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(LRC 5 - 1983)

REPORT ON THE LAW RELATING TO THE AGE OF MAJORITY,  
THE AGE FOR MARRIAGE AND SOME CONNECTED SUBJECTS

IRELAND

The Law Reform Commission  
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LAW REFORM COMMISSION

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1. The Law Reform Commission (hereinafter referred to as the Commission) was established under the Law Reform Commission Act 1975. Its function is to undertake an examination of the law with a view to formulating proposals for reform. It is the Commission's function:

- (a) in consultation with the Attorney General, to prepare for submission by the Taoiseach to the Government programmes for the examination of different branches of the law with a view to their reform;
- (b) pursuant to a recommendation contained in a programme approved by the Government, to undertake an examination of, and conduct research in relation to, any branch of the law and to formulate and submit to the Taoiseach proposals for its reform;
- (c) at the request of the Attorney General, to undertake an examination of, and conduct research in relation to, any particular branch or matter of law, whether or not such branch or matter is included in an approved programme, and, if so requested, to formulate and submit to the Attorney General proposals for its reform.

(See sections 4 and 5 of the Law Reform Commission Act 1975 and First Programme of the Commission (December 1976; Prl. 5984).)

2. The Attorney General requested the Commission in December 1975 to undertake an examination of, and conduct research into, the law relating to majority and, if it thought fit, to formulate proposals for its reform and submit them to him. The age of majority referred to in the request means the age at which a person normally becomes an adult in law, i.e. 21 years. In this Report the terms "minor" and "majority" (and not "infant" and "infancy") will generally be applied to a person under the age of 21.

3. As the research progressed it became obvious that the Commission could not limit itself to the simple question of whether or not an alteration should be made in the age of majority, and that other related questions would fall to be examined. For example, an alteration in the age of majority could affect the age at which parental consent is required for the marriage of a minor. It could also affect payments and allowances made by or to the parents or guardians of a minor.

4. Accordingly, in its Working Paper No.2 - 1977, The Law Relating to the Age of Majority, The Age for Marriage and Some Connected Subjects, the Commission considered not only the question of majority but also the question of the minimum age for marriage where the person wishing to marry is a minor, as well as some connected subjects, including the age at which certain entitlements should commence or terminate, as the case may be, and the minimum age requirement for certain adopters.

5. The Working Paper contained a comparative review of the law as to the age of majority in Ireland, in Great Britain, in other European legal systems, in Canada, in the U.S.A., in New Zealand and in Australia. It also examined the law as to the age for marriage in various jurisdictions.

6. The Working Paper made a number of provisional proposals for reform of the law in relation to a variety of aspects of the subject. It set out these proposals in a detailed General Scheme of a Bill (Chapter VII of the Working Paper).

7. Since publication of the Working Paper, the Commission has received observations from a number of interested persons and organisations. The Commission is most grateful for this response and has in reaching its conclusions carefully considered each of the contributions made.

8. The present Report represents the Commission's final recommendations on the subject. In general these recommendations are the same as those made in the Working Paper but in certain specific respects they differ from those in the Working Paper.

#### Reduction of the Age of Majority

9. Although the Brehon Laws seem to have recognised that a child required some legal protection, the concept of a fixed age at which a young person would attain maturity was not apparently known to them. Normally a son had no power to make a binding contract during the life of his father and while he was a member of his father's household.

10. After the Norman invasion of Ireland in the 12th Century the invaders started to impose their system of law on the country. Several hundred years elapsed before the English common law system, as supplemented by statute law, effectively became the law throughout the land.

11. The common law treated a person under 21 years as a minor, and gave such a person a special status. The law acted upon the principle that a minor should be protected from his own

improvidence and inexperience, but that this should be done so as not to cause unnecessary hardship to any person dealing with the minor.

12. With the passage of time statutes altered the legal position of minors. Some of the more notable of these statutes are dealt with in the following sub-paragraphs.

(1) The Industrial and Provident Societies Act 1893

This Act permits a person between the ages of 16 and 21 to be a member of a registered society unless there is a provision to the contrary in the rules of the society. Subject to the rules of the society, he may enjoy all the rights of a member, execute all instruments, and give all acquittances necessary under the rules. However, such a person may not be a member of the committee, a trustee, a manager, or a treasurer of the society. If he is over 16 years of age, he may nominate persons to whom his property in the society may be given on his decease.

(2) The Friendly Societies Acts 1896 and 1908

These Acts enable the rules of a friendly society to provide for the admission of a person under 21 years as a member. A person over 16 years of age may by himself execute all assignments. If the member is under 16 years he must act through his parent or guardian. As in the case of the industrial and provident society, if he is over 16 years he may nominate a person who will get his property in the society on his decease. He may not be a member of the committee, trustee, manager, or treasurer of the society.

(3) The Credit Union Act 1966

This Act applies the provisions of the Industrial and

Provident Societies Act to credit unions. It is to be noted that nothing in the Industrial and Provident Societies Act, the Friendly Societies Acts or the Credit Union Act gives a minor power to do anything that he otherwise may not do. For instance, he may not borrow money from such society or union, contract for the repayment of borrowed money, or give security for it. These transactions by a minor are invalidated by the Infants Relief Act 1874. (See Nottingham Permanent Benefit Building Association v Thurston [1903] A.C. 6.)

(4) The Succession Act 1965

Before the Wills Act 1837 a minor who had reached the age of 14 years could make a valid will disposing of his personal property, and even creating a trust thereof. The Wills Act 1837 enacted that no person under the age of 21 could make a valid will. This was subject to the exception created by section 11 that any soldier in actual military service or any mariner at sea could dispose of his personal estate as he might have done before the passing of the 1837 Act. Wills made in pursuance of this privilege might consist of oral declarations before witnesses or informal documents. (In the Goods of Hiscock [1901] P.78; In the Goods of Scott [1903] P. 243; In the Goods of Coleman [1920] 2 I.R. 332.) Some doubt existed as to the proper construction to be put on section 11 of the Wills Act 1837. The position was clarified by the Wills (Soldiers and Sailors) Act 1918. This Act applied to a soldier, or member of the air force on actual military service, or to a seaman or mariner at sea or on actual military service. Irrespective of age such a person could make a valid will of his personal and real estate. Such a will remained valid until revoked even though the military or other service had ended. (In the Goods of Coleman

/1920/ 2 I.R. 332.) The Succession Act 1965 repealed the Wills Act 1837 and the Wills (Soldiers and Sailors) Act 1918. The position now is that a person -

- (a) who is of sound disposing mind, and
- (b) has attained the age of 18 years or is or has been married,

may make a will. (See Succession Act 1965, section 77.) Since the enactment of section 7(7) of the Guardianship of Infants Act 1964 a person under the age of 21 years had been entitled to appoint a guardian by will.

(5) The Electoral (Amendment) Act 1973

Under the Constitution of Ireland (as enacted by the People in 1937) every citizen who had reached the age of 21 years, and who was not disqualified by law had the right to vote at an election for members of Dáil Éireann (Article 16.1.2<sup>o</sup>). Every citizen who had the right to vote at an election to Dáil Éireann had also the right to vote at an election for the President and the right to vote at a Referendum. (See Article 12.2.2<sup>o</sup> for Presidential election and Article 47.3 for the right to vote at a Referendum.) The Fourth Amendment of the Constitution Act 1972 reduced the age at which a person had the right to vote at Dáil and Presidential elections and at Referenda from 21 years to 18 years.

On 7 December 1972, the proposal for the amendment was submitted to a referendum. Of the 856,353 valid votes that were cast, 724,836 were in favour of the amendment and 131,514 votes were against it. (Iris Oifigiúil, December 12, 1972.)



Following on the Referendum the Electoral (Amendment) Act 1973 consequentially amended the Electoral Acts, the Local Elections Acts, the Seanad Electoral (University Members) Acts, the Presidential Elections Acts and the Referendum Acts. It should be noted that though an 18 year old has now the right to vote at elections and referenda and the right to be a member of a local authority, the age specified in Article 16.1.1<sup>o</sup> of the Constitution (eligibility for membership of Dáil Eireann) is still "the age of twenty-one years". Moreover, to be eligible for membership of Seanad Eireann a person must be eligible for membership of Dáil Eireann. (See Article 18.2 of the Constitution.)

(6) The Juries Act 1976

One of the qualifications to render a person eligible for service on a jury in a court or at a coroner's inquest was that such person had attained the age of 21 years. The Juries Act 1976 has reduced the minimum age limit for jury service in a court or at a coroner's inquest to 18 years. (See sections 6 and 31 of the Act.)

(7) Family Law Act 1981

Section 10 of the Family Law Act 1981 declares, for the avoidance of doubt, that no consent given by a spouse for the purposes of section 3(1) or 9(2) of the Family Home Protection Act 1976 is invalid by reason only that it is given by a spouse who has not attained the age of majority. The Family Home Protection Act 1976 is designed to protect persons against having the family house or chattels sold or otherwise disposed of by their spouses without their consent. Section 3(1) of the 1976 Act requires the written consent of a spouse to the disposition of the family home by the other; section 9(2) restricts the right of a spouse to dispose of

household chattels without the consent of the other spouse. Section 10 of the Family Law Act 1981 is retrospective in its operation, extending to consents given by spouses before the passing of the 1981 Act.

13. In the last twenty-five years there has been a trend throughout the world towards a reduction in the age of majority. This can be seen by reference to Appendix C, column 1 of the Working Paper. The trend has been fully supported by the Council of Europe, which comprises nineteen European States (including Ireland). Moreover, when it was proposed to remove certain of the disabilities of young persons, the proposals were generally welcomed. For example, eighty-five per cent of the votes cast were in favour of the Amendment to Article 16.1.2<sup>o</sup> of the Constitution to reduce the voting age.

14. In the Working Paper the Commission recommended that the age of majority should be reduced to 18 years. It also recommended that the term "minor" and not "infant" should be applied to a person who has not reached that age.

15. After further consideration, in the light of submissions it received following publication of the Working Paper, the Commission is satisfied that reform should proceed along these lines. Accordingly, it formally recommends (i) that the age of majority be reduced to 18 years, and (ii) that the term "minor", and not "infant", be applied to a person who has not reached that age.

16. In the Working Paper, the Commission went on to consider whether a person under the age of eighteen years should be permitted to acquire adult status in any circumstance. It referred to Article 41.1 of the Constitution, which provides as follows:-

"1<sup>o</sup> The State recognises the Family as the natural primary

and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State."

17. The Commission noted that from this it could be argued that no legal impediments or obstructions should be placed in the way of young married persons solely on the ground of age and that such persons should have the legal capacity to acquire a home and to furnish it. They should also have the right to establish a trade or business. As a consequence, they should be legally able to borrow money, to incur debts and to undertake contractual obligations. Third persons should be able to deal with any married minor secure in the knowledge that the minor will be bound by his transactions.

