

THE LAW REFORM COMMISSION

Working Paper No. 2 - 1977

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

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CHAPTER I INTRODUCTION

1.1 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).)

1.2 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 though fit, to formulate proposals for its reform and submit them to him.

1.3 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 paper the terms "minor" and "minority" (and not "infant" and "infancy") will usually be applied to a person under the age of 21.

1.4 Under the common law, as amended by the Infant's Relief Act 1874, a minor's right to enter into binding contracts or obligations is restricted. Irrespective of his age a minor is liable for his torts to the same extent as an adult unless the existence of a particular intention or mental state or capacity is essential to liability for the tort in question. (See O'Brien v. McNamee [1953] I.R. 86; Salmond, Law of Torts, pp. 432-433 (17th Ed. by R.F.V. Heuston, 1977).) On the other hand, criminal liability is excluded in the case of a minor under 7 years of age. Between 7 years and 14 years a minor is presumed to be incapable of criminal intent but the presumption is a rebuttable one. The statutory protection that minors receive against the acts of others ends at different ages. Thus, unlawful carnal knowledge of a female under 17 years of age is a statutory crime. The prohibition against serving intoxicating liquor to a minor ends when the minor reaches the age of 18 years. The various ages at which the law restricts the rights of a minor, or protects him, are set out in Appendix B to this paper (p.103 et seq. infra).

1.5 This paper is limited to an investigation of the law relating to the age of majority and of the connected question of the age for marriage. The age at which a minor should become responsible for his criminal or tortious acts presents

a separate problem and will be the subject of a further study as will also the question of the liability of parents for the acts of their children.

1.6 Following the request of the Attorney General the Commission arranged for the publication of an advertisement in the daily press asking those persons who had views on the subject under examination to communicate their views to the Commission. Communications were received from the organisations and individuals listed in Appendix A to this paper (p. 102 infra). The Commission was also in communication with law reform agencies, and with lawyers and jurists, in many countries. The Commission acknowledges with gratitude the help and information, which was so freely given.

1.7 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.

1.8 This paper deals in the first instance with the question of the age of majority and then with the effect of an alteration in that age on the various ages for marriage. (See paras. 4.1-4.3 infra.) The question of the status of a minor as it is reflected in the limitations on his ability to enter into contracts or to deal with property is not covered in this paper. The paper, however, does deal with a number of miscellaneous matters that arise consequentially from any alteration in the age of majority. As has already been indicated, in para. 1.5 supra, it will not deal with the

age of criminal or tortious liability or with the question of the liability of parents for the acts of their children. These will be the subject of a separate Working Paper as will also be the problem of the desirability of reforming the law as to the legal position of a minor having regard to modern social and economic developments and to the status of minors in other jurisdictions. Particular attention will be paid to developments in the Member States of the European Economic Community, of the Council of Europe and of The Hague Conference. The legal condition or the status of a minor may differ from country to country and the law that is to govern this condition or status for the purpose of the Irish rules as to conflict of laws requires separate study.

CHAPTER II THE AGE OF MAJORITY

2.1 In our law, "infancy" or "minority" is a status which was recognised by the Common Law and goes back to the earliest times. This status ceased when the minor attained the age of 21 years. In text books and statutes the words "infant" and "minor" are interchangeable and are used to describe a person who has not come of age. As indicated in para. 1.3 supra the terms "minor" and "minority" will be used in preference to "infant" and "infancy" in this paper.

2.2 The limitations on the legal capacity of a minor are not imposed to deprive the minor of his rights, but rather to protect him against his own inexperience and improvidence. Normally, a person who ceases to be a minor has full legal capacity and may act independently of a parent, a guardian or the court. The terms "age of majority" and "full age" are used to describe the age at which a person acquires the capacity to exercise all the rights of an individual who is not under a disability.

2.3 In this chapter it is proposed to trace the development of the present law relating to the age of majority in our legal system and in other legal systems.

A. Ireland

2.4 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.

2.5 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.

2.6 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.

2.7 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 verbal 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 since 1967 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 has 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^o). 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^o for Presidential election and Article 47.3 for the right to vote at a Referendum.)

The Referendum (Amendment) Act 1972 dealt with the Referendum in relation to the Fourth Amendment of the Constitution Act 1972. This Amendment to the Constitution reduced the age at which a person had the right to vote at Dail and Presidential elections and at Referenda from 21 years to 18 years.

On December 7, 1972, the proposal for 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^o of the Constitution (eligibility for membership of Dáil Éireann) is still 'the age of twenty-one years'. Moreover, to be eligible for membership of Seanad Éireann a person must be eligible for membership of Dáil Éireann. (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.)

B. Other Legal Systems

(i) Great Britain and Northern Ireland

2.8 The common law rule that a person does not attain majority until he is 21 years old applied in England and in Ireland. A person was a minor whether he was 1 year old or 20 years old, and remained such until he reached the age of 21 years.

2.9 In Scotland the common law recognised 21 years as the age of majority but the law differed from that of England and Ireland in that it recognised two categories of persons under 21 years of age, namely, that of -

- (1) a pupil - a male under the age of 14 and a female under the age of 12; and
- (2) a minor - a male between the ages of 14 and 21 and a female between the ages of 12 and 21.

A minor has greater legal capacity than a pupil. Thus, for example, a pupil is incapable of making a legal contract but his tutor (i.e. his parent or guardian) may act on his behalf. A minor who has no curator (i.e. father or guardian) may act on his own. If a minor makes a contract without his curator's consent, such contract is not enforceable against the minor if it is to the minor's detriment, but it may be enforced against the other party if it would be to the minor's advantage. (See Brief Summary of the Law of Scotland relating to Minors prepared by the Scottish Law Commission in Report of the Committee on the Age of Majority - the Latey Report (July 1967) (London, Cmnd. 3342) Appendix 5, p. 165 et seq.)

2.10 In July 1965 a Committee with Mr Justice Latey as chairman was appointed to consider whether any changes were desirable in the law relating to contracts made by persons

under 21 and to their power to hold and dispose of property, and in the law relating to marriage by such persons and to the power to make them wards of court. This Committee's Report was presented to the British Parliament in July 1967. Two members of the Committee disagreed on four major points and submitted a minority report. (See Part VII of Latey Report, p. 130 et seq.)

2.11 Nine out of the eleven members of the Latey Committee concluded that the historical causes for fixing 21 years as the age of majority were not relevant to contemporary society, and they recommended that the age of majority be reduced to 18 years. (See Latey Report, paragraphs 518 and 519(1) at pp. 125 and 126.) This recommendation was accepted and on January 1, 1970, the age of majority was reduced from 21 to 18 years. (See Family Law Reform Act 1969, for England and Wales, the Age of Majority (Scotland) Act 1969, for Scotland, and the Age of Majority Act (NI) 1969, for Northern Ireland.)

(ii) Other European Legal Systems

2.12 At the Fifth Conference of the European Ministers of Justice at London in 1968, a proposal to lower the age of majority was debated. It was recognised that the age prescribed in most Western nations, i.e. 21, was unnecessarily high in the present social context.

2.13 In 1970 the European Committee on Legal Co-operation (usually referred to as the CCJ) established a committee of experts to consider the question of the age of full legal capacity. This committee prepared a questionnaire on the age of majority which was sent to the Governments of the Member States of the Council of Europe and to the Governments of Spain and Finland.

2.14 From the replies to the questionnaire it appeared that the age of majority was 21 years in Austria, Belgium, France, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Spain and Switzerland. In Denmark, Finland, Norway and Sweden it was 20 years. In Cyprus, Malta, Turkey and the United Kingdom the age of majority was 18 years. (Replies made by Governments to the Questionnaire on the Age of Full Legal Capacity, pp. 3 - 5; Council of Europe, 1973.)

2.15 The Law Reform Commission has investigated the age of majority not only in the legal systems covered by the Council of Europe questionnaire but also in a number of other legal systems. The results of our investigation are given in Appendix C to this paper (p. 108 infra).

2.16 Since the questionnaire referred to in paragraph 2.13 was answered, Denmark, France, the Federal Republic of Germany, Italy, Luxembourg, and Sweden have reduced the age of majority to 18 years. In Switzerland the age of majority has been reduced to 20 years, and in Austria to 19 years. In Finland and Norway the age of majority remains at 20 years. At present Greece, Ireland, the Netherlands, Belgium and Spain are the principal European legal systems that retain 21 years as the age of majority.

2.17 The work of the Committee of Experts of the CCJ resulted in the Council of Europe formulating common principles in respect of the age of majority. Guidelines were laid down in a Resolution adopted by the Committee of Ministers on September 19, 1972, and in the Explanatory Memorandum which was published with the Resolution. (See Resolution (72) 29 on the lowering of the age of full legal capacity adopted by the Committee of Ministers on September 19, 1972, and the Explanatory Memorandum on the lowering of the age of full capacity (Strasbourg 1973).)

2.18 The Resolution recommended that the Governments of Member States should lower the age of majority to below 21 years and, if they should deem it advisable, fix the age at 18 years, provided that States could retain a higher age of capacity for the performance of certain limited and specified acts in fields where they believed that a high degree of maturity was required. It also recommended that Governments of Member States in which the lowering of the age of majority would substantially curtail the rights of children to be maintained by their parents, with the possible consequence of depriving them of the necessary assistance for pursuing their education or training, should take appropriate remedial measures.

(iii) North America

Canada

2.19 Twenty-one years was generally accepted as the age of majority throughout Canada. In the last decade, however, there has been a move to reduce the age. By 1972 the age of majority was 18 years in Alberta, Manitoba, Ontario, Prince Edward Island, Quebec, and Saskatchewan. In British Columbia, Newfoundland, New Brunswick and Nova Scotia, the age of majority is now 19. In 1973 a Royal Commission, with the title Family and Children's Law Commission, was set up in British Columbia to inquire, inter alia, into the laws in force in the Province relating to children and family relationships. The Fourth Report of the Commission recommended that the age of majority in British Columbia should be reduced to 18 years. (See Fourth Report of the Family and Children's Law Commission, paragraph 41; February 12, 1975.)

U.S.A.

2.20 In the United States of America the fixing of the age of majority is a matter for the State legislatures subject to whatever restrictions may be imposed by the Constitutions of the individual States. Unless a State has exercised its power to fix an age of majority the age of majority is the common law age of 21 years.

2.21 Prior to 1970 the age of majority was 21 years in most of the States. The exceptions were Kentucky where the age was 18, Alaska where it was 19 and Hawaii where it was 20. In Arkansas, Idaho, Illinois, Montana, Nevada, North Dakota, Oklahoma, and Utah the age of majority was 21 years for males and 18 for females.

2.22 In 1971 the Twenty-Sixth Amendment to the Constitution of the United States of America became law. This Amendment provides that the right of a citizen of the United States who is eighteen years of age or older to vote shall not be denied or abridged by the United States, or by any State, on account of age. After this Amendment of the Constitution a number of States altered the age of majority.

2.23 At present 31 States - Alaska, Arizona, California, Connecticut, Florida, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming - have fixed the age of majority at 18. In Iowa, Montana and Nebraska the age was fixed at 19, whereas in Hawaii it is 20, as mentioned in para. 2.21 supra.

2.24 In Arkansas and Nevada the age of majority is 21 years for males and 18 years for females. There may be some doubt

if the statutes fixing the age of majority in each of these two States are valid having regard to the decision of the United States Supreme Court in Stanton v. Stanton (421 U.S. 7 (1975)). (Prior to 1975 the age of majority in Utah was 21 years for males and 18 years for females. In the Stanton case the U.S. Supreme Court, in the context of child support, held that the section in the Utah legislation fixing these ages denied the equal protection of the laws as guaranteed by the Fourteenth Amendment in that no valid distinction might be drawn on the basis of sex only. Since then Utah amended the statute to make 18 years the age of majority for both sexes.)

2.25 In the remaining States of the U.S.A., and in the District of Columbia, the age of majority is 21 years.

(iv) New Zealand

2.26 Before 1971 the age of majority in New Zealand was 21 years. The Age of Majority Act 1970, which came into force on January 1, 1971, reduced the age to 20. Prior to this, rights had been given to minors by several statutes. Thus -

- (a) an 18 year old could vote in an election to the legislature and be a member thereof (Electoral Act 1956);
- (b) a married minor, or an 18 year old minor, could make a valid will (Wills Amendment Act 1969);
- (c) a married minor had full freedom to make contracts (Minors' Contracts Act 1969, sections 4 and 16);
- (d) an 18 year old minor could enter into contracts, subject to the right of the court to intervene in certain circumstances (Minors' Contracts Act 1969, section 9, as amended by Minors' Contracts Amendment Act 1970, section 2).

(v) Australia

2.27 Prior to 1970 the age of majority in each of the States and Territories of Australia was 21 years. Since 1970 the age of majority has been reduced to 18 years by the New South Wales Minors (Property and Contracts) Act 1970, sections 8 and 9, by the South Australia Age of Majority (Reduction) Act 1970-71, by the Western Australia Age of Majority Act 1972, by the Tasmania Age of Majority Act 1973, by the Queensland Age of Majority Act 1974, by the Northern Territory Ordinance 1974 and by the Australian Capital Territory Ordinance 1974.

2.28 In Victoria, where the common law rule still applies, the age of majority is 21 years. However, persons who have not attained that age are permitted to exercise many functions that at one time could be exercised only by an adult. An 18 year old in Victoria may vote at a parliamentary election to the State or Federal legislatures and he may become a member of a State or Federal legislature. He may also make a will and serve on a jury. He may obtain a loan to purchase a dwelling-house and may secure the loan by a mortgage on the property.

C. Ireland - Should the law be changed?

2.29 As has been already mentioned in paragraph 1.6 supra, the Law Reform Commission published an advertisement in the daily press asking any person who had views on the law relating to the age of majority to communicate those views to the Commission. Submissions were made by, among others, the Cork County Council, the Department of Agriculture, the Irish League of Credit Unions, the Dundalk Credit Union, the Free Legal Advice Centres (FLAC) and the National Youth Council of Ireland. (See Appendix A (p. 102 infra) for full list of organisations and individuals who made submissions.) In a recent submission, the Standing Committee of the

General Synod of the Church of Ireland suggested, in the context of marriage laws, that the age of majority should be 18 years.

2.30 The Cork County Council was particularly concerned with the desirability of reducing the age of majority so that persons under 21 would become legally entitled to avail themselves of house purchase loans. This, of course, is an important consideration in the case of those who marry before reaching the age of 21.

2.31 The submission from the Department of Agriculture favoured a reduction in the age of majority to 18 years. The view expressed was that, if the age of majority were to be reduced to that age, lending agencies would be more readily prepared to give credit to young farmers at an earlier age. At present, a progressive farmer who is under 21 years is unable to undertake farm development programmes and qualify for aid under the Department's Farm Modernisation Scheme simply because lending agencies will not consider making a loan to him. Furthermore, the inability of a young farmer to obtain a loan because he is a minor may tend to frustrate the desire of older farmers to pass on the farms to their successors at a younger age than has been customary.

2.32 The Irish League of Credit Unions, which represents some 300,000 members, would like to see a reduction in the age of majority to 18 years, mainly so as to allow younger people to take an active part in credit union administration. The argument is that persons under the age of 21 are interested in community affairs and display an ability and sense of responsibility to warrant their participating in decision-making. At present a member must be of full age (21 years) to hold office as director or supervisor in a credit union. The Dundalk Credit Union also supported a reduction to 18 years in the age of majority.

2.33 FLAC submitted that a reduction in the age of majority to 18 would be beneficial to everyone. It would, they suggested, prevent young people from hiding behind their special status as "infants". They also suggested that the term "minor" should be used instead of "infant".

2.34 The National Youth Council also favoured a reduction in the age of majority to 18 years. The Council's view is based on the answers to questionnaires circulated to members of the Council, voluntary youth leaders, and youth groups. Additionally, the Council recommended that the whole field of infants' contracts should be reviewed.

2.35 Individuals who made submissions to the Commission expressed some reservations about lowering the age of majority.

2.36 Legislation in the last decade in Ireland has recognised that young persons mature earlier than hitherto and some of the restrictions on the legal capacity of minors have been removed. As has been mentioned, since 1967 an 18 year old person may make a valid will, since 1973 he may vote in elections to the Dail and for the Presidency and in Referenda. He may also vote in local elections and be a member of a local authority. In 1976 the age at which a person becomes eligible for jury service was reduced from 21 to 18 years. (See para. 2.17 supra.)

2.37 In the last twenty 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. The trend has been fully supported by the Council of Europe, which represents nineteen European States (including Ireland). Moreover, when it was proposed to remove certain of the restrictions on 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^o of the Constitution to reduce the voting age.

2.38 The Commission is satisfied that the age of majority should be reduced to 18 years. The term "minor" and not "infant" should, in the Commission's view, be applied to a person who has not reached that age. (See sections 3, 4 and 5 of the General Scheme of a Bill in Chapter VII, pp. 82-101 infra.)

D. Should a person under the age of 18 years be permitted to acquire adult status in any circumstances?

2.39 Under Roman Law the power of a father (patria potestas) over his children was supreme. A child, irrespective of his age or personal distinction, was subject to patria potestas unless he was emancipated.

2.40 In those legal systems that are derived from the Civil Law (Roman Law) the concept of emancipation still exists in respect of persons who have not reached the age of majority. Emancipation may be secured -

- (a) by marriage, or
- (b) with the consent of the minor's parents or guardians, from a magistrate or a family court.

2.41 In those legal systems that are derived from the Common Law emancipation of minors is generally unknown. Included among the European countries that do not have emancipation are Cyprus, Denmark, Ireland, the United Kingdom, Norway and Sweden. However, in many legal systems, capacity is given to a minor to act in several respects as if he had reached the age of majority. For example, in Denmark,

Ireland, New Zealand, Sweden, Switzerland and in most of the Provinces of Canada, a married minor may make a will. Also in most of the Provinces of Canada and in Britain a minor, who is a member of the armed forces, or a seaman at sea, may make a valid will. The concept of soldiers' and sailors' wills comes from the law of Rome, where, indeed, the will itself seems to have originated.

2.42 The origin of the idea of emancipation is the relief of the minor from parental power and control - a power and control greater in those systems of law that are based upon the Civil Law than in those based upon the Common Law. The law as to emancipation of minors is not uniform throughout the Civil Law world and there are variations even among the members of the European Communities. If the age of majority is reduced to 18 and if majority is to be attained on marriage, there will, in the Commission's view, be no real necessity for introducing into Irish law the concept of emancipation in the Civil Law sense, in which it has hitherto had no place.

2.43 Article 41.1 of the Constitution is as follows:-

"1^o 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^o 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."

From this it can be argued that no legal impediments or obstructions should be placed in the way of a young married person solely on the ground of age and that such a person should have the legal capacity to acquire a home and to

furnish it. He should also have the right to establish a trade or business. As a consequence, he 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.

2.44 Recognition has already been given to the special position of a married minor. The 1964 Guardianship of Infants Act (section 7(7)) 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).)

2.45 The Commission is of opinion 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. In other words, the Commission sees no reason why the precedents established by section 7 of the Guardianship of Infant Act 1964 and 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. (See section 3 of the General Scheme of a Bill in Chapter VII, p. 83 infra.)

incapacity and is given the status of "infant" or "minor".

3.5 The legal capacity of a minor is subject to restrictions designed to shield and protect him from his own improvidence and from the actions of others. Here it is proposed to give no more than a bare outline of the rights and duties of a minor.

Contractual obligations of a minor

3.6 The basic principle of the law relating to the contracts of a minor is that a minor must be protected in his dealings with other persons. At the same time the policy of the law is to mitigate some of the hardships on a person dealing with the minor. The attempt to reconcile these two conflicting ideas has led to some confusion of thought, which has not been helped by the practice of using the terms "void" and "voidable" in several different senses where the contracts of minors are concerned.

