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Report of the Joint Committee on Marriage Breakdown

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BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR.

Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
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Contents

Orduithe Tagartha
Orders of Reference

Dáil Éireann

7 *Iúil* 1983: *Ordaíodh:*— (1) Go gceapfar Roghchoiste ar a mbeidh 11 Chomhalta de Dháil Éireann a bheidh le comhcheangal le Roghchoiste a cheapfaidh Seanad Éireann chun bheith ina Chomhchoiste um Chliseadh Póstaí chun cosaint an phósta agus shaol an teaghlaigh a mheas agus chun scrúdú a dhéanamh ar na fadhbanna a tharlaíonn de bhíthin pósadh cliseadh, agus chun tuairisc ar an gcéanna a thabhairt do Thithe an Oireachtais.

(2) Go ndéanfar Tuarascáil an Chomhchoiste a leagan faoi bhráid dhá Theach an Oireachtais laistigh de thréimhse bliana.

(3) Go mbeidh cumhacht ag an gComhchoiste fios a chur ar dhaoine, ar pháipéir agus ar thaifid agus, faoi réir thoiliú Aire na Seirbhíse Poiblí, seirbhísí daoine ag a bhfuil saineolas nó eolas teicniúil a fhostú chun cabhrú leis maidir le fiosruithe áirithe.

(4) Go ndéanfaidh an Comhchoiste, roimh thosach gnó, duine dá Chomhaltaí a thoghadh mar Chathaoirleach, agus gan aige ach vóta amháin.

(5) Go ndéanfar na ceisteanna go léir sa Chomhchoiste a chinneadh trí thromlach vótaí na gComhaltaí a bheidh i láthair agus a vótálfaidh agus i gcás comhionannas vótaí go gcinnfear gur freagra diúltach a thabharfar ar an gceist.

(6) Go mbeidh cumhacht ag an gComhchoiste miontuairiscí fianaise a ghlacfar os a chomhair mar aon le cibé doiciméid ghaolmhara is cuí leis a chlóbhualadh agus a fhoilsiú ó am go ham.

(7) Gur cúig Chomhalta den Chomhchoiste is córam dó agus duine amháin ar a laghad díobh ina Chomhalta de Dháil Éireann agus duine amháin ar a laghad díobh ina Chomhalta de Sheanad Éireann.

(8) Go ndéanfar Tuarascáil an Chomhchoiste, ar an gComhchoiste do ghlacadh léi, a leagan faoi bhráid dhá Theach an Oireachtais láithreach agus as a aithle sin go mbeidh ar chumas an Chomhchoiste an Tuarascáil sin a chlóbhualadh agus a fhoilsiú i dteannta cibé doiciméid ghaolmhara is cuí leis.

7th July 1983: *Ordered:*— (1) That a Select Committee consisting of 11 Members of Dáil Éireann be appointed to be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on Marriage Breakdown to consider the protection of marriage and of family life, and to examine the problems which follow the breakdown of marriage, and to report to the Houses of the Oireachtas thereon.

(2) That the Report of the Joint Committee shall be laid before both Houses of the Oireachtas within a period of one year.

(3) That the Joint Committee shall have power to send for persons, papers and records and, subject to the consent of the Minister for the Public Service, to engage the services of persons with specialist or technical knowledge to assist it for the purposes of particular enquiries.

(4) That the Joint Committee, previous to the commencement of business, shall elect one of its Members to be Chairman, who shall have only one vote.

(5) That all questions in the Joint Committee shall be determined by a majority of votes by the Members present and voting and in the event of there being an equality of votes the question shall be decided in the negative.

(6) That the Joint Committee shall have power to print and publish from time to time minutes of evidence taken before it together with such related documents as it thinks fit.

(7) That five members of the Joint Committee shall form a quorum, of whom at least one shall be a Member of Dáil Éireann and at least one shall be a Member of Seanad Éireann.

(8) That the Report of the Joint Committee shall, on adoption by the Joint Committee, be laid before both Houses of the Oireachtas forthwith whereupon the Joint Committee shall be empowered to print and publish such Report together with such related documents as it thinks fit.

Ordaíodh: 28 *Meitheamh*, 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 1 Nollaig, 1984.

Ordered: 28*th June*, 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to 1st December, 1984.

Ordaíodh: 29 *Samhain*, 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 19 Feabhra, 1985.

Ordered: 29*th November*, 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 19th February, 1985.

Ordaíodh: 19 *Feabhra*, 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 21 Márta, 1985.

Ordered: 19*th February*, 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 21st March, 1985.

Ordaíodh: 21 *Márta*, 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 2 Aibreán, 1985.

Ordered: 21*st March*, 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 2nd April, 1985.

Seanad Éireann

Ordaíodh: 12 *Iúil* 1983:— (1) Go gceapfar Roghchoiste ar a mbeidh 5 Chomhalta de Sheanad Éireann a bheidh le comhcheangal le Roghchoiste a cheapfaidh Dáil Éireann chun bheith ina Chomhchoiste um Chliseadh Póstaí chun cosaint an phósta agus shaol an teaghlaigh a mheas agus chun scrúdú a dhéanamh ar na fadhbanna a tharlaíonn de bhíthin pósadh cliseadh, agus chun tuairisc ar an gcéanna a thabhairt do Thithe an Oireachtais.

Ordered: 12*th July*, 1983:— (1) That a Select Committee consisting of 5 Members of Seanad Éireann be appointed to be joined with a Select Committee to be appointed by Dáil Éireann to form the Joint Committee on Marriage Breakdown to consider the protection of marriage and of family life, and to examine the problems which follow the breakdown of marriage, and to report to the Houses of the Oireachtas thereon.

(2) Go ndéanfar Tuarascáil an Chomhchoiste a leagan faoi bhráid dhá Theach an Oireachtais laistigh de thréimhse bliana.

(2) That the Report of the Joint Committee shall be laid before both Houses of the Oireachtas within a period of one year.

(3) Go mbeidh cumhacht ag an gComhchoiste fios a chur ar dhaoine, ar pháipéir agus ar thaifid agus, faoi réir thoiliú Aire na Seirbhíse Poiblí, seirbhísí daoine ag a bhfuil saineolas nó eolas teicniúil a fhostú chun cabhrú leis maidir le fiosruithe áirithe.

(3) That the Joint Committee shall have power to send for persons, papers and records and, subject to the consent of the Minister for the Public Service, to engage the services of persons with specialist or technical knowledge to assist it for the purposes of particular enquiries.

(4) Go ndéanfaidh an Comhchoiste, roimh thosach gnó, duine dá Chomhaltaí a thoghadh mar Chathaoirleach, agus gan aige ach vóta amháin.

(4) That the Joint Committee, previous to the commencement of business, shall elect one of its Members to be Chairman, who shall have only one vote.

(5) Go ndéanfar na ceisteanna go léir sa Chomhchoiste a chinneadh trí thromlach vótaí na gComhaltaí a bheidh i láthair agus a vótálfaidh agus i gcás comhionannas vótaí go gcinnfear gur freagra diúltach a thabharfar ar an gceist.

(5) That all questions in the Joint Committee shall be determined by a majority of votes by the Members present and voting and in the event of there being an equality of votes the question shall be decided in the negative.

(6) Go mbeidh cumhacht ag an gComhchoiste miontuairiscí fianaise a ghlacfar os a chomhair mar aon le cibé doiciméid ghaolmhara is cuí leis a chlóbhualadh agus a fhoilsiú ó am go ham.

(6) That the Joint Committee shall have power to print and publish from time to time minutes of evidence taken before it together with such related documents as it thinks fit.

(7) Gur cúig Chomhalta den Chomhchoiste is córam dó agus duine amháin ar a laghad díobh ina Chomhalta de Dháil Éireann agus duine amháin ar a laghad díobh ina Chomhalta de Sheanad Éireann.

(7) That five members of the Joint Committee shall form a quorum, of whom at least one shall be a Member of Dáil Éireann and at least one shall be a Member of Seanad Éireann.

(8) Go ndéanfar Tuarascáil an Chomhchoiste, ar an gComhchoiste do ghlacadh léi, a leagan faoi bhráid dhá Theach an Oireachtais láithreach agus as a aithle sin go mbeidh ar chumas an Chomhchoiste an Tuarascáil sin a chlóbhualadh agus a fhoilsiú i dteannta cibé doiciméid ghaolmhara is cuí leis.

(8) That the Report of the Joint Committee shall, on adoption by the Joint Committee, be laid before both Houses of the Oireachtas forthwith whereupon the Joint Committee shall be empowered to print and publish such Report together with such related documents as it thinks fit.

Ordaíodh: 28 *Meitheamh* 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 1 Nollaig, 1984.

Ordered: 28*th June* 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to 1st December, 1984.

Ordaíodh: 29 *Samhain* 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 19 Feabhra, 1985.

Ordered: 29*th November* 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 19th February, 1985.

Ordaíodh: 13 *Feabhra* 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 21 Márta, 1985.

Ordered: 13*th February* 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 21st March, 1985.

Ordaíodh: 20 *Márta* 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gChomhcoiste um Chliseadh Póstaí a fhadú go dtí an 2 Aibreán, 1985.

Ordered: 20*th March* 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 2nd April, 1985.

Comhaltaí

List of Members

Dáil Members
Myra Barry
Eileen Desmond
Dick Dowling
Pádraig Flynn
Máire Geoghegan-Quinn
Mary Harney
Willie O'Brien
Rory O'Hanlon
Alan Shatter
Madeline Taylor-Quinn
Michael Woods

Seanad Members
Katharine Bulbulia
Tras Honan
Thomas Hussey
Catherine I. B. McGuinness
Mary T. W. Robinson

Chairman of the Joint Committee
The Joint Committee at its meeting on the 14th September, 1983, elected Deputy Willie O'Brien as Chairman.

Clerk to the Joint Committee
Mr. Rory MacCabe was assigned to be Clerk to the Committee on the 16th November, 1983.

REPORT

Chapter 1

Introduction

1.1 The Joint Committee was established by Order of the Dáil on the 7th July, 1983 and of the Seanad on the 12th July, 1983.

Following this formal establishment, the committee met and elected Willie O'Brien T.D. as Chairman.

The Committee decided that, in order to fully comply with the Orders of Reference, a detailed examination of the social and legal factors which constitute marriage would be necessary. The Committee decided to embark on this examination immediately and also to seek the views of interested parties and, if necessary, invite submissions from specific persons or organisations with particular expertise in this area, as a means of gathering such information as would be necessary.

The Committee recognised the pre-eminent desire of all concerned to ensure insofar as possible the preservation and protection of marriage. The majority of marriages which are contracted in the State are, and remain, viable and stable. The Committee emphasised the need to ensure that the social and legal infrastructure of the State should not work to increase the pressure which can be placed on marriage and much of the Committee's deliberations consequently focused on the protection of marriage and of family life.

The Committee recognises that the number of people who marry has not increased at the same rate at which the persons of marriageable age has increased, and has not been matched by the numbers of people who have married (see Appendix C). The numbers of marriages taking place has

decreased and this gives cause for concern. The Committee is of the opinion that it will be necessary to tackle the problems which give rise to this in order to make marriage as secure and viable as is humanly possible, and to offer married persons adequate social and legal protection where it is not so possible.

The Committee acknowledged that the present law does not provide adequate protection for those persons whose marriages do not remain viable and that this, in itself, is a threat to marriage.

1.2 Method of Enquiry

The Committee placed advertisments in the daily newspapers on the 22nd September, 1983 and the 25th November, 1983 and in the Sunday newspapers on the 25th September, 1983 and on the 27th November, 1983, seeking submissions from interested parties on matters covered by the Committee's Orders of Reference. In response to these advertisements, the Committee received submissions from a wide variety of religious, social, medical, legal and political organisations and from individual members of the public. More than 700 written submissions were received. All of these drew attention to the lack of protection for marriage, the inadequacy of legal remedies and the need for legal and social reform.

1.3 The Committee decided to invite selected groups and individuals to make oral presentations in order to give them the opportunity to expand on their written submissions and to reply to questions from the Committee. Of those invited, 24 groups or individuals, listed at Appendix A, gave evidence to the Committee.

1.4 As a result of the quality of the submissions received, the Committee acquired a body of information which provided source material for all the various questions which arose in the course of the Committee's deliberations and the Committee wishes to thank all those organisations and individuals who made submissions and participated in oral hearings. The transcripts of the oral hearings are published separately.

1.5 In the normal course, the Committee would provide a list of the organisations and individuals who made submissions, but in view of the personal and confidential nature of many of the submissions the Committee decided to confine itself to listing, at Appendix A, the organisations or representative bodies which made submissions.

1.6 The Committee had occasion to consult Government Departments, State Bodies and many other organisations in relation to particular questions which arose for consideration. A list of these organisations is contained at

Appendix B. Valuable information was thereby obtained and the Committee wishes to acknowledge the co-operation and assistance which was received.

1.7 Due to the magnitude of the task which was entrusted to the Committee it became clear that the reporting date of the end of July, 1984 could not be met. For that reason the Dáil and Seanad agreed on the 28th June, 1984, to extend the time for the Committee to complete its work to the 1st December, 1984. The Committee found it necessary to request further extensions to the 19th February, 1985, in the first instance and then to the 1st March, 1985, and the Dáil and Seanad acceded to these requests. A final extension until the 2nd April, 1985 was granted.

1.8 The Committee engaged Mr. Gerard Durcan, Barrister-at-Law, as legal advisor to the Committee and wishes to acknowledge the invaluable service which was provided by him. The Committee also wishes to acknowledge the invaluable service provided by its Clerk, Mr. Rory MacCabe, Barrister-at-Law, and the Secretariat of the Committee and also Mr. Séamus Phelan, Principal Committee Clerk, and his staff in the compilation and publication of this Report.

Chapter 2

Marriage and the Family — The Legal and Constitutional Position

2.1 Marriage is a legal contract entered into by the celebration of a marriage ceremony; marriage creates by law a new relationship between the parties and alters the status of both. The status of an individual [used as a legal term] means the legal position of the individual in or with regard to the rest of the community.

2.2 For a marriage to be valid in the State—

(i) each of the parties must, as regards age, mental capacity and otherwise, be capable of contracting marriage;

(ii) they must not be either prohibited by reason of kindred or affinity from marrying one another;

(iii) there must not be a valid subsisting marriage of either of the parties with any other person;

(iv) the parties, understanding the nature of the contract, must freely consent to marry one another; and

(v) certain forms and ceremonies must be observed.[1]

2.3 The law which governs the formalities of marriage is contained in a series of Statutes from 1844 to 1972.[1]

[1]See "Family Law in Ireland" by Alan Shatter, and Report of the Law Reform Commission on Nullity of Marriage (LRC 9/84).

2.4 Marriage is given express recognition in the Constitution (Article 41)[2] where the State pledges

> "to guard with special care the institution of marriage".

The Constitution recognises only the family founded on the institution of marriage and this has been confirmed by the Supreme Court.[3]

2.5 The extent of the protection offered to marriage by the Constitution has been stated by the Supreme Court as follows:—

> "The pledge (of Article 41.3.1) to guard with special care the institution of marriage is a guarantee that this institution in all its constitutional connotations, including the pledge given in Article 41.2.2 as to the position of the mother in the home, will be given special protection, so that it will continue to fulfil its functions as the basis of the family and as a permanent, indissoluble union of man and woman."[4]

2.6 The rights of the family, recognised by the Constitution, are "antecedent and superior to all positive law" and are firmly based on natural law which is:

> "of universal application and applies to all human persons".[5]

These rights are also "inalienable and imprescriptible".[6] "Inalienable" has been held to mean

> "that which cannot be transferred or given away",[7]

while "imprescriptible" has been held to mean

> "that which cannot be lost by the passage of time or abandoned by non-exercise".[8]

2.7 An indication as to the rights of the family is found in Article 41.1.2 where:

> "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".

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[2](Article 41.3.1).
[3]The State (Nicolaou) v An Bord Uchtála [1966] IR 567.
[4]Murphy v Attorney General [1982] IR 241.
[5]Northants Co. Council v A.B.F. [1982] ILRM 164.
[6]Article 41.1.1.
[7]Ryan v Attorney General [1965] IR 294.
[8]Ryan v Attorney General [1965] IR 294.

The Committee noted the provisions dealing with the Family contained in the European Convention on Human Rights. These are reproduced here as follows:—

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

The European Court of Human Rights has interpreted this Article as follows:—

"By guaranteeing the right to respect for family life, Article 8 presupposes the existence of a family. The Court concurs entirely with the Commission's established case-law on a crucial point, namely that Article 8 makes no distinction between the "legitimate" and the "illegitimate" family. Such a distinction would not be consonant with the word "everyone", and this is confirmed by Article 14 with its prohibition, in the enjoyment of the rights and freedoms enshrined in the Convention, of discrimination grounded on "birth".

In addition, the Court notes that the Committee of Ministers of the Council of Europe regards the single woman and her child as one form of family no less than others (Resolution (70) 15 of 15 May, 1970 on the social protection of unmarried mothers and their children).

Article 8 thus applies to the "family life" of the "illegitimate" family as it does to that of the "legitimate" family.[9]

2.8 The Committee notes the extent to which these provisions are at variance with the judicial interpretation given to the family as constitutionally defined by the Irish courts.

2.9 Submissions received by the Committee refer to extra-marital unions which are occurring in the State. Single persons living together, married persons who have separated and are living with single persons or with other separated persons, persons who have had their marriages annulled by the Ecclesiastical Courts and who have "remarried" within the Church, persons who have obtained divorces abroad which are not recognised by the State and

[9]Marckx case, Strasbourg, 13th June, 1979.

have purported to remarry, are all, in varying degrees, living in extra-legal unions, enjoying only limited legal recognition and protection.

2.10 Extra-marital unions are not covered by the Constitutional protection afforded in Articles 41 and 42 to the family, as it is

> "quite clear that the family referred to in (Article 41) is the family which is founded on the institution of marriage and in the context of the Article, marriage means valid marriage under the law for the time being in force in the State."[10]

This also excludes from the definition of a family, a household consisting, for example, of an unmarried mother or father and her or his child.

The rights of the mother and father in a non-marital situation have been given a different interpretation under Article 40.3.1.

The Supreme Court stated that a mother of an illegitimate child:

> "as such. . . . . .has rights which derive from the fact of motherhood and from nature itself. These rights are among her personal rights as a human being which the State is bound under Article 40.3.1 of the Constitution to respect and to defend and vindicate. As a mother she has the right to protect and care for and to have custody of her infant child. . . . . .This right is clearly based on the natural relationship which exists between a mother and child."[11]

The Court has, however, not granted the same constitutional protection to the father of an illegitimate child:

> "It has not been shown to the satisfaction of this Court that the father of an illegitimate child has any natural right, as distinct from legal rights to either the custody or society of that child and the court has not been satisfied that any such right has ever been recognised as part of natural law."[12]

2.11 This failure to extend constitutional protection to the natural father of a child has been criticised in submissions made to the Committee and in modern Irish legal texts which deal with the subject.[13]

The Committee recognises the anomalous nature of this position having regard to the developments in legislation on equality between the sexes in other areas.

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[10]The State (Nicolaou) v An Bord Uchtála [1966] IR 567.
[11]G v An Bord Uchtála [1978] 113 ILTR 25.
[12]The State (Nicolaou) v An Bord Uchtála [1966] IR 643.
[13]See "Fundamental Rights in the Irish Law and Constitution" by Professor J. M. Kelly, and "Family Law in Ireland" by Alan Shatter.

