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*Number 6 of 1989*

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**JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989**

**REVISED**

**Updated to 16 November 2015**

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This Revised Act is an administrative consolidation of the *Judicial Separation and Family Law Reform Act 1989*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Marriage Act 2015 (35/2015)*, enacted 29 October 2015, and all statutory instruments up to and including *Marriage Act 2015 (Commencement) Order 2015 (S.I. No. 504 of 2015)*, made 10 November 2015, were considered in the preparation of this Revised Act.

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





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**Introduction**

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

**Related legislation**

This Act is not collectively cited with any other Act.

**Annotations**

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

An explanation of how to read annotations is available at [www.lawreform.ie/annotations](http://www.lawreform.ie/annotations).

**Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1999, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

**Acts which affect or previously affected this revision**

- *Marriage Act 2015* (35/2015)
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008)
- *Health Act 2004* (42/2004)
- *Civil Liability and Courts Act 2004* (31/2004)
- *Protection of Children (Hague Convention) Act 2000* (37/2000)
- *Children Act 1997* (40/1997)
- *Taxes Consolidation Act 1997* (39/1997)
- *Finance Act 1997* (22/1997)
- *Family Law (Divorce) Act 1996* (33/1996)
- *Domestic Violence Act 1996* (1/1996)

- *Courts and Court Officers Act 1995* (31/1995)
- *Family Law Act 1995* (26/1995)
- *Criminal Damage Act 1991* (31/1991)
- *Child Care Act 1991* (17/1991)
- *Child Abduction and Enforcement of Custody Orders Act 1991* (6/1991)
- *Family Home Protection Act 1976* (27/1976)

All Acts up to and including *Marriage Act 2015* (35/2015), enacted 29 October 2015, were considered in the preparation of this revision.

**Statutory instruments which affect or previously affected this revision**

- *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005* (S.I. No. 112 of 2005)
- *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2001* (S.I. No. 472 of 2001)

All statutory instruments up to and including *Marriage Act 2015 (Commencement) Order 2015* (S.I. No. 504 of 2015), made 10 November 2015, were considered in the preparation of this revision.



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[No. 6.] *Judicial Separation and Family Law Reform Act 1989* [1989.]

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ACTS REFERRED TO

Adoption Acts, 1952 to 1988	
Defence Act, 1954	1954, No. 18
Enforcement of Court Orders Act, 1940	1940, No. 23
Family Home Protection Act, 1976	1976, No. 27
Family Law Act, 1981	1981, No. 22
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11
Family Law (Protection of Spouses and Children) Act, 1981	1981, No. 21
Guardianship of Infants Act, 1964	1964, No. 7
Legitimacy Declaration Act (Ireland), 1868	1868, c. 20
Married Women's Status Act, 1957	1957, No. 5
Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870	1870, c. 110
Partition Act, 1868	1868, c. 40
Partition Act, 1876	1876, c. 17
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27



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**JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989**

**REVISED**

**Updated to 16 November 2015**

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**Annotations**

**Modifications (not altering text):**

- C1** Cost of mediation or counselling services declared to be in the discretion of the court (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 43, commenced as per s. 1(2).

**Cost of Mediation and Counselling Services**

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

- C2** Power provided to Court to make order regarding application of *Family Home Protection Act 1976* (27/1976), s. 3(1), when granting decree under Act (1.08.1996) by *Family Law Act 1995* (26/1995), s. 54(3), S.I. No. 46 of 1996.

**Amendment of Family Home Protection Act, 1976, and Act of 1989.**

**54.** — ...

(3) Where a court, when granting a decree of judicial separation under the Act of 1989, orders that the ownership of the family home shall be vested in one of the spouses, it shall, unless it sees reason to the contrary, order that section 3(1) (prior consent of spouse to conveyance of interest in family home) of the Family Home Protection Act, 1976, shall not apply to any conveyance by that spouse of an interest in the home and, if the court so orders, the said section 3(1) shall have effect accordingly.

- C3** Power of court to procure reports in family law proceedings extended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 47(1) and (6), S.I. No. 46 of 1996; as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 52(p), commenced as per s. 1(2); and as amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 13, S.I. No. 887 of 2004.