18. The Commission noted in the Working Paper that recognition has already been given to the special position of a married minor. Section 7(7) of the Guardianship of Infants Act 1964 gave a person under the age of 21 the right to appoint a guardian by will notwithstanding that the testamentary age was by reason of section 7 of the Wills Act 1837 still twenty-one. Since the Succession Act 1965 came into operation on 1 January 1967 the testamentary age is eighteen, but a valid will may be made by any person of sound disposing mind who is or has been married. (See section 77 of the Succession Act 1965 and the explanatory sidenotes thereto.) Furthermore section 19 of the Marriages (I) Act 1844 (as substituted therein by section 7 of the Marriages Act 1972) allows a widow or widower under the age of 21 to get married without parental or other consent. Section 7 of the 1972 Act came into operation on 1 January 1975. (See

the Marriages Act 1972 (Commencement) Order 1974 (S.I. 324 of 1974).)

19. The Commission expressed the opinion in the Working Paper that on marriage a minor should in law become an adult and should have all the rights and be subject to all the liabilities of a person who has reached the age of majority. The Commission saw no reason why the precedents established by section 77 of the Succession Act 1965 in regard to the making of a will should not be followed generally in regard to other legal transactions.

20. As mentioned in paragraph 12, supra , the Family Law Act 1981 has been enacted since publication of the Working Paper. Section 10 clarifies the position regarding the consent of a spouse to the sale or other disposition of a family home or of the household chattels. It declares that the consent will not be invalid by reason only that it is (or was) given by a spouse who has not (or had not) attained the age of majority. This appears to the Commission to be a further endorsement of the policy of treating a married minor, for legal purposes, in the same way as a person who has reached the age of majority.

21. After further consideration of the question, the Commission favours the approach it adopted in the Working Paper. Accordingly, it recommends that on marriage a minor should in law become an adult and should have all the rights and be subject to all the liabilities of a person who has reached the age of majority.

22. If the Commission's proposals are adopted and the necessary legislation enacted and brought into operation, a large number of people will be affected. Persons at the date of operation of the legislation between the ages of 18 and 21, and every married person who has not reached the age of 18, will become adults with all the rights and liabilities of adults. During the succeeding years a number of persons will attain the age of

18 years or marry under that age. For brevity in the following paragraphs all these persons are called "new adults".

23. A new adult will, on the commencement date of the legislation, acquire all the existing rights and become subject to all the existing obligations of an adult. Examples are as follows:

- (a) A new adult will be liable for the repayment of any money that he may borrow and for any goods that he buys after he attains majority;
- (b) He may enter into any mortgage, charge or hire-purchase agreement that may be required to secure the repayment of moneys owing **by** him;
- (c) He will be free to make settlements of his property;
- (d) He may buy and sell land and give valid receipts for the purchase money without the intervention of a trustee or other third person;
- (e) He will be entitled to act on the committee of a trade union, or any other body, corporate or unincorporate; and he may enter into binding contracts for the repayment of money to such a body;
- (f) He may change his domicile;
- (g) He may marry without the consent of his parents or guardians or of the President of the High Court;
- (h) He may sue or be sued in his own name without the intervention of a next friend or of a guardian ad litem; and he may enter into a binding compromise of an action without leave of the court;
- (i) If he is a ward of court, he will be discharged from wardship.

The foregoing is, of course, subject to whatever transitory provisions are contained in the proposed legislation. (See para. 25 infra.)

24. Where a restriction has been imposed or a right given in the Constitution by reference to an age other than 18 years nothing in the proposed legislation may affect the relevant provisions in the Constitution. The age for election to the office of President will still be 35 and the age for membership of the Dáil or Seanad will still be 21. (See Articles 12.4.1°, 16.1.1° and 18.2 of the Constitution.)

25. If the age of majority is altered, the proposed legislation will have to include special transitional provisions to cover the cases of those persons who attain the status of majority at an earlier age or time than is now the case. The transitional provisions will relate to such matters as funds in court, wardship and custody orders, powers of trustees during the minority of a beneficiary etc. The effect of the new legislation on private dispositions of property by deeds, wills and other instruments will also require special provision to ensure that in general the legislation will not apply to any such instruments made before its passing but that it will (subject to some exceptions) apply to statutory enactments and statutory instruments no matter when passed or made. (Cp. the Age of Majority Act (Northern Ireland) 1970, section 1 and the Schedules, and New Zealand's Age of Majority Act 1970, sections 4, 6, 7, 8 and the Schedules.)

26. In many statutes where the position of a minor or infant is dealt with, the expressions generally used are "minor", "minority", "infant" and "infancy". In other statutes, however, there is a specific reference to the age of 21 years. For instance, in section 2 of the Guardianship of Infants Act 1964, an infant is defined as "a person under twenty-one years of age". There is a similar definition in section 3 of the Succession Act 1965.

Legislation reducing the age of majority must ensure that "18 years" is substituted for "21 years" in all statutory enactments except where it is shown that "21 years" should be maintained.

27. Specific heads of legislation required in order to provide for (1) the transitory provisions and savings referred to in paragraph 25 supra and (2) the substitution of "18 years" for "21 years" in the various statutory enactments referred to in paragraph 26 supra were set out in the General Scheme of the Bill contained in Chapter VII of the Working Paper. (See sections 4, 9, 11 of, and Schedule to, that Scheme.)

#### Age for Marriage

28. A reduction in the age of majority to 18 years raises two questions concerning the law of marriage:

- (a) If an individual is to reach full age at 18 years, should parental consent for marriage be nonetheless required beyond this age?
- (b) Should the minimum age for marriage be equated with the age of majority?

29. In these paragraphs the following meanings are given to certain terms. "Minimum age for marriage" means the age at which a valid marriage may be contracted unless the law permits marriage at a younger age with the consent of a court or other competent authority. Where the law does not provide for a valid marriage below the minimum age in any circumstances, the "minimum age" becomes the "absolute minimum age" and is so termed. "Free age for marriage" means the lowest age at which a person may contract a valid marriage without the consent of a third person such as a parent or guardian. The term "consent age for marriage" means the range of age between the minimum age and the free age, in which a person may marry if he or she

has obtained the consent of a parent or guardian or the consent of a court or other competent authority.

30. The law governing marriage in Ireland was based on the common law as amended by statute. An individual was regarded as having reached marriageable age at 14 years, if a male, and 12 years, if a female. However, he or she did not reach full age until 21. A marriage when the bridegroom had attained 14 years and the bride had attained 12 years was binding on both parties. Parental consent to the marriage of a minor was not a legal requirement.

31. The English and the Irish law diverged in 1753 when the Act for the better preventing of Clandestine Marriages (26 Geo. 2, c. 33) was passed. This Act, known as Lord Hardwicke's Act, applied only to England. It required the consent of the parent or guardian if an intended spouse was under 21 years of age.

32. During the 19th century in Ireland Catholic marriages were left to the operation of the common law. They might be celebrated privately or publicly, at any time or place, and in any form or manner the celebrating priest thought proper, without banns, licence, notice, residence or consent. The only statutory interventions in respect of Catholic marriages were contained in the Registration of Marriages Act 1863, section 11, prescribing registration of marriages, and the Matrimonial Causes and Marriage Law (I) Amendment Act 1870, sections 36-40, and the Matrimonial Causes and Marriage Law (I) Amendment Act 1871, sections 25 and 29, repealing the penal enactments as to mixed marriages and giving enabling powers to Catholic clergymen.

Canon Law imposed certain conditions precedent to the validity of a marriage. By the decree Tametsi of the Council of Trent (1563), which was promulgated in Ireland at different times



in different dioceses from about 1638 to 1827, the validity of a marriage depended on -

- (a) the publication of banns prior to marriage (although such publication might be dispensed with by a licence of the bishop of the diocese), and
- (b) the presence of the bishop or the parish priest or some other deputed priest at the celebration of the marriage, together with at least two other witnesses.

These were not requirements for the validity of marriage at common law.

33. So far as all other marriages were concerned the common law in Ireland was altered by a number of statutes, the principal of which were the Marriages (I) Act 1844, the Marriage Law (I) Amendment Act 1863 and the Matrimonial Causes and Marriage Law (I) Amendment Act 1870. In general, these statutes dealt with the formalities attending the solemnisation of a marriage.

34. The Marriages (I) Act 1844 dealt with the marriages of persons belonging to the Church of Ireland, to the Presbyterian Church, to the Religious Society of Friends (Quakers) and to the Jewish religion. By reason of sections 3, 19 and 20 of this Act, in the case of a marriage (other than a Catholic marriage), if any spouse had not attained the age of 21 years, the consent of that spouse's parent or guardian was to be obtained. If, for any reason, the person who was to give the consent was unavailable, or unwilling to do so, an application could be made to the Lord Chancellor, or to the Master of Rolls, for such consent. The requirement of consent appears to have been directory and not mandatory, so that a marriage contracted without the required consent was not invalid.

35. The marriage laws at the establishment of the Irish Free State in 1922 may be summarised as follows:

- (a) For members of the Church of Ireland, Presbyterians, Methodists, Quakers, members of other Protestant religions and members of the Jewish faith, the law of marriage was governed by the common law as amended by the statutes referred to in paragraphs 33 and 34 supra. In the case of a person under 21 years the consent of the minor's parent or guardian was required for the issue of the licence. If such consent was refused or could not be obtained, either the Lord Chancellor or the Master of the Rolls could give the consent.
- (b) As regards Catholics the marriage law was the common law, which required no licences, banns, or consent. Under Canon Law a Catholic clergyman was required to solemnise the marriage. Even though the marriage might not comply with Canon Law it was valid if it complied with the common law.
- (c) Under the common law the minimum age for marriage, irrespective of religious belief, was 14 years for a male and 12 years for a female - the old Canon Law ages.

36. By 1960 there was a strong body of opinion in favour of raising the minimum age for marriage. An example of this was the resolution passed by the General Synod of the Church of Ireland that representations should be made to the appropriate Minister to have the minimum age raised to 16 years. The Canon Law ages had been raised to 16 and 14 in 1917.

37. The United Nations Organisation was particularly concerned about the minimum age for marriage. Under the United Nations Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage (1962) it is provided that States who are parties to the Convention should take legislative action to specify a minimum age for marriage. No marriage

should be legally entered into by a person under this age except where a competent authority had granted a dispensation as to age for serious reasons in the interest of the intending spouses (Article 2). Ireland has not yet acceded to this Convention.