3.7 These contracts may be dealt with under the following headings:-

- (1) Contracts that are binding on the minor;
- (2) Contracts that are declared void by the Infants Relief Act 1874;
- (3) Contracts that are binding on a minor unless and until he repudiates them.

(1) Contracts that are binding on a minor

3.8 Two kinds of contract are binding on a minor, namely, (a) contracts for necessities and (b) beneficial contracts of service.

(a) Contracts for necessities

3.9 At common law a minor was liable on a contract for necessities because such a contract is for the benefit of the minor himself rather than for the benefit of the tradesman who gave the credit to him. (Ryder v. Wombwell (1868) L.R. 4 Ex. 32, 36.)

3.10 The meaning of "necessaries" has evolved from the various cases in which it was decided that certain factors were relevant factors that had to be taken into account in arriving at a decision as to whether the goods in question constituted a 'necessary'. These factors include the station in life of the minor, the type and quantity of the goods ordered and the supply of such goods available to the minor at the time that the goods were ordered. Articles of luxury are excluded, although a luxurious article of utility may be included.

3.11 Section 2 of the Sale of Goods Act 1893 indicates what the term "necessaries" means. It states that "necessaries" in that section means "goods suitable to the condition in life of such infant or minor or other person and to his actual requirements at the time of the sale and delivery". (See further Chalmers, Sale of Goods Act 1893, pp. 85 to 89 (17th ed. by M. Mark, 1975).)

3.12 In an action by a vendor against a minor for the price of goods that he alleges to be necessities, the vendor must prove that:

- (a) the goods belong to the class "necessaries" as distinguished from "luxuries";
- (b) the goods were necessities for the minor concerned;
and
- (c) the minor was not sufficiently supplied with such goods at the time of the sale.

3.13 If an adult lends money to a minor to buy necessaries, and the minor buys the necessaries with this money, the minor is liable to the lender of the money because the latter stands in the place of the person who had been paid.

3.14 A trading contract is not binding on a minor even though the contract may be for the minor's benefit.

(b) Contracts of service

3.15 A contract of service that is beneficial to the minor is treated as being in the same category as a contract for necessaries. The mere fact that some clauses are restrictive of the minor's rights does not relieve the minor of his obligations. The court must look at the whole circumstances of the case before deciding whether or not a contract is beneficial to a minor. (See Brennan v. G.N.R. (1934) 68 I.L.T.R. 145; Keays v. G.S.R. /1941/ I.R. 534 and Harnedy v. National Greyhound Racing Co. /1944/ I.R. 160.)

(2) Contracts within the ambit of the Infants Relief Act 1874

3.16 The Infants Relief Act 1874 declared that three types of contract by a minor "shall be absolutely void". These are:

- (1) Contracts for repayment of loans;
- (2) Contracts for the supply of goods other than necessaries;
- (3) Accounts stated.

The courts have taken the view that the effect of this Act is merely to make the contract voidable at the election of the minor. He may enforce the contract but he may not be sued

upon it. If, in order to induce the contract, the minor makes an express fraudulent representation, e.g. misstates his age, a court may compel him to pay back any money he has received or to restore the goods. If he has sold the goods the court may compel him to restore any money he has received for them. A mortgage, or other agreement, entered into by a minor to secure the repayment of money lent to him is not binding on him and he may repudiate the transaction on attaining the age of majority.

3.17 An account stated is an admission by one person that a sum certain is due from him to another person. At one time such an admission was regarded as raising an implied promise to pay the amount stated. In modern law an account stated is only presumptive evidence of a debt and the presumption may be rebutted by other evidence. See Cheshire and Fifoot, The Law of Contracts, p. 414 (9th ed. by M. Furmston, 1976).

3.18 The Infants Relief Act 1874 (section 2) provides that no action may be brought against a person who on reaching full age promises to pay any debt contracted during minority or ratifies any promise or contract made during minority. Section 5 of the Betting and Loans (Infants) Act 1892 renders "void absolutely as against all persons whomsoever" an agreement by a person of full age to repay money lent to him during his infancy.

(3) Contracts that are binding until repudiated

3.19 Certain contracts made by a minor are binding on him unless and until he repudiates them. Repudiation may take place during minority, or within a reasonable time of the minor's attaining the age of majority. The contracts concerned are those in which the minor acquires an interest in some subject matter of a permanent nature, i.e. a subject

matter to which continuous and recurring obligations are incident. (Cheshire and Fifoot, op. cit. p. 408.)

3.20 When a minor repudiates such a contract -

- (1) he may not recover any money paid out by him unless there was total failure of consideration, and
 - (2) he is entitled to a return of other property disposed of by him during minority provided he returns the consideration which he received.
- (Cheshire and Fifoot, op. cit. pp. 411-412.)

A minor appears to be liable for debts which accrued due before repudiation (Blake v. Concannon (1870) I.R. 4 C.L. 323).

3.21 The purpose of paragraphs 3.4 to 3.20 supra is to indicate the manner in which the law of contracts attempts to protect a person during his minority and to give some idea of the effect of the change in the status of persons reaching majority when the proposed legislation is enacted. The law as to minors' contracts is too wide in scope to be dealt with fully in this paper. As has already been mentioned, the matter will be the subject of a separate paper that will cover:

- (1) the rights, duties and liabilities of a minor in regard to contracts entered into by him, including the position of the minor when the contract results from fraudulent acts or misrepresentations by him;
- (2) the changes proposed to be made, or that have been made, in other legal systems; and
- (3) the position of a minor in relation to the sale and management of real and personal property and in relation to trusts.

3.22 One type of obligation that a minor may undertake and that has not so far been dealt with is that of marriage. Marriage raises a number of matters that justify treatment in a separate chapter. (See Chapter IV infra.)

Minor's liability in respect of non-contractual matters

3.23 The liability of a minor in respect of his tortious actions does not depend upon the age of majority. At common law a minor of any age may be liable for a tort or civil wrong. The fact that a person has attained a particular age does not of itself make him liable in tort. (See para. 1.4 supra.) If the tort is one that requires the minor to have had a particular intention or state of mind or capacity, it will be relevant to consider whether he was old enough to have had that intention or state of mind or capacity.

3.24 A minor is not answerable for a tort directly connected with any contract in respect of which no action lies against him. Thus if a minor obtains a loan of money by means of a fraudulent misrepresentation of his age, he is not liable in an action for deceit. Furthermore, he is not estopped from relying on the Infants Relief Act 1874.

3.25 A minor is liable in tort only if the wrongful act he has done is of a kind not contemplated by the contract. For instance, where a minor had been lent certain pieces of equipment for his own use and he lent them without any authority to a third person who did not return them, the minor was held liable in detinue. It is in some cases difficult to determine whether the tort is so directly connected with the contract as to render the minor immune from delictual liability. As has been mentioned, a contract induced by the fraud of a minor may be set aside on the application of the other party and the fraudulent minor may be forced to restore what he has acquired by his fraud, if it is still in his possession.

B. Status of a new adult

3.26 If the age of majority is reduced to 18 and if majority is reached on marriage, 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 to 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 incorporate; 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. 3.28 infra.)

3.27 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 provision in the Constitution. The age for election to the office of President will still be 35 and the age for membership of the Dail or Seanad will still be 21. (See Articles 12.4.1^o, 16.1.1^o and 18.2 of the Constitution.)

3.28 If the age of majority is altered, the proposed legislation will have to include special transitory 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 transitory provisions will relate to such matters as funds in court, wardship and custody orders, powers of trustees during minority of 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. (See, for example, Age of Majority Act (NI) 1970, section 1 and the Schedules, and the New Zealand Age of Majority Act 1970, sections 4, 6, 7, 8 and the Schedules. See also paragraphs 5.48 to 5.52 infra.)

3.29 Reference has already been made (paragraphs 2.12 to 2.18 supra) to the Council of Europe Resolution recommending that the Governments of the Member States should lower the age of majority below 21 years. The Committee of Ministers suggested that consideration should be given to the position of children who, by reason of the lowering of the age of majority, might be deprived of necessary assistance for pursuing education or training. In this country, a reduction in the age of majority could adversely affect the position under the Social Insurance and Assistance Services and the Family Law

(Maintenance of Spouses and Children) Act 1976 of children who are aged between 18 and 21 years, and are in receipt of full-time education in a university, college or other educational institution. The maintenance law in regard to such children is considered in some detail in paragraphs 5.12 to 5.28 infra.

3.30. 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.

3.31 Chapter VI hereof contains the General Scheme of a Bill to reform the law relating to the age of majority and to provide for consequential amendments in existing statutory provisions. The Scheme provides specifically for a Schedule of the transitory provisions. (See paragraph 3.28 supra and section 11 of, and the Schedule to, the General Scheme of a Bill, contained in Chapter VII infra, pp. 92 and 96.)

CHAPTER IV MARRIAGE

4.1 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?

4.2 In this chapter 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 age, usually between the minimum age and the free age, at 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.

4.3 This chapter will deal with the following matters:

- (a) the law of marriage in Ireland with particular reference to the consent age for marriage, the free age for marriage and the minimum age for marriage;
- (b) the law of marriage in other countries with special reference to the changes made when the age of majority was reduced;
- (c) the problem of what should be done if the age of majority is reduced to 18 years.

A. Ireland

4.4 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.

4.5 The English and the Irish law diverged in 1753 when the Act for better preventing the Clandestine Marriages was passed. This Act, which was 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.

4.6 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. (See W. Harris Faloon, The Marriage Law of Ireland, p. 9 (Dublin 1881).) 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 -

- (i) the publication of banns prior to marriage (although such publication might be dispensed with by a licence of the bishop of the diocese), and
- (ii) 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. (See W.H. Faloon op. cit. p. 10 and G.H. Joyce, Christian Marriage, p. 131 et seq. (London 1948).)

4.7 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 1873. In general, these statutes dealt with the formalities attending the solemnisation of a marriage.

4.8 The Marriage Law (I) Act 1844 dealt with the marriages of persons belonging to the Church of Ireland, to the Presbyterian, Quaker, other dissenting Protestant religions, 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 marriage of Catholics), 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 Master of the 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.

4.9 The marriage laws at the establishment of the Irish Free State in 1922 and for the next fifty years may be summarised as follows:

- (a) For members of the Church of Ireland, Presbyterians, Quakers, members of other dissenting 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 4.7 and 4.8 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, i.e. the Canon Law ages.

4.10 By 1960 there was an increasing volume 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 with a view to having the minimum age for marriage raised to 16 years.

4.11 The United Nations Organisation was particularly concerned about the minimum age for marriage. In 1962 by the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage the United Nations agreed 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.

4.12 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.)

4.13 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 this 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^o of the Constitution. (See Report of the Committee on the Constitution, pp. 47-48 (December 1967, Prl. 9817).)

4.14 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.¹ 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.)

4.15 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 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 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 (I) Act 1844, the Marriage Law (I) Amendment Act 1863

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

and the Matrimonial Causes and Marriage Law (I) 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 Éireann - Seanad Debates, Vol. 73, col. 953 et seq., November 23, 1972.) When the Committee Stage of the Bill was taken in Seanad Éireann 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.)

4.16 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

4.17 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 granting 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.

4.18 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 names and addresses of both parties' parents or guardians etc. Copies of birth, or baptismal, certificates are also required.

4.19 An appointment is made for the parties, and their parents, 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.

4.20 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.

4.21 In 1975 there were 9 applications for exemption orders of which 3 were granted, 3 were refused, and 3 were withdrawn. In 1976 there were 10 applications for exemption orders of which 5 were granted, 4 were refused and 1 was withdrawn.

Consent to marriage

4.22 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. Consent is not required in the case of a person who is under 21 years and who is a widow or widower. A minor who is a ward of court requires the consent of the court in order to get married.

4.23 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 4.17 to 4.20 supra.

4.24 In 1976 twenty-seven applications for the Court's consent to marriage were made to the President of the High Court because there was no guardian for one of the parties to the proposed marriage, or because a guardian could not be found. All these were unopposed and all were granted.

4.25 The number of applications which were due to the opposition of one or both of the parents or guardians is given in the following table.

<i>APPLICATIONS TO THE COURT WHEN THE CONSENT OF PARENT OR GUARDIAN HAD BEEN REFUSED</i>				
<i>Year</i>	<i>Number of Applications</i>	<i>Number Granted</i>	<i>Number Refused</i>	<i>Number Withdrawn</i>
1975	22	9	6	7
1976	20	8	10	2

("Withdrawn" in column 5 includes applications not proceeded with)

4.26 Of the 22 applications in 1975, 1 was from a 16 year old, 5 were by 17 year olds, 5 were by 18 year olds, 7 were by 19 year olds and 4 by 20 year olds. Of the 20 applications in 1976, 6 were by 18 year olds, 11 were by 19 year olds and 3 by 20 year olds.

B. Great Britain and Northern Ireland

4.27 The common law age for marriage in England and Scotland was 14 years for a male and 12 years for a female. These were the old Canon Law ages.

4.28 As was mentioned in paragraph 4.5 supra the law of marriage in England and Ireland began to diverge with the enactment of Lord Hardwicke's Act in 1753. This is the statute which introduced into England the need for the consent of the parent or guardian to a marriage where either of the spouses was under 21. The Act applied only to England and Wales.

4.29 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.

4.30 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.)

4.31 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.)

4.32 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 the North of 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).

C. Other Legal Systems

4.33 Appendix C to this paper gives the age of majority, the minimum age for marriage and the free age for marriage in a number of legal systems. It will be noted that normally the age of majority is the same as the free age for marriage. In the last decade 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.

Canada

4.34 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.

U.S.A.

4.35 In the various States of the U.S.A., generally the free age for marriage is the same as the age of majority. In some States, however, a female may reach the free age for marriage at an earlier age than a male. For example, in Colorado, Delaware, Indiana, Iowa, Mississippi, Missouri and Texas, parental consent is not required in the case of a man who is 21 or a woman who is 18.

In Stanton v. Stanton (already referred to in paragraph 2.24 supra) the United States Supreme Court decided that a section of a Utah statute prescribing different ages of majority for a male and a female was unconstitutional on the ground that it denied the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution. This decision was made in the context of child support. Nevertheless, the decision raises doubts as to the constitutionality of a statute which provides a different free age for marriage for a man and for a woman. (See also Craig v. Boren, 97 Sup. Ct. 451 (1976).)

Australia

4.36 Formerly, the minimum age for marriage throughout Australia was determined by the common law. The first change was in 1942, when Tasmania raised the minimum age for marriage to 18 years for males and 16 years for females. Other States followed suit. At present each Australian State and Territory is subject to a Commonwealth Act - The Marriage Act 1961-73.

4.37 This Act fixes the minimum age for marriage ('the marriageable age') at 18 years for a male and 16 years for a female (section 11). However, a male who has attained the age of 16 years or a female who has attained the age of 14 years may apply to the court for permission to marry a person of marriageable age. The court must hold an inquiry into all relevant circumstances. If the court is satisfied that the circumstances of the case are so exceptional and unusual as to justify the making of an order, it may grant the application. Otherwise the court must refuse the application. (See the Marriage Act 1961-73, section 12.)

4.38 Where an intended spouse is a minor and has not previously been married, the consent in writing of the parents

or guardian of the minor is a condition precedent to the solemnisation of the marriage. If this consent is refused, or if it is not practicable to obtain the consent from the person who should give it, the court in a proper case may grant the consent, or dispense with the obtaining of it. (See the Marriage Act 1961-73, sections 13-21.)

4.39 As has been stated in paragraph 2.28 supra, the age of majority in Victoria is 21, whereas in all other Australian States it is 18. The free age for marriage is 21 years in Victoria whereas it is only 18 years in the other States.

D. Questions arising if age of majority is reduced to 18

4.40 As has been indicated in para. 4.1 supra, if the age of majority is reduced to 18, it will be necessary to consider -

- (a) whether there should be an alteration in the free age for marriage; and
- (b) whether any alteration should be made in the law as to the minimum age for marriage.

Free age for marriage

4.41 Prior to 1957 the law did not require a record of the ages of the contracting parties to be made in the marriage register. Each party was simply described as either "full age" or "minor". Therefore, before 1957 detailed records of the ages of persons at the date of their marriage are not available. Extracts from the Reports on Vital Statistics for the years 1961, 1966, 1971, 1974 and 1975 are given infra in Appendix D, Table 2 (pp. 120-121). The years 1961, 1966, and 1971 were chosen as they were years in which a Census was taken. The year 1975

was the most recent one for which statistics are available. These extracts show the number of marriages according to age groups in the years to which the Census returns refer.

4.42 If the age of majority is reduced from 21 years, it will be necessary to decide whether the free age for marriage should be reduced from 21 years to the new age of majority.

4.43 The table on page 47 gives the number of males and females who, at the time of their marriages, were in the 18-20 age group. This table, which is an extract from a more comprehensive Table 2 in Appendix D, gives an idea of the number of persons who would be affected if the age of majority is reduced, and no amendment is made to section 19 of the Marriages (I) Act 1844 (as substituted therein by section 7 of the Marriages Act 1972).

4.44 It is apparent from Appendix D (Tables 1 to 3) that the pattern of marriages in Ireland has been that:

- (a) the marriage rate has increased in the period between 1961 and 1973;
- (b) the age at which persons of both sexes are marrying is going down;
- (c) there has been a substantial increase in the number of marriages in which at least one of the spouses is less than 21 years of age; and
- (d) for both males and females the number of marriages increases as the age of 21 is approached.

4.45 It has been argued that there is a correlation between very young marriages and marital breakdown. The statistics in other countries suggest this. As regards Ireland, there is a dearth of reliable information as to the relationship between the ages of the spouses at the date of the marriage and the subsequent breakdown of the marriage or as to the incidence of the breakdown of marriages. (See Appendix D for a study

NUMBER OF PERSONS IN THE 18-20 YEAR AGE GROUP WHO MARRIED IN
THE YEARS 1961, 1966, 1971, 1974, AND 1978

Total number of marriages - all ages	1961		1966		1971		1974		1978	
	BRIDE	GROOM	BRIDE	GROOM	BRIDE	GROOM	BRIDE	GROOM	BRIDE	GROOM
	15,329		16,849		22,014		22,833		21,280	
18	No.	377	509	116	753	254	336	311	902	291
	%	2.46	3.02	.69	3.42	.82	4.10	1.36	4.24	1.37
19	No.	569	830	289	1,331	546	1,463	609	1,503	593
	%	3.71	5.02	1.72	6.15	2.66	6.41	2.67	7.06	2.79
20	No.	896	1,316	535	1,818	350	2,075	1,096	1,923	1,057
	%	5.85	7.81	3.18	8.26	4.12	9.09	4.80	9.04	4.97
Totals		1,842	2,755	940	3,952	1,618	4,474	2,716	4,328	1,941

by Dr Helen Burke on The Age at Marriage and Marital Breakdown; p. 117 et seq. infra.)

4.46 In most European States the age of majority is the same as the free age for marriage. (See Appendix C, column 5, p. 108 et seq. infra.) When no question of principle is involved, uniformity with other legal systems, particularly those of the EEC, is desirable.

4.47 If it is correct to reduce the age of majority there seems to the Commission to be no reason why a similar reduction should not be made in the free age for marriage. A person who is fit to manage his own affairs and who is fit to serve on a jury, to make a will and to vote should, in the Commission's view, be responsible enough to enter into a marriage contract without requiring the consent of any person or tribunal.

4.48 Accordingly, the Commission recommends that, if there is to be a free age for marriage in addition to a minimum age for marriage, it should be the same as the age of majority. If, as the Commission proposes (paragraphs 2.38 and 2.45 supra), the age of majority is fixed at 18 years, then a person who reaches that age should at the same time reach the free age for marriage.

Minimum age for marriage

4.49 The suggestion has been made that the minimum age for marriage should be raised to 18 years. (This is the age which the Commission suggests as the age of majority.)

