

GENERAL SCHEME
of
FAMILY LAW BILL 2019

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Head 1: Short title and commencement

Provide that:

- (1) This Act may be cited as the Family Law Act 2019.
- (2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Head 2: Amendment of Family Law (Divorce) Act 1996

Provide that:

The Family Law (Divorce) Act 1996 is amended—

(a) in section 5—

(i) in subsection (1)(a), by the substitution of “two years during the previous three years” for “four years during the previous five years”, and

(ii) by the insertion of the following after subsection (1):

“(1A) For the avoidance of doubt, for the purposes of subsection (1) a court may be satisfied that the spouses have lived apart notwithstanding that they have occupied the same dwelling, if the court is satisfied that the spouses have not lived together as a couple in an intimate and committed relationship.”,

and

(b) in section 39, by the insertion of the following after subsection (4):

“(5) A court shall, notwithstanding subsection (1), have jurisdiction to determine an application for the grant of a decree of divorce in respect of a marriage where on the date of the passing of the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Act 2019—

(a) proceedings are pending in the court in respect of an application for the grant of a decree of judicial separation in respect of the marriage concerned or in respect of an appeal from the determination of such an application,

(b) the spouses have lived apart from one another for a period of, or periods amounting to, at least two years during the previous three years, and

(c) the court has or had, by virtue of section 31(4) of the Act of 1989, jurisdiction to determine the application.”.

Head 3: Amendment of section 2 of Judicial Separation and Family Law Reform Act 1989

Provide that:

Section 2 of the Judicial Separation and Family Law Reform Act 1989 is amended—

(a) in subsection (1)—

(i) in paragraph (d), by the deletion of “and the respondent consents to a decree being granted”, and

(ii) by the deletion of paragraph (e),

(b) in subsection (2), by the substitution of “living apart from” for “not living with”,
and

(c) by the substitution of the following for paragraph (a) of subsection (3):

“(a) For the avoidance of doubt, for the purposes of this section a court may be satisfied that the spouses have lived apart notwithstanding that they have occupied the same dwelling, if the court is satisfied that the spouses have not lived together as a couple in an intimate and committed relationship.”.

Head 4: Amendment of section 110 of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Provide that:

Section 110 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is amended by the insertion of the following after subsection (1):

“(1A) For the avoidance of doubt, for the purposes of subsection (1) a court may be satisfied that the civil partners have lived apart notwithstanding that they have occupied the same dwelling, if the court is satisfied that the civil partners have not lived together as a couple in an intimate and committed relationship.”.

Head 5: Recognition of divorces, marriage annulments and legal separations granted in the United Kingdom on or after 1 March 2001

Provide that:

(1) This head shall apply to a divorce, marriage annulment or legal separation granted on or after 1 March 2001 under the civil law of any of the following jurisdictions—

- (a) England and Wales,
- (b) Scotland,
- (c) Northern Ireland.

(2) A divorce, marriage annulment or legal separation to which this head applies shall be recognised if, at the date of the institution of the proceedings for divorce, marriage annulment or legal separation—

- (a) both spouses are habitually resident in any of the jurisdictions referred to in subhead (1), or
- (b) both spouses were last habitually resident in any of the jurisdictions referred to in subhead (1) and one of them continues to reside there, or
- (c) the respondent is habitually resident in any of the jurisdictions referred to in subhead (1), or
- (d) the applicant is habitually resident in any of the jurisdictions referred to in subhead (1) and he or she resided there throughout the period of one year ending on the date the proceedings were instituted, or
- (e) the applicant is habitually resident and domiciled in any of the jurisdictions referred to in subhead (1) and he or she resided there throughout the period of 6 months ending on the date the proceedings were instituted, or
- (f) both spouses are domiciled in any of the jurisdictions referred to in subhead (1), or
- (g) either spouse is domiciled in any of the jurisdictions referred to in subhead (1).

(3) Section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not have effect in relation to a divorce to which this Head applies.