38. In 1965 by General Assembly Resolution 2018(XX) the General Assembly of the United Nations recommended that, where not already provided by existing legislative or other measures, each Member State should take the necessary steps to adopt such legislative or other measures as might be appropriate to give effect to the following principle:

"Member states shall take legislative action to specify a minimum age for marriage, which in any case shall be not less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouse."

(Recommendation on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages; United Nations, General Assembly Resolution 2018 (XX). Principle II.)

39. Further impetus to the movement to modernise the marriage laws was given in December 1967 by a Report of the Dáil Committee on the Constitution. In that Report it was suggested that the existing marriage legislation might be thought to be discriminatory against some religions and offend against Article 44.2.3<sup>o</sup> of the Constitution. (See Report of the Committee on the Constitution, pp. 47-48 (December 1967, Prl. 9817).)

40. A Marriages Bill was considered by Dáil Éireann in

November 1972. The Bill was introduced as an interim measure and was not designed to establish a comprehensive new marriage code. Its aim was to make certain desirable and rather urgent changes of a limited character. Most of the provisions of the Bill either met a specific need, or removed or modified an existing restriction, or gave an additional power which had been sought by the denomination concerned.<sup>1</sup> This Bill became law as the Marriages Act 1972 but it did not come fully into operation until 1 January 1975. (See S.I. No. 12 of 1973, S.I. No. 105 of 1973 and S.I. No. 324 of 1974.)

41. The main features of the Marriages Act 1972 are:

- (a) The minimum age for marriage is 16 years, with a provision enabling the President of the High Court to grant an exemption for a person who has not attained that age (section 1);
- (b) Sections 19 and 20 of the Marriages (I) Act 1844 are replaced by a new section 19. The substituted section applies to all marriages. (See section 7 of the 1972 Act.) In the case of the marriage of a person under 21 years who is neither a widow, widower nor ward of court, the consent of that person's guardian to the marriage is required. If there are no guardians, or if the guardians cannot, without unreasonable difficulty, be found or if they refuse or withhold their consent, the President of the High Court or a judge of the High Court nominated by him may consent. This is the first time that the law has required the consent of a guardian to the marriage of a Catholic minor. It should be noted that the new section does not render invalid a marriage contracted without the required consent. (Cf. the

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<sup>1</sup> See speech of the Minister for Health, Erskine Childers, T.D., moving the Second Reading of the Marriages Bill, November 17, 1972 - Dail Debates, Volume 263, column 829 et seq.

wording in section 1(1) of the 1972 Act.)

- (c) Section 18 gives power to the Minister for Health, by regulations made in the manner prescribed by the section, to substitute "18" for "21" in the Marriages (1) Act 1844, the Marriage Law (1) Amendment Act 1863 and the Matrimonial Causes and Marriage Law (1) Amendment Act 1870. No regulations have so far been made.

The intention at the time of the introduction of the Bill of the Act was that, if the voting age was reduced from 21 to 18 years, a corresponding reduction would be made in the age below which parental consent is required for marriage. (See the speech of the Minister for Health (Erskine Childers, T.D.) moving the second reading of the Marriages Bill in Seanad Eireann - Seanad Debates, Vol. 73, col. 953 et seq., November 23, 1972.) When the Committee Stage of the Bill was taken in Seanad Eireann on December 13, 1972, the result of the Referendum on the age of voting was known. The Minister for Health put down two amendments to the Bill:

- (1) to reduce from 21 years to 18 years the age at which consent to marriage would be required under the new section 19 of the 1844 Act (section 7 of the Bill), and
- (2) to delete section 18 of the Bill.

After hearing the arguments advanced by several Senators the Minister withdrew the two amendments, thus leaving section 18 stand part of the Bill. (See Seanad Debates, 13 December, 1972, Vol. 73, cols. 1275 to 1301.)

42. According to the Minister for Health, the intention of the 1972 Act was that, once the statutory provisions as laid down in the Act had been complied with, the various religious bodies would be entitled to impose their own discipline on

the marriage ceremony. The State would not interfere with the regulations of a religious body so long as the law of the land was not contravened. A Church authority could exercise its discretion and apply its own rules to its members. (Seanad Debates, December 13, 1972, Vol. 73, cols. 1275 to 1301.)

#### Exemption from Minimum Age

43. Section 1 of the Marriages Act 1972 fixes the minimum age for marriage at 16 years. It also provides machinery whereby an exemption order may be obtained. The application for an exemption order must be made through the Registrar of Wards of Court in accordance with an informal procedure. The application may be made by either party to the proposed marriage without the intervention of a next friend. The application must be heard in private. Before grant of an exemption the applicant must show that it is justified by serious reasons and is in the interest of the parties to the proposed marriage.

44. Applications are made informally through the Registrar in accordance with rules of procedure directed by the President of the High Court. The application is made by letter or personally. The Registrar sends the applicant a simple form, which is designed to ascertain relevant information such as the age of the applicant, the name and address of the intended spouse and the name and addresses of both parties' parents or guardians etc. Copies of birth, or baptismal, certificates are also required.

45. An appointment is made for the parties, and their parties, to meet the President of the High Court. The President has separate interviews with the parties to the intended marriage and with the parents or guardians. If the parties are willing, a report may be sought from any clergyman or social worker who

is interested in the application.

46. After these interviews, the application is normally adjourned to allow time for consideration of the information available and of any other information that may have been sought. As soon as possible the President of the High Court gives a ruling granting or refusing exemption. The Act does not mention the possibility of an appeal, but it would appear to be accepted that there is a right of appeal to the Supreme Court.

47. The table hereunder sets out the number of applications for exemption orders that have been made in the past five years.

APPLICATIONS TO THE COURT FOR EXEMPTION ORDER UNDER SECTION 1 OF THE MARRIAGES ACT 1972				
Year	Number of Applications	Number Granted	Number Refused	Number not Proceeded with
1978	3	2	0	1
1979	3	2	1	0
1980	6	3	1	2
1981	2	2	0	0
1982	2	1	0	1

#### Consent to marriage

48. Since the Marriages Act 1972 came into full force on January 1, 1975, the free age for marriage in Ireland has been 21 years. A person who has attained that age does not require the consent of his or her guardians and the same is true of a widow or widower. A minor who is a ward of court requires the consent of the court in order to get married.

49. In the case of persons requiring the consent of their

guardians to marry, if there is no guardian or if the guardian cannot be found or refuses consent to the proposed marriage, an application may be made to the President of the High Court or to a High Court Judge nominated by him. (See section 7 of the Marriages Act 1972.) The application is made informally and the procedure is substantially the same as the procedure for an exemption order outlined in paragraphs 43 to 46 supra.

50. The table hereunder sets out the number of applications that have been made to the court in the past five years for its consent to a marriage under section 7 of the Marriages Act 1972.

APPLICATIONS TO THE COURT FOR ITS CONSENT TO A MARRIAGE UNDER SECTION 7 OF THE MARRIAGES ACT 1972				
Year	Number of Applications	Number Granted	Number Refused	Number not Proceeded with
1978	41	27	6	8
1979	21	13	4	4
1980	35	28	2	5
1981	35	21	6	9
1982	15	9	2	4

51. The minimum age at which a marriage could be contracted was fixed at 16 years for England and Scotland by the Age of Marriage Act 1929. The minimum age for marriage in Northern Ireland was changed to 16 years by the Age of Marriage Act (Northern Ireland) 1951. There is no provision for any exemption for a person under 16 years in either of these statutes.



52. The Latey Committee considered whether the minimum age for marriage (i.e. 16 years) should be altered. The unanimous recommendation of the Committee was against any alteration in the age. (Latey Report, paragraph 177; 1967, Cmnd 3342.)

53. The free age for marriage was also considered by the Latey Committee. The majority of the Committee recommended that the free age for marriage should be the same as the age of majority which they had recommended, that is 18 years. (Latey Report, paragraphs 147 to 165.)

54. This latter recommendation was accepted and was implemented in the Family Law Reform Act 1969, which applies to England and Wales. (An attempt was made during the passage of the legislation in the British House of Lords to raise the free age for marriage to 20 years.) The free age for marriage is also 18 in Northern Ireland by reason of the Age of Majority (Northern Ireland) Act 1969. In Scotland the consent of a parent or guardian is not required for the marriage of a person who has reached the minimum age for marriage (i.e. 16 years).

55. In most other European legal systems the age of majority is the same as the free age for marriage. In the last fifteen years the age of majority was reduced from 21 to either 18, 19, or 20 in the following countries: Austria, Denmark, France, Germany, Italy, Luxembourg, New Zealand, Norway, Sweden, Switzerland, and Turkey. In each country the free age for marriage was also reduced to correspond with the age of majority.

56. Each provincial legislature in Canada has reduced the age of majority from 21 to either 18 or 19 years. In every case when the age of majority was reduced a corresponding reduction was made in the free age for marriage. In the various States of the U.S.A., the free age for marriage is generally the same as the age of majority.

The Recommendations of the Commission

57. As regards the minimum age for marriage, the Commission in the Working Paper recommended that the "free age for marriage", that is, the lowest age at which a person might contract a valid marriage without the consent of a third person (such as a guardian) should be the same as the age of majority. It recommended that there should also be a "minimum age for marriage" which could be the same as the "free age for marriage" or that there should be an "absolute minimum age for marriage" (16) and a "consent age for marriage" (16 to 18). The General Scheme of the Bill in the Working Paper was drafted on the basis of the latter option.

58. On the basis of an "absolute minimum age" (16), the Commission in the Working Paper recommended that the marriage of a person under that age should be made null and void and intrinsically or essentially invalid. It recommended that the marriage of a person during the "consent age for marriage" (16 to 18) should also be made null and void and intrinsically or essentially invalid, unless the consent of the parents or of a court or other appropriate authority was first obtained.

59. After further detailed consideration of this difficult subject, the Commission is satisfied that the solution proposed in the Working Paper and given effect in Part III of the Bill appended to this Report is (subject to one exception, mentioned in paragraph 62) the best solution; and the Commission recommends accordingly.

60. Stated very briefly, the position would be as follows. A marriage solemnised between persons either of whom is under the age of sixteen years would be void. This rule would apply to any marriage solemnised in the State, irrespective of the habitual residence of the parties (or either of them), and

any marriage solemnised outside the State where, at the time of the solemnisation of the marriage, the habitual residence of the parties (or either of them) is in the State. The law would be drafted in these terms in order to reduce the likelihood of "forum shopping", designed to defeat the policy of prohibiting marriage under the age of sixteen.

