

Family Law (Divorce) Act

FAMILY LAW (DIVORCE) ACT

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.

BE IT ENACTED BY THE MALTA HOUSE OF REPRESENTATIVES AS FOLLOWS

PART I PRELIMINARY AND GENERAL

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

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

2. In this act, save where the context otherwise requires-

"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;

"decree of divorce" means a decree under *section 3* ;

"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 or in relation to whom both spouses are in *loco parentis*, or

(b) of either spouse or adopted by either spouse, 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;

"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;

"periodical payments order" and "secured periodical payments order" have the meanings assigned to them by *section 11*;

"property adjustment order" has the meaning assigned to it by *section 12*;

"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.

PART II THE OBTAINING OF A DECREE OF DIVORCE

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

3. - (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 -

(a) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,

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

(c) such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent members of the family, the court may, in exercise of the jurisdiction conferred by the Constitution, grant a decree of divorce in respect of the marriage concerned.

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

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

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

(2) If a lawyer is acting for the applicant, the lawyer shall, prior to the institution of the proceedings concerned under *section 3-*

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

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

(3) Such a lawyer 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 lawyer is acting for the applicant

(a) the originating document by which the proceedings are instituted shall be accompanied by a certificate signed by the lawyer indicating, if it be the

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

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 lawyer to engage in the discussions specified in *subsection (2)*, and, if appropriate, to make the applicant aware of judicial separation,

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

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

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

5.-(1) In this section "the respondent" means a person who is the respondent in proceedings in the court

(2) If a lawyer is acting for the respondent, the lawyer shall, as soon as may be after receiving instructions from the respondent in relation to the proceedings concerned

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

(b) discuss with the respondent the possibility of engaging in mediation to help to effect a separation (if the spouses are

not separated) or a divorce on a basis agreed between the respondent and the other spouse and give to the respondent the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged, and

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

(3) Such a lawyer 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 lawyer 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 shall be accompanied by a certificate signed by the lawyer indicating, if it be the case, that the lawyer 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 lawyer 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 lawyer shall be accompanied by a copy of the relevant certificate aforesaid.

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

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

6.(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.

7. - 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.

8.-(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 to be guardians of the infant jointly.

PART III PRELIMINARY AND ANCILLARY ORDERS IN OR AFTER PROCEEDINGS FOR DIVORCE

Preliminary orders in proceedings for divorce.

9.-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-
a safety order, a barring order, an interim barring order or a protection order

Maintenance pending suit orders.

10.-(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.

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

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

(6) (a) Where a court makes an order under *subsection (1)* (a), it shall in the same proceedings, subject to *paragraph (b)*, make an attachment of earnings order 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.

Property
adjustment
orders.

12.-(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 firstmentioned 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 20 in relation to the order.

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

(4) Where a property adjustment order is made in relation to land, a copy of the order certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration.

(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.

Miscellaneous 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 the following 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,

(2) The court, in exercising its jurisdiction under *subsection (1)*, 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)* shall not apply in relation to a family home in which, following the grant of a decree of divorce, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.

Financial
compensation
orders.

14-(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 11, 12, 13 or 15* 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 or death of the applicant in so far as it relates to the applicant.

(c) The court shall not make an order under this section in favour of a spouse who has remarried.

(d) An order under *section 20* 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.

Pension
adjustment
orders.

15-(1) In this section, save where the context otherwise requires

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

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

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

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

attaining any normal pensionable age provided for under the rules of the scheme;

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

(a) contingent benefit, and

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

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

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

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

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

"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)*;

(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*

(⁶), (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 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 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 if the non-compliance was occasioned by his or her compliance with a direction of the court under this subsection.

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

(22) (a) Any costs incurred by the trustees of a scheme under *subsection (18)* or in complying with a pension adjustment order or a direction under *subsection (20) or (25)* shall be borne, as the court may determine, by the member spouse or by the other person concerned or by both of them in such proportion as the court may determine and, in the absence of such determination, those costs shall be borne by them equally.

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

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

(b) The court may make a pension adjustment order in addition to or in substitution in whole or in part for an order or orders under *section 11, 12, 13 or 14* 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) 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.

(25) An order under this section may restrict to a specified extent or exclude the application of *section 20* in relation to the order.

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

16.-(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 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 11, 12, 13, 14 or 15* for any reason (other than conduct referred to in *subsection (2) (i) of section 18* of the applicant).

(2) The court shall not make an order under this section in favour of a spouse who has remarried since the granting of the decree of divorce concerned.

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

(a) any order under *paragraph (c) of section 11 (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) if the marriage had not been dissolved.