The Committee considered this anomalous position in some detail and adverted to the work which has been done in this area by the Law Reform Commission. While deciding that this matter was not within the Orders of Reference of the Committee, the Committee understands that the drafting of amending legislation to deal with some of the problems in this area is at an advanced stage and urges swift presentation of such legislation to the Oireachtas.

Chapter 3

The Protection of Marriage and Family Life

Introduction

In later chapters — chapters 4 and 5 in particular — the factors which cause or contribute to the breakdown of marriage are dealt with in detail. This chapter concentrates on the prevention of marriage breakdown and, to a large extent, draws on the information received by the Committee and observations made by the Committee in other areas of this report. Such observations deal with the universally accepted causes of breakdown — personality defects, differing degrees of maturity, basic incompatibility of parties, all of which may be often manifested by argument, discord, alcohol and drug abuse, violence and cruelty, both mental and physical.

In addition, in considering how best the State can lead the way towards protecting marriage and family life, the Committee is conscious of the disturbing economic and social pressures which add to the interpersonal pressures which can arise in the course of a marriage. The Committee does not have the resources to engage in a detailed examination of these pressures and agreed that to do so would require research of a kind not envisaged in the Orders of Reference of the Committee and not, in any event, permitted by the real constraints which the schedule of work undertaken by the Committee dictated. The Committee urges that in-depth studies be undertaken as a matter of urgency by the appropriate bodies.

3.1 Education

3.1.1 Throughout the deliberations of the Committee, there was a constant emphasis on the importance of being prepared for marriage. Many submissions which were received by the Committee pointed out the need for a structured approach to educating people for marriage so that insofar as possible, all persons who marry are aware of the duties and obligations, rights and liabilities which are directly involved.

3.1.2 The Committee is conscious of the legal framework which surrounds marriage. When a marriage breaks down persons involved often find that the law is complex and open to misunderstanding and misapprehension.

3.1.3 The Committee is aware that some of the problems which give rise to the breakdown of marriage are present before the marriage. The Committee stressed the need for an educational process to reduce the element of uncertainty so as to promote awareness, reflection and mature consideration by all parties.

3.1.4 The Committee, aware of the constitutional provisions relating to the protection of the family, is of the view that the State has a specific responsibility to promote a system of education for marriage.

The Committee did not undertake a detailed analysis of the methods of educating people for marriage. Consistent with the principle, which runs through this report, of providing for the protection of marriage and prevention of marriage breakdown, the Committee draws attention to the absence of a cohesive and comprehensive educational programme designed to prepare people for marriage within the present educational system. The State, as part of its constitutional obligation to provide for the education of citizens, should ensure, as far as possible, that this programme should operate through the entire educational system. It should concentrate on the realities of life which are likely to confront all young people as they progress from childhood to adulthood, from childhood friendships through relationships of a more emotional and intimate nature to marriage and the raising of a family.

3.1.5 The Committee sees the role which the State plays through the educational system in this area as complementary to the primary responsibility which is placed on parents. In an oral submission to the Committee, Dr. Jack Dominian, Clinical Psychiatrist at the Central Middlesex Hospital said:

> "My image of the prevention of marital breakdown starts in the family. I would like to see the family as being the model. In regard to the schools, I have said again and again that in addition to "The Three R's", I want

a fourth "R" which stands for relationships to be an essential part of education in schools. We are doing research at the moment. I am not saying that you can teach boys and girls about marriage, because it is too big a leap for that age group, but you can teach them about personal relationships, about trust, about communication, about affection and about understanding. I would like to see that, which is the infrastructure of marriage, being an essential part of education".

3.1.6 The Committee recognises the role which is played by churches, schools, voluntary groups, third level and other educational institutions in this area. They commend these bodies for the work they have done and are doing. This work needs to be developed, augmented and financially supported.

3.1.7 In addition to formal education and the education which is given in the home, the Committee feels that the State has a special responsibility at the immediate pre-marriage stage. The parties should, from the time they formally declare their intention of marrying by notifying a clergyman, or applying to a registrar with powers to solemnise civil marriages, have access to a pre-marriage guidance service and be positively encouraged to avail of this service.

3.1.8 These services would have the task of ensuring that a couple intending to marry understand the nature of marriage, the importance of communications within marriage, assist them in obtaining an insight into the responsibilities and obligations which flow from it and discuss in depth any questions which relate to marriage.

3.1.9 As this service would essentially be personal, the Committee considers that staff would need to be specially recruited and trained in counselling skills. The Committee feels that considerable expertise already exists among voluntary bodies at present providing guidance services at pre-marriage stage and that the dissemination of this expertise would be invaluable in the expansion of pre-marriage guidance services as envisaged.

3.1.10 The Committee is of the view that prevention of marriage breakdown would be advanced considerably by heightening the level of awareness of persons contemplating marriage as to the true nature of marriage.

3.2 Counselling

3.2.1 Following on from counselling at the pre-marriage stage, the Committee has considered many submissions which stress the need for a comprehensive counselling service for married persons. The Committee was

impressed by the emphasis which the submissions placed on the importance of establishing a comprehensive nationwide State-aided counselling service, with trained and qualified personnel. This service would be available to assist persons who encounter difficulties within marriage.

3.2.2 The Committee is concerned that support for marriage, especially during the early years when marriages can be most vulnerable, is at best inadequate.

The Committee is of the view that those voluntary organizations at present engaged in marriage counselling are fulfilling a need where government intervention has been minimal. There is a need to support and develop existing services, in order to provide a service which is easily available and acceptable to the greatest possible number of people.

3.2.3 Among submissions received by the Committee, the following extracts are relevant:

> "The provision of such a counselling service would form the first line of defence so that couples with difficulties would have the opportunity to use the skilled help available to work at their problems."[1]
>
> "If the State is serious about its involvement in the area of marriage and the family, then it must review as a matter of urgency:
>
> (a) the availability of locally based statutory counselling services;
>
> (b) the improvement of Statutory support services (not necessarily of a financial nature).[2]
>
> "I think that the State has a supportive role. The State should finance voluntary bodies sufficiently well to support the preparation and support of marriages."[3]

3.2.4 The Committee is conscious of the vital role which education plays in preparing people for life. The Committee is not satisfied that the present facilities are adequate to cater for their educational needs as they relate to support for marriage.

3.2.5 The Committee is of the opinion that:

(a) the State is obliged to ensure that the educational system provides a means to educate persons for marriage; and

(b) the State is obliged to ensure that there is an easily accessible and effective counselling service available to married persons.

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[1]Submission to the Committee by the Marriage Counselling Service.
[2]Submission to the Committee by the Life Education and Research Network.
[3]Extract from oral submission to the Committee by Dr. J. Dominian.

3.3 Mediation

3.3.1 While this report deals with the provision of a mediation service at Chapter 8, it is appropriate here to draw attention to the educational role which is played by such a service and the association between a mediation service, which intervenes at the stage when marriage has broken down, and other educational and counselling services.

3.3.2 The Committee envisages a mediation service as complementary to both the pre-marriage counselling service dealt with at paragraph 3.2 above and the counselling service, dealt with earlier in this chapter. These services might well be closely associated and co-ordinated as the skills involved would, to a large degree, be based on the same principles.

It may happen that the personnel involved work in all three types of service. Such an approach would have the advantage of being based on the entirety of the marital relationship. Coordination of the work of the various services would be required. There should be the maximum co-operation and interaction between the personnel involved in all three services.

3.4 The age for marriage

3.4.1 The Committee received many submissions which stressed that marriages involving young persons are more likely to break down than marriages between persons of more mature years. This is a view which is widely held among social commentators. The Committee decided to examine the age at which persons marry, with a view to determining if the present legal framework governing this area requires modification.

3.4.2 The Marriages Act, 1972 sets out the law in regard to the age for marriage. Since the 1 January, 1975—

(1) A marriage between persons, either of whom is under sixteen, is not valid in law unless an exemption from the provision is obtained before the marriage from the President of the High Court (or a Judge nominated by him). An application for such an exemption can be made by or on behalf of either party to the intended marriage in an informal manner through the Office of the Wards of Court. To obtain such an exemption the applicant must show that its grant is justified by serious reasons and is in the interests of the parties to the intended marriage.

(2) A person who is under 21 years and who is not a widow, widower or a ward of court, must, prior to the marriage, obtain the consent of his or her guardians or sole guardian or if there is no guardian the

consent of the President of the High Court (or a Judge nominated by him). In the case of a Ward of Court the consent of the court must be obtained.

The requirement of the consent of a guardian can be dispensed with if a guardian

(a) refuses or withholds consent;

(b) is unknown;

(c) is of unsound mind; or

(d) is of whereabouts which would be unreasonably difficult to ascertain

and the President of the High Court (or a Judge of that Court nominated by him) consents to the intended marriage. Applications for such a dispensation are heard in an informal manner and in determining such an application the court must regard the child's welfare as the paramount consideration. If a marriage takes place between a person over 16 and under 21, without the required consent, the lack of such consent does not make the marriage invalid.

3.4.3 Recommendations of the Law Reform Commission[4]

The main recommendations of the Law Reform Commission contained in this report are as follows:

3.1 Marriage of a person under 16 years should be made null and void and intrinsically or essentially invalid.

3.2 Marriage of a person between 16 and 18 years should be made null and void and intrinsically or essentially invalid unless the consent of the parents or guardians or of a court or other appropriate authority is first obtained.

3.3 Where guardians disagree, or in the absence of guardians or if the minor is a ward of court, the High Court may give the necessary consent.

3.4 Where both guardians refuse their consent, this refusal should not be subject to appeal to the High Court.

3.5 Where the necessary consent has not been obtained the marriage will be void.

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[4]Report on the Law Relating to the Age of Majority, the Age of Marriage and Some Connected Subjects (LRC-5-1983) The Law Reform Commission.

3.4.4 Considerations regarding the absolute minimum age for marriage

4.1 Because of differences in individual's intelligence, judgement, temperament and social circumstances there is no easy way of designating what is the absolutely right age for marriage.

4.2 The average age for marriage in Ireland has been going down and there has been a considerable increase in the number of people aged 21 years and under who are getting married.[5]

4.3 Research in other countries indicates that the age of the couple at marriage does influence its outcome.

"It is well known 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".[6]

"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".[7]

"A correlation between young marriages, pre-marital pregnancy and marital breakdown has been found in other western countries".[7]

4.4 Statistics on Marital Breakdown are not sufficiently extensive in Ireland to permit similar inference with any degree of empirical certainty, but the increase in matrimonial court proceedings shows that marriages are breaking down with greater frequency in recent years[8]

There is no reason to suppose that in such circumstances the pattern of age-related marital breakdown in Ireland is any different from that in other countries where research has been carried out.

4.5 A study conducted by the Dublin Regional Marriage Tribunal of the Roman Catholic Church revealed that applicants in 1975 for

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[5]For Statistical data see Appendix C.
[6]G. Rowntree — Some aspects of Marriage Breakdown in Britain.
[7]J. Dominian, Marital Breakdown.
[8]See Appendix C.

Church annulments were, on average, younger at their date of marriage than the national average age of marriage in that year.

4.6 A further study[9] conducted by Dr. Kathleen Higgins (Economic and Social Research Institute) found that deserted wives were younger at marriage than the national average. These surveys support research in other European countries regarding the relationship between age at marriage and marriage breakdown.

4.7 It appears that pregnancy is one of the main reasons why a girl seeks permission to marry below the present minimum age in Ireland. Opinion, social, political and religious, is increasingly against pregnancy being a dominant factor in deciding whether or not to marry. Irish courts have recently held that in certain circumstances the marriage of a young person who is forced to marry because of pregnancy may be null and void.[10]

4.8 Many churches recognise that there is a need for a waiting period between the time parties decide to marry and the date of the actual marriage, to afford them the opportunity to reflect on the importance of the decision they have taken and the nature of the relationship into which they are entering.

At present the Roman Catholic Church in general imposes a 3 month waiting period. Other churches impose similar waiting periods. There is no similar provision for persons contracting civil marriages. Consideration should be given to introducing a similar provision in the Civil Law.

4.9 Concern has been expressed that the raising of the current absolute minimum age for marriage from 16 to 18 might adversely affect the travelling people, whose age of marriage, it was felt, is often 16 years or lower.

In the Report of the Review Body on the Travelling People published in February, 1983 at paragraph 2.3.4 (Page 88) it is accepted that travellers marry at a young age, but suggests from the result of the Census of Travelling People conducted by the Economic and Social Research Institute in 1981, that many travelling women are now postponing their marriages until their early twenties.[11]

[9]Marital Desertion in Ireland.
[10]McK V. F McC judgment of O'Hanlon J., 1982 ILRM 277.
[11]Economic & Social Research Institute — Census of the Travelling People.

Similar considerations would apply in the case of members of religions whose beliefs permit marriage at a young age.

Statistics at page 89 of the report show that no traveller under 16 years is married and that only 37 were married between 16 and 18 years of age.[12]

4.10 The Age of Majority Act, 1985, has now come into force. This has reduced the age of majority to eighteen (18) years.

3.4.5 Opinions of the Committee

The Committee considered that certain changes in the present law be made to take account of:

(i) the lowering of the age of majority to eighteen (18) years;

(ii) changes in the pattern of the age at which people are marrying in the present day;

(iii) the desirability of fixing a minimum age for marriage which would reflect the widely held view that marriages involving young persons are at greater risk than other marriages;

(iv) the need to ensure that marriage is with full and free consent and with full understanding of its nature and implications, social, economic and legal.

3.4.6 The Committee is of the opinion that the free age for marriage i.e. the age at which a person can freely contract a valid marriage without any prior requirement for parental consent, should be reduced from 21 years to 18 years.

3.4.7 The Committee is of the opinion that the minimun age for marriage should be 18 years and that any marriage contracted by a person under 18 years should be null and void. Marriages of persons between 16 and 18 years may, however, be permitted if such persons obtain the prior consent of guardian(s) and the prior consent of the court. Consent of the court should not be granted unless the court is satisfied that the marriage would, in all the circumstances of the case, be in the best interests of the parties. Welfare, in these circumstances, should comprise the moral, intellectual, physical and social welfare of the applicant. The court should also need to be satisfied that the applicant understands the nature and implications of marriage and consents fully and freely to the marriage.

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[12]Report of the Review Body on the Travelling People.

3.4.8 In forming the opinion that the free age of marriage should be reduced from 21 to 18 years, the Committee is conscious of the need for persons who intend to enter into marriage to receive the best possible education, preparation and advice in advance.

A comprehensive counselling service, allied with a specific educational input at secondary school level would go a considerable way to clarifying the social, legal and economic implications of marriage for such persons. This report deals in detail with this at paragraphs 3.1.4 to 3.1.6.

Chapter 4

Marriage Breakdown

4.1 Introduction

4.1.1 Having considered the nature and form of marriage, the Committee examined the factors which contribute to the breakdown of marriage. In so doing, the Committee drew from information supplied in submissions and in published works on marriage breakdown.

4.1.2 The Committee felt it was desirable to examine in detail the question of how and why marriages break down, in order to place the many elements of breakdown in the context of their opinions and observations on how best to protect marriage and family life and deal with problems which are caused by marriage breakdown.

4.1.3 The essence of marriage is a formal commitment, made in the presence of witnesses, to create and maintain a lasting and stable relationship between the spouses. The extent to which the stability of this relationship is subjected to pressure will vary. Pressure is brought about from within the relationship by the interaction of the personalities of spouses on each other and from outside the marriage by social, economic and environmental pressures such as bad housing, unemployment and the changing values and ethos of society. Most marriages in Ireland deal in the normal course with these pressures, but in an increasing number of cases these pressures can lead to

friction and conflict which cannot be resolved and which can lead to the breakdown of marriage.

4.1.4 As the Committee already stated, the incidence of marriage breakdown in Ireland is not easy to assess. Statistics available to the Committee from other jurisdictions generally relate to marriage and divorce. Divorce is a clearly defined termination of a valid marriage and can be accurately measured, while the breakdown of marriage is not so easily defined. Divorce shows only the numbers of marriages which have broken down and have been terminated. It does not include situations where spouses continue to live together in various stages of disharmony, or choose to separate or where one spouse is in desertion.

4.1.5 Studies conducted in other jurisdictions have found that the most vulnerable phase of marriage is the first five years. While these early years show the highest incidence of breakdown, marriages can and do break down after 30 years or more. A primary responsibility for marriage breakdown lies in the personality of the spouses and the specific interaction of the couple.

4.1.6 It is suggested that marriage breakdown can be divided broadly into at least two phases:—

(*a*) during the first five years of marriage, breakdown is often brought about by failure to establish the necessary minimum relationship, physically and emotionally; and

(b) marriages which negotiate the first phase with reasonable success enter into a second phase in which the relationship is subjected to different stresses — the increased maturity of the personality with the passage of time, and new needs which attain prominence and which may no longer be recognised or met by the partner, and the arrival and rearing of children.

4.1.7 The earlier the marriage starts the greater are the likely changes in the personality requiring considerable mutual adaptation later on. The Committee deal specifically with this matter in Chapter 3.

4.1.8 Finally, the marriage will experience a new situation when children grow up and leave the family home where both parents will be exposed to the challenge of re-directing their emotional and social lives. This will be particularly significant for the mother.

4.2 Personal Factors

4.2.1 The factors which attract one person to another and which cause them to marry are complex and are not always fully understood by the parties themselves. Modern sociological research has shown with considerable clarity that a person's place of residence, social class, age, intelligence and religion will, to a considerable extent, influence the field of people from whom a marriage partner is chosen.

4.2.2 Marked fluctuations in mood, loneliness, undue sensitivity, feelings of guilt and remorse, lack of self confidence, loss of temper, the need to dominate and inflexibility can affect the marriage adversely. While the consensus of opinion has accepted the view that marital selection based on the principle of like marrying like means in practice that the personality and neurotic problems of one partner are likely to be matched by those of the other, this does not exclude the possibility that one partner who has started with a normal personality becomes adversely affected in the course of the marriage by the other partner, or by internal changes in personality, not necessarily relating to any interaction with the other partner.

4.2.3 A further view with regard to personality needs is that people will marry one another precisely because they see in each other characteristics which they lack in themselves. So, if such persons fall in love their personalities may differ but be complementary in their psychological needs.

4.2.4 It is likely that both approaches influence the ultimate choice of the parties. The choice will bring about a close and intimate psychological relationship and the survival of every marriage depends on the capacity of each partner to meet the psychological needs of the other which in turn requires a sufficient degree of maturity and flexibility.

4.2.5 Marriage brings about a return to the close and intimate union which a child enjoyed with its parents. Spouses provide for further growth in their respective personalities, as well as for the requirements for the rearing of children. If the marital relationship is to be viable, it is necessary that both spouses have reached a sufficient degree of emotional independence, trust, self-acceptance, the ability to receive and give themselves to each other, and show no excessive anxiety or aggression.

4.2.6 The state of maturity of spouses and their ability to adjust, not only to the external changes imposed by a dynamic society, but also to the internal changes in their own personalities and the interaction of these factors will determine their ability to develop within marriage. The arrival of children or

the loss of a child will place new demands on the marriage. The passage of time itself may have the effect of one spouse maturing more rapidly than the other and the basic ability to meet each others minimum basic needs — love, affection, support, security, companionship and sexual relations — may no longer exist. These internal factors may be influenced by external factors.

4.3 Environmental Factors

4.3.1 Changes in the society in which a married couple live can be a cause of stress within the marriage. If the external pressure is combined with pressure which already exists from within the marriage then the chances of breakdown are increased. The breakdown of the traditional authority and power of the male head of the family and the fact that more women are working outside the home, give recognition to the equality of the sexes and it is accepted that distinctions which were perceived in the past were more often than not exclusively due to ignorance and prejudice.