61. The effect of the Commission's recommendations would also be that a marriage solemnised between persons either or both of whom is a minor would be void unless there had first been obtained the consent (or consents) in writing of the guardian (or guardians) of the minor; the consent of the High Court would be required where the guardians disagreed, or where there was no guardian or the minor was a ward of court. Moreover, where a guardian was incapable of consenting on account of mental disability or could not be found, notwithstanding the making of reasonable enquiries, the High Court might give the necessary consent to the marriage.

62. The one issue on which we now take a revised view, after further consideration, is in respect of the position arising where both guardians refuse their consent to the proposed marriage of a minor. Having regard to the fact that the age span during which the consent of guardians is required will be reduced from five years (i.e. 16 to 21) to only two years (i.e. 16 to 18), the majority of the Commission consider that it would not be desirable to make the combined opposition of guardians to a proposed marriage subject to appeal to the High Court. We consider that it would not be oppressive to require a minor in such circumstances to wait for what in many cases will be a period of months rather than years before being able to marry.

63. It should be noted that provisions designed to prevent "forum shopping" would apply to marriages requiring consent as

they would apply to marriages of persons under 16 years. Moreover, the requirements as to minimum age and as to consent would, for the purposes of private international law, be substantive and not formal. They would also be mandatory and not directory. No appeal from the decision of the High Court would lie to the Supreme Court.

#### Connected Matters

64. In the Working Paper, the Commission made a number of recommendations in relation to matters connected with the age of majority. These included the following:

- (a) that the time at which a person attains a particular age expressed in years should be the commencement of the relevant anniversary of his birth;
- (b) that the jurisdiction over the person or estate of a ward of court should cease when he or she reaches the age of majority;
- (c) that the definition of child in section 3 of the Adoption Act 1952 should be amended so that the reference to twenty-one years becomes a reference to the new age of majority;
- (d) that the minimum age requirement for certain prospective adopters should be changed from twenty-one to the age of majority;
- (e) that special transitory provisions, relating to such matters as funds in court, wardship and custody orders,

powers of trustees during the minority of a beneficiary and limitation of actions, should be included in the legislation;

(f) that the new legislation should, in so far as the construction of expressions such as "full age" and "infancy" is concerned, apply to all statutory enactments and instruments (no matter when passed or made) but not to deeds, wills and other private instruments made before the commencement date of the legislation;

(g) that section 11 of the Guardianship of Infants Act 1964 be amended so as to bring it into harmony with the Family Law (Maintenance of Spouses and Children) Act 1976, under which an order for maintenance may be made against a parent in respect of a mentally or physically disabled child who has reached the age of majority.

In this Report the Commission repeats these recommendations, which after further consideration, it continues to regard as desirable.

65. The Commission made a number of other recommendations in its Working Paper in respect of which further examination leads the Commission to revise its position. The first relates to taxation. In the General Scheme in the Working Paper it was proposed that the new age of majority should not affect any taxation statutes, so that any entitlements of a taxpayer to allowances or concessions in respect of any minor would continue as if the proposed legislation on the age of majority had not been passed. On examining the matter again, the Commission now thinks that it would be preferable that exemption from application of the proposed legislation to the taxation statutes should be restricted to section 141(1) of the Income Tax Act 1967. If full age were substituted for 21 in this provision it would mean that a taxpayer would be deprived of an allowance in respect

of a child who became permanently incapacitated between 18 and 21; at present a taxpayer is entitled to this allowance if his child becomes incapacitated before he reaches 21.

66. In the Working Paper, the Commission recommended that nothing in the proposed legislation relating to the age of majority should affect any statutory provision relating to social welfare or social assistance. The effect of this recommendation is that, although the age of majority would be reduced, this reduction would not affect the existing entitlements to social insurance and social assistance benefits. The Commission continues to be of the view that its proposals as regards these benefits should be implemented,

67. The Commission also recommended in the Working Paper that the legislation reducing the age of majority should ensure that an order for maintenance might be made under the Illegitimate Children (Affiliation Orders) Act 1930 or under section 11 of the Guardianship of Infants Act 1964 or under the Family Law (Maintenance of Spouses and Children) Act 1976 for the benefit of a child receiving full-time education until that child reached the age of 21. The Commission recommended in addition that the age of 18 should be substituted for the age of 16 in the 1930 and 1976 Acts and also in the Social Welfare (Supplementary Welfare Allowances) Act 1975. After further consideration, the Commission now takes the view that it would not be desirable to impose continuing maintenance obligations on parents in respect of children (other than those who are physically or mentally disabled) who have reached the age of majority, even if receiving full-time education. The Commission considers that the balance of the argument favours the view that a necessary implication of attaining majority is that a child is sufficiently mature and independent to be responsible for his or her own maintenance rather than looking to his or her parents for support.

At the same time, the Commission was, and continues to be, of the view that the age at which a parent ceases (either in civil law or for the purposes of social welfare legislation) to have an obligation to maintain a child should be raised from 16 to 18. (The social insurance and social assistance benefits have for some years been extended to persons up to 18 years.) However, the Commission makes no recommendation in regard to the upper age for children's allowances. This age will continue to be 16, unless the child is receiving full-time instruction at any university, college, school etc., or is an apprentice, or is physically or mentally disabled - when the age limit is 18. (See definition of "qualified child" in section 223 of the Social Welfare (Consolidation) Act 1981.)

68. Appendix A to this Report (p. 30) lists the persons and bodies who submitted observations on the Commission's Working Paper on the Law relating to the Age of Majority, the Age for Marriage and Some Connected Subjects. As indicated in paragraph 7 supra the Commission is most grateful to all these persons.

69. Appendix B (pp. 31-47) contains the Age of Majority Bill 1983. As indicated in the General Scheme of the Bill contained in Chapter VII of the Working Paper (Note to section 4 of the Scheme, p. 84) it was not considered necessary to list all the enactments in which the reference to the age of 21 required to be changed to a reference to full age (the age of 18 or the age of marriage). However, a list of the various statutory provisions that will be affected by having "full age" substituted therein for "21 years" is contained in Appendix C (pp. 48-54).

70. Finally, Appendix D (pp. 55-75) contains an Explanatory Memorandum to the Age of Majority Bill 1983. The Memorandum (which the Commission envisages would accompany the Bill as and when circulated) explains the various provisions in the Bill and is designed as an aid to the members of both Houses of the Oireachtas and others who concern themselves with the Bill.

APPENDIX A

Persons and Bodies who submitted observations on Working Paper  
No. 2-1977 on the Law relating to the Age of Majority, the Age  
for Marriage and Some Connected Subjects

1. The Hon. Mr Justice T.A. Finlay, President of the High Court
2. The Hon. Mr Justice D. Costello, Judge of the High Court
3. The Catholic Marriage Advisory Council
4. The General Synod of the Church of Ireland
5. The Irish Society for the Prevention of Cruelty to Children
6. The National Youth Council of Ireland



APPENDIX B

AGE OF MAJORITY BILL 1983

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ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

AGE OF MAJORITY

3. Reduction of age of majority from 21 to 18
4. Substitution of reference to full age for age of 21 in certain statutory provisions
5. Persons under full age may be described as minors
6. Time at which a person attains a particular age

PART III

AGE FOR MARRIAGE AND CONSENT  
REQUIREMENT FOR CERTAIN MARRIAGES

7. Marriage solemnised between persons either of whom is under 16 to be void
8. Consent required for marriage of a minor
9. Characterisation of requirements in sections 7 and 8

PART IV

MISCELLANEOUS

10. Act not to affect certain other statutory provisions
11. Amendment of section 11 of the Adoption Act 1952
12. Amendment of section 49 of the Statute of Limitations 1957
13. Construction of references in section 11 of the Guardianship of Infants Act 1964 and amendment of that section
14. References in certain enactments to age of 16 to be construed as references to age of 18
15. Repeal of certain statutory provisions relating to minors
16. Transitional provisions and savings

## SCHEDULE

## TRANSITIONAL PROVISIONS

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 ACTS REFERRED TO

Accumulations Act 1892	1892 c. 58
Adoption Act 1952	1952 No. 25
Conveyancing Act 1881	1881 c. 41
Defence Act 1954	1954 No. 18
Employers and Workmen Act 1875	1875 c. 90
Family Law (Maintenance of Spouses and Children) Act 1976	1976 No. 11
Guardianship of Infants Act 1964	1964 No. 7
Illegitimate Children (Affiliation Orders) Act 1930	1930 No. 17
Income Tax Act 1967	1967 No. 6
Infant Marriage Act 1860	1860 c. 83
Infants Settlements Act 1855	1855 c. 43
Marriages Act 1972	1972 No. 30
Marriages (Ireland) Act 1844	1844 c. 81
Married Women's Status Act 1957	1957 No. 5
Social Welfare (Consolidation) Act 1981	1981 No. 1
Statute of Limitations 1957	1957 No. 6
Succession Act 1965	1965 No. 27

AGE OF MAJORITY BILL 1983

BILL

ENTITLED

An Act -

(1) to reform the law relating to -

- (a) the age of majority;
- (b) persons who have not attained that age;
- (c) the time when a particular age is attained;
- (d) the age for marriage;
- (e) the consent required for the marriage of minors; and

(2) for connected purposes.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY

Short title and commencement 1.-(1) This Act may be cited as the Age of Majority Act 1983.

(2) This Act shall come into operation on the day of 1983 (hereinafter referred to as the commencement date).

Interpret- 2.-(1) In this Act -  
ation

"full age" shall be construed in accordance with  
section 3;

"statutory provision" means any enactment (including this Act) and any order, rule, regulation, byelaw or other instrument made in the exercise of a power conferred by any enactment.

(2) In this Act reference to full age shall be construed as including a reference to the age of majority.

(3) In this Act -

(a) a reference to a section or Schedule is to a section of or the Schedule to this Act, unless it is indicated that a reference to some other enactment is intended;

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision, including the Schedule, in which the reference occurs, unless it is indicated that reference to some other provision is intended;

(c) a reference to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

PART II

AGE OF MAJORITY

Reduction  
of age of  
majority  
from 21  
to 18

3.-(1) A person shall attain full age -

(a) on the commencement date -

(i) if he has then already attained the age of eighteen years but not the age of twenty-one years;

(ii) if he is or has been married and has not attained the age of eighteen years;

(b) after the commencement date -

(i) in the case of a person who has not been married, on attaining the age of eighteen years instead of on attaining the age of twenty-one years;

(ii) in the case of a person who marries before attaining the age of eighteen years, on the date of his marriage.

(2) Subsection (1) applies for the purposes of any rule of law and, in the absence of a definition or of any indication of a contrary intention, for the construction of the expressions "full age", "infant", "infancy", "minor", "minority" and similar expressions in -

(a) any statutory provision, whether passed or made before, on or after the commencement date; and

(b) any deed, will, court order or other instrument whatsoever (not being a statutory provision) made on or after the commencement date.