**Social reports in family law proceedings.**

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

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

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

(c) any other person specified in the order.

...

(6) [This section] applies to proceedings— ...

(f) under the Act of 1989,

...

**C4** Rights of spouses under Act confirmed not affected (1.08.1996) by *Family Law Act 1995* (26/1995), s. 48, S.I. No. 46 of 1996.

**Property of engaged couples.**

48.—For the avoidance of doubt, it is hereby declared that the reference in section 5 (1) of the Family Law Act, 1981, to the rules of law relating to the rights of spouses in relation to property in which either or both of them has or have a beneficial interest shall relate and be deemed always to have related only to the rules of law for the determination of disputes between spouses, or a claim by one of them, in relation to the beneficial ownership of property in which either or both of them has or have a beneficial interest and, in particular, does not relate, and shall be deemed never to have related, to the rules of law relating to the rights of spouses under the Act of 1965, the Family Home Protection Act, 1976, the Act of 1989 or this Act.

## PART I

### THE OBTAINING OF A DECREE OF SEPARATION

Definition.

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

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

Application for a decree of judicial separation.

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

(a) that the respondent has committed adultery;

(b) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;

(c) subject to *subsection (2)* of this section, that there has been desertion by the respondent of the applicant for a continuous period of at least one year immediately preceding the date of the application;

(d) subject to *subsection (2)* of this section, that the spouses have lived apart from one another for a continuous period of at least one year immediately preceding the date of the application and the respondent consents to a decree being granted;

(e) subject to *subsection (2)* of this section, that the spouses have lived apart from one another for a continuous period of at least three years immediately preceding the date of the application;

(f) that the marriage has broken down to the extent that the court is satisfied in all the circumstances that a normal marital relationship has not existed between the spouses for a period of at least one year immediately preceding the date of the application.

(2) In considering for the purposes of *subsection (1)* of this section, whether—

(a) in the case of *paragraph (c)* of that subsection, the period for which the respondent has deserted the applicant, or

(b) in the case of *paragraph (d)* or *(e)* of that subsection, the period for which the spouses have lived apart,

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

Provided that this subsection shall only apply where the spouses are not living with each other at the time the application is made.

(3) (a) In this section spouses shall be treated as living apart from each other unless they are living with each other in the same household, and references to spouses living with each other shall be construed as references to their living with each other in the same household.

(b) In this section “desertion” includes conduct on the part of one spouse that results in the other spouse, with just cause, leaving and living apart from that other spouse.

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

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

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

F1[(i) is satisfied that such provision exists or has been made, or]

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

(b) In this subsection—

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

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

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

**Annotations****Amendments:**

- F1** Substituted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 45(a), commenced as per s. 1(2).

**Editorial Notes:**

- E1** Power granted to Court, in proceedings relating to subs. (3), to direct the HSE to undertake an investigation of a child's circumstances (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20(1), S.I. No. 258 of 1995; as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2), and as amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 part 6, S.I. No. 887 of 2004.

Supplemental provisions as to proof of adultery and unreasonable behaviour.

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

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

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

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

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

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

(3) Provision shall be made by rules of court for the certification required for the purposes of *subsection (2)* of this section.

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

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

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

(2) An Entry of Appearance or a Notice of Intention to Defend an application for judicial separation shall be accompanied by a certificate by the solicitor, if any, acting on behalf of the respondent, that he has complied with the provisions of *subsection (1)* of this section and where a solicitor does not so certify, the court may adjourn the proceedings for such period as it deems reasonable for the respondent's solicitor to discuss with the respondent the matters referred to in that subsection.

(3) Provision shall be made by rules of court for the certification required for the purposes of this section.

Adjournment of proceedings to assist reconciliation or agreements on separation.

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

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

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

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

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

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

(7) F2[...]

**Annotations****Amendments:**

- F2** Deleted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 45(b), commenced as per s. 1(2).