Increasing economic independence for women has also contributed a new factor to the relationship between husband and wife.

Modern marriage is often seen more as a companionship than as an institution brought about and regulated by status. Marriage is veering away from the framework of mutual duties and rights towards the highest possible satisfaction of personal needs in an atmosphere of co-operative partnership.

4.3.2 The development of birth regulation is increasingly playing a large and important part in the fabric of family life. It can be argued that the time is now approaching when children will only be conceived when their parents want them and are, as a result, able to give them the unconditional care and love which is such a necessary prerequisite for the development of their health both physical and psychological.

4.3.3 Within the space of a few decades young people of all social classes have developed habits which are markedly different from those of one or two generations ago. Principal among these is felt to be the waning influence of parents and relatives whose views may not be taken into account in the choice of a future partner and are no longer in a position to arrange, strictly vet, and effectively disapprove of the choice of a future partner. This has become the primary concern of the participants themselves. Parental approval may or may not be sought and, while parental opposition may still dissuade some individuals or delay the event for others, it does not now constitute an insurmountable obstacle.[1]

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[1]See however the Discussion of a Statutory requirement of the consent of a Guardian or Guardians at Par. 3.4.2.

4.3.4 Industrialisation and the resulting decrease of numbers engaged in agriculture has also shifted the emphasis from the farming village or small town life to the larger towns and cities. The area of contact for individuals has been extended and the separation of the place of work from home, especially in cities, has added a new dimension to the range of possible choice of partners. While these changes have widened the range of possible contact, the immediate neighbourhood and social class remains the most likely meeting place for one's future partner.

4.3.5 Where persons marry for emotional reasons, they may not take into account the social, intellectual and emotional differences which may exist between them. Where these differences are considerable, such as when persons from different ethnic backgrounds marry, the internal qualities of the marriage must be such as to resist the added pressure as a result of such differences.

4.3.6 The growing permissiveness of western societies, living standards imposed by the social grouping in which the family exists and the comparative success of the family, having regard to its peers, can pressurise a marriage. The result of this pressure can be to place the marriage at greater risk or to actually strengthen it, depending on the ability of the family to deal with these influences. Large scale unemployment, poor housing or inadequate financial resources can, either individually or collectively, place marriages under strain and can exacerbate problems which may exist within the marriage.

4.3.7 Another important factor is the impact of Catholicism with its emphasis on the permanency of the marriage bond. This is particularly relevant in Ireland although the influence will ultimately vary according to the extent to which individuals adhere to the strict tenets of Catholicism.

4.3.8 Religious denominations encourage marriage between members of their own faith; both inter-church and inter-faith marriages continue to be discouraged. Nevertheless, such marriages are a growing feature of Irish life.

The Roman Catholic Church imposes conditions as to the ceremony and as to the religious upbringing of the children of these marriages. These conditions tend to vary in stringency in different dioceses. Where a marriage is stable and successful and where husband and wife have fully thought through the problems that may arise, differences in faith will not put a marriage at risk. Indeed, the life of the family can well be enriched and strengthened. However, where other stresses and interpersonal difficulties exist in the marriage there is a danger that religious differences over such matters as the upbringing of children can become an additional factor of risk or may be used as a scapegoat for the failure to recognise and resolve the interpersonal struggle.

4.3.9 Internal influences may, as mentioned earlier, be adequate to overcome external pressure. If the spouses do not enjoy a mininum ability to grow together and face the problems which arise as a partnership, there is the possibility that external pressures may overbear the ability of the spouses to resist. In such situations, the parties to the marriage come under such individual pressure that, without rapid intervention, breakdown becomes an inevitability. The logical conclusion from this is that the roots of marital failure will in some instances exist premaritally in the personality of the spouses. The capacity of the other party to contain or deal with these roots may ultimately decide the outcome of the marriage. When two immature persons marry, the risk of failure will be increased accordingly.

4.3.10 It is widely felt that alcoholism is a major contributory factor in the breakdown of marriage in Ireland. There can be little doubt that excessive consumption of alcohol, leading to drunkenness can lead to the release of tension which can manifest itself in abuse, either verbal or physical, of the other spouse and/or children. The view held by researchers is that excessive consumption of alcohol which results in abuse of this nature is not in itself a cause of marriage breakdown, but may conceal a failure in communication or may reveal a personality defect which, for any number of reasons, is only released through excessive consumption of alcohol. The personality defect can also reveal itself by other means — consumption of narcotic drugs, sexual deviation, extra marital affairs, impatience or open physical or verbal aggression unrelated to alcohol.

4.3.11 The attention of the Committee has been drawn in submissions to the large number of marriages where abuse of alcohol is seen as a major factor in breakdown. The Committee views the abuse of alcohol together with the increasing evidence of drug abuse — including the excessive use of some proprietary anti-depressant and other prescribed drugs — with concern and is of the opinion that there is a need for a campaign of awareness to be launched by the State in order to re-emphasise the dangers of such abuse.

Chapter 5

The Problems Caused by Marriage Breakdown

5.1 The critical factors which motivated the Oireachtas to establish the Committee were firstly the need to protect family life and secondly the growing awareness of marriage breakdown as a social reality, giving rise to social, economic and legal problems which required detailed examination and intervention by the State, if necessary, by legal or constitutional means.

5.2 It appears to the Committee from evidence received in submissions and from research conducted both in Ireland and in other countries which has been opened to the Committee, that western society is facing a major change in attitudes towards personal relationships and in particular towards marriage and the family. The effects of these changes are now being felt more strongly in Ireland — the increase in the rate of birth of illegitimate children and the numbers of single mothers who now keep their children supports this.

> "With an increase in mobility and a greater emphasis on personal autonomy, the concept of exclusive commitment to another person for life may not be as attractive at the present time as it was in the past. Making personal sacrifices is often thought of as foolish, where once it was thought to be heroic."[1]

[1]Submission from Life Education and Research Network.

5.3 Social and economic pressures, the adversarial nature of the legal system and the inadequacy of counselling and mediation services can individually or collectively, contribute to the breakdown of marriage, as has been considered in the previous chapter. When breakdown does occur, the individual concerned may look to the State, to voluntary organisations or to churches for support and to the legal system for a remedy for the problem or problems which have arisen.

5.4 From submissions received by the Committee, the scale and extent of problems which are caused by marriage breakdown are considerable.

> "The social and emotional costs of broken marriages are high. Marital conflict and the loss of intimacy are increasingly associated with physical and psychiatric disorders, of which depression is the most commonly cited (see for example Brown + Harris 1978). Long term effects for children of broken marriages include increased risk of delinquency (Langer + Michael 1963) and of disruption in their own subsequent marriages (Rutter 1972). However, these findings disguise the fact that the ending of a marriage is frequently preceded by intense conflict and there is a substantial body of evidence that it is destructive parental interaction which is associated with delinquency and disturbance in children rather than separation or divorce per se (Rutter + Madge 1977). Thus for many spouses and some children, the ending of the marriage brings relief from tension and hostility. Nonetheless, the process of adjustment to the ending of a marriage for spouses and children is painful and may be lengthy, especially when accompanied by ongoing recrimination (Wallerstein & Kelly 1980)."[2]

5.5 The Committee recognises that an increasing number of couples are separating and that the separation of spouses is essentially a public demonstration of the end of a marital relationship. The Committee also recognises, however, that many couples where marital relationship has irretrievably broken down are still residing under the one roof, and that although residing together are effectively leading separate lives. Many such couples wish to separate but are unable to do so as they cannot reach agreement between themselves as to the basis upon which they should separate. Under the existing legal system there are no legal remedies available, whereby the courts can resolve disputes as to the basis upon which a separation should take place without proof of fault, such as adultery, cruelty or unnatural practices.

The Committee acknowledges that there are many thousands of couples

[2]Submission from the Irish Association of Social Workers.

who find themselves in a legal limbo — tied into a legal marriage that in social reality no longer exists.

5.6 Persons whose marriages have broken down may form second relationships, many of which are stable and loving and have many of the appearances of a marriage. Such couples cannot validly marry and, looking ahead, under the present law, given that marriages will continue to break down, the numbers of such second relationships will increase and the numbers of children which result from such relationships will also increase.

The absence of any real legal protection for persons involved in second relationships has not deterred people from entering into them. On the contrary, attempts are often made by couples in such relationships to put some legal or official face on the relationship. Examples of this are:

1. Persons domiciled in Ireland obtaining foreign divorces, with one or both divorcees subsequently marrying another person and residing in Ireland with that other person, as if married, in circumstances where Irish law does not recognise the foreign decree of divorce or the second marriage, and still regards the divorced couple as married to each other.
2. The obtaining of Church decrees of annulment or dissolution with one or both parties marrying someone else in a Catholic Church, producing the result whereby the State does not recognise either the annulment, dissolution, or the second marriage and regards the annulled or dissolved marriage as still valid.
3. A married person residing with another person, one of whom changes his or her name by deed poll, so that both have the same surname and appear to be married.

In a submission to the Committee, Solicitors of the Incorporated Law Society of Ireland stated:

> "We are all aware of second unions being entered into and continued, with every appearance of stability and happiness, in which the partners beget and raise children. While possessing all the appearances of a regular family, the second union does not have State recognition or protection as a marriage. When it is recalled that at least one of the partners to such a union has a living spouse with whom at an earlier date marriage vows were exchanged, then if the number of such second unions taking place was small, the norm of marriage as a commitment for life, come what may, could still be seen as a norm accepted by society in general."

5.7 The absence of any legal status for the above-mentioned stable non-marital relationships may in itself create an element of insecurity between the

couple themselves and in the children, and this may have the effect of causing stress and tension which can lead to further breakdown and trauma for the couple and any children.

5.8 The Committee is aware of the economic consequences of marriage breakdown for the parties to the breakdown and for the State. For the parties themselves, breakdown will often involve expensive litigation, alteration of living arrangements and may often result in a decrease in the standard of living of all concerned, with the possibility of ongoing maintenance payments and unascertainable costs for health problems which marriage breakdown may cause.

The State may be obliged to bear some of the above costs if the parties are not financially capable of meeting them by providing legal aid, local authority housing, social welfare support and the cost of health care.

Financial considerations of the above kind may effectively prevent couples from having access to the available legal remedies, prevent them from separating and compel them to subsist in a marriage which is no longer socially or emotionally viable.

5.9 The Committee is of the opinion that the problems caused by marriage breakdown have not been adequately dealt with by the Oireachtas in the past. The present laws which purport to deal with marriage breakdown are not comprehensive, nor are they reactive to the current changes in society and in personal attitudes to the family and to marriage. In the following chapters the Committee considers the legal remedies and problems associated with them and makes observations as to changes which are felt necessary in order to improve this unsatisfactory situation.

Chapter 6

The Statistics

6.1 The Committee is acutely aware of the unavailability of comprehensive and detailed statistics on marriage breakdown in Ireland. The National Census in 1981 and the Labour Force Survey in 1983 contain limited data on this area, but the Committee has been unable to have access to any source which can delineate objectively the total number of persons whose marriages have broken down. Various submissions to the Committee contain statistics based on information available to the organisations concerned.

6.2 The statistics which are available relate to the numbers of persons who have recourse to the courts in order to seek access to one or other of the present legal remedies available in family law. In addition, information relating to those persons, in receipt of State benefits or allowances which are payable to victims of marriage breakdown in certain limited circumstances, is also available as well as those statistics provided by the Catholic Church relating to applications for the grants of church annulments.

6.3 The Committee has taken these into account, primarily as an indicator of the extent of the problem of marriage breakdown. The incomplete nature of these statistics indicates the immediate need to compile comprehensive statistics on marriage breakdown. Submissions received by the Committee criticise the unavailability of such statistics and in some instances question the accuracy of the available statistics.

6.4 The Committee is of the opinion that any future census should seek to ascertain precisely the incidence of marriage breakdown as manifested by separation or desertion. In this, the Committee accepts the difficulties which will be encountered in attempting to precisely ascertain the extent of marriage breakdown. The numbers of marriages which may, to all intents and purposes, have broken down, but where the spouses continue to reside together exacerbates this difficulty.

6.5 The statistics at present available to the Committee are attached at Appendix C.

Chapter 7

The Legal Remedies

7.1 Law of Nullity of Marriage

7.1.1 "The law of nullity of marriage is concerned with the circumstances in which a marriage will be invalid according to the law of the State; it is not concerned with such questions as divorce (which is the legal *termination* of an existing valid marriage) or legal separation (which is also concerned with a valid marriage).

Nullity of marriage focuses on the state of affairs prevailing at the time the marriage is entered into and thus cannot be an answer to all problems which bring about marital breakdown."[1]

This is a quotation from the Law Reform Commission on the law of nullity in the State and the Committee accepts this as a useful starting point in considering this area of law.

The effect of a decree of nullity is to declare that no marriage ever existed between the parties.

The Office of the Attorney General issued a paper entitled "The Law of Nullity in Ireland" in August, 1976. The Law Reform Commission have now published an extensive report on the law of nullity. The Committee has

[1]Report on Nullity of Marriage LRC 9/84, Law Reform Commission, page VII.

considered these publications, together with submissions made to the Committee on this subject, in formulating the opinions and observations which follow.

7.1.2 While the law of nullity in general developed from principles of Canon Law, the civil law of nullity in the State derives its jurisdiction from the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870. This Act transferred the jurisdiction, up to then exercised by the Ecclesiastical Courts of the Church of Ireland to a Civil Court for Matrimonial Causes and Matters. This followed the disestablishment of the Church of Ireland. This jurisdiction was subsequently transferred to the High Court, and is exercised by the High Court at present. Annulments of marriage granted by the Roman Catholic Church are a separate matter and do not have any effect on the validity of a marriage at law.

7.1.3 Under Section 13 of the above Act, the new court was required to act and rely on principles and rules which, in the opinion of the Court, were as nearly as may be conformable to the principles and rules on which Ecclesiastical Courts in Ireland had *up to then* acted upon and given relief. It has been suggested this Section of the Act has the effect of limiting the grounds for relief in nullity cases to those grounds which existed at the time the 1870 Act was passed. This has, in effect, been the view taken by the English courts. Up to 1975, the Irish courts had few opportunities to develop the Law of Nullity. Very few cases had come before the Courts and even fewer cases had resulted in a nullity decree being granted, for example, there were only 25 cases in the period from 1970 to 1980. Since 1975, there have been considerable developments in the Irish courts and the principles of law have been extended and developed as a result. There has, however, been no legislative intervention in this area since 1870.

7.1.4 Certain formalities are laid down by statutes which must be observed by parties wishing to enter into marriage in Ireland.[2] These formalities are laid down in a series of inter-connected statutes from 1844 to 1972. Apart from the Registration of Marriages (Ireland) Act, 1863 and the Marriages Act, 1972, none of the statutes apply to church marriages between two Roman Catholics. The 1863 Act provided for a system for registration of marriages between two Roman Catholics and the Act provided for a fine of £10.00 to be imposed on the husband if the provisions of the Act were not complied with. Failure to sign the register has no effect on the validity of such marriages. The 1972 Act sets out certain requirements in relation to a minimum age before

[2]For more detailed discussion see Family Law in Ireland (Chapter 4) by Alan Shatter and Report of the Law Reform Commission on Nullity of Marriage (LRC 9 — 1984).

which a person cannot enter into a valid marriage, unless that person has obtained a prior exemption from the effect of the section from the President of the High Court.[3]

7.1.5 Except for those statutory provisions relating to the age of marriage, the validity of a marriage between two Roman Catholics is not covered by any statutory provision; such validity is determined under the Common Law. In Common Law the essential conditions of a valid marriage are that both parties, intending then and there to get married, interchange their mutual consent to be husband and wife in the presence of an episcopally ordained clergyman.

It can readily be seen that a marriage conducted in accordance with the normal rite of the Roman Catholic Church will fulfil these conditions and will therefore be recognised as a valid marriage in the civil courts.

It should be noted, however, that there are situations in which a marriage between two Roman Catholics will be considered valid by the civil courts under Common Law but invalid under Canon Law, eg a marriage between two Roman Catholics in a Registry Office. Equally it is possible to have marriages valid under the Canon Law but invalid under the Common Law, for instance, if two Roman Catholics marry, one of whom has obtained a church annulment or church dissolution of a previous marriage.

7.1.6 In the case of non-Roman Catholic marriages if the parties knowingly and wilfully disregard certain requirements set down by statute then their marriage will be void. Also, in the case of inter-faith marriages, knowing and wilful failure to comply with the formalities set out by statute will render the marriage void.

7.1.7 A marriage may be void or voidable, depending on the nature of the defect which exists at the date of the marriage. These grounds are set out in the following paragraph. Void marriages may be treated by any person as invalid without the necessity of a court decree of nullity (although in some cases of uncertainty it may be prudent to seek a decree of nullity). A voidable marriage is legally effective unless and until its validity is challenged by one of the parties to the marriage. The distinction between void and voidable marriages will be examined in detail below.

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[3]See paragraph 3.4.2.

7.1.8 **Grounds for obtaining a civil decree of nullity, which render a marriage void:**

(1) *Lack of Capacity*
Prior subsisting marriage
Marriages within the prohibited degrees of relationship
Marriages to which "an act to prevent marriages of lunatics" applies
Marriages between persons of the same sex
Lack of age.

(2) *Non-observance of formalities*
and

(3) *Absence of Consent*
Mental incapacity (insanity)
Mistake
Duress
Fraud.

Grounds for obtaining a decree of nullity which render a marriage voidable:

(1) Impotence
(2) Psychiatric or mental illness rendering a party unable to enter into or sustain a normal marital relationship.

7.1.9 **The consequences of a decree of Nullity being enacted:**

The parties to the marriage which is annulled are treated as if they were never married:

the parties are free to remarry;
any children born of the annulled marriage are illegitimate;
the mother will be the sole guardian of such children; and
parties will lose maintenance rights and succession rights vis-a-vis each other's estates.

7.1.10 **Recent Developments**

Since the publication by the Office of the Attorney General of a paper entitled the "Law of Nullity in Ireland" in August, 1976, a number of cases have come before the courts which have resulted in development in the law, broadening and extending the grounds on which a petition for a decree of nullity can be based.

7.1.11 The 1976 paper from the Attorney General's Office recommends the

repeal of Section 13 of the 1870 Act in the light of the changes which have occurred, since the passing of that Act.

7.1.12 Mr. Justice Kenny in the Supreme Court has stated that S 13 of the 1870 Act did not fossilise the law, that the law had been to some extent at least, Judge made, and that the Court should recognise that the great advances made in psychological medicine since 1870 made it necessary to frame new rules which reflect these.[4] This has been cited with approval in a number of High Court Cases.[5]

7.1.13 The developments which have occurred relate in the main to the requirements of full and free consent of both parties to the marriage at the time the marriage was celebrated and to the psychological capacity of the parties to contract a valid marriage, and can be summarised as follows:—

1. A psychological disability rendering a person unable to enter into or sustain a normal marital relationship is ground for a petition for a decree of nullity rendering the marriage voidable (St J v St J, 11th January, 1982, D v C, 19th May, 1983).

2. There is a trend in recent cases where certain judges take a broad view as to what amounts to duress; other judges have taken a narrower view. The Committee is of the opinion that this uncertainty which has arisen is unsatisfactory and requires clear legislative remedial action.

3. An intention by one party, unknown to the other at the date of marriage, not to have sexual intercourse amounts to a breach of a fundamental term of the marriage rendering it void for absence of consent (S v S, Supreme Court, 1st July, 1976). This was a minority opinion by Mr. Justice Kenny in this case. To date no decree of annulment has been granted on this ground.