Substitution of reference to full age for age of 21 in certain statutory provisions

4.-(1) Save as provided in section 10, in any statutory provision passed or made before the passing of this Act, for any reference to the age of twenty-one years there shall be substituted a reference to full age.

(2) This section shall be without prejudice to any power of amending or revoking any order, rule, regulation, bye-law or other instrument made in the exercise of a power conferred by any enactment.

Persons under full age may be described as minors

5.- A person who is not of full age may be described as a minor instead of as an infant, and accordingly in this Act "minor" means such a person.

Time at which a person attains a particular age

6.-(1) The time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary of the date of his birth.

(2) This section applies only where the relevant anniversary falls on a date after the commencement date, and, in relation to any statutory provision, deed, will, or other instrument, has effect subject to any provision therein.

## PART III

AGE FOR MARRIAGE AND CONSENT  
REQUIREMENT FOR CERTAIN MARRIAGES

- Marriage Solemnised between persons either of whom is under 16 to be void
- 7.-(1) A marriage solemnised between persons either of whom is under the age of sixteen years shall be void.
- (2) Subsection (1) applies to any marriage solemnised -
- (a) in the State, irrespective of the habitual residence of the parties or of either of them; and
  - (b) outside the State where, at the time of the solemnisation of the marriage, the habitual residence of the parties or of either of them is in the State.
- (3) Any person to whom application is made in relation to the solemnisation of an intended marriage may, if he so thinks fit, request the production of evidence of age with respect to both parties or either party.
- (4) Where a request is made under subsection (3)-
- (a) refusal or failure to comply with the request shall be a proper reason for refusal of the application;
  - (b) if the request is complied with and the evidence shows that both parties or either party are or is under the age of sixteen years, the application shall be refused.



Consent  
required  
for  
marriage  
of a minor

8.-(1) A marriage solemnised between persons either of whom is a minor shall be void unless there has first been obtained -

(a) the consents in writing of the guardians or the consent in writing of the sole guardian of the minor; or

(b) if -

- (i) the guardians disagree; or
  - (ii) there is no guardian; or
  - (iii) the minor is a ward of court,
- the consent of the High Court.

(2) Where a guardian whose consent is required under subsection (1) -

(a) is incapable of consenting by reason of unsoundness of mind or other mental disability; or

(b) cannot be found notwithstanding the making of reasonable enquiries;

the High Court may give the necessary consent to the marriage.

(3) The following provisions shall have effect in relation to an application under paragraph (b) of subsection (1) or under subsection (2) -

(a) it may be made on behalf of either party to the intended marriage and without the intervention of a next friend;

(b) it may be made informally in accordance with rules of procedure made by the President of the High Court;

(c) it may be heard and determined otherwise than in public; and

(d) no court fee shall be charged in respect of it.

(4) This section applies to any marriage solemnised -

(a) in the State irrespective of the habitual residence of the parties or of either of them; and

(b) outside the State where, at the time of the solemnisation of the marriage, the habitual residence of the parties or of either of them is in the State.

(5) The jurisdiction conferred on the High Court by this section shall be exercised by the President of the High Court (or by a judge of that Court nominated by the President thereof).

(6) Any decision of the High Court granting or refusing consent under this section shall be final and conclusive.

Character-  
isation of  
require-  
ments in  
sections 7  
and 8

9.- The requirement as to age in section 7 and the requirement as to consent in section 8 are hereby declared to be substantive requirements for marriage.

## PART IV

## MISCELLANEOUS

Act not to 10.- Nothing in this Act shall affect -  
 affect  
 certain  
 other  
 statutory  
 provisions

(a) any provision contained in the Social Welfare (Consolidation) Act 1981 other than section 214;

(b) section 141(1) of the Income Tax Act 1967.

Amendment 11.- Section 11(3) of the Adoption Act 1952 is  
 of section hereby amended -  
 11 of the  
 Adoption  
 Act 1952

(a) in paragraph (c), by deleting "and she or her husband has attained the age of twenty-one years"; and

(b) in paragraph (d) by deleting "and each of them has attained the age of twenty-one years".

Amendment 12.- Section 49 of the Statute of Limitations 1957  
 of section is hereby amended in paragraph (a) of subsection (2) -  
 49 of the  
 Statute  
 of Limit-  
 ations  
 1957

(a) by deleting ", and" at the end of subparagraph (i); and

(b) by deleting subparagraph (ii).

Construct- 13.- In Section 11 of the Guardianship of Infants  
 ion of Act 1964 -  
 references  
 in section  
 11 of the

(a) any reference to an infant (except in

Guardian-  
ship of  
Infants  
Act 1964  
and amend-  
ment of  
that  
section

paragraph (a) of subsection (2)) shall include a reference to a child who has attained the age of eighteen years and is suffering from mental or physical disability to such an extent that it is not reasonably possible for him to maintain himself fully; and

(b) the following subsection is hereby substituted for subsection (3) -

"(3) An order under this section may be made on the application of either parent notwithstanding that the parents are then residing together, but an order made under paragraph (a) of subsection (2) (custody and right of access) shall not be enforceable and no liability thereunder shall arise while they reside together, and the order shall cease to have effect if for a period of three months after it is made they continue to reside together."

References 14.-  
in certain  
enactments  
to age of  
16 to be  
construed  
as refer-  
ences to  
age of 18

In-

- (a) the Illegitimate Children (Affiliation Orders) Act 1930;
- (b) section 214 of the Social Welfare (Consolidation) Act 1981; and
- (c) the Family Law (Maintenance of Spouses and Children) Act 1976,

for every reference to the age of sixteen years there shall be substituted a reference to the age of eighteen years.

- Repeal of certain statutory provisions relating to minors 15.- The following statutory provisions are hereby repealed -
- (a) sections 19 and 20 of the Marriages (Ireland) Act 1844;
  - (b) the Infants Settlements Act 1855 (which enables a male infant over 20 and a female infant over 17 to make a marriage settlement), together with the Infant Marriage Act 1860 and section 13(2) (d) of the Married Women's Status Act 1957, except in relation to anything done before the commencement date;
  - (c) in section 6 of the Employers and Workmen Act 1875 (powers of justices in respect of apprentices) -
    - (i) the paragraph numbered (1) (power to direct apprentice to perform his duties); and
    - (ii) the sentence following the paragraph numbered (2) (power to order imprisonment of an apprentice who fails to comply with direction);
  - (d) section 107(2) of the Defence Act 1954; and
  - (e) sections 1, 7 and 18 of the Marriages Act 1972.

Transitional provisions and savings 16.-(1) The transitional provisions and savings contained in the Schedule shall have effect in relation to sections 3 and 4, save where the context otherwise requires.

(2) Notwithstanding any rule of law, a will or codicil executed before the commencement date shall not be treated for the purposes of section 3 and the Schedule as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

## SCHEDULE

Section 16

## TRANSITIONAL PROVISIONS

Funds in court

1. Any orders or directions in force immediately before the commencement date by virtue of any rules of court or statutory provision relating to the control of money recovered by, or on behalf of or for the benefit of or otherwise payable to, an infant in any proceedings shall have effect as if any reference therein to an infant's attaining the age of twenty-one years were a reference to his attaining full age or, in relation to a person who by virtue of section 3 attains full age on the commencement date, to that date.

Wardship and custody orders

2.-(1) Any order in force immediately before the commencement date -

- (a) making a person a ward of court; or
- (b) otherwise providing for the custody of, or access to, any person,

that is expressed to continue in force until the person who is the subject of the order attains the age of twenty-one years, or any age between the age of eighteen and twenty-one years, shall have effect as if the reference to his attaining that age were a reference to his attaining full age or, in relation to a person who by virtue of section 3 attains full age on the commencement date, to that date.

(2) Paragraph (1) is without prejudice to any provision in any such order that provides or allows for the maintenance or education of a person after he has attained the age of eighteen years or after his marriage.

Power of trustees to apply income for maintenance of minor

3.-(1) Sections 3 and 4 shall not affect section 42 or section 43 of the Conveyancing Act 1881 (application by trustees of income of land and property for maintenance, education or benefit of infant) in their application to any estate or interest under an instrument made before the commencement date.

(2) In any case in which (whether by virtue of this paragraph or paragraph 7) trustees have power, under subsection (4) of the said section 42 or subsection (1) of the said section 43, to pay income to the parent or guardian of any person who has attained the age of eighteen years, or has married, or to apply it for or towards the maintenance, education or benefit of any such person, they shall also have power to pay it to that person himself.

Powers of personal representatives during minority of beneficiary

4. In the case of a beneficiary whose interest arises under a will or codicil made before the commencement date or, on the death before that date of an intestate, sections 3 and 4 shall not affect the meaning of "infant" in sections 57 and 58 of the Succession Act 1965.



Accumulation periods

5. The change, by virtue of section 3, in the construction of section 1 of the Accumulations Act 1892 (which lays down the permissible period for the accumulation of income for the purchase of land under settlements and other dispositions) shall not invalidate any direction for accumulation in a settlement or other disposition made by a deed, will or other instrument that was made before the commencement date.

Limitation of actions

6. The change, by virtue of section 3, in the construction of section 48(1) of the Statute of Limitations 1957 (person under a disability) shall not affect the time for bringing proceedings in respect of a right of action that accrued before the commencement date.

Statutory provisions incorporated in deeds and wills

7. Sections 3 and 4 shall not affect the construction of any statutory provision where it is incorporated in and has effect as part of any deed, will or other instrument the construction of which is not affected by those sections.