4.50 As from January 1, 1975, the minimum age for marriage for a male or a female is 16 years unless the President of the High Court or a High Court judge nominated by him grants an exemption for a marriage at a lower age (Marriages Act 1972, section 1).

4.51 The following table, which is an extract from Table 2, Appendix D, gives the number of persons in the 14-17 age group who got married in five specified years.

<i>Number of Marriages in the 14 to 17 year age group in the years 1961, 1966, 1971, 1974 and 1975</i>										
<i>Total number of marriages - all ages</i>	<i>1961</i>		<i>1966</i>		<i>1971</i>		<i>1974</i>		<i>1975</i>	
	<i>15,329</i>	<i>16,849</i>	<i>52,014</i>	<i>22,833</i>	<i>21,280</i>					
<i>Aged</i>	<i>Bride</i>	<i>Groom</i>	<i>Bride</i>	<i>Groom</i>	<i>Bride</i>	<i>Groom</i>	<i>Bride</i>	<i>Groom</i>	<i>Bride</i>	<i>Groom</i>
<i>14</i>	<i>1</i>	<i>0</i>	<i>6</i>	<i>0</i>	<i>25</i>	<i>0</i>	<i>5</i>		<i>6</i>	<i>0</i>
<i>15</i>	<i>20</i>	<i>1</i>	<i>16</i>	<i>0</i>	<i>37</i>	<i>0</i>	<i>28</i>	<i>9</i>	<i>6</i>	<i>0</i>
<i>16</i>	<i>59</i>	<i>5</i>	<i>73</i>	<i>17</i>	<i>119</i>	<i>23</i>	<i>175</i>	<i>13</i>	<i>144</i>	<i>23</i>
<i>17</i>	<i>147</i>	<i>33</i>	<i>231</i>	<i>46</i>	<i>359</i>	<i>52</i>	<i>466</i>	<i>105</i>	<i>427</i>	<i>92</i>
<i>TOTAL</i>	<i>227</i>	<i>39</i>	<i>326</i>	<i>62</i>	<i>546</i>	<i>75</i>	<i>671</i>	<i>127</i>	<i>577</i>	<i>115</i>

4.52 This table indicates that:

- (a) the number of persons of 14 or 15 years of age who marry is not great;
- (b) as the ages increase, there is a disproportionate increase in the numbers getting married; and
- (c) that the general trend towards earlier marriage referred to in paragraph 4.44 supra is maintained in the 14 to 17 age group, although in 1975 there was a decrease in the number of those marrying in the age group.

4.53 The question of the minimum age for marriage is dealt with more fully by Dr H. Burke in her study, Age at Marriage and Marital Breakdown, in Appendix D. This study suggests that in Ireland, as in other Western countries, there is a correlation between very young marriages (i.e. where either spouse is under 20 years at the time of marriage) and marital breakdown. (See also paragraph 4.45 supra.)

4.54 The present opinion of the Commission is that the minimum age for marriage should be the same as the age of majority. The Commission would welcome comments on this opinion.

E. Exemptions from age and consent requirements for marriage

4.55 The Commission has considered the question as to whether there should be a provision enabling the authorisation of the marriage of a person who has not attained the age of majority. The Commission's present view (as expressed in the General Scheme) is that a marriage between persons one of whom is under the age of 16 should be made null and void and that there should be no jurisdiction to grant exemptions¹. It appears to the Commission that section 1 of the Marriages Act 1972 should be repealed and replaced by a new and more comprehensive section, as is proposed in section 7 of the General Scheme - p. 86 infra. (The suggested new section is drafted on the basis of an absolute minimum age (16) for marriage and a consent age (16-18) for marriage.)

¹ This is the position in Northern Ireland. However, in the recent submission by the Standing Committee of the General Synod of the Church of Ireland (referred to in paragraph 2.29 supra) it is suggested that the exemption provided for in section 1(2) of the Marriages Act 1972 should be continued.

4.56 A marriage where one of the parties has reached the age of 16 but not the age of 18 should, in the opinion of the Commission, be null and void, unless it is solemnised with the prior written consent of the parents (or guardians) of that party, or with the consent of some other appropriate authority where there are no parents or guardians or where one or both of the parents (or guardians) refuse or withhold consent. Furthermore, any requirement in the proposed legislation making parental consent obligatory for the marriage of a minor should, as the Commission sees things, be clearly made a matter of capacity to marry. Moreover, the requirement should in terms be mandatory and not (as appears to be the position under existing law) directory. A marriage where one of the parties is under the minimum age for marriage is intrinsically or essentially invalid and, in the Commission's view, the same should be the position in regard to a marriage that is null and void because of lack of parental or other necessary consent.

4.57 The issue as to whether a marriage is formally valid or is essentially valid is important in the context of the conflict of laws. In the European systems of law, matters concerned with formal validity of marriage are determined by the lex loci celebrationis in accordance with the rule locus regit actum, whereas the substantive requirements of marriage are for the personal law of the parties, i.e. the law of the domicile or habitual residence or the law of the nationality. It is proposed to replace sections 1 and 7 of the Marriages Act 1972 by two entirely new provisions (sections 7 and 8 of the General Scheme of the Bill in Chapter VII infra) that will, inter alia, characterise age and consent requirements as matters of essential or intrinsic validity. (See Ernst Rabel, The Conflict of Laws, vol. 1, pp. 223-262 and 263-316 (second ed. 1958 by Ulrich Drobnig; Ann Arbor, Michigan) and Dalloz, Nouveau Répertoire de droit, vol. 3, pp. 227-237 and 249-250 (second ed. 1964 Paris).)

CHAPTER V MISCELLANEOUS

5.1 In this chapter the following matters are dealt with, namely:

- (1) The date for reaching the age of majority.
- (2) The effect of a reduction in the age of majority on the maintenance, education and training of persons who have not reached 21 years. This is subdivided into the following:
 - (a) the liability of a parent to maintain a minor;
 - (b) the Social Insurance and Assistance Services provided by the State.
- (3) Blind Persons' Pensions.
- (4) Wards of Court.
- (5) The Adoption of Children.
- (6) The Statute of Limitations.
- (7) The difference between construction of expressions ("full age" etc.) in statutory provisions and construction of similar expressions in private documents.
- (8) Proceedings by, against or in respect of a minor.

(1) The date for reaching age of majority

5.2 In Ireland and England the common law rule is 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 January 14, 1900, he would have become 21 at the first moment of January 13, 1921. The rule could, of course, be varied by a statute declaring the date at which a particular age would be reached.

5.3 The Latey Committee in Britain considered the question of when a particular age is reached. In its Report the Committee expressed the opinion that the difference between the date on which a certain age is reached at common law and the date specified in some statutes was confusing, as well as being pointless. Reference was made to certain English statutory provisions such as the Mental Health Act 1959, section 147(5) and the National Insurance Act 1965, section 114(4)(c), where a person attains (for the purposes of those Acts) a specified age at the commencement of the appropriate anniversary of the date of his birth. The Committee unanimously recommended that the moment of attaining an age in law should be the commencement of the relevant anniversary of the day of a person's birth. (Latey Report, paragraphs 511-516.)

5.4 Section 9 of the English Family Law Reform Act 1969 provides as follows:

"(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 that on which this section comes into force, and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision therein."

5.5 A similar section is to be found in the Age of Majority Act (Northern Ireland) 1969. There is no similar provision in the 1969 legislation for Scotland, where the rule is that a person attains majority on the eighteenth anniversary of his birth, at the hour of his birth.

5.6 In many other countries where the age of majority has been altered in recent years the legislature has included a section fixing the time when a particular age is reached.

Normally this section is similar to section 9 of the English Family Law Reform Act quoted in paragraph 5.4 supra. (See, for example, Alberta's Age of Majority Act 1971, section 7; Manitoba's Age of Majority Act 1970, section 8; New Brunswick's Age of Majority Act 1973, section 3; and New Zealand's Age of Majority Act 1970, section 7.

5.7 The Commission is of opinion that any statute altering the age of majority should contain a section on the lines of one of the sections referred to in paragraphs 5.4, 5.5 and 5.6 supra and the General Scheme of the Bill so proposes in section 6 (p. 85 infra).

- (2) The effect of a reduction in the age of majority on the maintenance, education and training of persons who have not reached 21 years

5.8 When the Committee of Ministers of the Council of Europe prepared their Resolution about the age of full legal capacity (see Chapter II, paragraphs 2.17 and 2.18 supra) they appreciated that a reduction in the age of majority might adversely affect the rights of persons who had reached the new age of majority but had not reached 21 years. Accordingly, the Committee in Clause 3 of the Resolution recommended -

"Governments of member States in which the lowering of the age of majority would substantially curtail the rights enjoyed by children under their parents' maintenance obligations, with the possible consequence of depriving them of the necessary assistance for pursuing their education or training, to take appropriate measures to remedy such consequences".

(Resolution (72) 29 on the Lowering of the Age of Full Legal Capacity, adopted by the Committee of Ministers of the Council of Europe on September 19, 1972.)

5.9 The Explanatory Memorandum which accompanied this resolution referred to the problems arising from the increasing number of young people who were pursuing education or training after compulsory schooling. Such young people would still need financial support. If a reduction in the age of majority resulted in a substantial reduction in the rights of children deriving from a parent's maintenance obligation, the continuation of their education and training could be in jeopardy. This could arise where the obligation of parents to meet a child's financial needs was partially linked with parental authority in such a way that, when such authority was extinguished on the attainment of majority, the obligation was abolished or considerably reduced. Parents who were relieved of their legal obligations might be less willing to continue to look after their children once the children reached the age of majority.

5.10 The Memorandum explained that Clause 3 of the Resolution was aimed at safeguarding the benefits of financial assistance to young people beyond the age of majority to the extent that such assistance was essential for the purpose of education or training. If the new law as to majority resulted in a situation disadvantageous to young people, the State concerned was asked to see to it that young people were provided with the necessary assistance for education and training beyond the age of majority. (Explanatory Memorandum, paras. 48-50.)

5.11 It is necessary to consider whether in Ireland a reduction in the age of majority would act to the detriment of a person who had attained the new age of majority but had not attained the age of 21 years. This involves a consideration of the liability of the parent of such a person under existing law and also the obligations of the State under the Social Welfare and Assistance Schemes.

(a) The liability of a parent to maintain a minor

5.12 A parent is under a moral obligation to maintain his or her child, including an illegitimate child. The moral obligation did not formerly impose upon the parent a civil legal obligation.

5.13 There was, however, an obligation on the parent to maintain his child to the extent that neglect to maintain brought the parent within the scope of the criminal law. (See R. v. Senior [1899] 1 Q.B. 283.)

5.14 In England, the Poor Relief Act 1601 imposed on the father, mother, grandfather, grandmother and children of a poor person a limited obligation to relieve and maintain the poor person: relief given by a local authority on account of a child under 16, not being deaf or blind, was regarded as having been given to the father of the child (or to the child's mother, if she were a widow) and the amount of the relief could be recovered from the father (or the mother).

5.15 In Ireland, the Poor Law legislation commenced with the Poor Relief Act 1838 (which was amended by the Poor Relief (Extension) Act 1839). Every husband was liable to maintain his wife and any child who had not attained 15 years, and every illegitimate child under 15 years born of his wife at the time of her marriage to him. A widow was liable to maintain those of her children who had not attained the age of 15 years. The mother of an illegitimate child under 15 years was liable to maintain that child. Any relief given under the Poor Law Acts to a child under 15 years was deemed to have been given to the person who, under the provisions of the Poor Relief Act 1838, was liable to maintain the child.

5.16 Section 27 of the Public Assistance Act 1939 raised to 16 years the age up to which the liability of a parent to maintain a child should continue. A local authority was authorised to recover any assistance that it had given to a child under 16 years either from the person who received it or from the person liable for the purposes of that Act to maintain the child. This Act was replaced by the Social Welfare (Supplementary Welfare Allowances) Act 1975. Sections 16 and 17 of the 1975 Act re-enact the obligations of parents to maintain their children up to 16 years and give the appropriate Health Board power to recover any supplementary welfare allowances from the person liable to maintain the child who received the allowance.

5.17 The most recent Act affecting the civil liability of a parent to maintain a child is the Family Law (Maintenance of Spouses and Children) Act 1976 (repealing and replacing the Married Women (Maintenance in case of Desertion) Act 1886 and substantially amending the Illegitimate Children (Affiliation Orders) Act 1930 and the Courts Act 1971). This Act deals with the right of a spouse, with or without dependent children, who is not receiving proper maintenance from the other spouse, to apply to the court for a maintenance order. In section 3 a "dependent child of the family" is defined as meaning "any child -

- (a) of both spouses, or adopted by both spouses under the Adoption Acts 1952 to 1974, or in relation to whom both spouses are in loco parentis; or
- (b) of either spouse, or adopted by either spouse under the Adoption Acts 1952 to 1974, or in relation to whom either spouse is in loco parentis, where the other spouse, being aware that he is not the parent of the child, has treated the child as a member of the family,

and who is under the age of sixteen years, or, if he has attained that age -

- (i) is or will be or, if an order were made under this Act providing for periodical payment for his support, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of twenty-one years, or
- (ii) is suffering from mental and physical disability to such extent that it is not reasonably possible for him to maintain himself fully".

5.18 An application to the court may be brought by a spouse for a maintenance order against the other spouse in favour of the applicant spouse and of each dependent child of the family. The court may make an order that the other spouse make to the applicant spouse periodical payments for the support of that spouse and of each of the dependent children, for such period during the lifetime of the applicant spouse, of such amount and at such times, as the court may consider proper. (See section 5(1)(a) of the 1976 Act.)

5.19 Where a spouse is dead, has deserted or has been deserted by the other spouse or is living separately and apart from the other spouse and there are dependent children who are not being fully maintained by either spouse, any person may apply to the court for a maintenance order in respect of such dependent children. If it appears to the court that the surviving spouse or, as the case may be, either spouse has failed to provide proper maintenance for such dependent children, the court may make a maintenance order in respect of such dependent children in favour of the person who has applied. (See section 5(1)(b) of the 1976 Act.)

5.20 In determining the amount to be paid by a spouse under a maintenance order the court shall have regard to all the circumstances of the case and in particular to -

- (a) the income, earning capacity (if any) and other financial resources of the spouses and of any dependent children of the family, and
- (b) the financial and other responsibilities of the spouses towards each other and towards any dependent children of the family, and the needs of such dependent children, including the need for care and attention. (See section 5(4) of the 1976 Act.)

5.21 The position in Ireland at present is as follows:

- (i) There is no legal obligation at common law on a parent to maintain a child;
- (ii) By virtue of the Social Welfare (Supplementary Welfare Allowances) Act 1975 (sections 16 and 17) a parent is bound for the purposes of that Act to maintain a child until that child attains the age of 16 years;
- (iii) If a maintenance order is made under the Family Law (Maintenance of Spouses and Children) Act 1976, the order may include a sum in respect of each dependent child, that is to say in respect of a child under 16 years, or a child under 21 years who is receiving full-time education or instruction at any university, school, college, or other educational establishment, or a child - of any age - who is suffering from such mental or physical disability that it is not reasonably possible for him to maintain himself fully.

- (iv) A parent of an illegitimate child has under the Acts referred to in paragraph 5.17 supra an obligation to maintain that child broadly similar to the obligation to maintain a legitimate child.

5.22 A reduction in the age of majority to 18 should not, in the Commission's view, affect the liability of a parent to make maintenance payments towards a child who has reached the age of 18 years (but who has not reached the age of 21 years) and who is receiving full-time education. Similarly, in the Commission's view, the fact that a parent ceases to be a guardian of a child on the child's reaching full age (18) should not disentitle the child to maintenance until the age of 21, and the Commission recommends that section 11 of the Guardianship of Infants Act 1964 should be amended so as to preserve the present entitlement of the child if the age of majority is reduced. Also, the Commission is of opinion that the age of 18 years should be substituted for the age of 16 years in the Social Welfare (Supplementary Welfare Allowances) Act 1975, in the Family Law (Maintenance of Spouses and Children) Act 1976 and in the Illegitimate Children (Affiliation Orders) Act 1930 (as amended by the 1976 Act). There appears to the Commission to be no reason to retain the age of 16 in maintenance legislation when the tendency in modern social insurance and assistance legislation is to specify an age of 18. (See paragraphs 5.8 to 5.11 supra and 5.25 infra. See also section 9 of the General Scheme of the Bill and the Note thereto - p. 89 et seq. infra.)

- (b) The Social Insurance and Assistance Services provided by the State

5.23 Financial assistance from the State is given to many different classes of people. This assistance normally takes the form of a periodic payment for the person receiving the assistance together with an additional allowance for any

qualified dependants. (See the Social Welfare Acts 1952 to 1977, the Unemployment Assistance Acts 1933 to 1977, the Old Age Pension Acts 1908 to 1977, the Widows' and Orphans' Pensions Acts 1935 to 1977, the Children's Allowances Acts 1944 to 1975, and the regulations made under and by virtue of those Acts.)

5.24 In the normal course of events a child is a qualified dependant of his/her father or stepfather. In certain circumstances a mother or stepmother will be entitled to an allowance for a child dependant.

5.25 A "qualified child" is any child who

- (a) has not attained the age of 18 years,
- (b) is ordinarily resident in the State, and
- (c) is not detained in a reformatory or an industrial school.

(See Social Welfare Act 1970, s. 29(3).)

The term "qualified child" has this meaning in this section of the Working Paper (paragraph 5.23 et seq.) except in paragraph 5.26 infra. In the case of widows' and orphans' pensions, deserted wife's benefit, deserted wife's allowance, prisoner's wife's allowance and unmarried mother's allowance, the allowance for a qualified child is given to a child between the ages of 18 years and 21 years who is getting full-time instruction by day in a school, college, university or other educational establishment: and references infra to full-time instruction or education are to be read as references to instruction or education by day.

5.26 It should be noted that a child is qualified for children's allowances purposes if -

- (a) he is under the age of 16, or
- (b) having reached the age of 16, he is under the age of 18 and -

- (i) is receiving full-time instruction at any university, college, school or other establishment,
- (ii) is an apprentice, or
- (iii) is incapable of self support etc.

(See section 4 of the Children's Allowances (Amendment) Act 1946 and section 6 of the Social Welfare Act 1973.)

The Commission is not of opinion that the change in the age of majority should result in any changes in the present ages of entitlement for children's allowances.

5.27 Additional allowances payable in respect of a child between the ages of 18 and 21 years who is receiving full-time education or instruction are dealt with in the following subparagraphs of this paragraph.

(i) Contributory Widow's Pension

This is paid to a widow until she remarries, if the contribution conditions are satisfied by her or by her husband's insurance record or if her husband was entitled to an old age (contributory) pension or a retirement pension at an increased rate. An additional payment is payable in respect of a qualified child, including a child between the ages of 18 and 21 years who is receiving full-time education. (See the Social Welfare Act 1952, the Social Welfare (Amendment) Act 1960, the Social Welfare (Miscellaneous Provisions) Acts 1966, 1967, 1968 and 1969 and the Social Welfare Acts 1972, 1974 (No. 2) and 1976.)

(ii) Contributory Orphan's Allowances

An orphan is -

- (a) a qualified child, being a legitimate child, both of whose parents are dead, who, where he has a stepparent, does not normally reside with the stepparent or a person married to, and living with, the stepparent, or
- (b) a qualified child, being an illegitimate child whose mother is dead and whose father is dead or unknown, who, if there is surviving the husband of his mother, does not normally reside with that husband or a woman married to and living with that husband.

