerned,

(*b*) limiting the relief granted, or

(*c*) frustrating or impeding the enforcement of an order granting relief;

"reviewable disposition", in relation to proceedings for the grant of relief brought by a spouse, means a disposition made by the other spouse concerned or any other person but does not include such a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in good faith and without notice of an intention on the part of the respondent to defeat the claim for relief.

(2) (*a*) The court, on the application of a person ("the applicant") who has instituted proceedings that have not been determined for the grant of relief, may—

(i) if it is satisfied that the other spouse concerned or any other person, with the intention of defeating the claim for relief, proposes to make any disposition of or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for the purpose of restraining that other spouse or other person from so doing or otherwise for protecting the claim,

(ii) if it is satisfied that that other spouse or other person has, with that intention, made a reviewable disposition and that, if the disposition were set aside, relief or different relief would be granted to the applicant, make an order setting aside the disposition.

(*b*) Where relief has been granted by the court and the court is satisfied that the other spouse concerned or another person has, with the intention aforesaid, made a reviewable disposition, it may make an order setting aside the disposition.

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

(3) Where the court makes an order under *paragraph (a)* or *(b)* of *subsection (2)*, it shall include in the order such provisions (if any) as it considers necessary for its implementation (including provisions requiring the making of any payments or the disposal of any property).

(4) Where an application is made under *subsection (2)* with respect to a disposition that took place less than 3 years before the date of the application or with respect to a disposition or other dealing with property that the other spouse concerned or any other person proposes to make and the court is satisfied—

(*a*) in case the application is for an order under *subsection (2) (a) (i)*, that the disposition or other dealing concerned would (apart from this section) have the consequence, or

(*b*) in case the application is for an order under *paragraph (a) (ii)* or *(b)* of *subsection (2)*, that the disposition has had the consequence,

of defeating the applicant's claim for relief, it shall be presumed, unless the contrary is shown, that that other spouse or other person disposed of or otherwise dealt with the property concerned, or, as the case may be, proposes to do so, with the intention of defeating the applicant's claim for relief.

F30**[**(5) An application shall not be made for an order setting aside a disposition by reason only of *subsection (2)(a)(ii)* or *(b)* after the expiration of 6 years from the date of the disposition. **]**

Annotations

Amendments:

F30 Inserted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 75(c), S.I. No. 274 of 2008.

Jurisdiction of courts and venue.

38.—(1) Subject to the provisions of this section, the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under this Act and shall, in relation to that jurisdiction, be known as the Circuit Family Court.

(2) Where the F31**[**market value**]** of any land to which proceedings in the Circuit Family Court under this Act relate exceeds F31**[**€3,000,000**]**, that Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

(3) The jurisdiction conferred on the Circuit Family Court by this Act may be exercised by the judge of the circuit in which any of the parties to the proceedings ordinarily resides or carries on any business, profession or occupation.

(4) F32**[**...**]**

(5) Section 32 of the Act of 1989 shall apply to proceedings under this Act in the Circuit Family Court and sections 33 to 36 of that Act shall apply to proceedings under this Act in that Court and in the High Court.

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

(*a*) each of the spouses concerned shall give to the other spouse and to, or to a person acting on behalf of, any dependent member of the family concerned, and

(*b*) any dependent member of the family concerned shall give to, or to a person acting on behalf of, any other such member and to each of the spouses concerned,

such particulars of his or her property and income as may reasonably be required for the purposes of the proceedings.

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

F33**[**(8) In this section "market value" means, in relation to land, the price that would have been obtained in respect of the unencumbranced fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.**]**

Annotations

Amendments:

F31 Substituted (11.01.2017) by *Civil Liability and Courts Act 2004* (31/2004), s. 52(a), S.I. No. 2 of 2017.

F32 Repealed (11.01.2017) by *Civil Liability and Courts Act 2004* (31/2004), s. 52(b), S.I. No. 2 of 2017.

F33 Inserted (11.02.2017) by *Civil Liability and Courts Act 2004* (31/2004), s. 52(c), S.I. No. 2 of 2017.