**F3** [Non-admissibility as evidence of certain communications relating to reconciliation or separation.]

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

**Annotations****Amendments:**

- F3** Inserted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 45(c), commenced as per s. 1(2).

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

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

(2) Following the granting of a decree of judicial separation the applicant and the respondent in the separation proceedings may at any future date by consent apply to the court to rescind the decree of separation granted and such order of rescission shall be made by the court upon it being satisfied that a reconciliation has taken place between the applicant and the respondent and that they have already resumed or again wish to resume cohabiting as **F4**[spouses of each other].

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

**Annotations****Amendments:**

- F4** Substituted (16.11.2015) by *Marriage Act 2015* (35/2015), s. 19, S.I. No. 504 of 2015.

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

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

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

## PART II

## ANCILLARY FINANCIAL, PROPERTY, CUSTODY AND OTHER ORDERS

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

- C5** Transitional provisions made (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3(2), S.I. No. 46 of 1996.

**Repeals.**

**3.—** (1) The enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) Notwithstanding subsection (1)—

(a) orders made before the commencement of Part II under a provision of the Act of 1989 repealed by subsection (1) shall continue in force and be treated after such commencement as if made under the corresponding provision of this Act,

(b) ...

(c) proceedings instituted before such commencement under a provision of the Act of 1989 repealed by subsection (1) may be continued and determined as if instituted under the corresponding provision of this Act and orders made in those proceedings after such commencement shall be in force and be treated as if made under the corresponding provision of this Act.

**Editorial Notes:**

- E2** Certain disposals made by virtue or in consequence of an order made under Part confirmed exempt from capital gains tax (1997-1998 onwards) by *Taxes Consolidation Act 1997* (39/1997), s. 1030, commenced as per s. 1097(1)(c), as amended (7.12.2005) by *Finance Act 2006* (6/2006), s. 75(1)(c), commenced as per s. 75(2).
- E3** Exemption from deduction of income tax for payments made pursuant to an order under Part II of Act provided (from year 1997-1998) by *Taxes Consolidation Act 1997* (39/1997), s. 1027, commenced as per s. 1097.
- E4** Previous affecting provision: certain disposals made by virtue or in consequence of an order made under Part confirmed exempt from capital gains tax (6.04.1997) by *Finance Act 1997* (22/1997), s. 72(1)(b), commenced as per s. 166(9); subsequently repealed (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), s. 1098 and sch. 30, commenced as per s. 1098(1).

Definitions (*Part II*). **10.—**F5[...]

**Annotations****Amendments:**

- F5** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Preliminary orders in judicial separation proceedings.

**11.—**F6[...]

**Annotations****Amendments:**

- F6** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

- E5** Previous affecting provision: subs. (a) substituted (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 20(a), commenced as per s. 25(1), subsequently repealed as per F note above.
- E6** Previous affecting provision: power granted to Court, in proceedings relating to subs. (b), to direct the HSE to undertake an investigation of a child's circumstances (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20(1), S.I. No. 258 of 1995; as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2), and as amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 part 6, S.I. No. 887 of 2004.

Making of applica- **12.—F7[...]**  
tions for prelimi-  
nary orders.

**Annotations****Amendments:**

- F7** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Maintenance **13.—F8[...]**  
pending suit, etc.

**Annotations****Amendments:**

- F8** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Periodical **14.—F9[...]**  
payments and  
lump sum orders.

**Annotations****Amendments:**

- F9** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

- E7** Previous affecting provision: power of court to discharge order made pursuant to section provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 26, commenced as per s. 1(2).

Property adjust-  
ment orders.      **15.—F10[...]**

**Annotations**

**Amendments:**

**F10** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

**E8** Previous affecting provision: power of court to discharge order made pursuant to section granted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 26, commenced as per s. 1(2).

Miscellaneous  
ancillary orders.      **16.—F11[...]**

**Annotations**

**Amendments:**

**F11** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

**E9** Previous affecting provision: power of court to discharge order made pursuant to section provided (27.02.1997) by *Family Law (Divorce) Act* (33/1996), s. 26, commenced as per s. 1(2).