An allowance is payable to an orphan, the child of an insured person, if the contribution conditions are satisfied. The allowance is normally paid weekly. It is paid until the orphan reaches the age of 18 years and between the ages of 18 and 21 years if the orphan is receiving full-time education. (See the Social Welfare Act 1952, sections 14, 23, 24 and Schedule 4, and the Social Welfare (Miscellaneous Provisions) Act 1969, section 9.) If the contribution conditions have not been fulfilled the orphan may qualify for a non-contributory orphan's pension. This pension is dealt with at (vi) infra. An orphan may also be entitled to a death benefit pension under the Occupational Injuries Scheme. (See section 21 of the Social Welfare (Occupational Injuries) Act 1966 and section 16 of the Social Welfare Act 1976.)

(iii) Deserted Wife's Benefit

A wife who has been deserted by her husband is entitled to a weekly benefit on her husband's, or her own, insurance record, if the contribution and other prescribed conditions have been fulfilled. An increase in the benefit is payable in respect of every qualified child (including a child between the ages of 18 and 21 receiving full-time education). (See Social Welfare Act 1952, section 25E (inserted by the Social Welfare Act 1973, section 17).) A deserted wife may also be entitled to a deserted wife's allowance. (See (vii) infra.)

(iv) Death Benefit under the Occupational Injuries Scheme

When an insured person dies as a result of an occupational injury, or of a prescribed industrial disease, benefits may be payable under the Occupational Injuries Scheme. Two benefits payable under this scheme are relevant in the present context. They are the widow's pension and the widower's pension.

(a) Widow's Pension

This is payable to a widow (until she remarries) if her late husband was an insured person and if his death was due to an occupational injury or a prescribed industrial disease. The pension may be increased by an additional allowance in respect of qualified children (including a child between the ages of 18 and 21 who is receiving full-time education). (See the Social Welfare (Occupational Injuries) Act 1966, sections 17, 18 and 19.)

(b) Dependent Widower's Pension

If an insured woman dies as the result of an occupational accident or of a prescribed industrial disease, leaving a dependent widower who is permanently incapable of self support, the widower is paid a pension. The increase for children is the same as that paid in the case of a widow. (See sections 17, 18 and 19 of the Social Welfare (Occupational Injuries) Act 1966.) Also, section 26 of the Social Welfare Act 1952 (as amended by section 11 of the Social Welfare (Miscellaneous Provisions) Act 1963 and section 17 of the Social Welfare Act 1976) provides that, on the death of a woman who is in receipt of a retirement or contributory old age pension that includes an increase for her husband, her husband shall be entitled to a benefit the weekly rate of which is equal to the rate of contributory widow's pension (including increases for any qualified children) that would be payable to him if he were a widow.

(v) Non-Contributory Widow's Pension

This is a weekly payment made to a widow who is not entitled to a contributory pension. The widow must be under 67 years of age, satisfy a means test and have lived in the State for a period of at least 2 years at any time before her claim. The weekly rate of pension depends upon the number of qualified children (including children between the ages of 18 and 21 who are receiving full-time education). In each case the children must be normally residing with the widow. (See the Widows' and Orphans' Pensions

Act 1935, sections 2, 3, 20 and 32, the Social Welfare Act 1952, sections 105 and 109, the Social Welfare (Miscellaneous Provisions) Act 1969, section 9, the Social Welfare Act 1970, section 29, and the Social Welfare Act 1976, sections 5 and 19.)

(vi) Non-Contributory Orphan's Pension

This type of pension is payable in respect of an orphan who satisfies a means test and to whom a contributory orphan's allowance is not payable. This pension is payable until the orphan reaches the age of 18 years and it may be continued between the ages of 18 and 21 if the orphan is receiving full-time education. (See the Widows and Orphans Pension Act 1935, sections 24 and 32, the Social Welfare Act 1948, section 52, the Social Welfare Act 1952, sections 106 and 114, and the Social Welfare Act 1976, section 6.)

(vii) Social Assistance Allowances for Deserted Wives

This is a weekly payment (known as a deserted wife's allowance) made to a deserted wife who is not entitled to a deserted wife's benefit. She must comply with certain prescribed conditions. These include a "means test". The deserted wife must be under pensionable age (67) and, if she has no children residing with her, she must be 40 years of age or over. The weekly rate of pension payable to a deserted wife is the same as the rate of the widow's non-contributory pension ((v) supra) and depends upon the number of qualified children (including the number of her children between the ages of 18 and 21 who are receiving full-time education). (See the Social Welfare Act 1970, section 22, the Social Welfare Act 1972, section 19, and the Social Welfare Act 1974, section 5.)

(viii) Social Assistance Allowance for a Prisoner's Wife

A woman who has not attained 67 years whose husband is in prison (having been committed for not less than 6 months) and who fulfils the same conditions as those for a deserted wife's allowance may qualify for a prisoner's wife's allowance while her husband is in custody. The means test and the rates of payment are the same as for a non-contributory widow's pension. (See (v) supra.) As in the case of that pension, the weekly rate depends upon -

- (a) the number of qualified children under 18 years;
and
- (b) the number of children between the ages of 18
and 21 years who are receiving full-time education.

(See the Social Welfare (No. 2) Act 1974, section 9.)

(ix) Social Assistance Allowances for Unmarried Mothers

A social assistance allowance is payable to an unmarried mother who is under 67 years of age, satisfies a means test, is the mother of at least one qualified child, i.e. a child under 18 or a child between the ages of 18 and 21 who is receiving full-time education, and has lived in the State for a period of 2 years at any time before her claim. The amount of her allowance will depend on the number of her qualified children (including those between the ages of 18 and 21 who are receiving full-time education and living with her). (See the Social Welfare Act 1973, section 8, and the Social Welfare Act 1974, section 5.)

5.28 The Commission is of opinion that a reduction in the age of majority should not affect the education of a "qualified child", so that the payment would continue to be made under all the social insurance and assistance schemes referred to supra until a child who is receiving full-time education reaches the age of 21 years. (See section 9(1) of the General Scheme of the Bill - p. 89 infra.)

(3) Blind Persons' Pensions

5.29 If a person fulfils the following conditions, namely:

- (i) has reached the age of 21 years;
- (ii) satisfies the pension authorities that he is so blind that he cannot do any work for which eyesight is essential, or cannot continue in his ordinary occupation; and
- (iii) satisfies the pension authorities that since reaching the age of 10 years he has had his residence in the State for an aggregate of 5 years,

he shall be entitled to receive a pension that is the same as the Old Age (Non-Contributory) Pension. (See the Social Welfare (No. 2) Act 1976, section 13.)

5.30 If the age of majority is reduced from 21 years, then the qualifying age for a blind pension should, in the Commission's view, be correspondingly reduced. (See section 4(1) of the General Scheme of the Bill - p. 84 infra.)

(4) Wards of Court

5.31 It is not proposed to go into the background of the power of the court to make a minor a ward of court, or to appoint, or remove, a guardian, or to provide for the maintenance of a ward of court. The general jurisdiction in respect of all these matters is vested in the High Court, though the Circuit Court has a jurisdiction limited according to the value of the property involved. The jurisdiction of the court over the person or the property of a ward of court ceases when the ward reaches 21.

5.32 The Latey Committee considered what should happen when the age of majority was reduced. A majority of the members of the Commission were of the view that jurisdiction with regard to wardship, access and custody should end at 18 years. (See Latey Report, paragraphs 217-221; and paragraphs 233-240.) The two members who recommended that the age of majority should remain at 21 recommended that wardship jurisdiction should continue until the age of 21. (Latey Report, paragraphs 581-589 and 599(2).)

5.33 The Committee unanimously recommended that the High Court should have power to make maintenance orders without age limit. This recommendation was not, however, fully implemented. (See Latey Report, paragraphs 249-254 and paragraph 5.34 infra.)

5.34 While the English Family Law Reform Act 1969 reduced the age of majority to 18, section 6 of that Act gives the court power to make an order -

- (a) requiring either parent of a ward to pay to the other parent, or

(b) requiring one or both parents to pay to any other person having care of the ward, a reasonable periodic sum for the maintenance and education of the ward even after he reaches majority, but not beyond the date on which he reaches 21. The order may direct that, after minority, the sum be paid to the person who has been the ward of court. No order may be made where the parents are living together or where the ward or former ward is illegitimate.

5.35 The Commission is of opinion that a person who is a ward of court by reason of his minority and who reaches the age of 18 years should be discharged from wardship and that the court should exercise no further jurisdiction over that person or his estate. (See section 3(2) of the General Scheme of the Bill and paragraph 2 of the Schedule thereto - pp. 83 - 97 infra.)

(5) The Adoption of Children

5.36 This section is limited to considering the effect of an alteration in the law of majority on the existing legislation concerning the adoption of children.

5.37 Formal provision for the adoption of children was first made by the Adoption Act 1952, which has been amended by Acts passed in 1964, 1974, and 1976. For the purposes of the Adoption Acts, except where the context otherwise requires, any person under 21 years of age is a 'child'. (See Adoption Act 1952, section 3.)

5.38 The Adoption Board may not make an adoption order unless -

- (a) the applicant and, if the applicants are a married couple living together, each of them, has attained the age of 30 years;

- (b) the applicants are a married couple living together who have been married to each other for not less than 3 years and each of whom has attained the age of 25 years;
- (c) the applicant has attained the age of 21 years and is the mother, natural father or a relative of the child;
- (d) the applicants are a married couple and the wife is the mother of the child and she or her husband has attained the age of 21 years; or
- (e) the applicants are a married couple and one of them is the natural father or a relative of the child and each of them has attained the age of 21 years.

(See Adoption Act 1952, section 11, as amended by the Adoption Act 1964, section 5(1).)

5.39 Originally the law provided that the Adoption Board should not make an adoption order except in respect of a child who had attained the age of six months but had not attained the age of 7 years. (See Adoption Act 1952, section 10.) This section was amended in 1964 and again in 1974. (See Adoption Act 1964, section 3, and Adoption Act 1974, section 11.) At present an adoption order may be made in respect of a child who has attained the age of 7 years if in the special circumstances of the case the Adoption Board is satisfied that it is desirable to do so. The Board is required, before deciding if it will make an adoption order, to consider the wishes of the child having regard to its age and understanding.

5.40 If the age of majority is reduced to 18 years, it will be necessary to consider the provisions of sections 3 and 11 of the Adoption Act 1952 as amended by later legislation. As already indicated, "child" is defined in section 3 of the 1952 Act as meaning (save where the context otherwise requires) a person under the age of 21. Section 11 (as amended) provides that in certain circumstances an applicant for an adoption order must have attained the age of 21. (See paragraph 5.38 supra.)

5.41 In England the law of adoption was consolidated with certain amendments by the Adoption Act 1958. A person in respect of whom an adoption order may be made is termed an "infant" and was, until the enactment of the Family Law Reform Act 1969 (section 1(3) and Schedule 1), a person under 21 years of age. The 1969 Act reduced this age to 18. If the adopter is the natural parent of the child, no minimum age for adoption is prescribed. In every other case the minimum age for a sole adopter was formerly 25 years, whereas, in the case of a married couple, one spouse had to be at least 25 and the other at least 21. Since the Children Act 1975, however, an adoption order may be made on the application of a sole applicant if he is 21 years and, in the case of a married couple, when each is 21 years. A natural parent must be 21 before being entitled to an adoption order. (See 1975 Act, sections 10 and 11.) It appears that the British approach to the age of majority is that (a) a person becomes an adult at 18 and, accordingly, may not be adopted, (b) the minimum age for a prospective adopter is not related to the age of majority.

5.42 If the age of majority is reduced to 18 from 21 the Commission is of opinion 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 "eighteen years". As regards the minimum age requirement for prospective adopters, the Commission is at present of opinion that the restriction to the age of 21 years should be removed in respect of an applicant who is the mother, natural father, relative or the spouse of the natural father or relative of the child and has attained majority either by marriage or by reaching the age of 18. (See paragraph 5.38 supra and section 4(2) of the General Scheme of the Bill - pp. 84-85 infra.) The Commission would especially welcome observations on this aspect of the law of adoption.

(6) The Statute of Limitations

5.43 The Statute of Limitations 1957 deals with the time limits for actions for the recovery of land and for money charged on land as well as for actions based on contract or tort. The period of limitation depends on the nature of the action and begins to run from the time at which the cause of action accrued.

5.44 Time may be extended when the claimant is under the disability of infancy or unsoundness of mind. The effect of disability on the period of limitation is dealt with in Part III, Chapter II of the Statute.

5.45 When a person is an infant at the time a cause of action accrues to him the action may be brought at any time before the expiration of six years from the date when the infant reaches twenty-one years or dies (whichever event first occurs). However, in the case of an action for damages for negligence, nuisance or breach of duty, where the damages claimed by the plaintiff consist of or include damages in respect of personal injuries to any person, the claim has to be brought within three years from the date the person ceased to be under a disability or died. (See the Statute of Limitations 1957, sections 48(1) and 49(1) and (2).) The same is the position in respect of a claim to the estate of a deceased person or to any share in such estate whether under a will, on intestacy or as a legal right. (See the Succession Act 1965, section 127.) In O'Brien v.

Keogh /1972/ I.R. 144 the Supreme Court held that section 49(2)(a)(ii) of the 1957 Statute was invalid having regard to the provisions of the Constitution. The provision as enacted provided that the limitation period was not to be extended if the plaintiff proved that the person under the disability was not at the time of the accrual to him of the right of action in the custody of a parent. In order to assist readers and compilers of indexes, it is proposed to repeal subsection (2)(a)(ii) of the section. (See section 12(e) of the General Scheme of the Bill - page 94 infra.)

5.46 It is necessary to consider the position of those persons who will reach majority earlier when the age is reduced from 21 to 18. For instance, a 19 year old who now has a right of action in respect of the recovery of land has a period of six years from the date on which he becomes 21 years within which to sue. If the age of majority is reduced to 18, he will become an adult on the date the legislation comes into force and may sue only within six years of that date.

5.47 The problem discussed in the immediately preceding paragraph is admittedly a transitory one. Nevertheless, it can be solved by a simple transitional provision to the effect that the legislation will not affect the time for bringing proceedings where the cause of action arises before the commencement of the legislation - and the Commission recommends that a provision on these lines be included in legislation. (See section 11 of, and paragraph 6 of the Schedule to, the General Scheme of the Bill - pp. 92 and 100 infra.)

(7) The effect of the proposed reduction in the age of majority on statutory provisions and on dispositions in private documents

5.48 If the age of majority is to be altered, it is necessary to consider how the legislation should affect the construction of "full age", "infant", "minor" etc. -

- (a) in statutory provisions, i.e. enactments and orders, rules, regulations, byelaws etc. made in the exercise of a power conferred by any enactment, and
- (b) in private instruments (such as deeds and wills) and in court orders.

5.49 In the legislation in England, Scotland and Northern Ireland a distinction is drawn between statutory provisions and private instruments. In the case of all statutory provisions the new age of majority (18 years) applies for the purpose of construing "full age", "infant", "infancy", "minor", "minority" and similar expressions in those provisions, unless there is a definition or an indication to the contrary. In the case of private instruments the legislation does not apply retrospectively so that in a settlement made prior to the commencement date of the legislation a limitation to A "on attaining majority" means that A will take only on reaching 21 years. If the settlement is made after the commencement date, he takes on reaching 18 years.

5.50 The English, Scottish and Northern Ireland Acts also provide that, in the case of certain statutory provisions listed in a Schedule, a reference to the age of eighteen is to be substituted for any reference to the age of twenty-one. (See, for example, sections 1(2) and 1(3) of, and Schedule 1 to, the Age of Majority Act (NI) 1969.) The legislation for England, Scotland and Northern Ireland also provides that,

notwithstanding any rule of law, a will executed before the commencement date is not to be treated for the purposes of the legislation 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. This provision was designed to ensure that a will made before the commencement date and confirmed by a codicil made after that date would not be subject to the new rule as to the construction of expressions such as "full age", "infancy", "minority" etc. contained therein. (See, for example, section 1(6) of the Age of Majority (Scotland) Act 1969.) The general rule of law is that a will speaks as to construction from the date of confirmation rather than from the date of its original execution. (See Note on section 11 of the General Scheme of the Bill - p. 93 infra.)

5.51 The reason for the distinction made in the legislation in England, Scotland and Northern Ireland between statutory provisions and private instruments was that, in the case of private instruments, it was considered that, a person made a disposition of his property according to the law as it stood when the instrument was executed. (See Parliamentary Debates, House of Lords, Official Report, Vol. 297, col. 1136.)

5.52 The Commission is of opinion that the distinction made in the legislation referred to supra is a valid one. In other words, the Commission's view is that the proposed legislation in the State should in so far as the construction of the expressions "full age", "infancy" etc apply to all statutory provisions (no matter when enacted) but not to private instruments (deeds, wills etc) made before the legislation comes into operation - subject always, of course, to the absence of a definition or of any contrary intention in the statutory provision or private instrument. In the case of a will, extrinsic evidence would be admissible to show a contrary intention. (See section 90 of the Succession Act 1965.) The Commission is also of opinion that the legislation

should provide that references in any statute to the age of twenty-one years should be read as references to the age of eighteen years, except where the reference to the age of twenty-one years is not clearly related to the fact that twenty-one years is the age of majority or where it is desirable for policy reasons (as for example in the case of legislation dealing with maintenance and social welfare benefits) to retain the age of twenty-one. (See section 2, section 3(2) and section 4 of the General Scheme of the Bill - p. 82 et seq. infra.) It will, of course, still remain possible for people to specify the exact age at which property is to vest in the person to whom it is given, devised or bequeathed.

(8) Proceedings by, against or in respect of a minor

5.53 In section 2 of the Guardianship of Infants Act 1964, an "infant" is defined as a person under the age of twenty-one years. If the age of majority is altered this age will in the ordinary way become eighteen. However, the Commission is satisfied that specific provision should be made so as to allow for the payment up to the age of twenty-one of those periodical sums that a court may (under section 11 of the 1964 Act) order a father or mother to pay towards the maintenance of an infant. (See section 9(3) and (4) of the General Scheme of the Bill - p. 89 et seq. infra.)

5.54 The various rules of court, i.e. the Rules of the Superior Courts, the Rules of the Circuit Court and the Rules of the District Court, all contain special provisions dealing with actions by or against minors. In general these rules refer only to the infancy of a person without specifying age. Some rules, however, do specify the age of 21. An example of this is to be found in the Rules of the Superior Courts, Order 65, rule 7. Whenever a rule of court specifies an age as 21 it will be amended by the substitution of "full age etc." for "21". (See section 2 and section 4(1) of the General Scheme of the Bill - pp. 82 and 84 infra.)

5.55 Section 6 of the Employers and Workmen Act 1875 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 not exceeding fourteen days. It is suggested that this statutory provision (which because of section 107(2) of the Defence Act 1954 no longer applies to members of the Permanent Defence Force) might be held to be inconsistent with the Constitution. Apart from this aspect, the provision is out of tune with modern labour law and should clearly be repealed. (Cf. judgment of Kingsmill Moore J. in Butler, an Infant v. Dillon (1951) 87 I.L.T.R. 95 at 97-98.) The repeal is provided for in section 12(c) and (d) of the General Scheme of the Bill - page p. 94 infra.

CHAPTER VI SUMMARY OF PROPOSALS

6.1 This chapter contains a summary of the various proposals that have been made in the Working Paper. The General Scheme of a Bill to implement these proposals and to make certain consequential changes in the law forms Chapter VII (p. 82 et seq. infra).

6.2 The proposals are as follows:

- (1) The age of majority should be reduced to 18 and a person under that age should reach majority on marriage. (Paragraphs 2.38 and 2.45.)
- (2) The term "minor" (instead of "infant") should in future be applied to a person who has not reached majority. (Paragraph 2.38, but see also Note to section 5 of the General Scheme of a Bill in Chapter VII - p. 85 infra.)
- (3) The "free age for marriage" should be the same as the age of majority. There should also be "a minimum age for marriage" which could be the same as the "free age for marriage" or 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 (p. 82 et seq. infra) is drafted on the basis of the latter option. (Paragraphs 4.2, 4.48 and 4.54.)
- (4) On the basis of an "absolute minimum age" (16), the marriage of a person under that age should be made null and void and intrinsically or essentially invalid. 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 is first obtained.
(Paragraphs 4.2, 4.55 and 4.56.)