Modifications (not altering text):

C3 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.

Proceedings heard otherwise than in public.

40. — ...

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

...

(*j*) section 38 of the Act of 1996;

...

(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.**]**

(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.**]**

Exercise of jurisdiction by court in relation to divorce.

39.—(1) The court may grant a decree of divorce if, but only if, one of the following requirements is satisfied—

(*a*) either of the spouses concerned was domiciled in the State on the date of the institution of the proceedings concerned,

(*b*) either of the spouses was ordinarily resident in the State throughout the period of one year ending on that date.

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

of 1989 or section 39 of the Act of 1995, as the case may be, have jurisdiction to determine an application for the grant of a decree of judicial separation or a decree of nullity in respect of the marriage concerned.

(3) Where proceedings are pending in a court in respect of an application for the grant of a decree of nullity or in respect of an appeal from the determination of such an application and the court has or had, by virtue of section 39 of the Act of 1995, jurisdiction to determine the application, the court shall, notwithstanding *subsection (1)*, have jurisdiction to determine an application for the grant of a decree of divorce in respect of the marriage concerned.

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

Annotations

Modifications (not altering text):

C4 Application of subs. (1) restricted (1.08.2022) by *European Union (Decisions in Matrimonial Matters and in Matters of Parental Responsibility and International Child Abduction) Regulations 2022* (S.I. No. 400 of 2022), reg. 7(c), in effect as per reg. 1(2).

Non-applicability of certain statutory provisions.

7. The following provisions shall not have effect in relation to proceedings to which the Council Regulation (other than Article 6) applies:

...

(*d*) section 39 (1) of the Family Law (Divorce) Act 1996 (No. 33 of 1996).

C5 Application of subs. (1) restricted (1.03.2005) by *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005* (S.I. No. 112 of 2005), reg. 7(d), in effect as per reg. 1(2).

Non-applicability of certain statutory provisions.

7. The following provisions shall not have effect in relation to proceedings to which the Council Regulation (other than Article 7) applies:

...

(*d*) section 39(1) of the Family Law (Divorce) Act 1996.

Editorial Notes:

E24 Previous affecting provision: application of subs. (1) restricted (23.10.2001) by *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2001* (S.I. No. 472 of 2001), reg. 3; revoked (1.03.2005) by *European Communities (judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005* (S.I. No. 112 of 2005), reg. 11, in effect as per reg. 1(2).

E25

Notice of proceedings under Act.

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

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

(*b*) any other person specified by the court.

Custody of dependent members of family after decree of divorce.

41.—Where the court makes an order for the grant of a decree of divorce, it may declare either of the spouses concerned to be unfit to have custody of any dependent member of the family who is a minor and, if it does so and the spouse to whom the declaration relates is a parent of any dependent member of the family who is a minor, that spouse shall not, on the death of the other spouse, be entitled as of right to the custody of that minor.

Annotations

Editorial Notes:

E26 Power granted to Court, in proceedings relating to section, to direct the HSE to undertake an investigation of a child's circumstances by *Child Care Act 1991* (17/1991), s. 20(1), as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2).

Social reports in family law proceedings.

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

Cost of mediation and counselling services.

43.—The cost of any F34**[**...**]** counselling services provided for a spouse who is or becomes a party to proceedings under this Act, the Act of 1964 or the Act of 1989 or for a dependent member of the family of such a spouse shall be in the discretion of the court concerned.

Annotations

Amendments:

F34 Deleted (1.01.2018) by *Mediation Act 2017* (27/2017), s. 26(c), S.I. No. 591 of 2017.

Determination of questions between persons formerly engaged to each other in relation to property.

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

Amendment of Act of 1989.

45.—The Act of 1989 is hereby amended—

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

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

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

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

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

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

Amendment of Act of 1965.

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

Amendment of Pensions Act, 1990.

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

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

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

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

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

(iii) the references to subsections (1), (2), (3), (5), (6), (7), (8), (10) and (25) of the said section 12 shall be construed as references to *subsections (1), (2), (3), (5), (6), (7), (8), (10)* and *(25)*, respectively, of *section 17*, and

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

and

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

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

Amendment of Criminal Damage Act, 1991.

