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*Number 37 of 2019*

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**Family Law Act 2019**

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## **FAMILY LAW ACT 2019**

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An Act to amend the Judicial Separation and Family Law Reform Act 1989; to amend the Family Law (Divorce) Act 1996; to amend the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; to make provision, in the event of the withdrawal of the United Kingdom from membership of the European Union occurring without an agreement between the United Kingdom and the European Union under Article 50 of the Treaty on European Union setting out the arrangements for such withdrawal, for the recognition of certain divorces, legal separations and marriage annulments granted in the United Kingdom or Gibraltar; and to provide for related matters. [25th October, 2019]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

#### **Short title and commencement**

1. (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.

### PART 2

#### AMENDMENTS TO ACTS RELATING TO FAMILY LAW

#### **Amendment of section 2 of Judicial Separation and Family Law Reform Act 1989**

2. (1) Section 2 of the Act of 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)—
  - (i) in paragraph (b), by the deletion of “or (e)”, and
  - (ii) by the substitution of “living apart from one another” for “not living with each other”,
- and
- (c) in subsection (3), by the substitution of the following paragraph for paragraph (a):
  - “(a) For the purposes of this section—
    - (i) spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship, and
    - (ii) a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.”.
- (2) The amendments effected by *subsection (1)* shall apply to proceedings for the grant of a decree of judicial separation under the Act of 1989—
  - (a) that are instituted on or after the date this section comes into operation, or
  - (b) that have been instituted, and have not been concluded, prior to such date.
- (3) In this section, “Act of 1989” means the Judicial Separation and Family Law Reform Act 1989.

### **Amendment of section 5 of Family Law (Divorce) Act 1996**

3. (1) Section 5 of the Act of 1996 is amended—
- (a) in subsection (1)(a), by the substitution of “at least two years during the previous three years” for “at least four years during the previous five years”, and
  - (b) by the insertion of the following subsection after subsection (1):
    - “(1A) For the purposes of this section—
      - (a) spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship, and
      - (b) a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.”.
  - (2) The amendments effected by *subsection (1)* shall apply to proceedings for the grant of a decree of divorce under the Act of 1996—

- (a) that are instituted on or after the date this section comes into operation, or
  - (b) that have been instituted, and have not been concluded, prior to such date.
- (3) In this section, “Act of 1996” means the Family Law (Divorce) Act 1996.

**Amendment of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

4. (1) Section 110 of the Act of 2010 is amended by the insertion of the following subsection after subsection (1):
- “(1A) For the purposes of this section—
- (a) civil partners who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the civil partners do not live together as a couple in an intimate and committed relationship, and
  - (b) a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.”.
- (2) Section 172(6) of the Act of 2010 is amended—
- (a) by the substitution of “where the relationship concerned ends before the coming into operation of *section 4(2)* of the *Family Law Act 2019*, an adult who” for “an adult who”, and
  - (b) in paragraph (b), by the substitution of “lived apart (which term shall, in this section, be construed in accordance with section 5(1A) of the Family Law (Divorce) Act 1996)” for “lived apart”.
- (3) The amendment effected by *subsection (1)* shall apply to proceedings for the grant of a decree of dissolution under the Act of 2010—
- (a) that are instituted on or after the date this section comes into operation, or
  - (b) that have been instituted, and have not been concluded, prior to such date.
- (4) In this section, “Act of 2010” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

PART 3

RECOGNITION OF CERTAIN DIVORCES, LEGAL SEPARATIONS AND MARRIAGE ANNULMENTS

**Definitions and application (*Part 3*)**

5. (1) In this Part—

“Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27 November 2003<sup>1</sup> concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as amended by Council Regulation (EC) No. 2116/2004 of 2 December 2004<sup>2</sup> amending Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as regards treaties with the Holy See;

“relevant jurisdiction” means—

- (a) England and Wales,
  - (b) Scotland,
  - (c) Northern Ireland, or
  - (d) Gibraltar.
- (2) Section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not apply to a divorce to which *section 6* or *7* applies.

**Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar before coming into operation of section**

6. A divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction that, prior to the coming into operation of this section, was recognised under the Council Regulation shall continue to be recognised.

**Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar after coming into operation of section**

7. (1) This section shall apply to a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction on or after the coming into operation of this section.
- (2) A divorce, legal separation or marriage annulment to which this section applies shall, subject to *subsection (3)*, be recognised if, at the date of the institution of the proceedings relating to the divorce, legal separation or marriage annulment concerned, at least one of the following requirements is satisfied:
- (a) the spouses were habitually resident in a relevant jurisdiction;
  - (b) the spouses were last habitually resident in a relevant jurisdiction, insofar as one of them still resided there;
  - (c) the respondent was habitually resident in a relevant jurisdiction;
  - (d) the applicant—
    - (i) was habitually resident in a relevant jurisdiction, and

<sup>1</sup> O.J. No. L338, 23.12.2003, p. 1

<sup>2</sup> O.J. No. L367, 14.12.2004, p. 1

- (ii) had resided there for at least a year immediately prior to that date;
  - (e) either of the spouses was domiciled in a relevant jurisdiction.
- (3) A divorce, legal separation or marriage annulment to which this section applies shall not be recognised—
- (a) if such recognition is manifestly contrary to public policy,
  - (b) where the judgment in the proceedings relating to the divorce, legal separation or marriage annulment concerned (“the relevant judgment”) was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally,
  - (c) if the relevant judgment is irreconcilable with a judgment given in proceedings between the same parties in the State, or
  - (d) if the relevant judgment is irreconcilable with an earlier judgment given in a state other than the State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State.