- (5) The time at which a person attains a particular age expressed in years should be the commencement of the relevant anniversary of the date of his birth.
(Paragraphs 5.3 to 5.7.)
- (6) The legislation reducing the age of majority should ensure that an order for maintenance may be made under the Illegitimate Children (Affiliation Orders) Act 1930 or under section 11 of the Guardianship of Infants Act 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 reaches the age of 21. In addition, 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.
(Paragraph 5.22.)
- (7) Legislation reducing the age of majority to 18 years should provide that the payments made under the Social Insurance and Assistance Services (other than children's allowances) provided by the State should continue in respect of a child receiving full-time education at a school, college, university or other educational institution until that child reaches the age of 21. (Paragraphs 5.26 to 5.28.)
- (8) If the age of majority is reduced from 21 years, the qualifying age for a blind pension should be similarly reduced. (Paragraph 5.30.)

- (9) The jurisdiction over the person or estate of a ward of court should cease when he or she reaches the new age of majority. (Paragraph 5.35.)
- (10) If the age of majority is reduced to 18 years, 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. The minimum age requirement for certain prospective adopters should be changed from 21 years to the age of majority. (Paragraphs 5.38 and 5.42; and see section 4(2) of the General Scheme of the Bill - p. 84 infra.)
- (11) Special transitory provisions should be included in the legislation. These provisions will relate to funds in court, wardship and custody orders, powers of trustees during the minority of a beneficiary, limitation of actions, etc. (Paragraphs 3.28 and 5.43 to 5.47.)
- (12) If the age of majority is reduced as proposed, the new legislation should, in so far as the construction of expressions such as "full age", "infancy" etc. 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. The legislation should also provide that references in any statute to the age of 21 should be read as references to the new age of majority, except where the reference to the age of 21 is not clearly related to the fact that 21 years is the age of majority or where it is desirable for policy reasons (e.g., in the case of maintenance payments and social welfare benefits) to retain the age of 21. (Paragraphs 3.28 and 5.48 to 5.52.)

CHAPTER VII GENERAL SCHEME OF A BILL TO REFORM THE LAW
RELATING TO THE AGE OF MAJORITY AND THE AGE
FOR MARRIAGE; AND TO PROVIDE FOR CONNECTED
MATTERS.

Short title and commencement

1. Provide that the Act may be cited as the Age of Majority Act 1977 and that it comes into operation on the first day of June 1978 (hereinafter referred to as the commencement date).

Note: This is a standard provision. The commencement date should be fixed so as to give people a reasonable time to deal with their affairs in the light of the new legislation before the legislation comes into force. Although the proposed Act will deal with both the age of majority and the age for marriage, it is proposed that only "majority" be referred to in the short title. Throughout the Scheme the expression "full age or majority" is being used.

Interpretation

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

Note: The expression "statutory provision" occurs throughout the Scheme and in the Schedule; so it requires to be defined. Normally, "statutory provision" would mean a provision in a statute or enactment of the Legislature but not a provision in a statutory order or instrument.

Reduction of age of majority

3. (1) Provide that, as from the commencement date, a person shall reach full age or the age of majority on reaching the age of eighteen (instead of twenty-one) if he has not been married or upon the date of his marriage if the marriage takes place before the person reaches the age of eighteen or upon the commencement date if he has already reached the age of eighteen or has been married before reaching that age but has not reached the age of twenty-one.

(2) Provide that, subject to section 10, 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, applies 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) in any deed, will, court order or other instrument whatsoever (not being a statutory provision) made on or after the commencement date.

Note: The object of this section is to ensure that a person will reach full age or majority at eighteen (instead of twenty-one) or on marriage before the age of eighteen. The expressions "full age", "infant", "minor" etc. will, from the commencement date, be construed in accordance with subsection (1) where they appear in any statutory provision, no matter when passed or made, and in any deed, will or court order made on or after the commencement date. The reason for distinguishing between statutory provisions and private instruments is discussed in paragraphs 5.48 to 5.52 supra. It should be noted that the transitional provisions and savings contained in the Schedule will have effect in relation to this section and also in relation to section 4. (See section 11 of the Scheme infra.)

Reference to age of twenty-one

4. (1) Provide that, subject to subsection (2) and section 9, in any statutory provision passed or made before the commencement date, for any reference to the age of twenty-one there is substituted a reference to full age or the age of majority (within the meaning of section 3(1)) but that this shall be without prejudice to any power of amending any order, rule, regulation, byelaw or other instrument made in the exercise of a power conferred by any enactment.

(2) Provide that, in the definition of "child" in section 3 of the Adoption Act 1952 (No. 25), the words "any person under eighteen years of age who has not been married" are substituted for "any person under twenty-one years of age": and provide for the deletion of (1) the words "and she or her husband has attained the age of twenty-one years" and (2) the words "and each of them has attained the age of twenty-one years" in, respectively, paragraphs (c) and (d) of section 11(2) of that Act.

Note: *This is a general provision. It is not considered necessary to list all the enactments in which the reference to the age of twenty-one is to be changed to a reference to the age of eighteen or full age. Where it is thought necessary to maintain the age of twenty-one in any statute, specific provision is being made. (See sections 9 and 10 of the Scheme infra.) Government Departments responsible for particular statutes will be asked to examine those statutes to see if the age of twenty-one should be maintained in any of them. It is not proposed to change the ages of twenty-five and thirty specified for applicants for adoption in section 11 of the Adoption Act 1952, as amended by section 5 of the Adoption Act 1964, but it is proposed to change the age of twenty-one. It is also proposed (subsection (2) of this section supra) that only a child under the age of eighteen (at present twenty-one) who has not married may be adopted. Although reference to the age of twenty-one in all existing statutory enactments and statutory instruments will become references to full age, this will not prevent a different age being specified in any amending*

statutory instrument made after the commencement date under a power conferred by any statute. Incidentally, enactment of the provision proposed in subsection (1) of this section will mean that a blind pension will be payable at eighteen (or on marriage before that age) instead of at twenty-one as at present. (See paragraphs 5.30, 5.38 and 5.42 supra and see also section 13 of the Social Welfare (No. 2) Act 1976.)

Description of person under eighteen as minor

5. Provide that a person who has not reached full age or majority may be described as a minor instead of as an infant and that accordingly in the Act "minor" means such a person.

Note: *The use of the term "infant" can confuse, and it is proposed to substitute the term "minor". The proposed section is an enabling one, so that it will still be correct to refer to persons under eighteen as infants and so that the Guardianship of Infants Act 1964, for example, will still be the Guardianship of Infants Act 1964.*

Reaching of particular age

6. (1) Provide that the time at which a person reaches a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth.

(2) Provide that subsection (1) applies only where the relevant anniversary falls on a date after the commencement date, and that the subsection, in relation to any statutory provision, deed, will or other instrument, has effect subject to any provision therein.

Note: *This section proposes that the moment of attaining an age shall be the first moment of the birthday. The provision will apply only to*

anniversaries occurring after the commencement date. (As to the existing law, see paragraphs 5.2 to 5.6 supra.)

Age for marriage

7. (1) Provide that a marriage solemnised between persons either of whom has not reached the age of sixteen is null and void and is intrinsically or essentially invalid.

(2) Provide that subsection (1) applies to any marriage solemnised in the State, irrespective of the habitual residence of the parties or of one of them, and applies also to any marriage solemnised outside the State where one of the parties has his habitual residence in the State.

(3) Provide that a person to whom application is made in relation to the solemnisation of an intended marriage may request the production of evidence of the ages of both parties or the age of either party and that, if the request is not complied with, the application is to be refused.

Note: *This section will be in substitution for section 1 of the Marriages Act 1972. It is proposed that the absolute minimum age for marriage will be sixteen and that the new rule will apply to any marriage solemnised in the State and also to any marriage solemnised outside the State where one of the parties is Irish or has his habitual residence in Ireland. A marriage in contravention of the section will be intrinsically invalid. This is the existing law, but it is, nevertheless, considered desirable to state the position in express terms. (See paragraphs 4.55 to 4.57 supra and also section 8 of the Scheme infra.) (Cp. the British Age of Marriage Act 1929 and section 1 of the Marriage (Scotland) Act 1977 (which repeals the 1929 Act); and see Pugh v. Pugh [1951] P. 482 as to the effect of the 1929 Act (now re-enacted for England in the Marriage Act 1949).)*

Consent required to marriage of a minor

8. (1) Provide that a marriage where one of the parties is a minor is null and void and is intrinsically or essentially invalid, unless there has first been obtained -

- (a) the consent in writing of the guardians or the consent in writing of the sole guardian of that party, or
- (b) if the guardians disagree or refuse or withhold consent or if there is no guardian or if the minor is a ward of court, the consent of the President of the High Court (or of a Judge of that Court nominated by him).

(2) Provide that, where a guardian whose consent is required under subsection (1) is incapable of consenting by reason of unsoundness of mind or other mental disability or has not after reasonable inquiries been found, the President of the High Court (or a Judge of that Court nominated by him) may give the necessary consent to the marriage.

(3) Provide that applications under this section to the President of the High Court may be made in an informal manner without the intervention of a next friend and in accordance with rules to be made by the President, that the applications are to be heard and determined otherwise than in public and that no court fee is chargeable in respect of them.

(4) Provide that this section applies to any marriage solemnised in the State, irrespective of the habitual residence of the parties or of either of them, and applies also to any marriage solemnised outside the State where either of the parties has his habitual residence in the State.

(5) Provide that any decision of the President of the High Court (or of a Judge of that Court nominated by him) granting or refusing consent under this section is final and unappealable.

Note: This section is to replace and substantially to amend section 19 of the Marriages (I) Act 1844 (as substituted therein by section 7 of the Marriages Act 1972). It is proposed in subsection (1) that the requirement as to consent should be mandatory and not directory (as at present) and that this requirement should be a substantive and not a formal requirement. A marriage in contravention of the section will be 'null and void'. Also it will be 'intrinsically or essentially' invalid. (See paragraph 4.56 supra and also section 7 of the Scheme supra.) It is not proposed in this Scheme to recommend any conflict of laws rule as to the characterisation of a consent requirement in foreign marriages (i.e. marriages to which this section does not apply). The matter is, however, being examined separately by the Commission in connection with the general problem of all requirements (formal and substantive) for the validity of marriage. In most systems of law, an age requirement, being concerned with capacity to marry, is characterised as a substantive or fundamental requirement; but there is not, unfortunately, universal agreement as to the classification of a consent requirement. (See paragraph 4.57 supra and the authorities cited at the end thereof. See also the discussion in Falconridge, Conflict of Laws, chapter 4 (2nd ed., Toronto 1954) and in Cheshire, Private International Law, p. 49 et seq. (9th ed. by P. North, London 1974).) It appears that in Northern Ireland a consent requirement is now clearly directory and not mandatory. Section 1 of the Marriages Act (NI) 1954, which deals with consent to the marriage of minors, provides in subsection (5) that a "marriage, which apart from this section, would be a valid marriage shall not be deemed to be invalid by reason of any contravention of this section". The 1954 Act repeals sections 19 and 20 of the Marriages (Ireland) Act 1844. In the recent submission by the Standing Committee of the Church of Ireland General Synod (referred to in paragraphs 2.29 and the footnote to paragraph 4.55 supra) it is suggested that the marriage of a person under 18 without parental consent should be invalid.

Age for maintenance and social welfare payments or benefits

9. (1) Provide that nothing in the Act affects any right of, or in respect of, a child who has reached full age or the age of majority to payments or benefits for his maintenance, support, education or instruction, or to payments in respect of his apprenticeship or funeral expenses, under -

- (a) the Illegitimate Children (Affiliation Orders) Act 1930 (No. 17), the Guardianship of Infants Act 1964 (No. 7), the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11), or
- (b) any statutory provision relating to social welfare or social assistance.

(2) (a) Provide that an application in respect of any such payment or benefit as is referred to in subsection (1) under any of the enactments specified in paragraph (a) of that subsection may (as the case may require and notwithstanding anything contained in those enactments or any of them) be made either by the child himself or his personal representatives or by either parent or by any other person on the child's behalf.

(b) Provide that the court having jurisdiction under any of the enactments specified in paragraph (a) of subsection (1) may, if it appears to it proper to do so, order that any sum or sums payable under that enactment to a parent or other person in respect of that child be paid to the child himself on his reaching full age or the age of majority.

(3) Provide that the reference in section 11 of the Guardianship of Infants Act 1964 (No. 7) to a guardian includes a reference to a parent and that the references to an infant (except in paragraph (a) of subsection (2) of the section) include references to a child who is under the age of twenty-one or, if he has reached that age, is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully.

(4) Provide for the amendment of section 11 of the Guardianship of Infants Act 1964 (No. 7) by the substitution of a subsection on the following lines for subsection (3) of that section:

"(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."

(5) Provide that in the Illegitimate Children (Affiliation Orders) Act 1930 (No. 17), section 16 of the Social Welfare (Supplementary Welfare Allowances) Act 1975 (No. 28) and the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11), for every reference to the age of sixteen there is substituted a reference to the age of eighteen.

Note: The object of subsection (1) of this provision is to ensure that the existing rights of a child (under, for example, the 1976 Act) to maintenance up to the age of twenty-one where he is receiving full-time education or instruction at a school, college or university will be maintained, despite the fact that he will reach full age at eighteen or on marriage. It will also ensure that a child up to the age of twenty-one receiving such education or instruction will be a qualified child for the purpose of social welfare pensions and benefits. Subsection (2) is a procedural provision designed to allow a child of full age or his parents etc. to apply for a maintenance payment or a

benefit under any of the relevant enactments providing for maintenance, as the particular circumstances of the case may necessitate. When a child reaches eighteen, he will be an adult and might have to make an application himself for maintenance until he is twenty-one. Subsection (3) proposes to amend the Guardianship of Infants Act 1964 so as to allow a parent to apply under section 11 of that Act for an order for maintenance for a child who has reached majority (eighteen) and so as to allow such an order to be made in respect of the child up to the age of twenty-one (as at present in the case of an infant) or, where the child is disabled, up to any age (as in the case of a maintenance order under the Family Law (Maintenance of Spouses and Children) Act 1976 and in the case of an order providing for a periodical payment under the Illegitimate Children (Affiliation Orders) Act 1930 (as amended by 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 child who has reached majority. (Hence the exception being provided in regard to subsection (2)(a) of section 11 of the 1964 Act.) Subsection (4) proposes to amend section 11 of the 1964 Act in order to allow an order for maintenance under that section to be enforceable although the parents are residing together - thus bringing the law as to such an order into line with the law as to a maintenance order under section 5 of the 1976 Act. Subsection (5) proposes to raise from sixteen to eighteen years 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 present age appears to be too low judged by today's standards. Moreover, the social insurance and assistance services have in practically all cases already been extended to persons up to eighteen years. Normally, where a person is receiving full-time education or instruction at a school, college or university after the age of sixteen, entitlement to social welfare payments continues until he reaches twenty-one. However, in the case of children's allowances, the upper age limit is eighteen. It is not proposed to amend the law

by raising this age limit to twenty-one. Similarly, it is not proposed to raise from sixteen to eighteen years the maximum age for qualification for children's allowances irrespective of entitlement based on educational needs. (See paragraphs 5.22, 5.26 and 5.28 supra.)

Statutory provisions unaffected by this Act

10. Provide that nothing in this Act affects the construction of any such expression as is referred to in subsection (2) of section 3 of the Act in any statutory provisions relating to taxation (including income tax, surtax, wealth tax, capital acquisitions tax, capital gains tax and estate duty).

Note: *It is proposed that the new age of majority will not affect any taxation statutes or enactments so that any entitlements of a taxpayer to allowances or concessions in respect of any infant will continue as if the proposed Act had not been passed.*

Transitional provisions and savings

11. (1) Provide that the transitional provisions and savings contained in the Schedule to this Act have effect in relation to section 3 and section 4 of the Act, save where the context otherwise requires.

(2) Provide that, notwithstanding any rule of law, a will or codicil executed before the commencement date shall not be treated for the purposes of section 3 of, and the Schedule to, the Act 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.

Note: *Subsection (1) provides for the transitory or transitional provisions and savings set out in the Schedule. The note at the beginning of these transitional provisions and those at the end of each provision explain the desirability and purpose of the provisions. Subsection (2) of section 11 is designed 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 Act. The object is that 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 it, 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.) It should 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 as matters stood at the time the will is deemed to have been made: and it is this time that is the concern of section 11(2) of the Scheme supra.*

Repeals

12. Provide for the repeal of the following statutory provisions:

- (a) sections 19 and 20 of the Marriages (Ireland) Act 1844 (c. 81);
- (b) the Infants Settlements Act 1855 (c. 45), together with the Infant Marriage Act 1860 (c. 83) and section 13(2)(d) of the Married Women's Status Act 1957 (No. 5), except in relation to anything done before the commencement date;

- (c) in section 6 of the Employers and Workmen Act 1875 (c. 90) (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 (No. 18);
- (e) in section 49(2)(a) of the Statute of Limitations 1957 (No. 6) the word "and" at the end of subparagraph (i) and subparagraph (ii); and
- (f) sections 1, 7 and 18 of the Marriages Act 1972 (No. 30).

Note: Sections 19 and 20 of the Marriages (I) Act 1844 were replaced in section 7 of the Marriages Act 1972 by a new section 19. All these provisions will be replaced by the proposed section 8 of the Scheme. The Infants Settlements Act 1855 was applied to Ireland by the Infant Marriage Act 1860 and 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 by paragraph (d) of that subsection. Now that the minimum age for making settlements is to be eighteen or the age of marriage, the 1855 Act, the 1860 Act and the provision in the 1957 Act are no longer necessary and should be repealed. The parts of section 6 of the Employers and Workmen's Act 1875 proposed for repeal and section 106(4) of the Defence Act 1954 (also proposed for repeal) are discussed in paragraph 5.55 supra. Section 49(2)(a)(ii) of the Statute of Limitations 1957 has been held to offend against the Constitution and should in terms be repealed. (See paragraph 5.45 supra.) Section 7 of the Scheme is designed to replace section 1 of the Marriages Act 1972 and section 8 of the Scheme is designed to replace section 7 of the 1972 Act. (See Notes on those sections of the Scheme supra.) Section 18 of the 1872 Act (substitutions

for certain references to age) will no longer be necessary and should be repealed. The age of 21 mentioned in each of the statutes specified in subsection (2) of the section will, because of sections 4, 5 and 8 of the Scheme become full age or the age of majority. The background of the 1972 Act section is explained in paragraph 4.15 supra. The Acts specified in subsection (2) of the section are: (a) the Marriages (Ireland) Act 1844, (b) the Marriage Law (Ireland) Amendment Act 1863 and (c) the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870.

SCHEDULE

TRANSITIONAL PROVISIONS AND SAVINGS

Note: *The transitory or transitional provisions proposed in the Schedule have been drafted on the basis that specific rules should be made 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 of the General Scheme proposes that the new legislation will apply to any statutory provision, no matter when enacted or made, but that it will not apply to a deed, will or other instrument (not being a statutory provision) made before the commencement date. However, section 11 of the Scheme proposes that the transitional provisions and savings shall have effect in relation to the provisions proposed in section 3 and also in relation to those proposed in section 4 (references to the age of twenty-one). The provisions will apply in respect of certain court orders in force before the commencement date, in respect of the powers of trustees to apply income from property for the maintenance of a minor, and in respect of accumulation periods, limitation of actions etc.*

Funds in court

1. Provide that 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 or for the benefit of or otherwise payable to, an infant in any proceedings have effect as if any reference therein to an infant's reaching the age of twenty-one were a reference to his reaching full age or majority or, in relation to a person who by virtue of section 3 of the Act reaches full age or majority on the commencement date, to that date.