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

(*a*) in paragraph (*a*), by the insertion after "1976," of the following:

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

and

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

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

Amendment of Criminal Evidence Act, 1992.

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

(*a*) by the insertion of the following definition:

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

and

(*b*) by the substitution of the following definition for the definition of former spouse:

"'former spouse' includes a person who, in respect of his or her marriage to an accused—

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

(*b*) has entered into a separation agreement, or

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

Amendment of Powers of Attorney Act, 1996.

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

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

"(*a*) the marriage is annulled or dissolved either—

(i) under the law of the State, or

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

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

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

Amendment of Act of 1996.

51.—F35**[...]**

Annotations

Amendments:

F35 Repealed (1.01.2019) by *Domestic Violence Act 2018* (6/2018), s. 3(a), S.I. No. 532 of 2018.

Amendment of Act of 1995.

52.—The Act of 1995 is hereby amended—

(*a*) in section 8—

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

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

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

(*b*) in section 9 (1), by the insertion of "or at any time there-after" after "separation",

(*c*) in section 10—

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

(ii) by the insertion after subsection (2) of the following subsection:

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

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

(*e*) in section 12—

(i) in subsection (1), in the definition of "relevant guidelines", by the substitution of "paragraph (*c*) or (*cc*) of section 10 (1)" for "section 10 (1) (*c*)", and

(ii) in subsection (18), by the substitution of "40" for "41",

(*f*) in section 15—

(i) in subsection (5), by the substitution of "10 (1) (*a*)" for "10 (1) (*a*) (ii)", and

(ii) by the insertion of the following subsection after subsection (5):

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

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

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

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

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

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

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

(*b*) any devise or bequest made by the deceased spouse to the applicant.

(4) The provision made for the applicant concerned by an order under this section together with any provision made for the applicant by an order referred to in subsection (3) (*a*) (the value of which for the purposes of this subsection shall be its value on the date of the order) shall not exceed in total the share (if any) of the applicant in the estate of the deceased spouse to which the applicant was entitled or (if the deceased spouse died intestate as to the whole or part of his or her estate) would have been entitled under the Act of 1965 if the court had not made an order under section 14.

(5) Notice of an application under this section shall be given by the applicant to the spouse (if any) of the deceased spouse concerned and to such (if any) other persons as the court may direct and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by the spouse of the deceased spouse and any other such persons as aforesaid.

(6) The personal representative of a deceased spouse in respect of whom a decree of judicial separation has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse shall not, without the leave of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section.

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

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

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

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

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

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

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

(10) On granting a decree of judicial separation or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, if it considers it just to do so, make an

order that either or both spouses shall not, on the death of either of them, be entitled to apply for an order under this section.",

(*h*) in section 16 (1)—

(i) by the insertion of "15A," after "14,",

(ii) by the substitution of "exists or will be made" for "is made", and

(iii) by the substitution of "proper" for "adequate and reasonable",

(*i*) in section 18, in subsection (1) (*h*), by the insertion of "insofar as such application is not restricted or excluded by section 12 (26)" after "section 12",

(*j*) in section 25—

(i) in subsection (1), by the substitution, as respects applications under that section made after the commencement of the *Family Law (Divorce) Act, 1996*, of "6 months" for "12 months", and

(ii) by the substitution of the following subsections for subsection (7):

"(7) The personal representative of a deceased spouse in respect of whom a decree of divorce has been granted in a country or jurisdiction other than the State shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse shall not, without the leave of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section.

(8) Where the personal representative of a deceased spouse in respect of whom a decree of divorce has been granted in a country or jurisdiction other than the State gives notice of his or her death to the other spouse concerned ('the spouse') and—

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

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

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

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

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

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

(*k*) in section 29, by the insertion of the following subsection after subsection (10):

"(11) In this section a reference to a spouse includes a reference to a person who is a party to a marriage that has been dissolved under the *Family Law (Divorce) Act, 1996*.",

(*l*) in section 35 (1)—

(i) by the insertion in the definition of "relief", of "15A," after "13,", and

(ii) by the insertion in that definition, after paragraph (*a*), of the following paragraph:

"(*aa*) an order under section 11 (2) (*b*) of the Act of 1964 or section 5, 5A or 7 of the Act of 1976, or",.