7.1.14 **The Procedure**

An application for a decree of nullity can only be made to the High Court. The application is by way of petition which is grounded on an affidavit sworn by the petitioner. After the petition and affidavit have been drawn up they are stamped and are issued in the Central Office of the High Court. An ex-parte (without notice to the other side) application is then made to the Master

[4]S v S, Supreme Court, 1st July, 1976, Mr Justice Kenny.
[5]D v C 19th May, 1983 (unreported) page 16. W v P 7th June, 1984 (unreported) page 21.

of the High Court for leave to extract a document called a Citation, for service on the respondent.

If the Master is satisfied that there is a proper ground for nullity alleged in the petition and that the affidavit is properly sworn he will then give leave to extract the Citation. The Citation is lodged in the Central Office of the High Court and is duly signed by a Registrar of that Court. The Petition, grounding affidavit and Citation are then served on the respondent. An Appearance is then lodged by the solicitors for the respondent. This is followed by the solicitors for the respondent lodging a document setting out the reply of the respondent to the Petition and this document is called an Answer.

At this stage the petitioner's solicitor brings an application to the Master of the High Court by way of Notice of Motion to fix the time and mode of trial of the nullity action. The Master sets down the issues to be determined in the proceedings and whether the proceedings are to be heard with or without a jury. If the proceedings are brought on the grounds of impotence, an application can also be made at the same time that medical inspectors be appointed to examine the parties.

The proceedings are then set down in the Central Office of the High Court for hearing and appear in a list to fix dates in the High Court. On that day a date is fixed for the hearing of the proceedings. A typical nullity case can take at least six months from the date of the petition to the court hearing.

There is an obligation on the court to enquire into the facts of the case even if the petition is not defended.

It can readily be seen that the above procedure is somewhat long drawn out and the reasons for the use of this procedure lie more in history than in logic. Most other family proceedings in the High Court are heard by way of special summons and this procedure is simpler and more time saving than the petition procedure.

7.1.15 The cost of bringing a defended application for nullity, in which counsel is instructed, and which takes approximately one day to hear would be in the region of £2,000-£3,000. This figure does not include VAT at 23% or Stamp Duty[6] which arises in all cases. It would include the following elements of work:

(a) Solicitor taking clients's initial instructions/consultations with witnesses.

(b) Sending preliminary instructions to counsel.

(c) Initial consultation between solicitor, client and counsel.

(d) Draft of Petition, Citation, and grounding affidavit by counsel.

[6]Stamp Duty in a Nullity Action would be in excess of £100.

(e) Application by counsel to the Master of the High Court for liberty to extract the Citation.

(f) The service of Petition, Citation and grounding affidavit.

(g) Receiving and considering the answer, if any, filed by the respondent.

(h) Drafting by counsel of Notice of Motion to set time and mode of trial and for the appointment of medical assessors.

(i) Application by counsel to Master of High Court to set time and mode of trial and for the appointment of medical assessors.

(j) Arrangement of appointments of medical assessors.

(k) Service of trial.

(l) Appearance by counsel in High Court to obtain date of trial.

(m) Drafting of advice on proofs for trial by counsel.

(n) Arrangement of attendance of medical witness at trial.

(o) Consultation(s) with client/witness and counsel.

(p) Appearance by solicitor and counsel at trial.

(q) Payment of medical witnesses,[7] normally an endrocrinologist and a gynaecologist where impotence is alleged. A psychiatrist may be necessary in some cases.

(r) taking up of final order.

Most of the above steps would be necessary in a straightforward action for nullity based on the grounds of non-consummation. As can be seen from this outline of a normal case much of the high cost involved is attributable to the long drawn out procedure involved. The Committee deals with the question of the simplification of procedure in the chapter dealing with Court Structure.

7.1.16 **Opinions of the Committee**

The Committee notes that judicial developments over the past ten years have sought to update and modernise the law, but that in so doing they have created uncertainty and made it impossible for lawyers to advise couples of the exact parameters of the law of nullity. This means that it is impossible for some couples to ascertain without court proceedings whether or not they are validly married. Judicial development has produced a degree of judicial subjectivity by which it appears that some judges are likely to interpret the law in this area more liberally than others, the effect being that a marriage may be regarded as valid or void depending on which member of the High Court hears the case.

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[7]Fees for a Consultant to draw up a Report and attend in court in such cases would normally be in the region of £200.

These comments are not made as any criticism of the judiciary who in this area have to apply outdated laws based on 19th century concepts of psychology and sociology. Modern legislation to update and state clearly the law of nullity is obviously necessary.

7.1.17 Lack of Capacity due to mental disorder

The committee is of the opinion that there is a need for legislative intervention in this area in order to provide a legal framework which reflects the advances in psychiatric medicine and sociology.

7.1.18 The Committee's attention has been drawn to the extent of the present uncertainty and need for change in a number of submissions made, extracts from which are reproduced below:—

> "Notwithstanding the invalidity of the concept of 'mental disorder' as proposed in the discussion paper[8] because of considerations already outlined and the proven unreliability of retrospective evidence to establish 'immaturity', 'arrested development' or 'irresponsibility' at the time of 'marriage', in many cases the court or expert witnesses are very likely to infer the existence of these conditions from observational data relating to conduct subsequent to marriage. It is necessary, therefore, to point out that 'the insights which advances in psychiatry and psychology have given into aspects of the human personality' are not yet of a kind to enable the expert witness to establish 'beyond doubt' or even 'on the balance of probabilities' that a particular individual's personality on his 'marriage' day many years ago was 'immature' or 'irresponsible'."[9]

> "There should be easily ascertainable grounds of annulment. One should be able to look at the law, which should be written down and codified, and one should be able to see how to get an annulment. The law should be clear and there should be some extension to take account of modern developments of psychiatry. Under no circumstances should annulment become a substitute for divorce".[10]

7.1.19 The Committee is aware of the recommendations which have been made in regard to the inter-relationship of mental disorder and the law of nullity, by the Office of the Attorney General and by the Law Reform Commission. The report of the Law Reform Commission suggests that "a marriage should be invalid on the ground of want of mental capacity where, at the time of the marriage, either spouse is unable to understand the nature of marriage and its obligations or where a spouse enters the marriage, when,

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[8]Paper by the Attorney General's Office "The Law of Nullity in Ireland.": 1976
[9]Submission from Dr. D. Walsh, The Medico-Social Research Board.
[10]Oral submission by Law Centre Solicitors.

at the time of the marriage, on account of his or her want of mental capacity, he or she is unable to discharge the essential obligations of marriage".[11] The report of the Attorney General's Office suggests that "mental disorder, which would render a marriage void, should be defined in such a way as to include arrested or incomplete development of personality of such a kind as to render the person suffering from it unfit for marriage".

7.1.20 The Committee is not satisfied that either of these recommendations would constitute a reasonable basis on which to organise the law of nullity in regard to mental capacity. The Committee is acutely aware of the need for greater certainty in this area of law, which governs the status of adults and children, and which has a very intimate and profound impact on those affected. The Committee has already noted that recent developments in this area of the law, have made it difficult for persons to be sure that a marriage is or is not invalid. This aura of uncertainty is unsatisfactory and the Committee feels that legislative intervention is now necessary to clarify the situation. Neither the approach of the Law Reform Commission or that contained in the report of the Attorney General, would remove, or sufficiently reduce, the present uncertainty.

7.1.21 It is obvious that the traditional ground of mental illness at the time of marriage which causes an inability to understand the nature of marriage and its obligations should continue to render a marriage void. The Committee accepts that there is need for the law to have regard to the fact that in certain cases a person is suffering from a mental disorder so serious in nature as to render him or her incapable of discharging the essential obligations of marriage. A guiding principle in this regard should be, in the words of a British judge, "it can only be those unfortunate people who suffer from a really serious mental disorder who can positively be stated in humane terms to be incapable of marriage".[12].

7.1.22 The Committee feels that the appropriate way forward is for legislation to be enacted, which accepts mental disorder as a ground which renders a marriage voidable, and which contains a definition of mental disorder in line with the principle which we have just outlined. Such a definition should not in our view, include the concepts of "arrested or incomplete development of personality".[13]

7.1.23 The Committee considered the grounds for obtaining a decree of nullity and agreed as follows:—

(i) *Lack of Capacity (other than on, the ground of mental disorder)*

[11]Report of Law Reform Commission Page 104.
[12]Bennett v. Bennett 1969 1 W.L.R. Page 430.
[13]See para. 7.1.19.

Lack of capacity to validly marry should ground a decree for nullity in the following circumstances:

(a) Where one or other partner is, at the date of the marriage, party to a prior existing marriage.

(b) When one or other parties are under age — in this context see Chapter 3.4 which deals with the age for marriage, and in particular paragraphs 3.4.5 et seq.

(c) Where the parties are within the prohibited degrees of relationship.[14]

(d) Where a person has been made a Ward of Court, and is unable to manage his or her own affairs due to mental illness.

(e) Where both parties are of the same sex.

The Committee also considered that the "Act to prevent marriages of lunatics" should be repealed.

7.1.24 (ii) *Formalities*

(a) The formalities for validly marrying, which are contained in a series of Acts stretching from 1844 to 1972 and in the Common Law should be simplified, uniformly applicable and given clear legislative force. The Committee agreed that this might properly be preceded by consultation with religious communities.

(b) Wilful non-observance of the simplified formalities should render a marriage null and void.

(c) The Committee considered situations where civil and religious marriage ceremonies take place at the same time and is of the opinion that this dual-purpose ceremony can give rise to difficulties in understanding. While the Committee feels that to require parties to undergo a separate civil ceremony in addition to the religious ceremony of their choice would create considerable administrative and financial difficulties for all concerned, it would be desirable that the nature of the contract and its legal consequences should be made clear to the parties at the time of the ceremony. This could be implemented by including a specific reference to the civil contract before the exchange of the marriage vows.

7.1.25 (iii) *Defective Consent*

Defective consent should render a marriage null and void in the following circumstances:—

[14]See "The Law of Nullity in Ireland", Office of the Attorney General, August 1976. Appendix 1.

(a) Mental illness at the time of marriage which causes an inability to understand the nature of marriage should continue to be a ground of nullity which renders a marriage void. The Committee agreed that amending legislation should define the parameters of mental incapacity, but that this ground of nullity should fall under the category of lack of capacity and cease to fall under the category of defective consent.

(b) Mistake, duress, fraud or misrepresentation. All of these grounds should be retained under this category of nullity.

(iv) *Impotence*

(a) Impotence existing at the time of the marriage resulting in an inability to consummate the marriage should continue to render a marriage voidable;

(b) The court, in dealing with impotence, should have discretion to refuse to grant a decree of nullity where justice so requires e.g. where both parties marry knowing one is impotent.

(c) Wilful refusal to consummate should render a marriage voidable; and

(d) The courts should be empowered to grant a decree of nullity on grounds of impotence of the petitioner without the need for repudiation of the marriage by the other party.

(v) The Committee considers that mental disorder of such a nature as to render a person incapable of discharging the essential obligations of marriage should be a ground of nullity which renders a marriage voidable.

(vi) The Committee considers that the consequences of the granting of a decree of nullity should not result in children being declared illegitimate and urges the speedy introduction of legislation to remove the status of illegitimacy.

The Committee is of the opinion that the court should be empowered to make ancillary orders relating to children of the annulled marriage, as to guardianship, custody and maintenance and to vary them subsequently if necessary.

7.1.26 The Committee is conscious of the complexity of the present procedure necessary to petition for a decree of nullity and of the high legal costs involved. In the chapter of this report which deals with the structure of the courts, the Committee sets out its opinions on reform in this area, including reform in the procedure aimed at—

(i) reducing costs

(ii) simplifying procedures; and

(iii) increasing accessibility to the courts for all litigants regardless of their means.

7.2 Separation Agreements

7.2.1 An agreement between husband and wife to live apart, whether with or without cause, is not considered contrary to public policy, but is, in general, valid and enforceable, provided it is made in contemplation of, and is followed by, an immediate separation.

7.2.2 Such an agreement will have no effect if it is made in contemplation of a separation at some time in the future.

7.2.3 No particular formality is necessary for the validity of a separation agreement. It can be varied subsequently or discharged by the parties by agreement. It is legally valid and enforceable. Provisions in a separation agreement may be specifically enforced in the courts and damages may be obtained for breach of any terms of the agreement.

7.2.4 A separation agreement will be in writing and will usually be executed by deed. The agreement to live apart is sufficient valuable consideration to render the contract legally enforceable. For an example of a typical separation agreement see Appendix D.

7.2.5 The terms included in a typical deed of separation can include:

(i) an agreement to live apart;

(ii) a non-molestation clause;

(iii) provision for custody of children;

(iv) maintenance provisions;

(v) an agreement not to pledge each others credit and to indemnify each other against debts;

(vi) clauses relating to property, including consents required under the Family Home Protection Act, 1976.

(vii) the mutual renouncing of succession rights under the Succession Act, 1965, by both spouses may be a term of an agreement. Section 113 of this Act provides for and recognises such renunciation provided always that the renunciation is in writing; and

(viii) a clause that, should parties be reconciled for a certain period the agreement will be discharged.

7.2.6 Any provision in a written separation agreement which purports to restrict any dependent spouse's right to apply to the court for a Maintenance

Order for support or for the support of dependent children is void. A husband may fail to pay a "proper sum of maintenance" to his wife and children and may be ordered by the court, under the provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976, to make payments to her, even though he has entered into an agreement with her providing for her maintenance and has faithfully observed the agreement, if, in fact, the maintenance provided for in the agreement is inadequate at the time of the application to the court. A spouse may find himself or herself contractually bound to pay maintenance in a certain sum under a separation agreement, even though he or she can no longer afford to do so, due to a change in circumstances, if the separation agreement does not contain a proper variation clause.[15]

7.2.7 In like manner, the court has power under the Guardianship of Infants Act, 1964, to entertain an application to the court for its direction to any question affecting the welfare of infants and the court may, notwithstanding the agreed terms of any deed or agreement of separation, make such Order as it thinks proper regarding custody, access and/or maintenance of the infant or infants in question.

7.2.8 **Opinions of the Committee**

The Committee recognises the role of separation agreements following marriage breakdown, which can be revoked if both parties decide to resume their former marital relationship. A separation agreement has the advantage of being inexpensive to arrange. Spouses whose marriages have broken down thus can have the opportunity of agreeing with legal advice and assistance to arrange their affairs, without having to go into court.

7.2.9 Such agreements, while they are legally enforceable between the parties, do not in any way affect the validity of the marriage and the parties to the separation agreement are not free to remarry.

7.2.10 The Committee is of the opinion that parties to a marriage which has broken down, or is in a stage of breakdown should be advised to avail of counselling or mediation. In the event of such advice not being taken by the parties, or in the event of the parties not effecting a reconciliation as a result of counselling, the parties should, before being advised to institute legal proceedings for one or other of the available legislative remedies, be apprised of the possibility of negotiating and entering into a separation agreement unless the circumstances are such that legal proceedings must be initiated as a matter of urgency.

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[15]See O'S v O'S (unreported) 18 November 1983 and D v D (unreported) 6 September 1984.

7.3 Judicial Separation — Divorce *a Mensa et Thoro*

7.3.1 The Law

Under Section 7 of the Matrimonial Causes (Ireland) Act, 1870 the High Court has power to grant a decree of Judicial Separation (otherwise called a divorce *a mensa et thoro*). The Courts Act, 1981 extended the jurisdiction to grant judicial separations to the Circuit Court.

7.3.2 The Grounds

The remedy of judicial separation is fault-based; to obtain a decree a plaintiff must prove that the defendant has been guilty of one of the following:—

(1) Adultery.

(2) Cruelty.

(3) Unnatural practices.

To prove adultery a plaintiff must show that the defendant has engaged in a voluntary act of sexual intercourse during the marriage with some person other than their spouse. A decree can be granted on the grounds of both physical and mental cruelty. The third ground, unnatural practices, has not been relied on in many cases, although there have been one or two recent applications based on this ground.

7.3.3 The Defences

There are four technical defences which, if proved, constitute a complete defence to an action for a judicial separation. The first of these is a plea of *recrimination* which is proved if the defendant shows that the plaintiff is himself or herself guilty of the conduct alleged against the defendant. The second defence is that the plaintiff has *condoned* the conduct of the defendant by returning to their previous relationship in the marriage. For instance, a husband would normally be held to have condoned his wife's adultery if he has sexual intercourse with her after the incidence of adultery and with knowledge of it. The third defence is *connivance* which a defendant can show by proving that the plaintiff by his or her own conduct brought about, or was instrumental in bringing about, the injury of which he or she complains. The fourth defence is *collusion* which is established when it is shown that there is an agreement between the parties that one or other of them will commit a matrimonial offence, in order that they may obtain a decree of Judicial Separation.

7.3.4 The Effects

The effect of a decree of Judicial Separation is that it will leave the plaintiff free from the obligation to live with his or her spouse. It should be stressed, however, that it does not dissolve the marriage and it does not give a right to

re-marry. The spouse against whom such an order is made is precluded from taking any share in the estate of the deceased spouse as a legal right or on intestacy. While it would appear that the legal effects just mentioned are, strictly speaking, the only effects that result from the grant of a Judicial Separation it should be noted that it is the practice of the President of the Circuit Court in dealing with judicial separations in many cases, to make a further supplementary order directing that the spouse against whom the order is given, should no longer continue to reside in the family home. In a recent case the then President of the High Court confirmed the making of such an ancillary order prohibiting the husband from living in the family home.[16]

When a court makes an order for Judicial Separation it also has power to make an order providing for alimony against the husband and in favour of a wife. It would appear at the moment that there is no provision for alimony to be awarded against a wife in favour of a husband. There is also provision for an order to be made directing that the alimony be paid *pendente lite* that is to cover the period of time from the issue of the proceedings until the determination of the proceedings. Again this relief is only available to a wife looking for an order against her husband.

7.3.5 The Procedure

The procedure for obtaining a judicial separation in the High Court is by way of petition and the various steps to be taken are similar to those involved in bringing a nullity application (see note on the procedure for applying for a decree of nullity).[17] As in the case of applications for nullity, there seems to be no particular logical reason why a person should be obliged to apply for a judicial separation by means of the time consuming and expensive petition procedure; instead such proceedings could be brought by way of a summons. The procedure in the Circuit Court is that the plaintiff lodges a matrimonial civil bill which contains details of the plaintiff's claim; the defendant then lodges a defence to this. The case can then be set down for trial by either party and a date is given for the case to be heard. This procedure is obviously cheaper and far less time consuming than the procedure at present used in the High Court. There has been a considerable increase in the number of applications for judicial separation since the Circuit Court obtained jurisdiction to grant such decrees and obviously the simplified and cheaper procedure available in the Circuit Court could explain that increase.[18] Also, it would appear that the practice of the President of the Circuit Court in making ancillary orders excluding a spouse from living in the family home could mean

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[16]W v W. (Unreported) 26th January, 1984.
[17]See chapter 7.1.14.
[18]See Appendix C, re statistics.

that the obtaining of a judicial separation has a more practical and useful effect.

7.3.6 **Proposals of the Law Reform Commission**

In their recent Report on Judicial Separation, the Law Reform Commission[19] proposes that the grounds on which a judicial separation may be granted should be extended so that a decree can be granted on one of the following grounds:—

(1) Cruelty.
(2) Adultery.
(3) Unreasonable behaviour.
(4) Desertion.
(5) Breakdown of marriage.
(6) Separation for a set period of time.