Note: *The object of this paragraph is to ensure that money lodged in*

court before the commencement date on behalf of a person under 21 will be paid out to him on his reaching 18 or on marriage or on the commencement date, as the case may be.

Wardship and custody orders

2. (1) Provide that 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 reaches the age of twenty-one, or any age between eighteen and twenty-one, has effect as if the reference to his reaching that age were a reference to his reaching full age or majority or, in relation to a person who by virtue of section 3 of the Act reaches full age or majority on the commencement date, to that date.

(2) Provide that paragraph (1) is without prejudice to any provision in any such order, or in section 9 of the Act, that provides or allows for the maintenance or education of a person after he has reached the age of eighteen or after his marriage.

Note: This paragraph proposes that existing wardship and custody orders will cease to operate when the person concerned reaches the new age of majority, but this will not affect any provision in any such order, or in section 9 of the Scheme, that provides or allows for maintenance or education of the person concerned after he reaches 18 or after his marriage. As to the provisions in section 9, see subsections (1) to (4) of that section in the General Scheme and the Note to the section - pp. 89-92 supra. See also para. 5.35 supra.

Power of trustees to apply income for maintenance of minor

3. (1) Provide that sections 3 and 4 of the Act do not affect section 42 or section 43 of the Conveyancing Act 1881 (c. 41) (application by trustees of income of land and property for maintenance, education or benefit of infant) in their application to any interest under an instrument made before the commencement date.

(2) Provide that 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 reached the age of eighteen or has married, or to apply it for or towards the maintenance, education or benefit of any such person, they also have power to pay it to that person himself.

Note: The object of paragraph (1) of this proposed provision is to ensure that the trustees under any instrument made before the commencement date will continue to apply the income from property for the maintenance and education of an infant until he reaches 21. In other words, sections 42 and 43 of the 1881 Conveyancing Act will continue to apply to the instrument under which the interest of the infant arises as if the proposed legislation had not been enacted. Paragraph (2) will ensure that, where the trustees may, under the 1881 Act, pay the income to the parents or guardians of the infant on his reaching eighteen or getting married or apply it for his maintenance, education or benefit, they may pay it to the infant himself (who will, of course, have ceased to be an infant and reached full age or majority by reason of the proposed legislation).

Powers of personal representatives during minority of beneficiary

4. Provide that 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 of the Act do not affect the meaning of "infant" in sections 57 and 58 of the Succession Act 1965 (No. 27).

Note: Sections 57 and 58 of the Succession Act 1965 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; and, if they make no appointment, they themselves become the trustees. Paragraph 4 is designed to ensure that, in the case of a will 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 of the 1965 Act 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.

Accumulation periods

5. Provide that the change, by virtue of section 3 of the Act, in the construction of section 1 of the Accumulations Act 1892 (c. 58) (which lays down the permissible period for the accumulation of income for the purchase of land under settlements and other dispositions) does 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.

Note: *The 1892 Accumulations Act provides in section 1 (no accumulation beyond minority) that property may not be settled or disposed of, in such a manner that the rents or income of that property 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 directing the accumulation would for the time being, if of full age, be entitled to receive the rents or income so directed to be accumulated. Paragraph 5 proposes that the change in the meaning of minority effected by the proposed Act will not affect any directions for accumulation in settlements and dispositions of property by a deed, will or other instrument that was made before the commencement date of the legislation. Therefore, 'minority' in section 1 of the 1892 Act will, for the purpose of private instruments made before the commencement date, be construed as hitherto. This is in line with the general policy as set out in section 3(2) of the General Scheme.*

Limitation of actions

6. Provide that the change, by virtue of section 3 of the Act, 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.

Note: *This paragraph proposes that, in the case of a right of action that accrues to an infant 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 1957 Statute) from the date when the infant reaches 21. Section 48 of the 1957 Statute provides that a person is under a disability while he is an infant (under 21); and section 49 of the Statute provides for the extension of limitation periods in the case of disabilities. For the purpose of rights 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

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

Note: *This paragraph is designed to ensure that a statutory provision (e.g., section 42(4) or section 43(1) of the Conveyancing Act 1981 (referred to in paragraph 3 supra) incorporated in a deed, will or other instrument made before the commencement date will be construed as if the proposed legislation had not been enacted. A settlor or 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" or "minority" contained in the provision will not be construed in accordance with some future legislation amending the meaning of the expressions.*

APPENDIX A ORGANIZATIONS AND INDIVIDUALS WHO MADE
SUBMISSIONS TO THE COMMISSION CONCERNING
THE AGE OF MAJORITY. (Paragraph 1.6)

1. Cork County Council.
2. Department of Agriculture.
3. Dundalk Credit Union Ltd.
4. Free Legal Advice Centres Ltd.
5. Irish League of Credit Unions.
6. National Association of the Mentally Handicapped of
Ireland.
7. National Youth Council of Ireland.
8. Mrs. S. O'Reilly.
9. Mrs. E. Scully.
10. Standing Committee of the General Synod of the Church
of Ireland.

APPENDIX B (Paragraph 1.4 supra)

RELATIONSHIPS BETWEEN AGE AND THE LAW (UP TO AGE OF 35)

A Person
Aged

- 5 It is an offence for any person to give intoxicating liquor (other than for medical purposes) to a child under 5 years. The Children Act 1908, s. 119.
-
- 6 (i) Compulsory school age from 6 to 15. School Attendance Act 1926, ss. 2 and 4; School Attendance Act 1926 (Extension of Application) Order, 1972 (S.I. 105 of 1972).
 (ii) A child under the age of 7 is entirely exempt from criminal responsibility. Common law.
-
- 7 For a child between the ages of 7 and 14, there is a rebuttable presumption that he is incapable of committing a crime.
-
- 13 A boy under 14 is conclusively presumed to be incapable of committing the crime of rape or any other crime of which sexual intercourse is an ingredient or buggery, though he may be convicted of aiding and abetting. Common law.
-
- 14 (i) Age of full criminal responsibility. Common law.
 (ii) Children aged 14 and under are not allowed in a bar. 1908 Children's Act, ss. 13 and 120.

A Person
Aged

- 14 (iii) Unlawful carnal knowledge of a female under 15 is a felony. Criminal Law Amendment Act 1935, s. 1(1). Consent is not a defence.
- (iv) Consent is not a defence to a charge of indecent assault on a person under 15. Criminal Law Amendment Act 1935, s. 14.
- (v) A child under the school-leaving age (15) may not be employed at a mine. Mines and Quarries Act 1965, ss. 5(1) and 108.
-
- 15 (i) Entitlement to children's allowances ceases when a child reaches the age of 16 unless the child is receiving full-time instruction, is an apprentice or is incapacitated, in which cases it continues until the age of 18. Children's Allowances (Amendment) Act 1946, s. 4 and Social Welfare Act 1973, s. 6.
- (ii) Under the Health Acts 1947 to 1970, a person under the age of 16 is treated as a child. Health Act 1957, s. 2(i)
- (iii) The obligation of a parent to maintain a child under the Family Law (Maintenance of Spouses and Children) Act 1976 ceases when the child attains the age of 16 unless the child is or will be, or, if a maintenance order were made for his support, would be, receiving full-time education or instruction at an educational establishment, in which case it may continue up to age of 21. If the child is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully, there is no upper age limit for the entitlement to maintenance. Ss. 3, 5 and 6(3) of the 1976 Act.
- (iv) Every man must maintain his legitimate children and every child of his wife born before her marriage to him, until they reach 16. Every woman is liable to maintain those of her children who are under 16. The liability to maintain is only for the purposes of supplementary welfare allowances, so as to allow for the recovery of and contributions to such allowances. Social Welfare (Supplementary Welfare Allowances) Act 1975. ss. 16 and 17.

A Person
Aged

- 15 (v) It is an offence to sell cigarettes to children under the age of 16. The Children Act 1908, s. 39.
- (vi) A person under the age of 16 may not be employed in a bar. Intoxicating Liquor Act 1924, s. 12.
-
- 16 (i) Minimum age for marriage. Marriages Act 1972, s. 1(1). Marriages of persons below 16 need permission of the President of the High Court. Ss. 1(2) and 1(3) of 1972 Act.
- (ii) Unlawful carnal knowledge of a girl under 17 is a misdemeanour. Criminal Law Amendment Act 1935, s. 2. Consent is not a defence.
- (iii) Compulsory social insurance of workers commences at 16. Social Welfare Act 1952, s. 4.
- (iv) Under the Health Acts 1947 to 1970 a person aged 16 and over is treated as an adult, i.e., he is free to choose his own doctor, obtain a medical card in his own right, give consent for an operation and apply for a disabled person's maintenance allowance. Health Act 1947, s. 2(1).
- (v) A 16 year old may be a member of a friendly society or credit union, but he may not be a member of the committee or its manager or borrow money until he reaches 21. Industrial and Provident Society Act 1893, s. 32 and Credit Union Act 1966, ss. 3 and 4.
- (vi) A 16 year old may hold a licence to ride a motor cycle with engine not exceeding 150 cc. Road Traffic Act 1961, s. 31; Road Traffic (Licensing of Drivers) Regulations 1964, Article 6 (S.I. 29 of 1964).
-
- 17 (i) A 17 year old may hold a licence to drive a private car, tractor or a vehicle for use by a person suffering from a physical disability. Road Traffic Act 1961, s. 31; Road Traffic (Licensing of Drivers) Regulations 1964, Articles 6 and 8 (S.I. 29 of 1964).

A Person
Aged

- 17 (ii) A "qualified child" for certain benefits under the Social Welfare Acts means a person who is either under the age of 18 or, if over 18, is under 21 and receiving full-time instruction. S. 2(1) of 1952 Act and s. 29(3) of 1970 Act.
- (iii) It is an offence to sell alcohol to a person under the age of 18. Intoxicating Liquor (General) Act 1924, s. 10.
- (iv) A girl aged 16 but under 18 may not be employed in, or permitted to sell drink for consumption on, licensed premises, unless she is a relative of the licence holder residing with him. Intoxicating Liquor (General) Act 1924, s. 12.
-
- 18 (i) May vote in Presidential, national and local elections and in referenda. Articles 12.2.2^o and 16.1.2^o of the Constitution; and Electoral (Amendment) Act 1973, ss. 2 and 3.
- (ii) May stand as a candidate in local elections. Electoral (Amendment) Act 1973, s. 4.
- (iii) May make a valid will. Succession Act 1965, s. 77(1)(a). (He or she may make a will under that age if he or she is or has been married: id.)
- (iv) May serve on a jury. Juries Act 1976, s. 6.
- (v) May be served alcohol in a bar. Intoxicating Liquor (General) Act 1924, s. 10.
- (vi) May hold a licence to drive class D vehicles, i.e., heavy lorries and trucks, or motor bicycles with engines of more than 150 cc. Road Traffic Act 1961, s. 31; Road Traffic (Licensing of Drivers) Regulations 1964, Articles 6 and 8 (S.I. 29 of 1964).
- (vii) May, if a male, qualify for unemployment assistance. Females aged 18 and over must have a certain number of social insurance stamps before they qualify. Unemployment Assistance Act 1933, s. 10; Social Welfare Acts 1952, s. 68, 1973, s. 9 and 1975, s. 10.

A Person
Aged

- 21, 25, (i) The age of eligibility for membership of the
30 and Dail and Seanad is 21. Articles 16.1.1^o
35 and 18.2 of the Constitution. To be eligible
for the Presidency a person must be at least
35. Article 14.1 of the Constitution.
- (ii) Persons aged under 21 need parental consent to
marry but the requirement to obtain such consent
is directory and not mandatory. Marriages Act
1972, s. 7.
- (iii) An illegitimate, legitimated or orphan child
who has not attained the age of 21 may be
adopted. Adoption Acts 1952, ss. 3 and 10,
1964, ss. 2 and 3, and 1974, s. 11.
- (iv) An applicant for an adoption order, being the
mother, natural father or a relative of the
child, must have attained the age of 21. If
the applicants are a married couple and the
wife is the mother of the child, she or her
husband must have attained the age of 21.
If the applicants are a married couple and one
of them is the natural father or a relative
of the child, each of them must have attained
the age of 21. Normally, an applicant for an
adoption order or, if the applicants are a
married couple, each of them must have attained
the age of 30. However, an adoption order may
be made on the application of a married couple
who have been married to each other for not
less than 3 years and each of whom has attained
the age of 25. Adoption Act 1952, s. 11 and
Adoption Act 1964, s. 5.
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APPENDIX C (Paragraph 4.33 *supra*) AGE OF MAJORITY, MARRIAGE, TESTAMENTARY CAPACITY, VOTING ETC. IN VARIOUS JURISDICTIONS

STATE	AGE	MARRIAGE (1)				WILLS	VOTING	OFFICE
		Minimum Age for Marriage	May permission to marry be given below this age?	Consent Age for Marriage	Free Age for Marriage			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
AUSTRIA	19	M: 18 F: 15	Yes, if he is 18 and is given permission by the court. Yes, if she is 15 and is given permission by the court.	M: 18 F: 15	M: 19 F: 16	14 to 18 year olds may make a will orally before the court.	(a) 19 (b) 19	(a) 35 (b) 25
BELGIUM	21 ⁽²⁾	M: 18 F: 15	Yes, in grave circumstances by the King.	Under 21	M: 21 F: 21	A minor of 16 may make a will disposing of half of his property. A married minor may donate his property to his spouse as if he were an adult. A minor may never be an executor of a will.	(a) not elected (b) 21	(a) not elected (b) 25 for Chamber of Deputies, 40 for Senate.

CANADA (a) Alberta	18	M: 16 F: 16	Yes, if a girl is pregnant or is the mother of a child.	Under 18	M: 18 F: 18	18 or younger if married, or a member of the Canadian Forces, or a mariner or seaman.	(a) not elected (b) 18
(b) British Columbia	19	M: 16 F: 16	Yes, when a marriage is shown to be expedient and in the interests of the parties, a Judge of the Supreme Court or Co. Court may grant permission.	Under 19	M: 19 F: 19	21 or younger if married, or if a member of the Forces, or a mariner or seaman.	(a) not elected (b) 19
(c) Manitoba	18	No statutory minimum age. Under Common Law— M: 14 F: 12	No	Under 18	M: 18 F: 18	18 or younger if married, a member of the Forces etc. See Alberta.	(a) not elected (b) 18

APPENDIX C (contd.) AGE OF MAJORITY, MARRIAGE, TESTAMENTARY CAPACITY, VOTING ETC. IN VARIOUS JURISDICTIONS

STATE	AGE	MARRIAGE ⁽¹⁾				WILLS	VOTING	OFFICE
		Minimum Age for Marriage	May permission to marry be given below this age?	Consent Age for Marriage	Free Age for Marriage			
	Age of Majority	(2)	(3)	(4)	(5)	Minimum Age for Testamentary Capacity	Minimum Age to vote in: (a) Election of President or Head of State (b) Election for Legislature	Minimum Age for Election to: (a) Head of State (b) Legislature
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
CANADA (contd.) (d) New Brunswick	19	No statutory minimum age.	See column (4)	Under 18	M: 18 F: 18	19 or younger if the person making the will is (a) married or (b) a member of the Forces or a mariner or seaman.	(a) not elected (b) 18	(a) not elected (b) 18
(e) Newfoundland & Labrador	19	Common Law applies ⁽³⁾ M: 14 F: 12	No ⁽³⁾	Under 19	M: 19 ⁽⁴⁾ F: 19 unless the girl is pregnant or a mother.	17	(a) not elected (b) 18	(a) not elected (b) 18
(f) Nova Scotia	19	M: 16 F: 16	Yes, to prevent illegitimacy.	Under 19	M: 19 F: 19	19	(a) not elected (b) 18	(a) not elect (b) 19

(g) Ontario	18	M: 14 F: 14	Yes, to prevent illegitimacy.	Under 18	M: 18 F: 18	18 or younger if married etc. See Alberta.	(a) not elected (b) 18	(a) not elected (b) 18
(h) Prince Edward Island	18	M: 16 F: 16	Yes, if girl is pregnant or a mother.	Under 18	M: 18 F: 18	18 or younger if married.	(a) not elected (b) 18	(a) not elected (b) 18
(i) Quebec	18	M: 14 F: 12	No	Under 18	M: 18 F: 18	18	(a) not elected (b) 18	(a) not elected (b) 18
(j) Saskatchewan	18	M: 15 F: 15	Yes, to prevent illegitimacy.	Under 18	M: 18 F: 18	18 or younger if married etc. See Alberta.	(a) not elected (b) 18	(a) not elected (b) 18
DENMARK	18	M: 18 F: 18	Yes, if 15 and pregnant, permission to marry may be obtained from the appropriate authorities.	Under 18	M: 18 F: 18	18 or younger if married.	(a) not elected (b) 20	(a) not elected (b) n. i.
FRANCE	18	M: 18 F: 15	Yes, for serious reasons, e.g. if the girl is pregnant	Under 18	M: 18 F: 18	Over 16 a person may dispose of half of his available estate	(a) 18 (b) 18	(a) 23 (b) National Assembly: 23 (i) National Assembly: 23 (ii) Senate: 35

APPENDIX C (contd.) AGE OF MAJORITY, MARRIAGE, TESTAMENTARY CAPACITY, VOTING ETC. IN VARIOUS JURISDICTIONS

STATE	AGE	MARRIAGE (1)				WILLS	VOTING	OFFICE
		Minimum Age for Marriage	May permission to marry be given below this age?	Consent Age for Marriage	Free Age for Marriage			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
GERMANY Federal Republic	18	18	Yes, with the permission of the court.	Under 18	18	16	(a) not elected (b) 18	(a) 40 (b) 18
GREECE	2:	M: 18 F: 14	n.i.	Under 21	M: 21 F: 21	21, but a person over 18 may make a testamentary disposition before a notary public and 3 witnesses.	(a) 21 (b) 21	(a) 40 (b) 25
IRELAND	21	M: 16 F: 16	Yes, by permission from the President of the High Court.	Under 21	M: 21 F: 21	18 unless married.	(a) 18 (b) 18	(a) 35 (b) (i) Dáil 21 (ii) Seanad 21

ITALY	18	18	The Tribunal may authorise for serious reasons and after hearing the parents or guardian the marriage of a minor aged 16.	Except as authorised in col. 3, no minor may marry.	18	18 unless married.	(a) elected by Parliament (b) (i) 18 for Lower House (ii) 25 for Senate	(a) 50 (b) (i) 40 for Senator (ii) 25 for Deputy
LUXEMBOURG	18	M: 18 F: 15	Yes, by the Grand Duke.	M: Under 18 F: Under 18	M: 18 F: 18	16	(a) not elected (b) 18	(a) not elected (b) 21
NETHERLANDS	21	M: 18 F: 16	Yes, with parental consent and by dispensation from the Crown.	Under 21	M: 21 F: 21	18, but a person under 18 who is married may make a will.	(a) not elected (b) 18	(a) not elected (b) 25

APPENDIX C (contd.) AGE OF MAJORITY, MARRIAGE, TESTAMENTARY CAPACITY, VOTING ETC. IN VARIOUS JURISDICTIONS

STATE	AGE	MARRIAGE (1)				WILLS	VOTING	OFFICE
		Minimum Age for Marriage	May permission to marry be given below this age?	Consent Age for Marriage	Free Age for Marriage			
	Age of Majority	(1)	(2)	(3)	(4)	(5)	Minimum Age for Election to: (a) President or Head of State (b) Legislature	(8)
		(1)	(2)	(3)	(4)	(5)	Minimum Age to vote in: (a) Election of Head of State (b) Election for Legislature	(7)
							Minimum Age for Testamentary Capacity	(6)
NEW ZEALAND	20	M: 16 F: 16	n.i.	Under 20	Under 20	M: 20 F: 20	On marriage and if unmarried at 18; or if unmarried over 16, with approval of the Public Trustee or Magistrate.	(a) 18 (b) 18
NORWAY	20	M: 18 F: 18	Yes, by the appropriate State authority	Under 20	Under 20	M: 20 F: 20	18. A younger minor requires the consent of the Department of Justice to make a will.	(a) not elected (b) 20