**E10** Previous affecting provision: subs. (e) substituted (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 20(b), commenced as per s. 25(1), subsequently repealed as per F note above.

**E11** Previous affecting provision: Power granted to Court, in proceedings relating to subs. (g), to direct the HSE to undertake an investigation of a child's circumstances (31.10.1995) by *Child Care Act 1991* (17/1991), s. 20(1), S.I. No. 258 of 1995; as substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 17, commenced as per s. 1(2), and as amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7 part 6, S.I. No. 887 of 2004.

**E12** Previous affecting provision: definition of property extended in respect of offences under *Criminal Damage Act 1991* (31/1991), ss. 2, 3(a) or 4(a), where the person charged is excluded from the home pursuant to an order under subs. (a) (27.01.1992) by *Criminal Damage Act 1991* (31/1991), s. 1(3), commenced as per s. 16(2), as amended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 48, commenced per s. 1(2).

Order extinguish-  
ing succession  
rights.      **17.—F12[...]**

**Annotations**

**Amendments:**

**F12** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Orders for sale of property. **18.—F13[...]**

**Annotations**

**Amendments:**

**F13** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

**E14** Previous affecting provision: power of court to discharge order made pursuant to section provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 26, commenced as per s. 1(2).

Additional family home jurisdiction. **19.—F14[...]**

**Annotations**

**Amendments:**

**F14** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

**E15** Previous affecting provision: section amended (27.03.1996) by *Domestic Violence Act 1996* (33/1996), s. 20(c), commenced as per s. 25(1), subsequently repealed as per F note above.

Provisions relating to maintenance, property and other orders. **20.—F15[...]**

**Annotations**

**Amendments:**

**F15** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Retrospective maintenance orders. **21.—F16[...]**

**Annotations**

**Amendments:**

**F16** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Variation and discharge of financial and property orders. **22.—F17[...]**

**Annotations**

**Amendments:**

**F17** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

**E16** Previous affecting provision: power of court to discharge order made pursuant to section provided (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 26, commenced as per s. 1(2).

Child maintenance. **23.—F18[...]**

**Annotations**

**Amendments:**

**F18** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Transmission of periodical payments through District Court clerk. **24.—F19[...]**

**Annotations**

**Amendments:**

**F19** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

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

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

and the substitution of—

“(i) an order for alimony pending suit;

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

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

Payments to be made without deduction of income tax. **26.—F20[...]**

**Annotations**

**Amendments:**

**F20** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

**Editorial Notes:**

**E17** Section also repealed (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), s. 1098 and sch. 30, commenced as per subs. (1).

Application of maintenance and periodical payments orders to men of Defence Forces. **27.—F21[...]**

**Annotations**

**Amendments:**

**F21** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Amendment of Enforcement of Court Orders Act, 1940. **28.—F22[...]**

**Annotations**

**Amendments:**

**F22** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

Voidance of transactions intended to prevent or reduce financial relief. **29.—F23[...]**

**Annotations**

**Amendments:**

**F23** Part II (ss. 10 to 29, other than s. 25) repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in subs. (2).

PART III

COURT JURISDICTION

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

- (a) this Act,
- (b) the Adoption Acts, 1952 to 1988,
- (c) the Family Home Protection Act, 1976,
- (d) the Family Law (Maintenance of Spouses and Children) Act, 1976,
- (e) the Family Law (Protection of Spouses and Children) Act, 1981,
- (f) the Family Law Act, 1981,
- (g) the Guardianship of Infants Act, 1964,
- (h) the Legitimacy Declaration Act (Ireland), 1868,
- (i) the Married Women’s Status Act, 1957, or
- (j) the Status of Children Act, 1987, F24[and includes proceedings relating to nullity of marriage]

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

**Annotations**

**Amendments:**

**F24** Inserted (15.12.1995) by *Courts and Court Officers Act 1995* (31/1995), s. 53, commenced on enactment.

**Editorial Notes:**

**E18** The *Adoption Acts 1952 to 1988* were repealed (1.11.2010) by *Adoption Act 2010* (21/2010), s. 7 and sch. 1 part 1, S.I. No. 511 of 2010.