(*m*) in section 36—

(i) in subsection (7) (*a*) (i), by the insertion of "or dissolved", after "annulled", and

(ii) in subsection (8), after paragraph (*c*), by the insertion of the following paragraph:

"(*cc*) either of the parties to a marriage that has been dissolved under the law of the State,",

(*n*) in section 38 (7), by the insertion of "15A," after "14,",

(*o*) in section 43—

(i) in paragraph (*a*), by the substitution of the following subparagraph for subparagraph (ii):

"(ii) in the definition of 'dependent child' the substitution of '18' for 'sixteen' and '23' for 'twenty-one', and",

and

(ii) by the substitution of the following paragraph for paragraph *(e)*:

"(*e*) in section 23, after subsection (2), the insertion of the following subsections:

'(3) In proceedings under this Act—

(*a*) each of the spouses concerned shall give to the other spouse and to, or to a person acting on behalf of, any dependent member of the family concerned, and

(*b*) any dependent member of the family concerned shall give to, or to a person acting on behalf of, any other such member and to each of the spouses concerned,

such particulars of his or her property and income as may reasonably be required for the purpose of the proceedings.

(4) Where a person fails or refuses to comply with subsection (3), the Court, on application to it in that behalf by a person having an interest in the matter, may direct the person to comply with that subsection.'.",

and

(*p*) in section 47—

(*a*) in subsection (6), by the substitution of "This section" for "Subsection (1)", and

(*b*) in subsection (7), by the substitution of "(1) (*b*)" for "(2)".

Amendment of Maintenance Act, 1994.

53.—The Maintenance Act, 1994 (as amended by the Act of 1995), is hereby amended—

(*a*) in section 3, in subsection (1), by the insertion of the following definition:

"'*the Act of 1996*' means the *Family Law (Divorce) Act, 1996*;",

(*b*) in section 4, by the substitution of the following paragraph for paragraph (*a*) of subsection (2):

"(*a*) For the purposes of section 8 of the Enforcement of Court Orders Act, 1940, the Act of 1976, the Act of 1988, the Act of 1993 (as amended by this Act), the Act of 1995, *the Act of 1996* and this Act, the Central Authority shall have authority to act on behalf of, as the case may be, a maintenance creditor or claimant, within the meaning of section 13 (1), and references in those enactments to a maintenance creditor or such a claimant shall be construed as including references to the Central Authority.",

(*c*) in section 14—

(i) in subsection (1) (*c*), by the substitution of the following subparagraph for subparagraph (i):

"(i) if the amount of the maintenance sought to be recovered exceeds the maximum amount which the District Court has jurisdiction to award under the Act of 1976 or the request is for a relief order (within the meaning of the Act of 1995) or a maintenance pending suit order, a periodical payments order, a secured periodical payments order or a lump sum order (within the meaning, in each case, of *the Act of 1996*), make an application to the Circuit Court,",

and

(ii) by the substitution of the following subsection for subsection (3):

"(3) An application referred to in subsection (1) (*c*) shall be deemed to be an application for a maintenance order under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Act of 1976, or the appropriate order referred to in subsection (1) (*c*) (i), as may be appropriate, and to have been made on the date on which the request of the claimant for the recovery of maintenance was received by the Central Authority of the designated jurisdiction concerned.".