SWEDEN	18	M: 18 F: 18	Yes, by special permission from the County Administrative Board	Under 18	M: 18 F: 18	18, or younger if married. If a 16 year old wishes to make a will disposing of property over which he has control he may do so.	(a) not elected (b) 18	(a) not elected (b) 18
SWITZERLAND	20	M: 20 F: 18	Yes. A boy of 18 and a girl of 17 may be given permission to marry by the appropriate State authority.	Under 20	M: 20 F: 20	18	(a) 20 (b) 20	(a) 20 (b) 20

APPENDIX C (contd.) AGE OF MAJORITY, MARRIAGE, TESTAMENTARY CAPACITY, VOTING ETC. IN VARIOUS JURISDICTIONS 23

STATE	AGE	MARRIAGE (1)				WILLS	VOTING	OFFICE
		Minimum Age for Marriage	May permission to marry be given below this age?	Consent Age for Marriage	Free Age for Marriage			
TURKEY	(1) 18	(2) M: 17 F: 15	(3) Yes, under exceptional circumstances, a boy of 15 or a girl of 14 may be given permission by the Court to marry.	(4) Under 18	(5) M: 18 F: 18	(6) Minimum Age for Testamentary Capacity A minor of 15 may make a will.	(7) Minimum Age to vote in: (a) Election of President or Head of State (b) Election for Legislature	(8) Minimum Age for Election to (a) Head of State (b) Legislature
UNITED KINGDOM OF GREAT BRITAIN & NORTHERN IRELAND	18	M: 16 F: 16	No	Under 18 In Scotland no parental consent is required. 16 is both the minimum and the free age for marriage.	M: 18 F: 18	18. In certain circumstances a seaman may make a will under the age of 18	(a) not elected (b) 21 for election to House of Commons.	(a) Elected by Parliament (b) (i) 30 for National Assembly (ii) 40 for Senate

- NOTE: (1) In this Appendix, Minimum Age for Marriage means the age at which a valid marriage may be contracted unless the legislation permits a competent authority to allow marriage at a lower age. Free Age for Marriage means the lowest age at which a person may contract a marriage without the consent of a parent or guardian. Consent Age for Marriage means the age at which a person may marry with the consent of the parents, guardian or court.
- (2) A Bill to lower the age of majority was tabled in the Belgian Senate in 1971. If passed, it would have fixed the age of majority at 18, except in regard to consent to marriage. Consent of both parents to a marriage would have been required up to the age of 20.
- (3) As of 27th May, 1976, the common law applied to the minimum age for marriage in Newfoundland. Under the Solemnization of Marriage Act 1974 (not proclaimed as of May 1976), the minimum age will be 16 for both sexes. Permission to marry under the minimum age may be granted by the court if the girl is pregnant.
- (4) Under the 1974 Act (see footnote (3) *supra*) the free age for marriage will be 18 when a person has been living apart from his/her parents and has not been supported by them for 3 months.

APPENDIX D AGE AT MARRIAGE AND MARITAL BREAKDOWN:
AN ANALYSIS OF APPLICATIONS FOR ANNULMENT
TO THE DUBLIN REGIONAL MARRIAGE TRIBUNAL
IN 1975

1. Age at marriage is but one of several factors that affects a person's capacity to marry. It is, however, the factor considered in this study, because the Law Reform Commission was concerned with the legal minimum age of marriage and the age of free marriage in its working paper on the Age of Majority. It is obvious that because of differences in individuals and in their social circumstances there is no easily designated "right" age for marriage.

2. Any discussion of changing either the free age of marriage or the minimum age for marriage in Ireland must take into account the changes that have been taking place in both the marriage rate in Ireland and in the ages of those marrying in recent years.

The assistance which was so readily given by the Central Statistics Office and the Dublin Regional Marriage Tribunal in supplying the data on which much of this study is based is gratefully acknowledged.

The marriage rate in Ireland:

3. The marriage rate in Ireland showed a steady increase from 1951 to 1973. It reached a peak of 7.5 in 1973, the highest marriage rate ever recorded in Ireland. Subsequently there was a decline to 7.3 in 1974 and 6.8 in 1975.¹ Table 1 (Appendix D) shows the gradual increase in the Irish marriage rate between 1951 and 1973. It illustrates that, even though the Irish rate was going up in this period, it still remained

APPENDIX D

TABLE 1¹

Number of Marriages per 1,000 Population in Ireland* and Neighbouring Countries, 1941-1960 and in each Year 1964-1973

Year	Ireland	Northern Ireland	England and Wales	Scotland
1941-1950 ⁺	5.6	7.6	8.6	8.5
1951-1960 ⁺	5.4	6.8	7.8	8.1
1964	5.6	7.3	7.5	7.7
1965	5.9	7.1	7.8	7.8
1966	5.8	7.3	8.0	8.1
1967	6.1	7.3	8.0	8.1
1968	6.5	7.5	8.4	8.4
1969	7.0	7.7	8.1	8.3
1970	7.1	8.1	8.5	8.3
1971	7.4	7.9	8.3	8.1
1972	7.4	7.7	8.2	8.1
1973	7.5	7.3	8.1	8.1

* Exclusive of Northern Ireland

⁺ Average annual number of marriages per 1,000 population for decennial periods from 1941-1960.

¹ Report on Vital Statistics 1973, An Roinn Slainte, Prl.4778, 1976, p. IX.

lower than the marriage rates in Northern Ireland, England and Wales and Scotland until 1972, but in 1973 the marriage rate in the Republic was .2 above that for Northern Ireland.

Young Marriages in Ireland in recent years:

4. While the marriage rate has been going up in Ireland the average age of marriage has been coming down. The average age of men at marriage in 1945-46 was 33.1 years, in 1973 it was 27.2 years. Likewise for women, the average age of women at marriage has declined from 28 years in 1945-46 to 24.8 years in 1973.

5. Table 2 (Appendix D) shows that there was a considerable increase in the number of people aged 21 years and under getting married between 1961 and 1975.² Table 2 shows that 6.9% of the men marrying in 1961 were aged 21 and under, 16.9% of the men marrying in 1975 were aged 21 and under.

6. A similar pattern can be detected in relation to the ages of the girls who got married in 1961 and 1975. Three thousand, three hundred and one girls aged 21 and under (21.5% of all women marrying that year) were married in 1961, whereas 7,229 girls aged 21 and under (or 34% of the total for that year) were married in 1975. It is also clear from these figures that in recent years more than twice as many girls as boys have been marrying aged 21 and under. Another trend that emerges from this table is that for both boys and girls aged 21 and under the number of them marrying each year increases steadily as they approach the age of 21, with the largest number of them marrying at 21.

7. The Marriages Act of 1972 made 16 the minimum age for marriage for boys and girls in Ireland. This table shows

APPENDIX D

TABLE

	1961				1966			
Total number of marriages All Ages	15,329				16,849			
AGED	BRIDE		GROOM		BRIDE		GROOM	
	N	%	N	%	N	%	N	%
14	1		0		6	.04	0	
15	20	0.13	1		16	0.10	0	
16	59	0.38	5	0.03	73	0.45	17	0.10
17	147	0.96	33	0.22	231	1.37	46	0.27
18	377	2.46	69	0.45	509	3.02	116	0.68
19	569	3.71	152	0.99	930	5.52	289	1.71
20	896	5.85	260	1.70	1,316	7.81	535	3.18
21	1,232	8.04	540	3.52	1,634	9.70	873	5.18
TOTAL 21 AND UNDER	3,301	21.53	1,060	6.91	4,715	28.01	1,876	11.14
TOTAL UNDER 21	2,069	13.5	520	3.4	3,081	18.3	1,003	6.0
TOTAL 21 AND OVER	13,260	86.5	14,809	96.6	13,768	81.7	15,846	94.1
SOURCE OF INFORMATION	Report on Vital Statistics p. 138-139				Report on Vital Statistics p. 140-141			

AGE OF BRIDE AND GROOM AT MARRIAGE

1971				1974				1975			
22,014				22,833				21,280			
BRIDE		GROOM		BRIDE		GROOM		BRIDE		GROOM	
N	%	N	%	N	%	N	%	N	%	N	%
25	0.11	0		2		0		0		0	
37	0.17	0		28	0.12	0		6	0.03	0	
119	0.54	23	0.10	175	0.77	13	0.06	144	0.68	23	0.11
359	1.63	52	0.24	466	2.04	105	0.46	427	2.00	92	0.43
753	3.42	214	0.97	936	4.10	311	1.36	902	4.24	291	1.37
1,331	6.05	498	2.26	1,463	6.41	609	2.67	1,503	7.06	593	2.79
1,818	8.26	906	4.12	2,075	9.09	1,096	4.80	1,923	9.04	1,057	4.97
2,325	10.56	1,419	6.45	2,548	11.16	1,696	7.43	2,324	10.92	1,544	7.25
6,767	30.74	3,112	14.14	7,693	33.69	3,830	16.78	7,229	33.97	3,600	16.92
4,442	20.2	1,693	7.7	5,145	22.5	2,134	9.4	4,905	23.1	2,056	9.7
17,572	79.8	20,321	92.3	17,688	77.5	20,699	90.7	16,375	77.0	19,224	90.3
Report on Vital Statistics p. 142				The information for 1974 and 1975 was kindly supplied prior to publication by the Central Statistics Office.							

that raising the age to 16 affected very few young people as the numbers marrying under 16 in 1961, 1966, 1971 and 1974 were very small when compared with the numbers marrying in older age groups. This table suggests that the new provisions introduced by the 1972 Marriages Act, which came into force on the 1st January, 1975, may have caused a decrease in the number of people marrying under the age of 16. There were 21 brides under 16 in 1961, 22 under 16 in 1966, 62 under 16 in 1971, 30 under 16 in 1974 and 6 under 16 in 1975. However, one cannot be certain about the cause of this decline since the figures show that the decline in the number of brides under 16 had already taken place in 1974 before the new Marriages Act was in operation.

A surprising feature of this table is that it shows that there were 6 brides under 16 married in 1975. However, the President of the High Court only gave permission for 3 couples to marry in 1975 where one of the parties was under the age of 16.³ This would suggest that the 3 under age marriages that did not have the prior consent of the President of the High Court were not validly contracted. This raises the question if the new regulations concerning marriages where one of the parties is under 16 are fully understood throughout the country.

Age at Marriage as a Factor in Marital Breakdown

8. Research abroad indicates that the age of the couple at marriage does influence its outcome. Griselda Rowntree commenting on the Registrar General's figures in Britain says "Certain couples appear more likely to experience marital difficulty than others. It is well known, for example, that the marriages of young couples (in which the brides are under 20 years of age at the date of the wedding) are twice as likely to end in divorce as marriages in which the brides are older."⁴ And again Jack Dominionian in his review of the

research on marital breakdown states quite definitely that age at marriage is very important. "Every major study in the last 30 years and all official statistics have found that age at marriage is associated with success, with a critical cut-off point at about 18 or 19. Marriages below this age run a considerably higher risk of breaking down."⁵

9. Reliable figures concerning the extent and nature of marital breakdown in Ireland are currently not available. The Irish census does not show the number of separated and divorced people in the population. When analysing the population by conjugal condition, the Irish census only uses three categories, single, married and widowed.⁶ This lack of statistical data makes it very difficult to ascertain the precise extent of marriage breakdown in Ireland.

10. This present study was concerned with trying to find out if there was any correlation between age at marriage and marital breakdown in Ireland. The difficulty was to find a sample from which to elicit this information. The Dublin Regional Marriage Tribunal of the Catholic Church was approached to see if they could supply any information, as it was widely known that the numbers of people seeking a Church annulment of their relationship had increased in recent years. The assumption was made that a couple would only seek an annulment if their marriage had already broken down or was on the point of doing so. Thus it was decided that a valid - if limited - sample could be drawn from the applications for an annulment in any given year.

11. The Dublin Regional Marriage Tribunal co-operated in carrying out this research by going through the records of all the applicants for an annulment in 1975 to find out the age of the bride and groom at the time of their marriage.⁷ Because research abroad had associated very young marriages with premarital pregnancy they were also asked to include

information on whether or not the wife was pregnant at the time of the marriage.

12. The survey showed that 419 couples applied for an annulment of their marriage to the Dublin Regional Marriage Tribunal in 1975. Of these 419 couples information was available on the age at the time of their marriage of 79% (331) of the men and 80% (335) of the women. The average age at marriage of these 331 men worked out at 26 years of age.

13. Table 3 shows the decline that has been taking place in the average age of marriage for men between 1945 and 1973 (the last year for which published figures are available). The male applicants for an annulment in 1975 turned out to be more than a year younger than the men who married in 1973. Average ages of men at marriage shown in Table 3 refer to men marrying throughout the whole country thus including rural areas where the average age at marriage is higher. Thus it may give a fairer picture to compare the average age of the male applicants for an annulment in 1975 to the average age of the males marrying in Leinster in 1973. In Leinster, the province with lowest average age at marriage for both men and women in 1973, the average age of the men at marriage was 26.6. So even the average age of the Leinster men at marriage was more than 6 months higher than the average age of the male applicants for an annulment in 1975.

14. Averages by their nature are a somewhat crude yardstick and in using them alone for comparative purposes some more subtle differences can be lost. To overcome this difficulty Table 3 (Appendix D) breaks down the age at marriage by different age bands in order to compare the trends in the different years.⁸ Table 3 shows quite clearly that the percentage of young men under 20 marrying went up steadily between 1945-1972 reaching its highest point in 1972. In 1972 4.3% of the men marrying that year were under

20 years of age, but among the applicants for annulment 8.8% were under 20 years of age. Likewise for 20-24 age group, a higher percentage of the annulment applicants fall into this band (47.7%) than for the men marrying in 1973 where 41.1% of them were aged between 20-24. The trend is reversed in the 25-29 age band and events out in the older age groups.

15. A similar pattern is evident for the women. Table 3 shows that the average age at marriage of the women who applied for an annulment in 1975 was 23.6, more than a year younger than the average age of all women who married in 1973. Thus it can be concluded that the average age of couples who applied for an annulment in 1975 was 1.2 years younger than the average age of all couples marrying in 1973. When the applicants for an annulment were compared with the Leinster women who married in 1973 it was found that the average age of the women who applied for an annulment was almost one year lower than the Leinster women. The average age at marriage of women resident in Leinster who married in 1973 was 24.5.

16. Again the striking feature of Table 3 is the high percentage of the female applicants for annulment who were under 20 at the time of their marriage: 19.4% as compared with 13.2% of all the brides who married in 1973. It is interesting to note that Kathleen O'Higgins in her exploratory study of marital desertion in Dublin also found that the deserted wives she interviewed were younger at the time of their marriage than the national average.⁹

17. The first major conclusion of this study then is that this group of people whose relationships were experiencing such severe difficulties that they sought a church annulment were younger than the national average at the time of their marriage. This then would suggest that in Ireland as in other western countries there is a correlation between very young marriages and subsequent marital breakdown.

APPENDIX D

TABLE 3

PERCENTAGE DISTRIBUTION OF MARRIAGES ACCORDING TO THE AGE OF GROOM AND OF THE APPLICANTS FOR AN ANNULMENT OF MARRIAGE TO THE DUBLIN REGIONAL

Age Group	Distribution according to Age of Groom						Applicants for Annulment in 1975	N
	1945-46	1961	1971	1972	1973*			
	%	%	%	%	%	%		
<i>Under 20 years</i>	1.0	1.7	3.6	4.3	4.2	8.8	29	
<i>20 to 24 years</i>	14.3	24.1	39.7	40.9	41.1	47.7	158	
<i>25 to 29 years</i>	25.7	32.2	34.1	33.1	33.8	22.4	74	
<i>30 to 34 years</i>	24.2	18.6	11.4	10.9	10.6	10.0	33	
<i>35 to 44 years</i>	25.8	16.6	7.6	7.2	7.1	7.9	26	
<i>45 years and over</i>	9.0	6.8	3.6	3.5	3.2	3.3	11	
<i>TOTALS</i>	100.-	100.-	100.-	100.-	100.-	100.-	331	
<i>AVERAGE AGE</i>	33.1	30.6	27.5	27.3	27.2	26.0		

*It is not possible to indicate precisely the allowance which should be annulment and the % of all marriages in a particular age group.

TABLE 3 (continued)

BRIDE AND AVERAGE AGE AT MARRIAGE IN 1945-46, 1961, 1971, 1972, 1973 AND TRIBUNAL IN 1975.

Age Group	Distribution according to Age of Bride						Applicants for Annulment in 1975	N
	1945-46	1961	1971	1972	1973*			
	%	%	%	%	%	%		
Under 20 years	6.6	7.8	12.0	13.5	13.2	19.4	65	
20 to 24 years	29.5	40.4	52.2	51.0	51.5	54.0	181	
25 to 29 years	31.1	28.5	23.2	22.9	23.2	14.6	49	
30 to 34 years	19.9	12.7	6.5	6.9	6.3	5.1	17	
35 to 44 years	11.1	8.3	4.4	4.1	4.0	5.1	17	
45 years and over	1.9	2.3	1.7	1.8	1.6	1.8	6	
TOTALS	100.-	100.-	100.-	100.-	99.8	100.-	335	
AVERAGE AGE	28.0	26.9	25.0	24.8	24.8	23.6		

made for duration of marriage when comparing the % of applicants for an

Age at Marriage, Pre-marital Pregnancy and Marital Breakdown:

18. Much has been written in recent years about the correlation between pre-marital pregnancy and marital breakdown.¹⁰ The Marriage Survey in Britain carried out in 1960 found that among the 1,340 couples who had married between 1930 and 1949, the percentage of couples who had parted or contemplated separation was distinctly higher in almost all ages in which there was a pre-marital pregnancy. This was particularly marked in couples who were under 20 at the time of their marriage.¹¹ A further aspect of this problem that is increasingly engaging the attention of researchers abroad is that children born to adolescent mothers have a greater risk of dying before one year of age than children born to women 20 years of age and older.¹²

19. Appendix C to the Age of Majority Report shows that pregnancy is a valid ground for getting permission to marry below the legal minimum age in many countries. It would appear that pregnancy is one of the main reasons why a girl seeks permission to marry below the minimum age in Ireland. There were nine applications to the President of the High Court for an exemption order to marry below the minimum age in 1975,¹³ In all but one of these cases it was the girl who made the application; seven out of the eight girls who sought permission to marry below the minimum age were pregnant. Permission to marry was given in three out of the nine cases.

20. However, it is now being questioned if the law should ever allow an exemption to marry below the minimum age even if the girl is pregnant. The Royal Commission on the Status of Women in Canada expressed the following view:

"The Commission believes that the fact of pregnancy should not in itself constitute a sufficient ground to permit marriage when both parties are so young or

immature that their future may be jeopardized and there is little hope of the marriage being a success. As one brief put it: 'We believe it to be of the utmost importance that pregnancy should not be a cause for dispensing with the provision of the law regarding age and consent, because this leads certain people to seek pregnancy as a means of avoiding parental consent or of avoiding the 16 year age minimum. There is widespread concern at the increasing rate of breakdown of marriage, especially of teenage marriages, and experience indicates that this rate of breakdown is even higher in those marriages precipitated by pregnancy.'"¹⁴

21. And nearer home, the Catholic Archbishop of Dublin in his recent directive to the priests of the Dublin diocese says:

"The mere fact that the girl is pregnant is not ever a sufficient reason for marriage; If his investigation of the case should lead the priest to the conclusion that this couple have decided to marry solely because of the pregnancy, and that they are not in fact yet adequately prepared for marriage, he should gently but firmly advise at least a substantial postponement, offering at the same time to put at the couple's disposal the Church's resources in respect of the child."¹⁵

22. In Northern Ireland and in Britain it is not possible to get permission to marry below the legal minimum age, which is sixteen.¹⁶

23. In considering the question of whether an exemption should ever be granted to marry below the minimum age, this present study first sought to establish if there was in Ireland - as in other countries - a correlation between early

marriage, premarital pregnancy and marital breakdown. Thus in gathering information on the applicants for an annulment in 1975, the Dublin Regional Marriage Tribunal was asked to specify: (a) if the bride was pregnant at the time of her marriage; (b) if the bride was not pregnant; (c) if there was no information on this matter or, finally, (d) if there was some indication that the bride was pregnant but not sufficient evidence to put her in category (a). The results of this inquiry are shown in Table 4.