**E19** The *Partition Acts 1868 and 1876* were repealed (1.12.2009) by *Land And Conveyancing Law Reform Act 2009* (27/2009), s. 8(3) and sch. 2, S.I. No. 356 of 2009.

**E20** The *Family Law (Protection of Spouses and Children) Act 1981* (21/1981) was repealed (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 23(1), commenced as per s. 25(1).

Courts, jurisdiction and venue.

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

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

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

act done in the course of those proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

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

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

#### Annotations

#### Amendments:

**F25** Substituted by *Civil Liability and Courts Act 2004* (31/2004), s. 50(a), not commenced as of 2.11.2012.

**F26** Inserted by *Civil Liability and Courts Act 2004* (31/2004), s. 50(b), not commenced as of 2.11.2012.

#### Modifications (not altering text):

**C6** Prospective amending provisions: subs. (3) amended and subs. (6) inserted by *Civil Liability and Courts Act 2004* (31/2004), s. 50(a) and (b), not commenced as of 2.11.2012.

(3) Where in proceedings under this Act for a decree of judicial separation an order could be made in respect of land whose F25[market value] exceeds F25[€3,000,000] and an application commencing those proceedings is made to the Circuit Family Court, that Court shall, if the respondent so requires before the hearing thereof, transfer those proceedings to the High Court, but any order made (including an interim order) or act done in the course of those proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

...

F26[(6) In this section 'market value' means, in relation to land, the price that would have been obtained in respect of the unencumbered fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.]

**C7** Application of subs. (4) restricted (1.03.2005) by *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005* (S.I. No. 112 of 2005), reg. 7(b), in effect as per reg. 1(2).

#### Non-applicability of certain statutory provisions.

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

...

(b) section 31(4) of the *Judicial Separation and Family Law Reform Act 1989*;

...

**C8** Application of subs. (4) restricted (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 39(2), commenced as per s. 1(2).

#### Exercise of jurisdiction by court in relation to divorce.

**39.** — ...

(2) Where proceedings are pending in a court in respect of an application for the grant of a decree of divorce or in respect of an appeal from the determination of such an application and the court has or had, by virtue of subsection (1), jurisdiction to determine the application, the court shall, notwithstanding section 31(4) of the Act of 1989 or section 39 of the Act of 1995, as

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

- C9** Application of subs. (4) restricted (1.08.1996) by *Family Law Act 1995* (26/1995), s. 39, S.I. No. 46 of 1996.

**Exercise of jurisdiction by court in relation to nullity.**

**39.** — ...

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

**Editorial Notes:**

- E21** Previous affecting provision: application of subs. (4) restricted (23.10.2001) by *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2001* (S.I. No. 472 of 2001), reg. 3(2), subsequently revoked (1.03.2005) by *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005* (S.I. No. 112 of 2005), reg. 11, in effect as per reg. 1(2).
- E22** Previous affecting provision: power of the Court to determine rateable valuation for the purpose of subs. (3) provided (1.08.1996) by *Family Law Act 1995* (26/1995), s. 38(5), S.I. No. 46 of 1996; subsequently repealed by *Civil Liability and Courts Act 2004* (31/2004), s. 51(b), not commenced as of 2.11.2012.

Hearing of  
proceedings.

**32.**—The Circuit Family Court shall sit to hear and determine proceedings instituted under this Act and under the Acts F27[and proceedings] referred to in *section 30* of this Act in a different place or at different times or on different days from those on which the ordinary sittings of the Circuit Court are held.

**Annotations**

**Amendments:**

- F27** Inserted (15.12.1995) by *Courts and Court Officers Act 1995* (31/1995), s. 54, commenced on enactment.

**Modifications (not altering text):**

- C10** Application of section extended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 38(5), commenced as per s. 1(2).

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

- C11** Application of section extended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 38(6), S.I. No. 46 of 1996.

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

- C12** Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 16(4) and (5), commenced as per s. 25(1).