ACTS REFERRED TO

Adoption Acts, 1952 to 1991	
Capital Acquisitions Tax Act, 1976	1976, No. 8
Capital Gains Tax Acts	
Censorship of Publications Act, 1929	1929, No. 21
Criminal Damage Act, 1991	1991, No. 31
Criminal Evidence Act, 1992	1992, No. 12
Defence Act, 1954	1954, No. 18
Domestic Violence Act, 1996	1996, No. 1
Enforcement of Court Orders Act, 1940	1940, No. 23
Family Home Protection Act, 1976	1976, No. 27
Family Law Act, 1995	1995, No. 26
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11
Finance (1909-10) Act, 1910	1910, c. 8
Finance Act, 1972	1972, No. 19
Finance Act, 1983	1983, No. 15
Finance Act, 1993	1993, No. 13
Finance Act, 1994	1994, No. 13
Guardianship of Infants Act, 1964	1964, No. 7
Income Tax Act, 1967	1967, No. 6
Income Tax Acts	
Insurance Act, 1989	1989, No. 3
Judicial Separation and Family Law Reform Act, 1989	1989, No. 6
Maintenance Act, 1994	1994, No. 28
Partition Act, 1868	1868, c. 40
Partition Act, 1876	1876, c. 17
Pensions Act, 1990	1990, No. 25
Pensions (Amendment) Act, 1996	1996, No. 18
Powers of Attorney Act, 1996	1996, No. 12
Registration of Title Act, 1964	1964, No. 16
Social Welfare Acts	
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27

Number 33 *of* 1996

FAMILY LAW (DIVORCE) ACT 1996

REVISED

Updated to 1 August 2022

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

- *Family Law Act 2019* (38/2019)
- *Domestic Violence Act 2018* (6/2018)
- *Mediation Act 2017* (27/2017)
- *Marriage Act 2015* (35/2015)
- *Finance (No. 3) Act 2011* (18/2011)

- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Land and Conveyancing Law Reform Act 2009* (27/2009)
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008)
- *Social Welfare and Pensions Act 2008* (2/2008)
- *Finance Act 2006* (6/2006)
- *Civil Liability and Courts Act 2004* (31/2004)
- *Capital Acquisitions Tax Consolidation Act 2003* (1/2003)
- *Pensions (Amendment) Act 2002* (18/2002)
- *Finance Act 2000* (3/2000)
- *Stamp Duties Consolidation Act 1999* (31/1999)
- *Children Act 1997* (40/1997)
- *Taxes Consolidation Act 1997* (39/1997)
- *Finance Act 1997* (22/1997)
- *Child Care Act 1990* (17/1991)
- *Pensions Act 1990* (25/1990)

All Acts up to and including *Electoral Reform Act 2022* (30/2022), enacted 25 July 2022, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (Decisions in Matrimonial Matters and in Matters of Parental Responsibility and International Child Abduction) Regulations 2022* (S.I. No. 400 of 2022)
- *Pension Schemes (Family Law) (Amendment) Regulations 2012* (S.I. No. 254 of 2012)
- *Occupational Pension Schemes (Disclosure of Information)(Amendment) (No. 3) Regulations 2012* (S.I. No. 203 of 2012)
- *Registration of Deeds Rules 2009* (S.I. No. 350 of 2009)
- *Land Registration Rules 2009* (S.I. No. 349 of 2009)
- *Registration of Deeds Rules 2008* (S.I. No. 52 of 2008)
- *Trust Racs (Disclosure of Information) Regulations 2007* (S.I. No. 182 of 2007)
- *Occupational Pension Schemes (Disclosure Of Information) Regulations 2006* (S.I. No. 301 of 2006)
- *Occupational Pension Schemes (Disclosure Of Information) Regulations 2005* (S.I. No. 633 of 2005)
- *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005* (S.I. No. 112 of 2005)
- *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2001* (S.I. No. 472 of 2001)
- *Occupational Pension Schemes (Disclosure of Information) (No. 2) Regulations 1998* (S.I. No. 349 of 1998)
- *Equality and Law Reform (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (S.I. No. 297 of 1997)
- *Pension Schemes (Family Law) Regulations 1997* (S.I. No. 107 of 1997)

All statutory instruments up to and including *European Union (Decisions in Matrimonial Matters and in Matters of Parental Responsibility and International Child Abduction) Regulations 2022* (S.I. No. 400 of 2022), made 31 July 2022, were considered in the preparation of this revision.