They suggest that there should be a power whereby the court can convert a separation agreement into a decree for Judicial Separation. The Commission also recommends that the defences of recrimination and collusion should be abolished, but that the defence of connivance should remain. They also recommend that the defence of condonation should not be an absolute bar to an order, but should only be a discretionary bar. Further, it suggests that if a spouse has by his or her neglect conduced to the adultery of their spouse, that this is a factor the court should be entitled to take into account. As regards alimony, the Commission recommends that husbands as well as wives should be able to apply for alimony. There should be provision to allow the court to provide orders for the maintenance of the children and the operation of the law in relation to alimony should be brought into line with the law in regard to maintenance. The Commission considers it desirable that the court be entitled to make orders for the payment of *lump sums* and for the *transfer of property*, with the *consent of the parties*.

In relation to the effects of a decree of Judicial Separation, the Commission feels that such a decree should continue to end the obligation on spouses to co-habit with one another. Specific provision should be made for the revision by the court of decrees of judicial separation and for the automatic discharge of any such decree when the parties resume co-habitation. The Commission feels that if a decree for Judicial Separation is granted each spouse should be precluded from taking any share in the other spouse's estate on the death of the other spouse.

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[19](LRC 8-1983)

7.3.7 In its deliberations on this area the Committee had regard to the Report published by the Law Reform Commission mentioned above and to the many submissions received by the Committee which dealt with judicial separation. The following are excerpts from submissions received by the Committee as regards this area of law:

> "Grounds for judicial separation should be geared to show that a marriage has broken down, rather than to find which spouse is guilty".[20]

> "Remedies for marital breakdown should be based on irretrievable breakdown of the marriage rather than on fault".[21]

> "A matrimonial breakdown is the failure of a relationship between spouses. Both spouses are responsible to various degrees. The law should reflect this and not try to assign fault and make orders as rewards for good behaviour. It should be possible for spouses to obtain judicial separation in the courts when a marriage has irretrievably broken down. The grounds for obtaining a divorce *a mensa et thoro* should be changed to those covering irretrievable breakdown of marriage e.g. unreasonable behaviour, desertion or separation, rather than those based on the fault principle, namely adultery, cruelty and unnatural practices. The law, by insisting on one party proving fault, encourages conflict between the spouses. It actively discourages reconciliations between a couple".[22]

> "We would prefer to see only one ground for judicial separation, namely, the breakdown of the marriage, but that this ground could be proved by *inter alia* but not exclusively, the proving of any other grounds mentioned in the Law Reform Commission Report on Divorce *a mensa et thoro* (LRC 8/1983)[23]

7.3.8 **Opinions of Committee**

1. The Court should grant a decree of Judicial Separation if it is satisfied that the marriage of the person to his or her spouse has irretrievably broken down. Irretrievable breakdown should be the one overall ground for the grant of a decree of Judicial Separation.

2. In considering whether or not a marriage has irretrievably broken down, the court should be satisfied that such a breakdown has occurred if an applicant proves one of the following:—

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[20]AIM —Group for Family Law Reform.
[21]The William Sampson Society of Radical Lawyers.
[22]Law Centre Solicitors.
[23]Incorporated Law Society members.

(a) That his or her spouse has behaved in such a way that the Applicant cannot reasonably be expected to co-habit with that other spouse.

(b) That his or her spouse has been guilty of adultery.

(c) That his or her spouse is in desertion or in constructive desertion of the Applicant.

(d) That the Applicant has been living separate and apart from the other spouse for a continuous period of not less than one year and the other spouse consents to the making of the decree.

(e) That the Applicant has been living separate and apart from the other spouse for a continuous period of three years.

(f) That such other facts and/or reasons exist or existed which in all circumstances make it reasonable for the Applicant to live separate from, and not co-habit with, the other spouse.

3. The Court should have an ancillary power to decide who shall have the right to live in the family home as and from the date of the making of a decree of Judicial Separation. In exercising this power, the court should be obliged to base its decisions on what is in the best interests of the family as a whole and, in the event of a conflict as to the best interests of the various members of the family, the interests of the children should be paramount during their minority.

4. The Court should have an ancillary power to divide the various property or properties of the spouses, between the spouses, upon making a decree of Judicial Separation, and the Court should have the power to transfer the title of any relevant property as it deems just and equitable. Again, the Court should be obliged to exercise this power on the basis of the best interests of the family as a whole, but in the event of a conflict arising as to the best interests of the various members of the family, the interests of the children should be paramount.

5. Rights of succession are dealt with in the Succession Act, 1965. A spouse has a legal right under Section 111 of this Act, to one-half of the deceased spouse's estate, if there are no children and to one-third of the estate if there are children.

Provision for children is covered in Section 117 of the Act, and in summary, the courts are empowered to order such provision for children out of the estate

as they think just, if a testator has failed in his or her moral duty to make proper provision for a child.

The Committee feels that the courts should be empowered to vary or discharge a spouse's rights of succession following the grant of a decree of Judicial Separation having regard to the circumstances of the parties, in the context of determining what orders, if any, should be made for the division or transfer of property between spouses. The Committee agreed that the rights of children in relation to succession should not be affected by any such court orders.

The Committee agreed that the courts should, in determining these issues, take into account the manner in which property was acquired by the spouses and the relevant contributions of both parties to the property in the course of the marriage.

7.3.9 The Court should have such ancillary powers as are necessary pursuant to the Guardianship of Infants Act, 1964 to ensure that the best interests of the children are protected if a decree of Judicial Separation is to be made and, in particular, should have power to decide questions of custody and access.

7.3.10 The Court should have an ancillary power to award maintenance pursuant to the Family Law (Maintenance of Spouses and Children) Act, 1976 if a decree of Judicial Separation is made and any award of maintenance should be based on the principles set out in that Act.

7.3.11 The technical defences of recrimination, condonation, connivance and collusion should be abolished.

7.3.12 The Court should have a power on the application of both parties to convert a legal separation agreement into an order of Judicial Separation and any decree of Judicial Separation so made by the Court should incorporate the terms of the separation agreement into the decree. In doing so, the Court should not be entitled to incorporate or impose any terms on the parties not in the original agreement. The Court should only convert a separation agreement into a decree of Judicial Separation if it is satisfied that the terms as set out in the separation agreement are just and reasonable and in the best interests of the family, and in particular the dependent spouse and children, if any.

7.3.13 The Court should have power to discharge a decree of Judicial Separation if both spouses apply to have the decree so discharged.

7.4 Maintenance

7.4.1 The Law in regard to maintenance of spouses and children is contained in the Family Law (Maintenance of Spouses and Children) Act, 1976. To obtain a Maintenance Order under the 1976 Act a spouse must show that the other spouse has failed to provide proper maintenance for him or her and/or for the dependent children of the marriage. Dependent children are defined as children under the age of sixteen, or children between the ages of sixteen and twenty-one who are still in fulltime education, or someone above the age of sixteen who is suffering from mental or physical disability to such an extent that it is not reasonably possible for him or her to maintain themselves fully.

While it is normal for one spouse to apply for a Maintenace Order against the other spouse there is provision under the Act to allow third parties to apply for Maintenance Orders in respect of dependent children in certain circumstances.

7.4.2 In deciding whether to make a Maintenance Order and in deciding the amount of any such Order the court is obliged to take into account the following matters—

(a) The income, earning capacity (if any), property and other financial resources of the spouses and of any dependent children of the family, including income or benefit to which either spouse or any such children are entitled by or under statute; 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 any such dependent children, including the need for care and attention.

If a spouse against whom an application is made can show that he or she has provided proper maintenance for the applicant spouse and/or the dependent children then the Court should not make any Maintenance Order. Desertion by the applicant spouse which includes constructive desertion defeats the application in respect of the spouse's maintenance, but this would not be relevant to any application in respect of the dependent children.

Proof of adultery on the part of the applicant gives the court a discretion in deciding to make a Maintenance Order in favour of the applicant spouse; again the adultery of the applicant spouse does not affect the obligation on the defendant spouse to provide proper maintenance for dependent children. An applicant spouse can defeat a defence of adultery by showing that the defendant spouse condoned or connived in the adultery or, by wilful neglect or misconduct conduced to the adultery of the applicant spouse.

7.4.3 The court has power to discharge a Maintenance Order at any time after a period of one year from its making, if it decides that such discharge is reasonable in the context of the defendant's record of payments.

The court may discharge or vary a Maintenance Order at any time on the application of either party if it thinks proper to do so having regard to any circumstances not existing when the Order was made or to any evidence not available to that party when the Order was made.

There is provision in the Act that a court must discharge the part of a Maintenance Order in respect of the husband or wife if that husband or wife is shown to be in desertion. As regards adultery, the court has a discretion to to vary or discharge the Maintenance Order unless one of the elements vitiating the adultery is shown.

7.4.4 If the court makes a Maintenance Order or a Variation Order, the court is obliged to direct that any payments due under the Order shall be made to the District Court Clerk for transmission to the applicant, unless the applicant expressly requested it not to do so. Even if the court does not direct that payments be made through the District Court Clerk the applicant can apply at any time at a later stage and the court is then obliged to order that the payments from then on will be to the District Court Office.

7.4.5 If a person fails to comply with the terms of a Maintenance Order then the correct procedure for the other spouse is to apply to the court for what is called an Attachment of Earnings Order. This is an Order directed to the employer of the person obliged to pay the maintenance under the original Maintenance Order, directing that employer to deduct a certain sum of money from the employee's wages and to forward that sum of money to the District Court Office.

To obtain an Attachment of Earnings Order a person has to show

(i) that an original Maintenance Order was made in their favour; and

(ii) that the defendant in the Attachment proceedings has without reasonable excuse defaulted in the making of the payments under that original Order.

A court will refuse to make an Attachment of Earnings Order if there are reasonable circumstances justifying the failure to meet the payment, for instance if a person is on strike and is not being paid.

An Attachment of Earnings Order will specify the "normal deduction rate" i.e. the rate at which the court considers it reasonable to pay the sum due under the original Maintenance Order, to include any arrears that may have built up. The Order will specify the "protected earnings rate" i.e. the rate below which having regard to the resources and the needs of the maintenance

debtor, the court considers that the earnings of the defendant should not be reduced.

The court has power to order the defendant in Attachment proceedings to give to the court the name of his or her employer and details of his or her earnings. The court can also order the employer to furnish details of the defendant's earnings. The court also has power to vary or discharge an Attachment of Earnings Order. If an employer fails to comply with the terms of an Attachment of Earnings Order or gives false or misleading information in relation to the earnings of the defendant and the applicant as a result fails to obtain a sum of money due under the Attachment of Earnings Order, the employer can be sued by the applicant for the sum lost.

It should be noted that if payments are through the District Court Office then the District Court Clerk has power to take Attachment proceedings on behalf of the applicant.

7.4.6 In the case of a self-employed person, enforcement of a Maintenance Order in the District Court is pursuant to the Enforcement of Court Orders Act, 1940, where the applicant seeks

(i) a warrant for the distress of the defendant's goods in the sum then due; or

(ii) an Order committing the defendant to jail for non-payment.

In the Circuit and High Court in such cases the applicant applies to court to have the defendant committed for contempt of court in failing to comply with the Order.

7.4.7 Under the Enforcement of Court Orders Act, 1940, a defendant can show that the failure to make payments was reasonable and equally it would be very unlikely that a Judge would commit someone for contempt if they can show that there was a reasonable explanation for non-payment.

7.4.8 The maximum sum that can be awarded by a District Court in respect of maintenance of an applicant is the sum of £100 per week and a further £30 per week in respect of each dependent child. The Circuit Court has unlimited jurisdiction to award maintenance in any sum.

7.4.9 The procedure for obtaining maintenance and an Attachment or Variation Order in the District Court Office is to ask the District Court Clerk to issue a simple summons directing the defendant to come to court on a particular day for the hearing of the applicant's case. In practice there may be a delay of three or four weeks between the date of issue of the summons and the date of hearing.

7.4.10 In the Circuit Court the procedure is somewhat different. The applicant commences his or her proceedings by way of a document called an *Application* which sets out the grounds upon which the applicant intends to rely. The defendant is then entitled to file a document called an *Answer* which sets out the grounds upon which he or she intends to defend the proceedings. The case then comes up for hearing on the date set out in the Application. To draft an Application and Answer a person would normally need a solicitor. The delay in the Circuit Court depends to a great extent on the Circuit in which the Application is made and the amount of business which at that time is on hand in the local Circuit Court.

7.4.11 There is an appeal from a District Court Order to the Circuit Court and where the case is commenced in the Circuit Court from that Court to the High Court.

It should also be noted that the High Court still has power to make original Orders under the Family Law (Maintenance of Spouses and Children) Act, 1976 and the procedure in that Court is by way of the applicant issuing a Special Summons and Grounding Affidavit to which the defendant puts in a Replying Affidavit. The case is sent forward at that stage by the Master of the High Court to a Judges' list where the case is given a date for hearing. If the case is commenced in the High Court, there is an appeal to the Supreme Court.

Opinions of the Committee

7.4.12 The Committee accepts that the Family Law (Maintenance of Spouses and Children) Act, 1976, has operated reasonably well and its introduction represented a major step forward in the area of family law. The Committee considers that the law relating to maintenance is not without its faults and wishes to make the following observations as to possible areas for change.

7.4.13 The Committee notes from submissions received instances of persons who default on payments of maintenance. The Committee recognises the relative difficulty which can be experienced in enforcing maintenance awards particularly against self-employed maintenance defaulters and is of the opinion that legislation should be introduced to afford these persons who suffer as a result of the default an effective means of enforcing such orders. In particular, the Committee is of the opinion that the State should be empowered to make payments of maintenance to victims of such default and to recoup monies owed by defaulters, with an appropriate system of sanction in the case of continued default.

7.4.14 In the above matter, the Committee is conscious of the considerable

time and expense involved for litigants in pursuing maintenance defaulters and the need to balance this against the constitutional responsibility placed on the State to protect marriage and the family.

7.4.15 The Committee is of the view that access to the remedy of maintenance should be via the proposed Family Tribunal, dealt with at Chapter 9, as a means of overcoming the present procedure where maintenance is dealt with in the District, Circuit and High Courts.

7.4.16 The Committee feels that the court should, at the commencement of any application for maintenance, be in a position to assess the relative financial position of the spouses. In this regard the Committee is of the opinion that the parties should be under a statutory obligation to provide the court with a statement of their income and assets, to assist the court in determining the level of maintenance to be awarded, if any.

7.4.17 The Committee agreed that the court should have power to waive the need to prove a failure to maintain, if the exceptional circumstances of a case require it. This would cover situations which can arise where there has been no failure to maintain, but where the courts are satisfied that there is good reason to believe that such a failure will happen. For instance such a situation can arise where the applicant applies for a Barring Order, perhaps on grounds of violence, but there has been no failure by the defendant to maintain adequately. It may very well be the case that the applicant has good reason to believe that the defendant will cease to maintain him or her if the Barring Order is made but, as the legislation presently stands, the applicant would have to wait until such failure took place before an Order could be obtained, which could involve a considerable delay during which time no maintenance would be payable.

7.4.18 Desertion or adultery should be a discretionary bar to maintenance for the applicant spouse, unless the conduct of the defendant is or was such as to make it inappropriate and unfair that he or she should be entitled to rely on the applicant's desertion or adultery.

7.4.19 The factors to be taken into account by the court in deciding whether to make a Maintenance Order and in deciding the amount of any such Order should be extended to include the following:—

(i) The extent of any property transfer orders between the spouses that have been made by that or any other Court.

(ii) The making by that Court of an Order granting the sole right to reside in the family home to either the applicant or the defendant

and the need of the spouse who does not have the right to reside in the family home to provide adequate and suitable accommodation for himself or herself together with any persons with whom they may be living.

7.4.20 The Committee considered situations where the courts might be empowered to make once-off lump sum payments in the light of circumstances where dependent spouses are effectively denied the right of maintenance. This can occur where the person against whom maintenance is awarded can defeat the effect of the order by disposing of his assets, leaving the jurisdiction or, if self-employed, by simply refusing to obey the order of the court and requiring the dependent spouse to have endless recourse to the courts with little hope of success.

The Committee also considered situations when both spouses consent to the making of lump sum payments or where the dependent spouse and/or children are in need of a capital sum for, say, school fees or the provision of alternative living accommodation as a matter of urgency.

The Committee feels that in providing for a jurisdiction to award lump sum payments there is a need to examine this matter in greater depth, having particular regard to the need to protect the interests of all parties concerned.

7.4.21 The Committee expresses concern at evidence contained in submissions to the Committee of judicial inconsistency in administering the law in the area of maintenance. The Committee emphasises the importance of uniform judicial interpretation as to the levels of maintenance awards, having regard to the incidence of hardship imposed by awards of maintenance that are either too high, from the point of view of the spouse against whom the award is made, or too low, from the point of view of the spouse and/or dependent children in favour of whom the award is made.

7.4.22 The Committee considered the situation of maintenance defaulters who attempted to defeat Court Orders by removing themselves to a jurisdiction where the Order(s) of the Irish courts are not recognised or enforceable. The Committee agree that the existence of such a loophole is unsatisfactory and is of the opinion that the 1968 EEC Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, which was signed by Ireland in 1978, should be implemented as soon as practicable, as a means of making evasion of payments of maintenance more difficult.

7.4.23 The Convention covers proceedings for maintenance and provides that a maintenance debtor may be sued in either:

(a) the courts of the Contracting State where he is domiciled, or

(b) the courts where the maintenance creditor is domiciled or habitually resident, as the maintenance creditor may choose.

7.4.24 The Committee has been informed that enabling legislation is presently being prepared in the Department of Justice and looks forward to the early presentation of this to the Houses of the Oireachtas.

7.5 Guardianship and Custody

7.5.1 Under Irish law both the father and mother of a child born to a married couple are held to be joint guardians of that infant. Guardians of a child have both rights and duties in respect of the upbringing of that child and the authority and obligation to exercise and perform those rights and duties can be described as the right to guardianship of the child.

7.5.2 Custody of a child means the right to physical care and control of that child.

7.5.3 By reason of the provisions of Articles 41 and 42 of the Constitution and the Guardianship of Infants Act, 1964, each parent has an equal right to guardianship of the child and, as such, an equal right to custody and to make decisions in relation to the child's upbringing.

7.5.4 Section 11 of the 1964 Act provides a mechanism whereby any person being a guardian of an infant may apply to the court for directions on any question affecting the welfare of the infant, such as the child's religious upbringing or education and the court can make such Order as it thinks proper in the circumstances. This is the procedure which is usually used to resolve a dispute between two parents as to which of them should have custody of a child or children.

7.5.5 Applications under Section 11 can be made even if both parents are then living together but any Order made is not enforceable (except an Order made under Section 11 as to maintenance of the child) so long as they continue to live together. The Order ceases to have effect if they continue to live together for a period of three months after it is made.

7.5.6 A statutory right to apply under Section 11 is specifically given to the natural father of an illegitimate child, although the father has no constitutional rights in relation to the child.

7.5.7 All applications in regard to custody and access are interlocutory in nature and at any time either guardian has the right to apply to court to have

a previous Order varied or to seek directions in relation to any matter affecting the welfare of a child.

7.5.8 By virtue of Section 3 of the 1964 Act the court, in deciding any question regarding the custody, guardianship and upbringing of an infant, must have regard to the welfare of the infant as the primary and paramount consideration. The Act defines the concept of welfare in relation to an infant as comprising "the religious, moral, intellectual, physical and social welfare of the infant".

7.5.9 In deciding disputes as to custody and access in regard to children the courts have consistently stated that an award of custody is not, and should not be, a reward for one party's good behaviour in the marriage, but that the function of the court is to decide whether the welfare of a particular child would best be served by being left in the custody of one parent rather than the other. This principle has been applied not only in theory but in practice and in a number of cases the "innocent" party has been unsuccessful in an application for custody of the children. The Committee noted that applications in relation to custody and access are among the few areas of family law in which the legal principles applied by the courts are such as to generally make it unnecessary for one party to make allegations against the other in an effort to win the case. This is consistent with the approach which the Committee has considered appropriate in dealing with family law remedies generally.