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

(6) The personal representative of a deceased spouse in respect of whom a decree of divorce has been granted shall make a reasonable attempt to ensure that notice of his or her death is

brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse shall not, without the leave of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section.

(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 maybe, 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.

Orders for sale

17.-(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 of that spouse, cease to have effect except as respects payments due on the date of the death or remarriage.

(5) Where a spouse has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other spouse) also has a beneficial interest in that property or those proceeds, then, in considering whether to make an order under this section or *section 12 or 13 (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 18* in any relevant proceedings under a provision referred to in that section after the making of those representations.

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

Provisions relating to certain orders under sections 10 to 16 and 20.

18.-(1) In deciding whether to make an order under *section 10, 11, 12, 13 (1) (a), 14, 15, 16 or 20* and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.

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

(a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or

is likely to have in the foreseeable future,

(b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise),

(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.

Retrospective
periodical
payments
orders.

19.-(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 11(1) (c)*.

Variation, etc., 20.-(1) This section applies to the following orders: of certain orders under this Part.

(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 12*

(1) in so far as such application is not restricted or excluded pursuant to *section 12 (2)*,

(f) an order under *subparagraph (i) or (ii) of section 13 (1) (a)*,

(g) a financial compensation order,

(h) an order under *section 15 (2)* insofar as such application is not restricted or excluded pursuant to *section 15 (26)*,

(i) an order under this section.

(2) Subject to the provisions of this section and *section 18* and to any restriction or exclusion pursuant to *section 12 (2)* or *15 (26)* and without prejudice to *section 14 (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 10* or *11*, 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 17* 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.

21. -In deciding whether-

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

(a) to include in an order under *section 10* 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 11 (1)*,

(c) to make an order under *section 20* 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 18*.

Method of making

22. 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

payments under the order and be subject to such terms and conditions as it considers certain orders. appropriate and so specifies.

23.-Where an appeal is brought from an order 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.

Payments to be
made without
deduction of
income tax.

PART IV INCOME TAX, CAPITAL ACQUISITIONS TAX, CAPITAL
GAINS TAX AND STAMP DUTY

24.-Payments of money pursuant to an order under this Act (other than
under *section 15*) shall be made without deduction of income tax.

Income tax treatment of divorced persons.

25.-Where a payment is made in a year of assessment by a spouse who was a party to a marriage that has been dissolved for the benefit of the other spouse and-

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

(b) neither spouse has entered into another marriage, then, the provisions of the relevant regulations related to tax matters shall, with any necessary modifications, have effect in relation to the spouses for that year of assessment as if their marriage had not been dissolved.

Exemption of certain transfers from stamp duty.

26. Stamp duty shall not be chargeable on an instrument by which property is transferred pursuant to an order to which this subsection applies by either or both of the spouses who were parties to the marriage concerned to either or both of them.

This does not apply in relation to an instrument by which any part of or beneficial interest in the property concerned is transferred to a person other than the spouses concerned.

27. A gift or inheritance taken by a spouse who was a party to the marriage concerned shall be exempt from any capital acquisitions tax and shall not be taken into account in computing such a tax.

Exemption of certain transfers from capital acquisitions tax.

28.-(1) Notwithstanding the provisions of the Capital Gains Tax Acts where, following the granting of a decree of divorce either of the spouses concerned disposes of an asset to the other spouse, both spouses shall be treated for the purpose of those Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal:

Capital gains tax treatment of certain disposals by divorced persons.

Provided that this subsection shall not apply if, until the disposal, the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(2) Where *subsection (1)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (1)* applies), the spouse

making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

PART V MISCELLANEOUS

29.-(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 10, 11 or 12, paragraph (a) or (b) of section 13 (1) or section 14, 15, 16 or 20* (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.

Exercise of
jurisdiction by
court in relation
to divorce.

30.-(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 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 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 jurisdiction to determine the application, the court shall, notwithstanding *subsection (1)*, have jurisdiction to determine an application for the grant of a decree of divorce in respect of the marriage concerned.

Notice of proceedings under Act.

31. 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 dependant members of family after decree of divorce.

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

Social reports in proceedings.

Cost of mediation and counselling services.

33. -The cost of any mediation services or counselling services provided for a spouse who is or becomes a party to proceedings under this Act or for a dependent member of the family of such a spouse shall be in the discretion of the court concerned.

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

34. -Where an agreement to marry is terminated the parties to the agreement will be regarded as having been married to each other, in relation 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.

Dr. J. PULLICINO
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M.P.

6/4/10