## APPENDIX C

STATUTORY PROVISIONS AMENDED BY  
SUBSTITUTING FULL AGE FOR 21 YEARS

Pre-Union Irish Statutes

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
1721 c.5	Boundaries Act 1721	Section 14	Conclusiveness of land boundaries

British Statutes

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
1830 c.65	Infants' Property Act 1830 (extended to Ireland by the Infants' Property (Ireland) Act 1835)	Section 12	Powers of guardians in relation to the surrender and renewal of infants' leases
		Section 16 (repealed by the Married Women's Status Act 1957, Section 19 and Schedule, so far as it refers to married women)	Infants empowered by court to grant renewal of leases
		Section 32	Court may order dividends of infants' stock to be applied for their maintenance

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
1844 c.81	The Marriages (Ireland) Act 1844	Section 9	Oath, etc., to be taken before grant of licence by Presbyterian minister
		Section 22	Oath, etc., to be taken before grant of licence by Registrar
		Schedule C	Form of licence for Presbyterian ceremony
		Schedule D	Notice of intended marriage - Certificate of Presbyterian minister
		Schedule E	Form of licence issued by Registrar
1861 c.100	The Offences Against the Person Act 1861	Section 53	Fraudulent abduction of a girl under age
1863 c.27	The Marriage Law (Ireland) Amendment Act 1863	Section 4	Notice of marriage to be accompanied by solemn declaration
1870 c.110	The Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870	Section 35 (as amended by Section 8(3) of the Vital Statistics and Births, Deaths and Marriages Registration Act 1952 and Section 12(1) of the Marriages Act 1972)	Licences for marriage
		Schedule A (as amended by section 12(1) of the Marriages Act 1972)	Form of licence under s. 35

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
1876 c.22	The Trade Union Amendment Act 1876	Section 9	Persons under 21 but over 16 eligible as members of trade union but not of committee etc.
1876 c.36	Customs Consolidation Act 1876	Section 165	Bond given under the Customs and Excise Acts by person under 21 to be valid
1881 c.41	The Conveyancing Act 1881	Section 43 (as extended by Section 58(4) of the Succession Act 1965)	Application of income of infant's property for his maintenance
1882 c.38	The Settled Land Act 1882	Section 24(3)  Section 37(1)	Beneficial interest in leasehold land to vest as freehold land on death of tenant under 21  Sale of heirlooms by life tenant
1882 c.39	The Conveyancing Act 1882	Section 10(1) (as amended by Section 8 and Second Schedule, Part III of the Succession Act 1965)	Restrictions on executory limitations
1885 c.69	The Criminal Law Amendment Act 1885	Section 12 (as amended by Section 10 of the Criminal Law Amendment Act 1935)	Custody of girls up to 21
1893 c.39	The Industrial and Provident Societies Act 1893	Section 36	Membership of minors

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
1896 c.25	The Friendly Societies Act 1896	Section 36	Membership of minors
1908 c.45	The Punishment of Incest Act 1908	Section 1(4)	Incest with female under 21

Statutes of Saorstát Éireann and of the Oireachtas

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
No.12 of 1927	Army Pensions Act 1927	Section 22(2) and (3) and Sixth Schedule, item 3	Daughter under age of 21 entitled to allowance
No.25 of 1928	Dentists Act 1928	Section 41	Age of 21 years minimum age for qualifying as a dentist
No.24 of 1932	Army Pensions Act 1932	Section 11(2) and Second Schedule, Parts I and II	Allowance payable to unmarried daughter under the age of 21
No.25 of 1952	Adoption Act 1952	Section 3	Child defined as person under 21 years of age
<p><i>Note: The requirement in section 11(3) of the Act that certain adopters must have attained the age of 21 years is being abolished - section 11 of the Bill.</i></p>			
No.36 of 1954	Solicitors Act 1954	Section 24	Person not qualified to be admitted as solicitor unless he has attained the age of 21 years

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
No.26 of 1956	Irish Nationality and Citizenship Act 1956	Section 2	"Full age" defined as the age of 21 years and upwards
No.38 of 1960	Superannuation Act 1956	Section 7(1)	Substitution of annuity for pension where grantee has not attained age of 21 years
		Section 8	Where grantee of pension or annuity has not attained the age of 21 years, payment to be made to parent or guardian
No.39 of 1960	Army Pensions (No.2) Act 1960	Second Schedule, item 3	Child under age of 21 years entitled to certain benefits
No.16 of 1961	Courts of Justice and Court Officers (Superannuation) Act 1961	Sections 7(6)(a) and 7(7)	Provision for payment of an annuity to a dependent i.e. person who has not attained the age of 21 years
No.17 of 1961	Mental Treatment Act 1961	Section 17(1)	Applicant for temporary private patient reception order must be at least 21 years of age
No.7 of 1964	Guardianship of Infants Act 1964	Section 2	"Infant" defined as person under 21 years of age
No.27 of 1965	Succession Act 1965	Section 3(1)	"Infant" defined as a person under the age of 21 years

<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
No. 6 of 1967	Income Tax Act 1967	Section 443(1)	Income settled on unmarried child under the age of 21 years treated as income of settlor
		Section 444 (as amended by Section 16 of The Finance Act 1971)	Money paid under trusts established by an irrevocable instrument to or for the benefit of unmarried child under the age of 21 years deemed (subject to specified limitation) to be income

*Note: Section 141(1) of the Act provides for a deduction in income tax liability where a child of the claimant is permanently incapacitated before the child attains the age of 21 years. This provision is unaffected by the proposed legislation - section 10 of the Bill.*

No. 11 of 1976	Family Law (Maintenance of Spouses and Children) Act 1976	Section 3(1)	Definition of "dependent child of the family" as child who is receiving third level education and is under the age of 21 years
		Section 6(3)	Maintenance order to cease when a child attains the age of 21 years
		Section 28(1)	"Child" defined as a person who has attained the age of 16 years and who is under the age of 21 years if he is receiving education
No.27 of 1976	Family Home Protection Act 1976	Section 1(1)	"Child" defined as a person who has attained the age of 16 years and who is under the age of 21 years if he is receiving education

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<u>Number</u>	<u>Short Title</u>	<u>Section</u>	<u>Subject Matter</u>
No.21 of 1980	Army Pensions Act 1980	Section 5(1)	"Child" defined as a person who has attained the age of 16 years and who is under the age of 21 years if he is receiving education



APPENDIX D

## AGE OF MAJORITY BILL 1983

EXPLANATORY MEMORANDUM

## I - PURPOSE OF THE BILL

1. The purpose of the Bill is to put into legislative form a number of proposals in regard to the age of majority made by the Law Reform Commission in its Working Paper (No.2-1977) and Report on the law relating to the age of majority, the age for marriage and some connected subjects. Chapter VII of the Working Paper (pp.82-101) contains the General Scheme of the Bill to reform the law relating to those matters.

2. The main proposals made by the Commission and implemented in the Bill are three. First, it is proposed to reduce the age of majority from 21 years to 18 years or the age at which the person concerned marries. Second, it is proposed that a marriage solemnised between persons either of whom is under 16 years should be void. Third, it is proposed that a marriage solemnised between persons either of whom is under 18 years should be void unless there has first been obtained the consent of that person's guardians, who would, of course, normally be his parents.

## II - PROVISIONS OF THE BILL

## PRELIMINARY

Section 1: Short title and commencement

3. Section 1 of the Bill is a standard provision setting out the short title of the proposed Act and the commencement date or the date of the coming into operation of the Act. This date is important having regard to the following provisions of the Bill: sections 3 (reduction of age of majority), 4 (substitution of reference to full age for age of 21 in certain statutory provisions) and 16 (transitional provisions and savings) and the Schedule (transitional provisions).

Section 2: Interpretation

4. Section 2 of the Bill is the interpretation section. "Full age", which is the term that is normally used throughout the Bill, is to be construed in accordance with section 3; and any reference to full age will be construed as including a reference to the age of majority. In general, a person will attain majority on reaching the age of 18 years or on marriage before he reaches that age. "Statutory provision" is defined to mean any enactment and any order, rule etc. made in exercise of a power conferred by any enactment.

## III - PART II OF THE BILL

## AGE OF MAJORITY

Section 3: Reduction of age of majority from 21 to 18

5. Section 3 of the Bill provides that a person will attain full age on the commencement date (1) if he has then reached the age of 18 but not 21, or (2) if he is or has been married and has not reached the age of 18. After the commencement date a person will attain full age on reaching the age of 18 or on marriage. This is all provided for in subsection (1) of the section. Because of subsection (2), subsection (1) will apply for the purpose of any rule of law and for the construction of the expressions "full age", "infant", "infancy", "minor", "minority" and similar expressions in any statutory provision passed or made before, on or after the commencement date. For subsection (1) to apply in respect of a deed, will, court order or other instrument that is not a statutory provision, the deed, will etc. must have been made on or after the commencement date. Where a statutory provision or a deed, will etc. contains a definition of one of the expressions in question or indicates a contrary intention, the rule in subsection (1) will not govern the meaning of the expression. It should be noted that section 16 of the Bill and the Schedule thereto provide for certain transitional provisions and savings in relation to any statutory provision or any deed, will etc. that is or might be affected by reason of the provisions of sections 3 and 4.

Section 4: Substitution of reference to full age for age of 21 in certain statutory provisions

6. Section 4 of the Bill proposes, in subsection (1), to substitute a reference to full age for any reference to the age of 21 in every existing statutory provision, save the provisions excepted by section 10, i.e. the provisions of the Social Welfare (Consolidation) Act 1981 (No.1) (other than sections 175 and 214) and subsection 141(1) of the Income Tax Act 1967 (No.6). Section 4 is, like section 3, subject to the transitional provisions and savings provided for in section 16 and in the Schedule. For instance, because of paragraph 4 of the Schedule, neither section 3 nor section 4 will affect the meaning of "infant" (a person who is not of full age) in sections 57 and 58 of the Succession Act 1965 (No.27) in the case of a beneficiary whose interest arises under a will made before the proposed Age of Majority Act comes into operation (the commencement date specified in section 1 of the Bill). Sections 57 and 58 of the 1965 Act provide, respectively, for the appointment by personal representatives of trustees of an infant entitled to any share in the estate of a deceased person and for the powers of such trustees. Subsection (2) of section 4 is designed to ensure that where a statutory order, rule, regulation, bye-law or other instrument is by reason of subsection (1) amended by substituting full age for 21 years, the right (conferred in the parent statute) to amend or revoke the order, rule, etc. as so amended will be preserved or saved in the same way as if the order, rule, etc. had not been so amended.

Section 5: Persons under full age may be described as minors

7. Section 5 of the Bill proposes that a person under the new age of majority may be described as a minor instead of as

an infant. The section is an enabling one, so that it will be still correct to refer to persons under 18 as infants; the Guardianship of Infants Act 1964 will, of course, still be the Guardianship of Infants Act 1964 (No. 7).

Section 6: Time at which a person attains a particular age .

8. Section 6 of the Bill proposes (subsection (1)) that the moment when a person reaches a particular age (not necessarily full age or the age of majority) shall be the commencement of his birthday. The section will apply only to anniversaries occurring after the commencement date of the proposed legislation and will apply subject to any provision in any enactment, deed, will or other instrument. A similar provision to section 6 will be found in the English Family Law Reform Act 1969 (section 9) (c. 46), the Age of Majority Act (Northern Ireland) 1969 (section 5), the New Zealand Age of Majority Act 1970 (section 7), the Manitoba Age of Majority Act 1970 (section 8), the Alberta Age of Majority Act 1971 (section 7) and the New Brunswick Age of Majority Act 1973 (section 3). The proposed section 6 of the Bill will abolish the old common law rule that a person attains a particular age at the first moment of the day preceding the relevant anniversary of his birth. Thus if a person was born on 1 January 1900 he would under existing law have become 21 at the first moment of 31 December 1921. The common law rule could, of course, be altered by a statute declaring the date at which a particular age would be reached for the purposes of that statute. In Scotland the rule is that a person attains a particular age on the anniversary of his birth at the hour of his birth; and no change was made in this rule in the Age of Majority (Scotland) Act 1969 (c. 39). Section 6 will apply only to anniversaries after the commencement date. Accordingly, except in cases already governed by any

statutory provision, deed, will or other instrument, no one will attain an age on the commencement date. However, no particular difficulties result from this.