APPENDIX D

TABLE 4

Incidence of Pre-marital Pregnancy among the Applicants
for an Annulment to the Dublin Regional Marriage Tribunal
in 1975

	N.	%
Bride pregnant at the time of marriage:	54	22.4
Bride not pregnant at the time of marriage:	232	55.4
Some indication that the bride was pregnant at the time of marriage:	3	.7
No information:	90	21.5
	419	100.0

24. The high percentage of cases in which there was no information in this table means that the results are inconclusive. What is clear, however, is that in 94 of the 419 applicants for an annulment in 1975 the wife was pregnant at the time of the marriage and the number may be even higher than this. Neither do we know the incidence of premarital pregnancy among the population at large because the Central Statistics Offices do not collect the information on births and marriages in such a way as to yield that information so it is impossible to ascertain if the incidence of pre-marital

pregnancy was higher among those who applied for an annulment than in the population at large.

25. Table 5 shows the incidence of pre-marital pregnancy in the applicants for an annulment in 1975 broken down by the different age bands. It shows that pre-marital pregnancy was far more common among those of this group who married under 20 than in the older age groups; 38.5% of the brides who married under the age of 20 were pregnant at the time of their marriage; among the grooms who were under 20 at the time of their marriage, 55.2% of their brides were pregnant when they married. As one would expect the incidence of pre-marital pregnancy decreases as the age of the bride and groom increases. The exception to this pattern is among the brides who were aged between 35-44 at the time of their marriage, 35.3% of this group were pregnant when they got married, but the total number of people involved here is so small that it would be rash to attach any significance to this unusual feature. The incidence of pre-marital pregnancy among the applicants for an annulment who were under 20 at the time of their marriage, seems high, particularly among the men who were under 20 where over half their brides were pregnant at the time of their marriage. As indicated in paragraph 18 above a correlation between young marriages, pre-marital pregnancy and marital breakdown has been found in other western countries. In the absence of statistics on the incidence of pre-marital pregnancy among the population in general one cannot be sure that such a correlation exists in Ireland, but these figures in Table 5 do look rather high.

26. Findings of this research:

Two main findings emerge from this research:

- (i) there is in Ireland, as in other western countries, a correlation between very young marriages (i.e. where either of the couple is under 20 at the time of the

APPENDIX D

TABLE 5

APPLICANTS FOR ANNULMENT IN 1975 SHOWING AGE OF THE BRIDE AND GROOM AT

Age at Marriage	Number of Brides		Bride Pregnant at Marriage							
			Yes		No		No Information		Some Indication that she was	
	N	%	N	%	N	%	N	%	N	%
Under 20 years	65	100.-	25	38.5	35	53.9	4	6.2	1	1.5
20-24 years	181	100.-	46	25.4	122	67.4	11	6.1	2	1.1
25-29 years	49	100.-	7	14.3	37	75.5	5	10.2	0	
30-34 years	17	100.-	1	5.9	16	94.1	0		0	
35-44 years	17	100.-	6	35.3	8	47.1	3	17.7	0	
45 years and over	6	100.-	0	0	6	100.-	0		0	
TOTALS	335	100.-	85	25.4	224	66.9	23	6.9	3	.9

¹Only the applicants for an annulment for whom information on their age

TABLE 5 (continued)

TIME OF MARRIAGE AND IF THE BRIDE WAS PREGNANT¹

Age at Marriage	Number of Grooms		Bride Pregnant at Marriage							
			Yes		No		No Information		Some Indication that she was	
	N	%	N	%	N	%	N	%	N	%
Under 20 years	29	100.-	16	55.2	9	31.0	4	13.8	0	
20-24 years	158	100.-	45	28.5	99	62.7	12	7.6	2	1.3
25-29 years	74	100.-	14	18.9	56	75.7	3	4.1	1	1.4
30-34 years	33	100.-	4	12.1	27	81.8	2	6.1	0	
35-44 years	26	100.-	3	11.5	22	84.6	1	3.9	0	
45 years and over	11	100.-	3	27.3	6	54.6	2	18.2	0	
TOTALS	331	100.-	85	25.7	219	66.2	24	7.3	3	0.9

at the time of their marriage was available are included in this table.

marriage) and marital breakdown;

- (ii) there was a high incidence of pre-marital pregnancy among the applicants for an annulment in 1975 who were very young at the time of their marriage; i.e. 38.5% of the brides who married under the age of 20 were pregnant and among the grooms who were under 20, 55.2% of their brides were pregnant.

27. Questions raised by this research:

When these findings are allied to the results of research on the age of marriage and marital breakdown abroad, they would suggest that because the marriages of the very young are more at risk than older marriages the law should discourage teenage marriages and marriages that are embarked upon because the girl is pregnant. This in turn raises the following questions:

If exemption to marry below the present minimum age of 16 should ever be given? Is 16 too low a minimum age for marriage? If it is, what would be a better age? If the minimum age of marriage was raised to 18 what would result?

28. Should permission to marry below the present minimum age of 16 ever be given?

Studies abroad "consistently seem to indicate that the younger the couple at the time of the marriage the greater the risk of divorce. This would be expected for some obvious reasons: internal pressures, which might be grouped under the generalization - lack of maturity; and external pressures, such as financial difficulties and parental interference, which would be stronger than with the older couple."¹⁷ Monahan, in the most elaborate study that had been done on the relationship between age at marriage and divorce,¹⁸ found that where both parties were 16 years or

under "the divorce rate rose to 4 times that experienced by partners wed at the mean age, that is where the groom was 25 and the bride 22".¹⁹

Bearing this in mind and the widely held opinion that someone below the age of 16 is not mature enough to enter into the lifelong commitment of marriage, this study suggests that permission to marry below the age of 16 should not be given.

29. Is 16 too low an age to set for the minimum age of marriage, if it is what would be a better age?

The evidence of this study suggests that 16 is too low an age to set for the minimum age of marriage, but it does not pinpoint an alternative "correct" age. It shows that all teenage marriages are more at risk than older marriages. Should 20, therefore, be the minimum age for marriage? Most people would probably feel that this age was too high, too much of a restriction on the individual's freedom to manage his or her own affairs, particularly if the general age of majority had been lowered to 18.

30. Should 18 be made the minimum age for marriage?

Dominian identified the ages of 18 and 19 as the "critical cut off point" and concluded "that marriages below that age run a considerably higher risk of breaking down".²⁰ The Royal Commission on the Status of Women in Canada considered the question of the minimum age of marriage and the age of parental consent and recommended the establishment of a single minimum age of 18 for both males and females with no exceptions for parental consent or pregnancy below this age; they felt that on the evidence available, 18 appeared to be the minimum age at which a successful marriage might reasonably be anticipated.²¹

31. California has made 18 the minimum age and the free age for marriage within that State. Anyone wishing to marry under the age of 18 requires parental consent and the approval of the court i.e. California's Family Law Act, 1970, C.C. 4101(6). In California the court has power to require "the parties to such prospective marriage of a person under the age of 18 years to participate in premarital counselling concerning social, economic and personal responsibilities incident to marriage, if it deems such counselling necessary."²² According to Judge Hogoboom "the premarital marriage counselling law was enacted in response to an awareness of the tenuous stability of teenage marriages".²³

32. In Los Angeles County (a county with approximately 7 million people) an under-age couple are required to participate in a minimum of 4 sessions of pre-marriage counselling. The pre-marriage counsellor sends a report - which he has discussed with the couple - to the judge. This report helps the judge assess the couple's readiness for marriage.²⁴ A recent report on the results of this new law as it operates in Los Angeles County has shown that in the 5 years between 1970-1975

- (a) the number of couples applying to marry below the minimum age has fallen below the estimated projections;²⁵
- (b) the percentage of couples refused permission to marry by the court has increased from 3%²⁶ in the first year the new Act was in operation to 20.5% in 1975.²⁷

33. It must be noted, however, that the purpose of this premarital counselling is not to talk the couple out of marriage, but rather to explore with them why they need to marry now and to help them to face more realistically what marriage involves.²⁸ Only time and systematic research will tell if this new service does anything to decrease the incidence of marital breakdown in California. However, in

the opinion of Judge Hogoboom most of the counsellors and judges involved in the new procedure "believe that the concept of premarital counselling has value. One important byproduct is to make young people aware that there is a source of assistance in the community should difficulties arise later in their marriage."²⁹ This California experiment is an interesting example of the law trying to prevent marital breakdown and of linking in with existing community agencies in providing this counselling service.³⁰

34. If the minimum age of marriage was raised to 18 in Ireland what would result?

On the assumption that an exemption procedure would be provided, it is most likely, nevertheless, that there would be a decrease in the number of marriages contracted by couples under the age of 18. Five hundred and seventy-seven of the brides who married in 1975 and 115 of the grooms were under 18.³¹ One may safely predict that there would be a large increase in the number of applications to the President of the High Court for permission to marry under the minimum age, so that a procedure for dealing with a much greater number of applications to marry below the minimum age would have to be devised. The incorporation of a pre-marriage counselling service into the legal procedure can usefully be considered in this context.

35. Another possible result of raising the minimum age of marriage to 18 would be that many underage Irish couples would go to Britain to marry where the minimum age is 16.

36. It is also likely that there would be a substantial increase in the number of illegitimate children being born to girls under 18, and, possibly, an increase in the number of abortions being sought by Irish girls in Britain. Commenting on the increasing number of women "normally resident in the Republic of Ireland" who have their pregnancy terminated in Britain, Dr. Dermot Walsh of the Medico-Social Research Board states: "From these data and the recent increase in

illegitimate births" in Ireland, "with the illegitimate birth rate almost doubling between 1961 and 1971, it is reasonable to assume a considerable increase in extra-marital sexual activity in Ireland".³² The figures quoted by Walsh³³ and the rise in illegitimate births to mothers aged under 20 in recent years,³⁴ shows that teenagers are responsible for some of this increase in "extra-marital sexual activity". It would be naive to suppose that raising the legal minimum age of marriage to 18 would of itself decrease sexual activity among teenagers, but it is argued that embarking on a hasty marriage is a false solution to this problem.

37. Set out below are the main options that are open in relation to the minimum age of marriage in Ireland.
- (a) Maintain the present law as set out in paragraphs 4.15 to 4.24.
 - (b) Maintain the present law but lower the age of parental consent to 18 if 18 is made the age of majority in Ireland (paragraph 4.48).
 - (c) Retain 16 as the legal age of marriage but allow no marriage to take place if either party is under the age of 16, i.e. remove the President of the High Court's power to grant an exemption to marry under the minimum age.
 - (d) Raise the minimum age to 18 and retain parental consent until 21 and allow no exemptions to marry under 18.
 - (e) Raise the minimum age of marriage to 18, retain parental consent until 21 and give the President of the High Court - or some other body - power to grant exemptions to marry below the minimum age. If this was adopted should a lower age limit be set below which an exemption would not be granted e.g. 16?
 - (f) Make 18 both the minimum age for marriage and the free age of marriage, but allow persons between the age of

16 and 18 to marry if they have secured the written consent of both parents. If parents refuse there can be no marriage. If parents disagree then the underage couple can apply to the court, or other appropriate authority, for permission to marry. If either party is under 16 years of age no marriage is possible. (Paragraphs 4.54 to 4.56).

- (g) Make 18 both the minimum age for marriage and the free age of marriage with judicial and parental consent necessary for permission to marry under this age. If either party is under 16 no marriage is possible.

38. Option (g) is the option favoured by the author. It goes further than option (f) in that it requires underage couples to have the permission of the court, or other appropriate authority, as well as parental permission to marry under the age of 18. Judicial permission to marry is regarded as necessary in these cases as well as parental consent:

- (a) to protect a couple from being pressurized into marriage by parents who might persuade them to marry to avoid the stigma of illegitimacy,
- (b) judicial consent, if it is tied in with a system of premarital counselling, could provide a very positive service for underage couples.

39. If option (g) were adopted, it would mean that any person wishing to marry who had attained the age of 16 and who had still not attained the age of majority would require parental consent and the consent of the court or other appropriate authority, and would be required to participate in premarriage counselling before permission to marry could be given by the court. This would (a) give the couple the opportunity to examine thoroughly, in an atmosphere removed from parental pressure, why they want to marry now and the pros and cons of such a marriage; (b) the report from the

marriage counsellor would provide the court with the necessary information and assessment of the couple's readiness for marriage; (c) if the marriage goes ahead and if the couple at some future date encounter difficulties in their marriage they will be well aware of a source of help for these difficulties. Trained counsellors and operational guidelines would be necessary for the successful operation of this scheme. The experience of other jurisdictions where such a scheme is in operation could be tapped in drawing up such a service for underage couples in Ireland.

40. The publication of this Working Paper on the Age of Majority provides an opportunity for Irish people generally, and legislators in particular, to think again about what the legal minimum age of marriage in Ireland should be.

FOOTNOTES

1. Quarterly Report on Births, Deaths and Marriages, An Roinn Slainte, Dublin, 4th Quarter 1975, p. 67.
2. *Prior to 1957 the law did not require that the ages of the contracting parties should be entered in the marriage register. It was necessary only that each party should be described as of full age or as a minor. Thus a full record of the ages of persons marrying before 1957 is not available. 1961, 1966, 1971 were chosen for comparison in Table 2 because they were census years. 1974 and 1975 were included as they are the two most recent years for which information is available.*
3. *See paragraph 4.21 of the Working Paper.*
4. *G. Rowntree, "Some Aspects of Marriage Breakdown in Britain", Population Studies, 1964, vol. 18, no. 2, p. 155.*
5. *J. Dominian, Marital Breakdown, Pelican, Harmondsworth, 1968, pp. 130-131.*
6. *A recent report from the National Economic and Social Council Statistics for Social Policy, Dublin, 1976, recommends that in future "an additional marital status category be included in the census to cover the separated and divorced, and those whose marriages have been annulled". P. 21.*
7. *Strictest confidentiality was observed in carrying out this task. No names or other identifying information regarding the applicants was given to the Commission.*
8. *The age bands chosen are those used in the Census Reports and the Reports on Vital Statistics.*

9. K. O'Higgins, *Marital Desertion in Dublin, E.S.R.I., Dublin, 1974*, p. 54.
10. M. Carter, "Teenage Marriages; Diocesan Policy", *The Jurist*, vol. 35, 1975, pp. 276-295.
 T.H. Christensen, "Timing of First Pregnancy as a Factor in Divorce: A Cross-Culture Analysis", *Eugenics Quarterly*, vol. 10, No. 3, 1963, p. 127.
 H. Couch, "Marriage Law Reform - A Comment", *Tulane Law Review*, vol. 44, No. 2, Feb. 1970, pp. 251-263.
 Dermot, Archbishop of Dublin, *Marriage and Pastoral Care*, Dublin 1975, pp. 14-17.
 J. Dominian, *Op. Cit.*, pp. 133-134.
 C. Foote, R.J. Levy, F.E.A. Sander, *Cases and Materials on Family Law*, 2nd edition, Little, Brown & Co., Boston and Toronto, 1976, pp. 612-626.
Report on the Status of Women in Canada, Information Canada, Ottawa, 1970, p. 233.
 "A Report on the Capacity to Marry: The Minimum Ages", *Proceedings of the 54th Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada*, Quebec, 1972, pp. 115-118.
 P.T. Piotrow, "Mothers too Soon", *Draper World Population Fund Report*, No. 1, Autumn, 1975.
 W.W. Weiss & H.B. Collada, "Judicial Consent to Marry - Its Complex Demands", *Family Law Quarterly*, 1969, vol. III, No. 4, pps. 288-301.
11. G. Rowntree, *Op. Cit.*, pp. 158-159 and J. Dominian, *Op. Cit.*, p. 133.
12. R.E. Furlong, "Youghful Marriage and Parenthood: A Threat to Family Stability", *Hastings Law Journal*, 1967, vol. 19, pp. 112-115.
 R.R. Puffer & C.V. Serrano, "Teenage Pregnancies: High Risk for Infants" *Draper World Population Fund Report*, *Op. Cit.*, p. 16 and
 R.R. Puffer & C.V. Serrano, *Birthweight, Maternal Age and Birth Order: Three Important Determinants in Infant Mortality*, *Fan American Health Organisation* 1975.

13. See paragraph 4.21 of the Working Paper.
14. "Report on the Status of Women in Canada", Op. Cit., p. 233.
15. "Marriage and Pastoral Care", Op. Cit., pp. 16-17. Some dioceses in the U.S. require their under-age couples to attend pre-marriage counselling before they will be given permission for marriage in the Catholic Church, for example the diocese of Rochester in New York State has developed an elaborate programme of preparation for teen-age couples. G.C. Kreig, "Canonical Preparation for Marriage: some new Diocesan Procedures", Catholic Lawyer, Vol. 18, Autumn 1972 pp. 284-292.
16. See paragraph 4.29 of the Working Paper.
17. H. Couch, Op. Cit., p. 258.
18. T.P. Monahan, "Does Age at Marriage Matter in Divorce?" Social Forces, vol. 32, Oct., 1953, pp. 81-87.
19. W.W. Weiss & H.B. Collada, Op. Cit., pp. 288-289.
20. See paragraph 8 in this Appendix.
21. "Report on the Status of Women in Canada", Op. Cit., pp. 230-234.
22. California Civil Code, Section 4101 (as amended in 1970).
23. William P. Hogoboom, "Premarital Marriage Counselling for Teenagers: one year's experience in California", Buffalo Law Review, vol. 22, No. I, 1972, p. 147.
24. M. Elkin, Premarital Counselling for Minors: the Los Angeles Experience, pre-publication copy pp. 1-3 and pp. 26-30.
25. Ibid, p. 36.

26. W.P. Hogoboom, Op. Cit., p. 154.
27. M. Elkin, Op. Cit., p. 41.
28. "Guidelines for Premarital Counselling with Minors", *California Civil Code, Section 4101(c)*, quoted by W.P. Hogoboom, Op. Cit., p. 166.
29. W.P. Hogoboom, Op. Cit., p. 154.
30. J. Neville Turner, "Marriage of Minors", University of Western Australia Law Review, vol. 8, 1968, pp. 319-376. Turner concludes his extensive review of the law in relation to the marriage of minors in a variety of countries by suggesting that the Commonwealth Marriage Act of 1961 in Australia would have been improved if people applying to the courts for permission to marry under either section 12 or 16 of the Act, were required to obtain pre-marital counselling before permission was granted, p. 375.
31. See Table 2 in this Appendix.
32. D. Walsh, "Medical and Social Characteristics of Irish Residents whose Pregnancies were Terminated under the 1967 Abortion Act in 1971 and 1972", Journal of the Irish Medical Association, March 22, 1975, vol. 68, No. 6, p. 148.
33. Ibid, p. 144 and D. Walsh, "Pregnancies of Irish Residents Terminated in England and Wales in 1973", Journal of the Irish Medical Association, January 17, 1976, vol. 69, No. 1, p. 16.
34. Illegitimate births to mothers aged under 20: 1961 = 305; 1966 = 419; 1971 = 605; 1975 = 910.