Opinions of the Committee

7.5.10 The High Court places considerable weight on professional independent evidence as to the welfare of the child, such as that given by child psychiatrists or social workers. The Committee feels that this type of evidence is vital in that it gives the court the benefit of an experienced and independent opinion as to what is or is not in the best interests of the child, as well as taking account of the wishes of the particular child without the necessity of directly involving the child in the legal proceedings.

7.5.11 A large number of custody and access disputes continue to be determined, particularly in the lower courts, without the benefit of any such professional evidence. Such is the importance of evidence of this nature that the Committee suggests that there should, other than in emergency situations, be a statutory obligation on a Judge, in deciding a custody or access matter, to hear suitable evidence from appropriate professional witnesses as to the welfare of the child before deciding the issue. The normal result in a custody application is that one parent is awarded custody of the children while the other parent is given periodic access to them. Typically custody may be awarded to a mother while the father would be given access for a number of

hours, usually at the weekends. While both parents continue as joint guardians of the children and continue to be entitled to exercise their rights and duties as parents, the Committee sees that often the parent who is awarded access can feel cut off from the children, having only a very limited right to see them. This can lead to a feeling of alienation on the part of that parent.

7.5.12 A considerable body of evidence has been produced to this Committee as to how important it is for both spouses to continue to play a full and proper role as parents of the children, despite the breakdown of their relationship as husband and wife. The Committee believes that the normal type of custody or access arrangement can sometimes appear to hinder the establishment of a good parenting relationship between the parties whose marriage has broken down.

7.5.13 A Custody Order made in favour of one parent is often perceived by the other parent as cutting him or her off from an involvement in making decisions about a child's upbringing, giving rise to a feeling of alienation that is not alleviated by the making of Access Orders conferring visitation rights on the non-custodial parent. It has been suggested to the Committee that Orders of Joint Custody would be preferable and help us to resolve this difficulty.[24]

The Committee has considered this issue and in doing so is mindful that a Custody Order determines which parent a child is to reside with and that both the custodial and non-custodial parent remain joint guardians. Custody determines which parent is to have physical control of an everyday nature and no more. Joint Custody Orders would be meaningless unless they were to mean a child would have to live a part of each week with one parent and a part with the other. The Committee is conscious of the need to ensure that children who are the unfortunate victims of broken marriages have the right to establish roots and stability in their own lives and of submissions received to this effect. The Committee does not feel that Joint Custody Orders as described here would normally be in the interests of a child's welfare but appreciate that such an Order may be desirable in exceptional circumstances. The Committee notes that the courts already possess the power to make such Orders under existing legislation. The Committee recognises that it is essential that a court when making a Custody Order should ensure that both parents understand that they remain joint guardians of their children with all that that implies, and that the parent to whom custody is granted understands the need to ensure that children maintain a continuous relationship with the non-custodial parent, and that this relationship with the non-custodial parent is fostered and encouraged.

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[24]Dads against Discrimination.

7.5.14 When disputes as to custody arise in the courts, the Committee believes that the emphasis should be to attempt to assess the parenting capacity of each parent and the relationship between the parents and the children, while at the same time to take cognisance of the need for continuity in the lives of children, particularly young children and to decide ultimately on the basis of what is in the best interests of such children. Decisions made by the courts should also take into account how important it is for children to have a good and continuing relationship with both parents. Each case presents its own particular set of facts and the best solution for each family will vary accordingly.

7.6 Matrimonial Property

7.6.1 At present disputes involving matrimonial property are dealt with pursuant to Section 12 of the Married Womens Status Act, 1957, which provides a mechanism whereby a spouse can apply to a court to have his or her interest determined in any property held by the other spouse or held jointly. The Family Home Protection Act, 1976, also deals with aspects of matrimonial property and this is dealt with later in this section

7.6.2 It is important to note that Section 12 of the 1957 Act is purely declaratory in nature, i.e. it gives no power to change the title to the item or property in question, but simply declares in what shares it is held by the spouses.

7.6.3 The Circuit Court has jurisdiction to deal with chattels of an unlimited value and property of which the rateable valuation is less than £200, while the High Court has unlimited jurisdiction under the Section. The District Court has limited jurisdiction to deal with the disposal of household chattels under the Family Home Protection Act, 1976.

7.6.4 Applications in the Circuit Court are by way of the lodgement of an application by the applicant and the lodgement of an answer by the respondent. In the High Court the procedure is for the plaintiff to commence the proceedings by way of Special Summons and Grounding Affidavit while the defendant files a Replying Affidavit.

7.6.5 For any party to establish an interest in a chattel or a piece of property under the Act it is necessary for the applicant to show that he or she has contributed either directly or indirectly to the purchase of the item. This can be done in a number of ways: for example, by showing that the applicant made a direct contribution in money to the purchase price or to mortgage repayments, or by showing that the applicant made an indirect contribution

by way of payment into a joint family fund out of which the purchase was financed.

An example of the second situation would be where a spouse makes contribution to the joint family income out of which mortgage payments to finance the purchase of the house are made. In the case of such indirect contribution some Judges require evidence of an agreement between the spouses before they will grant any interest in the property to the spouse making the indirect contribution. Other Judges take the view that such an agreement can be inferred from the conduct of the parties.

7.6.6 There is a presumption that property which is held in joint names is owned in 50 per cent shares by each spouse. An applicant in certain circumstances can establish an interest in property by showing that he or she has contributed to its purchase by way of actual work done, for example, by assisting in the actual building of a home or by helping to renovate, such as would enhance the value of the property in question. It is, however, decided law that a woman working in the home does not become entitled to any interest in the family home simply by reason of the work which she carries out therein as a wife, looking after the home and the family.

7.6.7 There is a rebuttable presumption that a husband who purchases a property from his own resources but puts it into his wife's name is making a gift of that property to her; this is known as the presumption of advancement. There is no similar presumption as regards the transfer of property to a husband by a wife.

7.6.8 The Family Home Protection Act, 1976, was the first piece of legislation introduced in this country which was designed to give some element of protection to a spouse who had no proprietary rights in the property in which he or she lived. Until the passing of that Act, it was possible for a husband or a wife who solely owned the property in which the spouses ordinarily resided with the children, to sell or mortgage that property without the consent of the other spouse. In practice this meant that wives, in particular, could find themselves in a situation where their husband could come home at any stage, announce that he had sold the family home and that the family would have to move out, even though he might not have provided any adequate alternative accommodation for them. The Family Home Protection Act, 1976, was designed to prevent such abuses and had as its object the protection of the family home. In retrospect it is clear that while the 1976 Act has introduced some element of protection, that protection is by no means complete.

7.6.9 The Family Home Protection Act, 1976, provides that where a spouse, without the prior consent in writing of the other spouse purports to

convey any interest in the family home to any person except the other spouse, the purported conveyance shall be void. "Conveyance" within the meaning of the Act includes any disposition of property otherwise than by will and includes a mortgage, lease, assent, transfer, disclaimer and release subject to certain exceptions which are set out in the Act.

Under the Act the obligation is put on the purchaser to ensure that the terms of the Act are complied with. This required changes in the system of conveyancing of property up to that time. The present position under the Act is one of the matters dealt with in the form of standard requisitions used by solicitors in regard to the selling and the buying of property and the requirement for consent to the sale of property which is a family home within the meaning of the Act is now a standard portion which must be completed before a valid sale can be closed.

7.6.10 If a spouse unreasonably withholds his or her consent to a conveyance of the family home the other spouse can apply to the court to dispense with the required consent. The court is obliged not to dispense with the consent unless the court considers that it is unreasonable for the spouse to withhold consent taking into account all the circumstances of the case including:

(a) the respective needs and resources of the spouses and of the dependent children (if any) of the family; and

(b) in a case where the spouse whose consent is required is offered alternative accommodation, the suitability of that accommodation having regard to the respective degrees of security of tenure in the family home and in the alternative accommodation.

7.6.11 The court must dispense with the consent of a spouse whom the court finds has deserted and continues to desert the other spouse.

7.6.12 Under the 1976 Act, if proceedings for possession of a family home are brought by a mortgagee or a lessor due to the failure of a spouse to make payments, the other spouse can apply for an adjournment of the proceedings if that other spouse is capable of paying the arrears due. There are also provisions in the Act which provide a means whereby a spouse can apply for an Order to prevent the other spouse from selling or otherwise disposing of the chattels in the family home and whereby a spouse can apply for compensation if the other spouse has wrongly sold or disposed of the chattels. The Act further provides a mechanism whereby a spouse can register a notice stating that he or she is married to any person having an interest in land or property.

Opinions of the Committee

7.6.13 The present system of dealing with matrimonial property is extremely unsatisfactory. It decides spouses interests in property on the basis of chance decisions made by them over the years, such as whether a house is put in the sole name of one partner or in joint names. At the time the parties may have placed no significance on these decisions and sometimes many years later the courts imply a conscious element of intention which simply did not exist at the time. In many cases the court is obliged to attempt to review many years of married life and to try to imply what was, or was not, in the parties' minds many years before the court hearing. The court is also obliged to try to act on detailed evidence of financial contributions made by each spouse during the marriage. This sometimes involves the court in comparing the respective incomes of the spouses over, perhaps, twenty years of their marriage. Given that it would be extremely unusual for spouses to keep detailed records of their financial dealings as a family, the court has to act on many occasions on half-remembered, inaccurate, and often conflicting accounts of what occurred.

7.6.14 Another major disadvantage of the present system is that it effectively discriminates against women since in most marriages the wife is obliged to give up work outside the home for at least some time, and in many cases permanently, to look after the family. This suggests that, because she is not earning, she is unable to make contributions which would entitle her to an interest in property acquired in her husband's name. It is particularly inequitable that this should be the case when the Constitution in Article 41.2 recognises the special importance of women within the home.

7.6.15 Further, the present means of determining interests in matrimonial property has led to large differences in the way that the law involved is interpreted, to the extent that one's chance of success can be determined by which particular Judge is hearing the case. This variation in treatment arises from the fact that the principles of law involved are extremely unclear and are very difficult to apply to the situation of a marriage.

7.6.16 As regards the operation of the Family Home Protection Act, 1976, it was the intention of the legislature in passing this Act to give comprehensive protection to family homes.

7.6.17 Two recent decisions of the High Court have shown that such protection is inadequate in at least one major respect. In those cases[25] it was decided that the Family Home Protection Act had no relevance and did not

[25]Murray v. Diamond, 7th December 1981 (unreported) and Containercare (IRE) Ltd. v W, 25th December, 1981 (unreported).

apply to a situation where a creditor applied to sell a family home on foot of a judgment for the amount of a debt that is obtained against him or her. That judgment is then registered by the creditor as a judgment mortgage against the family home.

The rationale of these decisions was that the Family Home Protection Act only applied to conveyances by one or other of the spouses and not by a third party and that the judgment mortgage was not a conveyance within the meaning of the Act, but an operation of law. This has brought about a result whereby even though a spouse is prevented from using the family home as security without the other spouse's consent he or she can obtain an unsecured loan which, if not paid, can be registered against the family home and finally lead to its sale.

7.6.18 The only protection available under the Act for a spouse who wishes to try to protect the family home is for him or her to apply under Section 5 of the Act which gives the court power to make any order for the protection of the family home which the court feels necessary, if it is satisfied that the other spouse is intentionally engaging in conduct which will lead to the loss of the family home. The difficulty about this approach, however, is that in many cases it is very hard, or indeed, impossible to prove the necessary intention. In cases where a spouse is simply spendthrift by nature or where he or she has an alcohol, drug or gambling problem, the necessary intention would not be proved.

7.6.19 Section 5 of the 1976 Act also allows a spouse to apply for compensation if a family home is lost by reason of the conduct of the other spouse. In such an application for compensation it is not necessary to prove that the loss of the family home was intentionally brought about. This leaves persons in the anomalous position where they can obtain compensation from the court for the loss of a family home but they are unable to obtain any orders from the court to try to prevent the loss before it occurs.

7.6.20 As regards marital property generally, two approaches are possible in the future, either to attempt to reform the present principles or to introduce a totally new concept.

7.6.21 The Committee briefly examined systems of community property which exist in some other jurisdictions whereby one spouse would automatically have equal rights in regard to property in the name of the other spouse. The Committee noted the operation of such systems, and recognising the complexity of this subject is of the view that this issue is so complex that the subject would warrant a separate study in far greater depth than the present Committee could possibly attempt.

7.6.22 The Committee recommends to the Oireachtas that a study of this nature should be commenced at the earliest possible opportunity and the Committee notes that the Commission on the Status of Women so recommended in 1972.[26]

7.6.23 The Committee is of the view that a dependent spouse should not be prejudiced in any determination of property rights by the fact that he or she gave up employment in the course of a marriage to attend the duties in the home.

7.6.24 As regards the operation of the Family Home Protection Act, 1976, the Committee is of the view that legislative action should be taken immediately in order to prevent the spirit of the Act from being defeated whereby judgment mortgages can be used to enforce the sale of the family home without the consent of either or both spouses. In this regard Section 5 should be interpreted in such a way that a spouse is presumed to intend the natural consequences of his or her actions. Where there has been a loss of the family home in these circumstances and the offending spouse has other assets, the courts should have power to order compensation.

7.6.25 Finally, the Committee wishes to comment on the lack of uniformity in judicial interpretation of the law relating to family property and to stress the desirability of uniformity in such interpretation. The Committee refers to its views on the establishment of a unified Family Tribunal, staffed by specialist Judges, as set out in Chapter 9. In addition, the Committee's views regarding the introduction of legislation to provide for property transfer orders should be noted.[27]

7.7 Barring Orders

7.7.1 The Barring Order, which has the effect of excluding one spouse from the family home at the instance of the other, was first introduced by Section 22 of the Family Law (Maintenance of Spouses and Children) Act, 1976. The basis for granting such a Barring Order under that section was that there must be reasonable grounds for believing the safety or welfare of the applicant spouse or any of the dependent children of the family required the making of such an Order.

7.7.2 Section 17 of the Family Law (Protection of Spouses and Children) Act, 1981, repeals Section 22 of the Family Law (Maintenance of Spouses and

[26]Report of the Commission on the Status of Women, December 1972.
[27]See Chapter 7.38

Children) Act, 1976. The 1981 Act is a completely new statutory regime in that, while the basic test — the existence of reasonable grounds for believing that the safety and welfare of the applicant spouse or any of the dependent children of the family require the making of an Order — remains unchanged, substantial changes were made in relation to the means of enforcing a Barring Order. The 1976 Act failed to give to the Garda Síochána a power of arrest for breach of a Barring Order. The 1981 Act for the first time specifically gave to members of the Garda Síochána the right to arrest a person whom they believed was guilty of a breach of a Barring Order. This was of great practical significance because up to then even if a person breached a Barring Order, the Gardaí were often powerless to remove that person from the family home.

7.7.3 The 1981 Act also created a new form of order called a Protection Order. A Protection Order covers the period of time from the taking out of an application for a Barring Order until the date of the hearing of that application. It has the effect of restraining the alleged offending spouse from threatening, molesting or otherwise putting in fear the applicant and/or dependent children. It does not bar a spouse from the family home.

A Protection Order can be obtained by the applicant without notifying the other spouse in advance and it is now a normal procedure for an applicant for a Barring Order to apply to the court for a Protection Order on the same day that he or she takes out a summons or application for a Barring Order. The grounds for obtaining a Protection Order must be made out before the court will grant it.

7.7.4 Breach of a Barring Order is a criminal offence which leaves a person in breach open to a sentence of imprisonment up to a maximum of six months and/or a fine. Breach of a Protection Order is also a criminal offence which can lead to a term of imprisonment for a period of up to six months and/or a fine and again the Gardaí have a power of arrest when they have reasonable grounds to believe that a breach of a Protection Order has taken place.

7.7.5 Under the 1981 Act the power to grant Barring Orders was specifically given to the District Court and to the Circuit Court. The District Court has power to make a Barring Order up to a maximum period of 12 months. The Barring Order can be renewed after the 12 month period, but will not be renewed by the court without continuing evidence that the safety or welfare of the spouse or children require such renewal. There is no maximum limit on the duration of a Barring Order made by the Circuit Court.

7.7.6 A recent decision of the High Court decided that the High Court

retains the power to make Barring Orders even though such power is not specifically given to that court under the 1981Act.[28]

7.7.7 As mentioned in paragraph 7.7.4 breach of a Barring Order is a criminal offence. It should be noted that breach of a Barring Order granted by the Circuit or High Court would, in addition, constitute a contempt of court. Such a breach could therefore be dealt with in the alternative by either of those courts under its general power to deal with contempt. The usual method of enforcement in cases of contempt is imprisonment.

7.7.8 Section 11 of the 1981 Act gives the right to a person who has been barred to apply at any time to have the Barring Order discharged on the grounds that its continuance is no longer necessary.

7.7.9 For some years after the introduction of Section 22 of the 1976 Act there was no direct judicial authority as to what constituted the exact grounds on which a Barring Order should be granted. This position was rectified by the Supreme Court[29] in June 1983. This judgment was a landmark and has profoundly affected the pattern and frequency of the grant of Barring Orders. The court in that case took the view that for the proper grant of a Barring Order under the 1981 Act the following factors should be present:

(a) There must be something in the conduct of the spouse against whom the Order is sought which endangers the safety or welfare of the other members of the family;

(b) Ordinarily the conduct complained of must be of serious nature and must be wilful and avoidable, and which causes or is likely to cause hurt or harm not as a single occurrence but something which is continuing or repetitive in its nature;

(c) The conduct complained of should be changeable and remedial by the act of the parties or one or other of them.[30]

It is also clear from the judgments that the court felt that a Barring Order was not an appropriate remedy to deal with a situation of irretrievable breakdown in a marriage.

Opinions of the Committee

7.7.10 The Committee observed that prior to the O'B judgment, Barring Orders had been granted in some cases as a form of enforced separation and

[28]R v R, High Court (unreported) 16th February 1984.
[29]O'B v O'B (unreported) 17th.June 1983.
[30]Judgment of Chief Justice Page 10.

in situations where the marriage had broken down. Following the O'B decision, the Committee notes that judicial interpretation has moved towards refusing the making of an Order unless physical violence is occurring. The Committee is of the opinion that this rigid interpretation of the Act may have the effect of denying some persons a remedy under the Act where it can be strongly argued that the conduct of the offending spouse, though not physically violent, is such as to place the safety and welfare of the other spouse and/or children at serious risk.

7.7.11 The Committee is concerned that this uncertainty which is a consequence of judicial inconsistency should be replaced by a clear re-statement of the law relating to Barring Orders, if necessary by amending legislation.

7.7.12 The view was expressed in some submissions received by the Committee that the legislation providing for Barring Orders should be repealed as such Orders are ineffectual and inhuman. It is undoubtedly the case that the use of Barring Orders, particularly the manner in which they were used prior to the decision in the O'B case, left a large body of dissatisfied persons, practically all male, who found themselves restrained by court Order from entering or having the use or enjoyment of the family home which, in some cases, may well have been their sole property. In some cases a person was barred from the family home with immediate effect from the hearing of the court case, with the result that the lifestyle of the person was totally altered by the Order, to the extent of having to seek alternative accommodation. In many cases the granting of a Barring Order was accompanied by the making of a Maintenance Order which meant that the persons barred found themselves trying to find alternative accommodation and to live on a very restricted income. The effect of a Barring Order with these consequences in some cases left men embittered, humiliated and in dire financial straits.