**Hearing of civil proceedings, etc.**

**16.** — ...

(4) Civil proceedings under this Act before the Circuit Court shall be heard by the Circuit Family Court and, accordingly, the provisions of section 32 and subsection (1) and (2) of section 33 of the Judicial Separation and Family Law Reform Act, 1989, shall apply to such proceedings.

(5) The proceedings to which subsections (3) and (4) of section 33 of the Judicial Separation and Family Law Reform Act, 1989, apply shall be deemed to include civil proceedings under this Act.

Conduct of family proceedings in Circuit and High Courts.

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

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

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

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

**Annotations**

**Modifications (not altering text):**

- C13** Application of subs. (1) and (2) extended (1.01.2011) by *Protection of Children (Hague Convention) Act 2000* (37/2000), s. 4(4), S.I. No. 650 of 2010.

**Exercise of jurisdiction.**

**4.** — ...

(4) Sections 33(1), 33(2) and 45 (which provisions relate to the conduct of family proceedings) of the Judicial Separation and Family Law Reform Act, 1989, shall apply and have effect in relation to an application under subsection (1)(b).

- C14** Application of section extended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 38(5), commenced as per s. 1(2).

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

- C15** Application of section extended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 38(6), S.I. No. 46 of 1996.

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

- C16** Application of section extended (27.03.1996) by *Domestic Violence Act 1996* (1/1996), s. 16(4) and (5), commenced as per s. 25(1).

**Hearing of civil proceedings, etc.**

**16.** — ...

(4) Civil proceedings under this Act before the Circuit Court shall be heard by the Circuit Family Court and, accordingly, the provisions of section 32 and subsection (1) and (2) of section 33 of the Judicial Separation and Family Law Reform Act, 1989, shall apply to such proceedings.

(5) The proceedings to which subsections (3) and (4) of section 33 of the Judicial Separation and Family Law Reform Act, 1989, apply shall be deemed to include civil proceedings under this Act.

- C17** Application of subs. (1) and (2) extended by (31.10.1995) *Child Care Act 1991* (17/1991), s. 29(2), S.I. No. 258 of 1995.

**Hearing of proceedings.**

**29.** — ...

(2) The provisions of sections 33(1), 33(2) and 45 of the Judicial Separation and Family Law Reform Act, 1989, shall apply to proceedings under Part III, IV or VI as they apply to proceedings to which those provisions relate.

...

- C18** Application of subs. (3) and (4) extended (1.10.1991) by *Child Abduction and Enforcement of Custody Orders Act 1991* (6/1991), s. 39(2), S.I. No. 235 of 1991.

**Amendment of Judicial Separation and Family Law Reform Act, 1989.**

**39.** — ...

(2) The proceedings to which subsections (3) and (4) of section 33 (conduct of family proceedings in the High Court) of the Act of 1989 apply shall be deemed to include proceedings under this Act.

Privacy.

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

**Annotations**

**Modifications (not altering text):**

- C19** Application of section restricted (31.03.2005) by *Civil Liability and Courts Act 2004* (31/2004), s. 40, S.I. No. 544 of 2004, as amended (1.08.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 31, S.I. No. 274 of 2008.

**Proceedings heard otherwise than in public.**

**40.** — ...

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

...

(f) section 34 of the Act of 1989;

...

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

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

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

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

(i) attend the proceedings, and

(ii) have access to any relevant documents,

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

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

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

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

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

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

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

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

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

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

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

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

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

(a) subject to paragraph (b), means—

(i) the petition, summons or other originating document in the proceedings,

(ii) pleadings and other documents (including the terms of settlement, if any) produced to or lodged with the court, or included in the book of pleadings, in the course of the proceedings, and

(iii) any order made by the court in the proceedings,

(b) does not include any document the contents of which are expressed to be without prejudice or in terms having a like effect.]

**C20** Application of section extended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 38(5), commenced as per s. 1(2).

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

**C21** Application of section extended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 38(6), S.I. No. 46 of 1996.

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

Costs.

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

**Annotations**

**Modifications (not altering text):**

**C22** Application of section extended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 38(5), commenced as per s. 1(2).