#### IV - PART III OF THE BILL

##### AGE REQUIREMENT AND CONSENT REQUIREMENT FOR CERTAIN MARRIAGES

Section 7: Marriage solemnised between persons either of whom is under 16 to be void

9. Section 7 of the Bill will be in substitution for section 1 of the Marriages Act 1972 (No. 30), which it is proposed in section 15 of the Bill to repeal.

Subsection (1) proposes that any marriage solemnised between persons either of whom is under the age of 16 shall be void. The rule will be absolute and no exemption from it may be obtained. Under existing law (section 1 of the 1972 Act) an exemption may be obtained from the President of the High Court (or a judge of that Court nominated by him) where either party to an intended marriage is under 16. The new rule will apply to every marriage solemnised in the State, irrespective of the habitual residence of the parties or either of them, and will apply also to every marriage celebrated outside the State where one of the parties has his habitual residence in the State - subsection (2). The concept of habitual residence is already to be found in subsection 102(1)(d) of the Succession Act 1965 (No. 27) and section 11 of the Air Navigation and Transport Act 1973 (No. 29); and the term "habitual residence" is being increasingly used in International Conventions as a connecting

factor or point of contact in private international law (i.e. as a link that indicates the law (called the applicable law) to which the legal problem under consideration (e.g. capacity of a party to marry or formal validity of a marriage) is referred). See further Law Reform Commission Working Paper No.10-1981 on domicile and habitual residence.

Subsection (3) provides for the production of evidence of age of both parties or either party to a proposed marriage. Refusal or failure to comply with a request for the production of evidence of age will be a proper reason for refusal of an application to solemnise the marriage - subsection 4(a). If the request is complied with and it is shown that both parties or either party are or is under the age of 16, the application is to be refused - subsection 4(b).

Section 7 of the Bill repeats the provisions of section 1 of the Marriages Act 1972 (No. 32) except, of course, that it makes no provision for the granting of exemptions where either party is under the age of 16 or for an offence where a marriage that is invalid because of the age of either of the parties is knowingly solemnised or knowingly permitted to be solemnised. Section 1 of the 1972 Act is listed for repeal in section 15 of the Bill.

#### Section 8: Consent required for marriage of a minor

10. Section 8 of the Bill proposes that a marriage between persons either of whom is a minor shall be void unless there has first been obtained the consent of the guardians of the minor or (if they disagree or there is no guardian or the minor is a ward of court) the consent of the High Court - subsection (1). Where a guardian is incapable of consenting by reason of unsoundness of mind or cannot be found, the High Court may give the necessary consent - subsection (2).

Subsection (3) provides for application to the High Court where the guardians disagree or there is no guardian or the minor is a ward of court or the guardian is incapable or cannot be found. It should be noted that section 8 will in practice apply only to minors between 16 and 18 years. The marriage of a minor under the age of 16 will, by reason of section 7, be absolutely void.

11. Because of subsection (4), section 8 of the Bill will apply to any marriage solemnised in the State irrespective of the habitual residence of the parties or of either of them and to any marriage solemnised outside the State where, at the time of solemnisation, the habitual residence of the parties or of either of them is in the State. A similar provision is contained in subsection (2) of section 7 in relation to marriage of persons under 16.

12. Subsection (5) provides for the exercise by the President of the High Court or a judge of that Court of the jurisdiction conferred on that Court by the section; and subsection (6) makes any decision of that Court granting or refusing consent under the section final and conclusive.

13. Section 8 is designed to replace and substantially to amend section 19 of the Marriages (Ireland) Act 1844 (c. 81) (as substituted therein by section 7 of the Marriages Act 1972 (No. 30)). The requirement as to consent of the guardian to the marriage of a minor is being made mandatory and not directory as at present. Accordingly, where the necessary consent has not been obtained the marriage will be void.



Section 9: Characterisation of requirements in sections 7 and 8

14. Section 9 of the Bill proposes that the requirement as to age and the requirement as to parental consent should be made substantive requirements for marriage, in other words that, for the purposes of private international law, age and consent requirements should be characterised as matters of essential or intrinsic validity. The question as to whether a marriage is valid as to form or valid as to substance is important where persons get married outside their own jurisdiction. In most systems of law matters concerned with the formal validity of marriage (e.g. the nature of the ceremony) are determined by the lex loci celebrationis (the law of the place of celebration) in accordance with the rule locus regit actum (the place governs the act), whereas the substantive requirements (Fr. conditions de fond) (i.e. matters of essential validity) of marriage are governed by the personal law of the parties, i.e. the law of their domicile or habitual residence or nationality. Unfortunately, there is not universal agreement as to whether a consent requirement affects capacity to marry and is accordingly to be regarded as a substantive requirement and so governed by the personal law of the parties. The better view seems to be that a consent requirement, like an age requirement, should be classified as a substantive and not a formal requirement (Fr. condition de forme) if according to the applicable law (i.e. the personal law of the party concerned) the rule as to consent is mandatory; and this is what is proposed in section 9. (See Ernst Rabel, The Conflict of Laws, vol. 1 pp. 223-262 and 263-316 (second ed. 1958 by Ulrich Drobnig; Ann Arbor, Michigan); Dalloz, Nouveau Répertoire de Droit pp. 227-237 and 249-250 (second ed. 1964) Paris); and Cheshire and North, Private International Law, pp. 49 et seq. (10th ed. by P.M. North, London 1979). See also the English cases of Ogden v Ogden [1908] P. 46 (consent requirement) and Pugh v Pugh [1951] P. 482 (age requirement).)

## V - PART IV OF THE BILL

## MISCELLANEOUS

Section 10: Act not to affect certain other statutory provisions

15. Section 10 of the Bill proposes to ensure (1) that persons who are at present entitled to social welfare or social assistance benefits in respect of children between 18 and 21 who are in full-time education will continue to be so entitled and (2) that a taxpayer will continue to be eligible for an income tax allowance in respect of a child who has become permanently incapacitated between the ages of 18 and 21 at a time when he or she was not in receipt of full-time instruction at a university, college, school etc. This is done by specifically saving from the operation of the proposed Act (i.e. section 4) all the provisions of the Social Welfare Consolidation Act 1981 (No. 1) (other than section 214) and subsection (1) of section 141 of the Income Tax Act 1967.

Section 214 of the 1981 Act, which specifies 16 years as the age at which a parent ceases for the purposes of social welfare legislation to be obliged to maintain a child is proposed for amendment in section 14 of the Bill and is accordingly also being excepted from the ambit of section 10. Incidentally, the saver provided in the section for section 141(1) of the Income Tax Act 1967 (which, inter alia, provides for an income tax allowance in respect of a child who becomes permanently incapacitated before he attains the age of 21 years) is the only saver that is being made in relation to references to the

age of 21 in taxation legislation.

Section 11: Amendment of section 11 of the Adoption Act 1952

16. Section 11 of the Bill proposes to amend section 11(3) of the Adoption Act 1952 (No. 25) so as to allow a married couple (one of whom is the mother or the natural father or a relative of the child) to adopt the child, whether or not each of them has attained the age of 21. Where there is a reference elsewhere in the Adoption Act (e.g. the definition of "child" in section 3) to the age of 21 the reference will, by reason of section 4 of the Bill, become a reference to full age. The Bill does not propose to change the ages of 25 and 30 specified for certain applicants for adoption in section 11 of the 1952 Act, as amended by section 5 of the Adoption Act 1964 (No. 2).

Section 12: Amendment of section 49 of the Statute of Limitations 1957

17. Because of section 2(a)(ii) of the Statute of Limitations 1957 (No. 6) the limitation period (3 years) in respect of personal injuries claims was not to be extended in the case of a person under a disability (infancy or unsoundness of mind) unless the plaintiff proved that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent. In O'Brien v Keogh [1972] I.R. 144 the Supreme Court held that this provision was invalid having regard to the provisions of the Constitution because it failed to protect and vindicate the property rights of the plaintiff (who was an infant) contrary to the guarantee contained in section 3, subsection 2° of Article 40. Section 12 of the Bill proposes to delete the offending provision in the Statute of 1957. This is designed

to assist readers and compilers of statutory indexes and revised statutes.

Section 13: Construction of references in section 11 of the Guardianship of Infants Act 1964 and amendment of that section

18. Section 13 of the Bill proposes to amend section 11 (applicants to court) of the Guardianship of Infants Act 1964 (No. 7) in two respects. First - paragraph (a) - any reference to an infant (except in subsection 2(a) of section 11 of the 1964 Act) will include a reference to a child who has attained the age of 18 and is suffering from mental or physical disability to such an extent that it is not reasonably possible for him to maintain himself fully. This will allow a parent to apply for an order for maintenance for a child who has reached majority (18) where the child is disabled and it will allow an order to be made up to any age, as in the case of a maintenance order under the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11) and a periodical payment order under the Illegitimate Children (Affiliation Orders) Act 1930 (No. 17). (See definition of "dependent child of the family" in section 3 of the 1976 Act and of "child" in section 1 of the 1930 Act as amended by section 28 of the 1976 Act.) It is not, of course, proposed to allow for the making of a custody and right of access order in respect of a disabled child over 18; hence the exception being provided as respects the meaning of the word "infant" in subsection (2)(a) of section 11 of the 1964 Act. Second - paragraph (b) - an order for an infant's maintenance under section 11 of the 1964 Act on the application of either parent will be enforceable notwithstanding that both parents are then residing together: this will bring the law as to such an order into line with the law as to a maintenance order under section 5 of the 1976 Act. The existing rule

(section 11(3) of the 1964 Act) in regard to an order for custody and right of access is being maintained. This latter order will continue not to be enforceable while the parents reside together.