7.7.13 The Committee also considered the effects of a Barring Order from the perspective of the person seeking the making of the Order. There are undoubtedly cases in which the actions of one spouse are such as to make life impossible for the other spouse and the children of the marriage, and cases in which the behaviour of one spouse poses a serious threat to the health, safety and welfare of the other spouse or children. The Committee accepts that some legal assistance must be available to persons affected by such behaviour and recognises that the Barring Order is a necessary legal remedy. If Barring Orders were to be abolished, as some groups have suggested, the only help available to a spouse in need of legal protection would be an injunction or a prosecution under the criminal law.

Relief by way of injunction, in order to prevent a spouse from entering the family home, would have the same effect as a Barring Order but would be

somewhat less effective in terms of enforcement. Injunctions in this area have been granted by the courts on the same basis as Barring Orders and for that reason injunctions can be Barring Orders by another name.

The use of the criminal law is a very blunt instrument in dealing with family disputes and the imposition of a jail sentence would deprive the applicant spouse and children in many cases of their financial support. Some applicants would certainly be dissuaded from taking any action if they thought that the imposition of a prison sentence might be the ultimate result. Also the thought of the details of their family difficulties being openly discussed in court might make many applicants slow to proceed with the case even though ample grounds for a criminal prosecution might exist.

In addition the use of the criminal law should by its very nature, be restricted to physical assaults and would give no relief in cases which did not involve physical violence, or threats of immediate violence.

7.7.14 The Committee feels that cases of irretrievable breakdown are more appropriately dealt with by way of another remedy, such as judicial or legal separation. The Committee sees the sole role of the Barring Order as affording protection and not by any means as the principal legal process in cases of irretrievable breakdown. The Committee suggests that the definition of conduct such as gives rise to the granting of a Barring Order should ensure that Barring Orders can continue to be obtained where the health, safety and welfare of the spouse or children are at risk and not only in situations involving physical violence.

7.7.15 A most unsatisfactory aspect of the present structure in relation to the making of Barring Orders is that, in practically all cases, no help is available to a person whose conduct has led to him or her being barred.

That person is simply removed from the family home for a period of months or years during which time they are given no professional help to form an insight as to why their conduct was unacceptable, or to ensure that similar conduct will not recur. This is yet another example of the complete lack of any adequate welfare or counselling service being available to those whose family difficulties are dealt with through the courts. The Committee deals in Chapter 8 with the type of mediation service which would have a significant influence in this area. The Committee believes that the introduction of such a mediation service would also have the effect of reducing the volume of cases coming before the courts.

7.7.16 The Committee deals in Chapter 9 of this Report with the type of family tribunal which should be introduced to deal with all family cases.

7.8 Divorce

7.8.1 In this Chapter the Committee will deal solely with the question of divorce. Elsewhere in this report other solutions and remedies for the problems caused by marital breakdown are discussed in full. Here the Committee will examine what are considered to be the substantive arguments for and against divorce, condensed from the 700 written submissions and oral evidence heard from 24 different groups. The object of the Committee in this regard is to put before the Oireachtas as clearly and succinctly as possible the options which are open and to express the views of the Committee on those options.

7.8.2 In using the expression "divorce" we take it to be synonomous with the expression "dissolution of marriage" as used in Article 41 of the Constitution. We feel that the former expression is more widely used by the majority of people and for this reason we feel that its use in this Chapter will bring about greater clarity.

7.8.3 In discussing divorce as a remedy for marital breakdown it is perhaps as well at the beginning to identify the difference between divorce and other remedies available in connection with the breakdown of a marriage. At the moment there is in existence legislation which deals with disputes as to the custody and upbringing of children, the maintenance of dependent spouses and children, and the protection of spouses and children at risk of violence and neglect. Further, there is provision for deciding ownership of assets of the parties to a marriage and for the grant of a decree of judicial separation or nullity in certain circumstances. The Committee has in other Chapters of this report suggested changes, which will improve the effectiveness of these remedies as a response to the problems of marital breakdown. Should divorce be introduced following the carrying of a referendum the present response to marital breakdown would be altered in one very important way. It would give the courts the power to dissolve a valid marriage and thus the parties to that marriage would thereafter be free to remarry. The granting of the right to remarry would appear to the Committee to be the essence of a divorce jurisdiction as it is the main difference between divorce as a method of solving the problems caused by the breakdown of a marriage and other less far-reaching legal remedies.

7.8.4 Statement of Current Legal Position

At present divorce, with the right to remarry, is not possible under the Civil Law of the State due to the provision contained in Article 41.3.2° of the Constitution which states:

"No law shall be enacted providing for the grant of a dissolution of marriage".

Under the terms of this provision the Oireachtas cannot enact legislation which permits divorce and, as a result, persons who contract valid marriages under the Civil Law remain married until the death of one or other party.

7.8.5 When a valid marriage irretrievably breaks down the spouses cannot obtain any final legal recognition that their marriage is at an end and they cannot remarry. As has been pointed out above they can avail of limited legal remedies such as judicial separation, the conclusion of a deed of separation, or one or other spouse may obtain a Barring Order. Sometimes a spouse may simply desert the other spouse but, in any event, no matter which of these courses they pursue neither spouse would be free to enter into a new and valid marriage until the death of the other spouse.

7.8.6 Freedom to remarry can arise if the parties obtain a foreign decree of divorce provided this decree is recognised in this State. The law regarding recognition of foreign divorces is complex and it is not appropriate to enter into a lengthy discussion on this area of law. Suffice it to say that the State will only recognise a divorce obtained in a foreign jurisdiction if both parties to the marriage were domiciled in that foreign jurisdiction at the time of the divorce. Married couples living permanently in Ireland whose marriages have irretrievably broken down cannot obtain any divorce decree outside Ireland that will validly terminate their marriage under Irish law.

7.8.7 The prohibition on the enactment of legislation to permit divorce contained in the Constitution must remain part of the law until such time as a referendum is held and the majority of those voting at that time decide in favour of removing the ban on divorce contained in the Constitution. In the event of such a decision being made by the electorate the result of such a referendum would not, by itself, provide for divorce. It would then become necessary for the Oireachtas to enact divorce legislation if divorce were to be made available. In this context it can be noted that the 1922 Constitution did not prohibit the Oireachtas from enacting divorce legislation and that no such legislation was enacted in the period from 1922 to the coming into force of the present Constitution in 1937.[31]

7.8.8 **Informal Committee on the Constitution, 1967**

On only one other occasion[32] since the enactment of the 1937 Constitution

[31]In 1925 rules were introduced for the Dáil and Seanad, which prohibited the introduction of Private Bills allowing for the dissolution of a marriage.

[32]Report of the Informal Committee on the Constitution, December, 1967. (Pr. 9817)

have the provisions of Article 41.3.2° been examined by an Oireachtas committee. We feel that it is useful to set out the views of that Committee in regard to this particular provision of the Constitution.

Paragraph 123: Article 41.3.2° provides that:

> "no law shall be enacted providing for the grant of a dissolution of mariage".

The universal prohibition has been criticised mainly on the ground that it takes no heed of the wishes of a certain minority of the population who would wish to have divorce facilities and who are not prevented from securing divorce by the tenets of the religious denominations to which they belong. It is argued that the Constitution was intended for the whole of Ireland and that the percentage of the population of the entire island made up of persons who are Roman Catholics, though large, is not overwhelming. The prohibition is a source of embarrassment to those seeking to bring about better relations between North and South since the majority of the Northern population have divorce rights under the law applicable to that area. It has been pointed out that there are other predominantly Catholic countries which do not in their Constitutions absolutely prohibit the enactment of laws relating to the dissolution of marriage. Finally, attention is sometimes drawn in discussing this subject to the more liberal attitude now prevailing in Catholic circles in regard to the rights and practices of other religious denominations, particularly since the Second Vatican Council.

Paragraph 124
It would appear to us that the object underlying this prohibition could be better achieved by using alternative wording which would not give offence to any of the religions professed by the inhabitants of this country. An example of such an alternative would be a provision somewhat on the following lines:—

> "in the case of a person who was married in accordance with rites of a religion, no law shall be enacted providing for the grant of a dissolution of that marriage on grounds other than those acceptable to that religion."

It would probably be necessary to add a clause to the effect that this was not to be regarded as contravening any other provision of the Constitution prohibiting religious discrimination. This wording would, we feel, meet the wishes of Catholics and non-Catholics alike. It would permit the

enactment of marrige laws acceptable to all religions. It would not provide any scope for changing from one religion to another with a view of availing of a more liberal divorce regime. While it would not deal specifically with marriages not carried out in accordance with the rites of religion, it would not preclude the making of rules relating to such cases.

Paragraph 125
In coming to this conclusion we have examined a great deal of published material on the subject and, in particular, the decisions reached by the recent Vatican Council. It is important to note in this connection that the existing prohibition of dissolution of marriage deprives Catholics also of certain rights to which they would be entitled under their religious tenets. There are several circumstances in which the Catholic church will grant dissolutions of valid marriages or will issue declarations of nullity. We understand that many thousands of cases are dealt with under these provisions every year either at Rome or by dioceses and metropolitan courts throughout the world. The absolute prohibition in our Constitution has, therefore, the effect of imposing on Catholics regulations more rigid than those required by the law of the Church. This conflict is referred to in a number of publications by Catholic authors.

Paragraph 126
It can be argued, therefore, that the existing constitutional provision is coercive in relation to all persons, Catholics and non-Catholics, whose religious rules do not absolutely prohibit divorce in all circumstances. It is unnecessarily harsh and rigid and could, in our view, be regarded as being at variance with the accepted principles of religious liberty as declared at the Vatican Council and elsewhere. It would seem, therefore, that there could be no objection from any quarter to an amendment of the Constitution on the lines which we have indicated in paragraph 124 above and we unanimously recommend that such an amendment be made.

7.8.9 The Committee has noted with interest the work of the 1967 Committee in regard to Article 41.3.2° of the Constitution and obviously the unanimous view of that Committee must be taken into account in any discussion of the topic of divorce. Almost twenty years have passed, however, since the deliberations of that Committee and those years have seen many changes in Irish society. Further, since the deliberations of that Committee the provisions in the Constitution which deal with fundamental rights have

been interpreted by our courts in a manner which could hardly have been predicted in 1967.[33]

7.8.10 **Submissions received**

Many of the written and oral submissions received by the Committee make reference to the constitutional prohibition on divorce. Some argue in favour of a referendum on the issue, others argue against it. In addition, arguments for and against the provision of divorce legislation were discussed in detail by many of the churches, groups and individuals who expressed their views to the Committee. It is not possible in this report to refer in detail to all the many excellent submissions presented to us. The best that can be achieved in a report such as this is to summarise as fairly as possible the substantive arguments both for and against the holding of a referendum and the introduction of divorce legislation. A selection of quotations from a fair cross-section of the submissions received are included in this Chapter so that an insight into the many and varied views expressed can be obtained.

7.8.11 **Arguments in favour of divorce**

From the numerous written and oral submissions, including personal submissions, made to this Committee, the following is a synopsis of the main arguments in favour of the introduction of divorce in this country:

(a) that the prohibition on divorce is an injustice to those persons whose marriages have irretrievably broken down and who have become involved in other relationships or wish to become involved in other relationships. They feel it to be such an injustice because:

  (1) they cannot achieve any recognition of their new relationship or any adequate legal definition of their status;

  (2) there is no legislation in force to provide protection for parties to and the children of such a relationship, for instance, in the areas of maintenance, succession and in respect of violence and neglect;

  (3) the children of such a relationship are illegitimate; and

  (4) the parties suffer substantial disadvantages in such areas as taxation and the right to social welfare benefits.

It is argued that this injustice not only has adverse effects on the immediate parties to the relationship and any children that they may have but that the existence of unregulated second relationships after the

[33]The case of Ryan v Attorney General 1965 IR heralded the beginning of an era in which the courts held that the fundamental rights provisions of the Constitution conferred rights which were not specifically enumerated in those provisions.

breakdown of a marriage also has adverse effects on the community at large.

> "We find people changing their names by deed polls to their boyfriends' names. They are coming in wanting to know why their children are regarded as illegitimate in the law. They are losing respect for the law. These are people who are basically law abiding citizens and who have very strong religious views, but who find they have got themselves into second relationships. They feel that they want to marry. They want the commitment of marriage and they do not have that right at the moment. It is from the viewpoint of practitioners of family law that we have seen the problems that these second relationships caused — the fact that there is no legal protection for them and particularly for the children who are left and the women are left in a most vulnerable position. We feel that if divorce was to be brought in they would have the option of remarriage which would in fact help the parties to have a greater commitment to each other and it would mean that the law would apply to and protect these relationships as well".[34]

> "Marriages should be supported through all their stages as active social relationships, but only as long as they are capable of being so. Failure to accept that the parties to a marriage which has broken down irretrievably have the right to divorce and remarry can cause hardship. Inter alia, this failure confers an uncertain status on new relationships arising after marriage breakdown; it also leaves unprotected the interests of couples and their children with regard to maintenance, security and continued parenting".[35]

> "This Article (41.3.2°) enshrines Roman Catholic teaching (in common with Article 41.3 regarding the definition of what constitutes a family) and taken together we believe that they constitute a threat to family life by forbidding the possibility of divorce and remarriage. This threat arises by the pressures exerted by the growing number of stable relationships not recognised as family units under the present Constitution".[36]

(b) All the minority churches and religions (with the exception of the church of the Latter-day Saints) do not favour the retention of the blanket prohibition on divorce in the Constitution and consider the availability of divorce legislation as a basic right notwithstanding

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[34]Ms Paula Scully — oral submission by Law Centre Solicitors.
[35]Irish Association of Social Workers.
[36]Submission by the Divorce Action Group.

that certain of those churches as a matter of internal discipline disapprove of divorce. It is argued that Civil Law in this area should not reflect only the views expressed by the church of which the majority of the population are members, and that by so doing at present it discriminates against members of other churches and religions and those who profess no religious faith.

"We recognise that too easy recourse to divorce may lead to widespread abuse and that the utmost care is required in legislation on these matters. Nevertheless, we hold that blanket prohibition of divorce is also the cause of serious abuse, much personal suffering, and grave social injustice. Attempts to supress recognition of this situation does nothing to promote well-ordered marriage and family life."[37]

"The nature of marriage is to be lifelong and ideally this should always be so, but we recognise that human nature is frail and that some marriages fail to develop and break down irretrievably.

We believe that legal provision should be made for divorce as a civil right for those whose marriages have broken down irretrievably and who wish to avail of it. The period of marriage before which a divorce is not allowed should be five years. Knowledge of this fact may prevent many rash and unsatisfactory marriages taking place. There should be an interval of 6 months after application for a divorce before proceedings can start, during which time counselling should be available."[38]

"We do recognise that circumstances can occur where relationships deteriorate to such an extent that it may be right to end a marriage, and for this reason we would welcome a change in the constitutional position on divorce. The demand for divorce to be legal may come only from a minority of the Christian people of this country. However, we see no reason why the Constitution or legislation should deny the minority their wish in this matter, bearing in mind that provision is made for divorce by other nations within the Council of Europe. We do feel strongly however that divorce must always be seen as the last resort."[39]

"The existing machinery suffers from the defect that it deals only with matters which, important, and even vital though they may be, are only ancillary to the root problem, that of status. Persons whose marriages have broken down and who have strug-

[37]Submission by the Presbyterian Church in Ireland.
[38]Submission by The Mothers' Union Social Concern Committee of the Anglican Church.
[39]Submission by Dublin Monthly Meeting of the Religious Society of Friends.

gled through the complex legal machinery find themselves substantially poorer but without the one remedy which they really want, namely the freedom to marry."[40]

(c) That the constitutional ban on divorce and the absence of divorce legislation in this country since the foundation of the State has not prevented marital breakdown from occurring and that in the past decade the level of marital breakdown has increased.

"I do not believe that the absence of divorce law in any way stops marriages breaking down. Marriages go on breaking down by persons pursuing their own personal causes quite independently of what the law says or does not say."[41]

(d) That the breakdown of a marriage is due to the collapse of the relationship between the parties and that divorce does not cause that collapse, but merely affords a facility to give legal recognition to the fact that a marriage has ended, while leaving the parties thereto free to remarry. It is suggested that confirmation of this assertion can be obtained from an examination of the statistics in regard to marital breakdown in the Republic of Ireland and Northern Ireland. Despite the fact that divorce has been available in the North of Ireland since 1937, it has been suggested that the level of marital breakdown in the Republic of Ireland appears to be similar to the proportional level of marital breakdown in Northern Ireland.

"Our views on that (divorce) are that there clearly are cases where divorce is the only solution to the problem of irretrievable breakdown. We feel that conciliation should be part of that divorce procedure. Our family system differs from other European countries in that families here are larger and only 10 per cent of the married women work outside the home, so there would be financial considerations involved."[42]

"Gingerbread, through our members, recognises that marital breakdown occurs and that marriages do end. Irretrievable breakdown should be accepted as a basis for separation. If this is done, people in this situation have a right to finally choose to completely end their legal contract of marriage. We believe that this is a basic human right."[43]

(e) To deny the right to remarry to a battered wife or husband has no

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[40]Submission of the Church of Ireland.
[41]Dr Jack Dominian — oral submission.
[42]Mrs Anne Williams — oral submission of AIM Group for Family Law Reform.
[43]Submission by Gingerbread.

social advantage to the State and is in fact detrimental to society in general and lacking in compassion.

(f) That the absolute prohibition on the introduction of divorce legislation in the Constitution has the effect of imposing on Catholics regulations more rigid than those required by the law of the Church. The relevant Canons in the Code of Canon Law state as follows:

Article 1: The Dissolution of the Bond

Can. 1141 A marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death.

Can. 1142 A non-consummated marriage between baptised persons or between a baptised party and an unbaptised party can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or of either party, even if the other is unwilling.

Can. 1143 S1 In virtue of the Pauline privilege, a marriage entered into by two unbaptised persons is dissolved in favour of the faith of the party who received baptism, by the very fact that a new marriage is contracted by that same party, provided the unbaptised party departs.

S2 The unbaptised party is considered to depart if he or she is unwilling to live with the baptised party, or to live peacefully without offence to the Creator, unless the baptised party has, after the reception of baptism, given the other just cause to depart.

Can. 1149 An unbaptised person who, having received baptism in the Catholic Church, cannot re-establish cohabitation with his or her unbaptised spouse by reason of captivity or persecution, can contract another marriage, even if the other party has in the meantime received baptism, without prejudice to the provisions of Can. 1141.

The facility of dissolution of the bond of marriage in the above circumstances, which is allowed under Canon Law, is ineffective at Civil Law.

(g) That it is the factual breakdown of a marriage and not the availability of divorce that has an adverse effect on children. It is suggested that in certain circumstances the integration of a child into a new loving family unit can reduce the trauma resulting from the breakdown of his or her parent's marriage.

"What is clear is that it is the effects of separation in marital conflict rather than divorce which constitutes a crisis for the child. Therefore, whether or not divorce is introduced, we urgently need

to consider how we might respond to the many Irish families for whom separation may become a reality."[44]

(h) That divorce is not the source of financial hardship to parties whose marriage has broken down. Such financial hardship results from the need to finance two separate homes, which in turn results from the need to live separate and apart. The forming of a relationship with a third party can either ease or exacerbate such financial difficulties.