**Jurisdiction of courts and venue.**

**38.** —...

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

...

**C23** Application of section extended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 38(6), S.I. No. 46 of 1996.

**Jurisdiction of courts and venue.**

**38.** — ...

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

...

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

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

#### Annotations

#### Modifications (not altering text):

**C24** Application of section extended (27.02.1997) by *Family Law (Divorce) Act 1996* (33/1996), s. 38(5), commenced as per s. 1(2).

#### Jurisdiction of courts and venue.

**38.** — ...

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

...

**C25** Application of section extended (1.08.1996) by *Family Law Act 1995* (26/1995), s. 38(6), S.I. No. 46 of 1996.

#### Jurisdiction of courts and venue.

**38.** — ...

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

...

## PART IV

### MISCELLANEOUS

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

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

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

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

“unless, having regard to all the circumstances (including the conduct of the other spouse), the Court is of opinion that it would be repugnant to justice not to make a maintenance order”,

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

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

“(c) the conduct of each of the spouses, if that conduct is such that in the opinion of the Court it would in all the circumstances be repugnant to justice to disregard it.”.

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

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

“(including the conduct of each of the spouses, if that conduct is such that in the opinion of the Court it would in all the circumstances be repugnant to justice to disregard it)”.

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

“unless, having regard to all the circumstances (including the conduct of the other spouse), the Court is of opinion that it would be repugnant to justice to do so.”.

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

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

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

**39.—F28[...]**

**Annotations**

**Amendments:**

**F28** Repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in s. 3(2).

Reports on children in guardianship cases.

**40.—F29[...]**

**Annotations**

**Amendments:**

**F29** Repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996, subject to transitional provisions in s. 3(2).

Custody of dependent children.

**41.—F30[(1) In this section ‘dependent member of the family’ has the meaning assigned to it by section 2 of the Family Law Act, 1995.**

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

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

**Annotations**

**Amendments:**

**F30** Substituted (9.01.1998) by *Children Act 1997* (40/1997), s. 16, commenced as per s. 1(2).

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

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

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

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

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

**Annotations**

**Editorial Notes:**

**E23** S. 14 was repealed (1.08.1996) by *Family Law Act 1995* (26/1995), s. 3 and sch., S.I. No. 46 of 1996. An equivalent provision dealing with periodical payments and lump sum orders is contained (1.08.1996) in *Family Law Act 1995*, s. 8, S.I. No. 46 of 1996.

Collusion, condonation, recrimination, connivance.

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

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

Conduct of District Court family proceedings.

**45.**—(1) Proceedings before the District Court under the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children) Act, 1976, the Family Home Protection Act, 1976, section 9 of the Family Law Act, 1981, the Family Law (Protection of Spouses and Children) Act, 1981 and the F31[ *the Status of Children Act, 1987, and the Child Abduction and Enforcement of Custody Orders Act, 1991,*] shall be as informal as is practicable and consistent with the administration of justice.

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

**Annotations****Amendments:**

- F31** Substituted (1.10.1991) by *Child Abduction and Enforcement of Custody Orders Act 1991* (6/1991), s. 39(3), S.I. No. 235 of 1991.

**Modifications (not altering text):**

- C26** Application of section extended (1.01.2011) by *Protection of Children (Hague Convention) Act 2000* (37/2000), s. 4(4), S.I. No. 650 of 2010.

**Exercise of jurisdiction.****4.** — ...

(4) Sections 33(1), 33(2) and 45 (which provisions relate to the conduct of family proceedings) of the Judicial Separation and Family Law Reform Act, 1989, shall apply and have effect in relation to an application under subsection (1)(b).

- C27** Application of section extended (31.10.1995) by *Child Care Act 1991* (17/1991), s. 29(2), S.I. No. 258 of 1995.

**Hearing of proceedings.****29.** — ...

(2) The provisions of sections 33 (1), 33 (2) and 45 of the Judicial Separation and Family Law Reform Act, 1989, shall apply to proceedings under Part III, IV or VI as they apply to proceedings to which those provisions relate.

...

Short title and commencement.

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

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