Section 14: References in certain enactments to the age of 16 to be construed as references to age of 18

19. Under section 14 of the Bill references to the age of 16 in the Illegitimate Children (Affiliation Orders) Act 1930, (No. 17), in section 214 of the Social Welfare (Consolidation) Act 1981 (No. 1) and in the Family Law (Maintenance of Spouses and Children) Act 1976 will become references to the age of 18. The section is designed to raise from 16 to 18 the age at which a parent ceases to have an obligation (either in civil law or for the purposes of social welfare legislation) to maintain a child. The social insurance and social assistance services have in practically all cases already been extended to persons up to 18. (See, for example, the definitions in the 1981 Act of "qualified child" (sections 2(1) and 176(1)), "child qualified for the purposes of this Chapter" (section 36(1)), "child dependant" (section 137(1) and 208(2)), "young person" (section 233(1).) However, in the case of children's allowances the age limit is 16 unless the child is receiving full-time instruction by day at any university, college, school etc., or is an apprentice, or is physically or mentally disabled - when the age limit is 18. (See meaning assigned to "qualified child" by section 223(1) of the 1981 Act.) In the case of children's allowances, no change in these age limits is proposed in the Bill.

Section 15: Repeal of certain statutory provisions relating to minors

20. Section 15 of the Bill proposes to repeal a number of statutory provisions that are being replaced or rendered unnecessary by the provisions of the Bill.

(a) Sections 19 and 20 of the Marriages (Ireland) Act 1844 (c. 81) were replaced in section 7 of the Marriages Act 1972 by a new section 19. As the consent requirements for marriage are now provided for in sections 8 and 9 of the Bill, the provisions in the 1844 Act and section 7 of the 1972 Act are being repealed.

(b) The Infants Settlement Act 1855 (c. 43) was applied to Ireland by the Infant Marriage Act 1860 (c. 83) and it allows marriage settlements, if sanctioned by the High Court, to be made by boys over 20 and girls over 17 upon or in contemplation of marriage. Such settlements are saved from invalidity under subsection (2) of section 13 of the Married Women's Status Act 1957 (No. 5) by paragraph (d) of that subsection. As under the proposed Act - section 3 of the Bill - the minimum age for making settlements will be 18 or the age at marriage the 1855 and 1860 Acts and the provision in the 1957 Act are being repealed as no longer necessary. The repeals will not affect any settlement made before the commencement of the proposed legislation.

(c) Section 6 of the Employers and Workmen Act 1875 (c. 90) (powers of justices in respect of apprentices) gives a court of summary jurisdiction, in proceedings relating to a dispute between a master and an apprentice, power to make an order directing the apprentice to perform his duties under the apprenticeship. Where such an order is made the court may, from time to time, if satisfied after the expiration of not

less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period of not exceeding fourteen days. This statutory provision (which because of section 107(2) of the Defence Act 1954 (No. 18) no longer applies to members of the Permanent Defence Force) may well be inconsistent with the Constitution. Also, the provision is out of tune with modern labour law. (See judgment of Kingsmill Moore J. in Butler, an Infant v Dillon (1951) 87 I.L.T.R. 95 at 97-98.) It is proposed to repeal the offending provision in the 1875 Act.

(d) As indicated at (c) supra, an order under subsection (1) of section 6 of the Employers and Workmen Act 1875 (c. 90) may not (because of section 107(2) of the Defence Act 1954 (No. 18)) be made against a member of the Permanent Defence Force. As the provision in the 1875 Act is being repealed, the provision in the 1954 Act will no longer have anything on which to operate and is, accordingly, also proposed for repeal.

(e) It is proposed to repeal sections 1, 7 and 18 of the Marriages Act 1972 (No. 30). Section 7 of the Bill is designed to replace section 1 of the 1972 Act (marriages where either party is under 16 not to be valid in law). Section 8 of the Bill is designed to replace section 7 of the 1972 Act (amendment of sections 19 and 20 of Marriages (Ireland) Act 1844). Section 18 of the 1972 Act (substitutions for certain references to age) will no longer be necessary because references to the age of 21 in each of the statutes specified in subsection (2) of that section will, because of section 4 of the Bill, become references to full age. Under section 18 of the 1972 Act, the Minister for Health "may, by regulations, substitute, for any reference to the age of twenty-one contained in any Act specified in the next subsection, a reference to any lesser age". The specified Acts are the Marriages (Ireland) Act 1844 (c. 81), the Marriage Law (Ireland) Amendment Act 1863 (c. 27), the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 (c. 110). No

regulations have ever been made under section 18 of the 1972 Act.

Section 16: Transitional Provisions and Savings

21. Subsection (1) of section 16 of the Bill provides for the transitional or transitory provisions and savings set out in the Schedule. These provisions and savings will have effect in relation to section 3 (reduction of age of majority from 21 to 18) and section 4 (substitution of reference to full age for age of 21 in certain statutory provisions). The provisions in the Schedule are designed to cover all cases that need to be covered and that arise (1) in respect of deeds, wills, court orders and other instruments made before the commencement date of the proposed Act and (2) in respect of causes of action that arose before that date. Section 3 will apply to any statutory provision, no matter when enacted or made, but it will not apply to a deed, will or other instrument (not being a statutory provision) made before the commencement date; and section 4 will apply to any statutory provisions enacted or made before the passing of the proposed Act. The transitory provisions and savings will apply as respects (1) court orders and directions concerned with funds of infants, (2) wardship and custody orders, (3) the powers of trustees to apply income for the maintenance of a minor, (4) powers of personal representatives during minority of beneficiary, (5) accumulation periods, (6) limitation of actions and (7) statutory provisions incorporated in deeds and wills.

22. Subsection (2) of section 16 proposes to ensure that the rule of law that a will or codicil speaks as to construction from the date of confirmation (rather than from that of the original execution) will not mean that a will or codicil made



before the commencement date, but confirmed on or after that date, will be construed in accordance with section 3 of the proposed Act. Accordingly, expressions such as "infancy" and "majority" contained in any such will or codicil will be construed as heretofore. Where the same expressions are used in a will made before the commencement date and in a codicil made after that date extrinsic evidence will be admissible to show the intention of the testator and to assist in the construction of, or to explain any contradiction in, the codicil or will. (See section 90 of the Succession Act 1965 (No. 27) and para. 55 of the Explanatory Memorandum to the Succession Bill 1965 (as passed by both Houses of the Oireachtas and enacted as the Succession Act 1965) (an Roinn Dlí agus Cirt, Eanáir 1966).) It may be noted that section 89 of the 1965 Act, which provides that a will is to be construed as if executed immediately before the death of the testator, relates only "to all estate comprised in the will and every devise or bequest contained in it". However, as has been indicated, the construction of expressions in a will is to be made having regard to the state of things at the time the will is deemed to have been made: and this is the time that is the concern of section 16(2) of the Bill.

#### VI - SCHEDULE TO THE BILL

##### TRANSITIONAL PROVISIONS

23. The Schedule contains the transitional provisions and savings envisaged in section 16(1). (See para. 21 supra.)

Funds in Court

24. Para. 1 of the Schedule is designed to ensure that money lodged in court under orders or directions in force immediately before the commencement date on behalf of a person under 21 will be paid out to that person on his reaching 18 or on marriage or on the commencement date (where he reaches full age on that date), as the case may be.

Wardship and custody orders

25. Para. 2 of the Schedule proposes that existing wardship and custody orders will cease to operate when the person concerned reaches the proposed new age of majority; but this will not affect any provision in any such order that provides or allows for maintenance or education of the person concerned after he has reached the age of 18 or after his marriage.

Powers of trustees to apply income for maintenance of minor

26. Para. 3 of the Schedule proposes that, where a trust instrument made before the commencement date is concerned with land or property to which an infant is beneficially entitled the powers of the trustees under sections 42 and 43 of the Conveyancing Act 1881 (c. 41) in respect of the income of the land or property will continue until the infant reaches 21. Sub-para (1) will ensure that the trustees under any such instrument may continue to apply the income from the land or property for the maintenance, education or benefit of the infant until he reaches 21. Sub-para (2) provides that where the trustees are, because of the application of section 42(4) or 43(1) of the 1881 Act, empowered to pay that income to the

parents or guardians of the infant on his reaching 18 or getting married, they will also have power to pay it to the infant himself. On his reaching 18 or getting married he will, of course, have attained majority or full age. The 1881 Act provisions may apply to the case because of sub-para (1) or because these provisions have been incorporated in and have effect as part of the trust instrument. (See para 30 infra.)

Powers of personal representatives during minority of beneficiary

27. Para. 4 of the Schedule is designed to ensure that, in the case of a will or codicil made before the commencement date or in the case of an intestacy arising before that date, the trusteeship of the personal representatives or their appointees will continue until the beneficiary reaches 21. In other words, the proposed change in the age of majority will not affect the definition of "infant" in section 3(1) of the Succession Act 1965 (No. 27) as "a person under the age of twenty-one years" where the will was made before the commencement date or where the intestacy arose before that date. Sections 57 and 58 of the 1965 Act deal, respectively, with the appointment by personal representatives of trustees of an infant beneficiary's share in the estate of a deceased person and with the powers of such trustees. The personal representatives may appoint themselves trustees; but, if they make no appointment they themselves become the trustees.

Accumulation periods

28. Para. 5 proposes that the change in the meaning of

"minority" being effected by section 3 of the proposed Act will not affect any directions for accumulation in settlements or dispositions of property by a deed, will or other private instrument that was made before the commencement date. The Accumulations Act 1892 (c. 58) provides in section 1 (no accumulation beyond minority) that property may not be settled or disposed of in such manner that the rents or income will be wholly or partially accumulated for the purchase of land only for any longer period than during the minority of any person who under the trust in the instrument would for the time being, if of full age, be entitled to receive the rents or income directed to be accumulated. The effect of para. 5 of the Schedule will be that the terms "minority" and "full age" in section 1 of the 1892 Act will, for the purpose of deeds, wills etc. made before the commencement date, be construed as heretofore.

#### Limitation of actions

29. Para. 6 of the Schedule proposes that, in the case of a right of action that accrues before the commencement date, the action may be brought at any time before the expiration of the relevant number of years (specified in section 49 of the Statute of Limitations 1957 (No. 6)) from the date when the infant reaches 21. Section 48 of the Statute of 1957 provides that a person is under a disability while he is, inter alia, under 21; and section 49 of the Statute provides for the extension of the particular limitation period applicable in the case of a disability. In the case of a right of action accruing after the commencement date, a young person will cease to be under a disability on reaching 18 or getting married.

Statutory provisions incorporated in deeds and wills

30. Para. 7 is designed to ensure that a statutory provision (e.g. section 42(4) or section 43(1) of the Conveyancing Act 1881 (c. 41) (referred to in para. 3(2) of the Schedule)) incorporated in a deed, will or instrument made before the commencement date will be construed as if the proposed legislation had not been enacted. A settlor or a testator incorporating a statutory provision in a deed or will normally intends that the provision will have its current meaning and that expressions, such as "infancy", "full age" etc., contained in the provision will not be construed in accordance with some future legislation altering the meaning of the expressions.