7.8.12 **Arguments Against Divorce**

The following, in our view, is a synopsis of the main arguments presented to us against the introduction of divorce and against the holding of a referendum to facilitate such introduction. It is argued:

(a) That the introduction of a divorce jurisdication would as it were open the flood gates and that the rate of divorce and the incidence of marital breakdown would be greatly increased. In other words, the introduction of divorce, rather than contributing towards a solution of the problem of marital breakdown, would merely cause multiplication of it.

In support of this argument it was suggested that it was the experience of practically every modern state in the western world which has introduced divorce on the grounds of irretrievable breakdown that the rate of divorce has multiplied, in some cases several times over.

> "I think our view would be — we know very often from certain experience — that there are many incidents of marital breakdown but what concerns us basically is, in the light of evidence we have of experience in other countries, would the price we would pay in society be too high if we institute divorce legislation? In trying to solve the problem of a vulnerable society would we be opening the door to a further deterioration in the State, in the family and in our society? That is the point that concerns us."[45]

(b) That the introduction of divorce would fundamentally change the nature and perception of marriage by making it into a temporary as opposed to a permanent union between a husband and wife. The effect of this is to undermine the institution of marriage and the family and since the family is the fundamental unit of society, it is said that society itself is undermined and destabilised.

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[44]Submission by Royal College of Psychiatrists Irish Division Child Psychiatry Specialist Section.

[45]Mr Seán Byrne — oral submission of the Order of the Knights of St Columbanus.

"Marriage in Canon Law is seen as a covenant by which a man and a woman establish a partnership of their whole life which by its own nature is ordered towards the wellbeing of the spouses and towards the procreation and upbringing of children. Its essential properties are unity and indissolubility (cf. Cans. 1055 and 1056)."[46]

(c) That the introduction of divorce would reduce the protection at present given to the institution of marriage and the family under Article 41 of the Constitution.

(d) That the introduction of divorce would cause persons who were having difficulties in their marriage to work less hard at achieving a solution to those difficulties. In this respect it is pointed out that only a minority of marriages collapse and that to extend the facility of divorce and remarriage might undermine the stability of successful marriages.

"Divorce, once introduced, cannot be withdrawn. And it is to be feared that, once it was available as a solution (as a safety valve, so to speak), there would be little real urgency and little real energy devoted to the effective support of marriages through proper education, material support measures and adequate remedial help."[47]

(e) That the introduction of divorce would have a detrimental effect on child development and would increase the number of children whose upbringing is damaged by the fact that they come from a broken home. In this respect it is pointed out that the process of the disintegration of a marriage is a traumatic experience for children of all ages and that they suffer because of it. However, if one of the parents remarries it is argued that the situation is exacerbated in that the children have to cope with the problem of forming new relationships with step-parents and step-brothers and step-sisters. Sometimes this can result in conflicts of loyalty and emotional tension between children and new and former parents.

"Apart from objections of principle and religious belief, it is our view that the hard evidence internationally indicates that divorce is not an acceptable solution to the question of marriage breakdown or disharmonies. The problems caused by the initial divorce

[46]Submission by members of the Dublin Regional Marriage Tribunal.
[47]Submission by the Commission for the Laity.

and the subsequent legal interpretations and implications for wives and children make it clear that divorce far from being a remedy nearly always exacerbates the difficulties."[48]

(f) That women and children suffer financial hardship as a result of the introduction of divorce. This argument is based on the proposition that in general it costs more to look after two homes and two families than it costs to look after the original home and family. An inevitable reduction in the standards of living of the parties involved must take place. As the wife often obtains custody of the children she is financially in a particularly vulnerable position, being unable to take up full-time employment. It is suggested that the reality of divorce would be that the wife and children of the broken marriage would lose out financially and have to suffer the consequences of a reduced lifestyle.

> "To introduce divorce into the Republic where divorce has been unknown since the establishment of the Free State in 1922, would be an interference with the existing constitutional rights of spouses and their children to the protection and security of indissoluble marriage, rights of inheritance etc. A withdrawal of these valuable rights, which were guaranteed to the partners and children of existing marriages, would be unjust and intolerable."[49]

(g) That the introduction of divorce would be contrary to the religious views of the vast majority of the people residing in the Republic of Ireland and contrary to the teachings of the Church of which the overwhelming majority of the population of the Republic of Ireland are members.

> "Divorce would have a disastrously destabilising effect on Irish society. We suspect that this would happen here faster than in neighbouring countries."[50]

The Committee is of the view that the best way to discuss the strengths and weaknesses of these various arguments is in the context of an analysis of the possible effects of firstly the retention of the current constitutional position and secondly the removal of the present constitutional ban on divorce.

7.8.13 **Effects of retaining the current constitutional position:**

If the changes which the Committee believes to be necessary in other Chapters of this report are implemented it can be anticipated that persons entering into marriage in the future and some of those who are now married may be afforded

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[48]Submission of the Christian Family Movement.
[49]Submission by Irish Family League.
[50]Submission from the Familia Group.

a greater hope of stable and harmonious marriages. Changes such as the provision of improved education for relationships, an increase in the age for marriage, community based support for marriage and the provision of more extensive marriage counselling can be expected to, at the very minimum, slow down the rate of increase of marriage breakdown and, hopefully, will substantially reduce that rate.

7.8.14 It is, however, recognised by the Committee that the implementation of its proposals in this area will have little, if any, impact in effecting a reconciliation between couples whose marriages have already irretrievably broken down. One of the difficulties in dealing with this whole area is that there is no accurate computation of the numbers of marriages which have actually broken down.

The highest estimate which has been put to this Committee is that 36,000 marriages have broken down in Ireland[51] to date. This estimate would represent approximately 6% of the total number of marriages if it is correct. Figures available from the Central Statistics Office suggest that the figure could be considerably lower than this.

Figures obtained from the 1981 Census of Population conducted by the Central Statistics Office show a return of 14,117 persons who categorised themselves as neither married nor single. This category would include persons who obtained divorces in other countries but also included a number of persons whose legal status appeared to be married, but were separated.

The 1983 Labour Force Survey, also conducted by the Central Statistics Office, provided an estimated figure for separated persons as 8,300 males and 12,800 females. A further 5,500 males and 10,900 females were estimated to be married but not usually resident with the other spouse. In 1984 approximately 8,100 women were receiving deserted wives' benefit or allowance.[52]

Even if a marriage failure of 6% were accepted it should be noted that this would still leave Ireland with the lowest figure for marriage breakdown in Europe. While some comfort can be taken from this fact, nonetheless it must be recognised that there are a significant number of people who find themselves in a situation of marriage breakdown. Further even with the improvements which we hope will take place it is inevitable that some marriages will continue to break down.

7.8.15 It would also appear to be inevitable that some of the persons whose marriages have irretrievably broken down will form relationships with third parties. At the moment the parties to such a relationship, and any children of the relationship, are afforded little or no legal protection. In order to remedy

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[51]Estimated by the Divorce Action Group in their submission to the Committee.

[52]See Appendix C.

the problems which they encounter, and to put their relationships on a footing which gives to the parties involved and the children the type of legal protection which the law provides by way of statute in the case of married couples, the parties are in effect thrown back on drawing up contracts between themselves which set out their mutual rights and obligations. Such contracts can be of some assistance in the area of maintenance but the parties still find themselves in a considerably inferior position to that of a married couple who have all the enforcement procedures contained in the Family Law (Maintenance of Spouses and Children) Act, 1976. There must be some question whether such contracts would be contrary to the constitutional protection afforded to the family and for this reason contrary to public policy. This view would call into question the enforceability of such agreements.

In relation to protection from violence or abuse the parties must rely on the law in regard to injunctions rather than the more effective and comprehensive legislation in regard to Barring Orders.

7.8.16 The making of mutual wills can give parties to such a second relationship some succession rights but such rights are subject to the rights of their spouse or children under the Succession Act, 1965. In normal circumstances the maximum benefit that can be obtained by a surviving member of a second relationship upon the death of the other party to that relationship is one-half of the estate of the deceased, where the deceased had no children by his marriage, or two-thirds where there were children of the marriage. Even this two-thirds, however, will be shadowed by any claim made by the children of the marriage for part of their parents' estate pursuant to the provisions of Section 117 of the Succession Act, 1965.

7.8.17 The Committee recognises that if the current law remains unchanged there will be a significant number of persons, whose marriages have broken down, who are obliged to resort to alternative forms and mechanisms[53] in second relationships, in order to extend the appearance of a "marriage" to their relationship. In the context of the present legal situation these efforts are doomed to be at best partially successful. However, it has been suggested that most of the problems experienced by persons in such second relationships can be relieved by the enactment of appropriate legislation. For example, it was pointed out that the abolition of the concept of illegitimacy would be a substantial step forward. It was also suggested that legislation could be enacted to provide appropriate rights to maintenance and protection by way

[53]Such alternative forms or mechanisms can take the form of (a) The making of mutual wills (b) The signing of a deed poll (c) Obtaining a foreign decree of divorce (d) Obtaining a Catholic Church annulment and subsequent "remarriage" in Church.

of a Barring Order in respect of the members and the children of such relationships.

7.8.18 The problem with such an approach, in the view of the Committee, is that it would appear that there would be great difficulty in defining what type of relationship, and which persons involved in a relationship, should be covered and protected by the suggested legislation. For example, should the protection of such legislation be extended to a person who has formed a relationship for a short period of time, perhaps a number of weeks, with a party whose marriage has broken down? A question must arise whether it would be necessary to give evidence of a stable relationship, extending over a certain period of time, before such legislation could be invoked and if such a condition is to be necessary how such a stable relationship is to be defined. Also such legislation would have to deal with the difficult question of the relative priority which is to apply, between the spouses and children of the marriage of a party, and the partner and children of any subsequent relationship of that party. The nature of such a priority could make the protection in regard to matters of finance and succession more illusory than real. In any event such legislation could only extend legislative protection, as opposed to constitutional protection, which covers the members of a family based on marriage. For these reasons it is the view of the Committee that simple legislative reforms cannot adequately solve the problems at present experienced by parties to a relationship, one or both of whom is still legally married to another person.

7.8.19 The Committee feels that it is inevitable in the context of the retention of the current constitutional position in relation to divorce that many adults, whose marriages have irretrievably broken down, will form stable permanent relationships with other men and women and, that the parties to such relationships and the children of such relationships, will continue to lack any adequate legal status and protection. The parties to such relationships will be unable to remarry even though they may wish to do so and this fact, at least in their eyes, will in all probability appear to be harsh, unnecessary and unjust. It is also recognised by the Committee that representatives of most of the minority religions in this country, who made submissions to the Committee, sincerely believe that the current constitutional position discriminates against members of their churches and religions and presumably they will continue to hold this belief as long as the present position continues.

7.8.20 **The effect of removing the current constitutional ban on divorce legislation**

The Committee is satisfied that it is impossible to say with any degree of certainty exactly how many people would apply for decrees of divorce if

divorce legislation were enacted. One of the difficulties in this regard is the lack of any definite statistics as to the exact extent of marital breakdown in this country. There are a number of factors from which it is argued that there would not be a flood of divorce applications. Since the vast majority of people in the country are members of religions that actively disapprove of divorce, it can be expected that a certain proportion of persons who have experienced marital breakdown would not be anxious to avail of the remedy of divorce on account of their religious beliefs. Also, even on the highest figures presented to the Committee it would appear that the rate of marital breakdown in this country is lower than that of any other country in western Europe. Experience in other countries, where the majority of citizens are Catholics, and in which divorce has been introduced, for example, Portugal, has been, that following an initial large number of applications for divorce, the numbers of applications have not continued at the same high level. This would seem to indicate that the large number of applications immediately following the introduction of divorce reflects applicants whose marriages had broken down, perhaps for many years, and who were, up to then, unable to avail of the remedy of divorce. It should be borne in mind, however, that it is very dangerous to predict what might occur in this country from the experience of other countries.

7.8.21 Further, it is argued that regard must be had to the fact that legislation can have a profound effect upon human behaviour and that changes in legislation in this area could produce a significant change in patterns of behaviour that have been applicable up to this time. It is the view both of the Committee and of a great majority of those who made submissions to it, that divorce rates of the kind that prevail in other countries would not be desirable in this country. Marital breakdown figures in this country have not as yet reached the level of those in other countries in the western world and, it is to be hoped that, given the type of positive support and active help for marriages which this Committee suggests in other Chapters, such levels would not be reached.

7.8.22 It has been suggested to the Committee that one of the consequences of the deletion of the prohibition on divorce from the Constitution would be that the protections and safeguards for the institutions of marriage and the family would be weakened. In the Committee's view, such protections and safeguards can take a number of distinct and yet interlinked forms. The first means by which the State can safeguard marriage is by upholding the protection of marriage and the family which is enshrined in our Constitution. Secondly, such protection can be given in a practical way, by the introduction of measures to provide better preparation for marriage, and by the provision of proper back-up services with suitable facilities, to help married couples

who are experiencing difficulties. The Committee has already expressed the hope that such increased practical help will be made available. Finally, the State can safeguard marriage by the introduction of suitable legislation aimed at preventing the causes of marital breakdown. A clear example of such legislation would, in the Committee's view, be the introduction of an Act to raise the minimum age for marriage.

7.8.23 At present clear constitutional protection for the institution of marriage and the family based on marriage is provided in Article 41 of the Constitution. It is worthwhile at this stage to quote in its entirety the text of Article 41:

> Article 41.1.1°: The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptable rights, antecedent and superior to all positive law.
>
> Article 41.1.2°: The State, therefore, guarantees to protect the Family in its Constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
>
> Article 41.2.1°: In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
>
> Article 41.2.2°: The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.
>
> Article 41.3.1°: The State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack.
>
> Article 41.3.2°: No law shall be enacted providing for the grant of a dissolution of marriage.
>
> Article 41.3.3°: No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage dissolved.

7.8.24 This Article is the fundamental basis of the various legal protections enjoyed by the family. It has been the bulwark which has from time to time been relied upon to prevent discrimination against the family as an institution. It has been urged on this Committee that any amendment of the Constitution which might be proposed to allow the introduction of divorce legislation should ensure that the rights of the family as set out in Article 41 are not diminished. The Committee accepts this view and is of the opinion that any such amendment should be drafted in such a way as to ensure that the basic emphasis of Article 41 is not altered; it should continue to place a duty on the State to protect the family and the institution of marriage, and to recognise the family as the natural primary fundamental unit of society.

7.8.25 If divorce were to be introduced, the Committee believes that it would not be sufficient merely to remove the negative prohibition on divorce contained in Article 41.3.2° of the Constitution because it would be still possible for the remainder of Article 41 to be relied upon, to have any such divorce legislation struck down as being unconstitutional. If a referendum were to take place the Committee believes that the proposed amendment to the Constitution should not simply ask whether the Constitutional prohibition on divorce contained in Article 41.3.2° of the Constitution should be removed or should be retained. To ensure that no constitutional ambiguity results from any such referendum, the Committee is of the view that any amendment to be voted upon should be in a positive format, replacing the present Article 41.3.2° with a provision, specifically authorising the Oireachtas to legislate for the dissolution of marriage.

7.8.26 **Opinions of the Committee**

The current constitutional position cannot be changed without a referendum being held. For such a referendum to be held enabling legislation would need to be enacted by the Oireachtas. Having regard to the many submissions and arguments heard by the Committee the question arises as to whether a referendum should be held.

7.8.27 The Committee feels that it is important to state clearly that support for the holding of a referendum does not necessarily imply support for divorce. It is perfectly logical and reasonable for a person to hold a view that a referendum on the question of whether or not the Oireachtas should have the power to introduce legislation for divorce, should take place, whilst at the same time holding the view that any such legislation would be unnecessary or undesirable at this time. For example, a person may for personal or religious reasons dislike the concept of divorce yet feel that it is the democratic right of the people to decide on the issue. Equally the Committee feels that it is open to a person to believe that divorce legislation is necessary or desirable

in this country but that a referendum would not be appropriate at this time, perhaps on the ground that such a referendum would have divisive effects in the community or from a belief that such a referendum would be doomed to defeat at this time.

7.8.28 Most of the submissions made to us when dealing with the question of divorce have concentrated on the arguments for and against divorce legislation but in many cases they do not deal separately with the arguments for and against the holding of a referendum. A number of facts can be identified in relation to the holding of such a referendum. It is almost 48 years since the present Constitution came into force. Since then the Irish people have never been afforded a democratic opportunity to express their views as to whether they wish the current constitutional prohibition on divorce to be retained. Many people in this country are affected by the problem of marital breakdown. Strong arguments can be made both for and against the introduction of a divorce jurisdiction and a national debate is currently in progress about this question. It is likely that this debate will continue regardless of whether or not it is in the context of an actual referendum to reform the Constitution. Since Article 41.3.2° constitutes an absolute bar on the enactment of any divorce legislation, any move towards the introduction of divorce requires constitutional change which in turn requires the holding of a referendum. It is necessary, however, to balance against these considerations the fact that the holding of a referendum on the question of divorce is likely to be socially divisive, in that deep divisions of opinion exist in the community in respect of this issue. Such divisions are already apparent to some extent with certain groups taking up a pro and anti divorce stance.

7.8.29 Having considered submissions and bearing in mind the factors set out above, the Committee is of the view that a referendum should be held; this was a decision of the majority of the Committee. A minority of the Committee believes that this matter should be decided by the Oireachtas as a whole without a recommendation from the Committee.

So as to ensure that no constitutional ambiguity results from any such referendum, the Committee feels that any amendment to be voted upon should be in a positive format.

7.8.30 The Committee is also of the view that any amendment should be drafted in such a way as to ensure that the basic emphasis of Article 41 is not altered, in that the Article should continue to place a duty on the State to protect the family and the institution of marriage and to recognise the family as the natural primary and fundamental unit group of society.

7.8.31 The outcome of a referendum is a matter for the people. By that

outcome they will decide whether the Oireachtas should be free to introduce divorce legislation in this country.

7.8.32 The Committee has decided that it will not express any views on the wider question of whether divorce legislation is either necessary or desirable in the State at present. Some members of the Committee are of the belief that a view should be expressed as to whether divorce legislation is either necessary or desirable. From the internal discussions of the Committee it is clear that it would not be possible to reach a consensus on this question. The Committee believes, however, that by setting out the arguments for and against divorce and by analysing those arguments in the context of the effects of the introduction or non-introduction of divorce we have made a useful contribution to this debate, so as to assist members of the Oireachtas and the general public in reaching an informed view in regard to this important question. The Committee feels that it can also further this process by analysing the nature of any possible divorce legislation.

7.8.33 **The nature of possible divorce legislation**
The Committee believes that it would not be appropriate or feasible for it to recommend the details of any divorce legislation which might be provided in the event of a change in the Constitution. However, having heard and received detailed submissions from a wide variety of groups, organisations and individuals, the Committee feels that it should indicate its view as to what should be the main feature of any such legislation. The Committee is of the opinion that the situation of divorce on demand would not be appropriate in this country and would not be acceptable to the people. Adequate safeguards must be built into any legislation to take account of the State interest in fostering and protecting marriage and the family. Also the Committee feels that there is an obvious need to ensure in any such legislation that proper provision is made for the protection of dependent spouses and the welfare of dependent children who might be affected by the grant of a decree of divorce. The Committee sees these factors as essential in considering any divorce legislation.

7.8.34 The constant theme in the opinions and observations of this Committee has been the need as far as possible to reduce the adversarial element in marriage breakdown. The Committee consequently feels that any divorce law should be based on the concept of marital breakdown. The Committee believes that this approach would reduce the acrimony and bitterness and would assist separated parents in the continuing relationship between themselves and their children.

7.8.35 The Committee has already discussed the concept of irretrievable

breakdown in the context of judicial separation. If judicial separation and the dissolution of marriage are both to be granted on the basis of irretrievable breakdown, then it would appear logical that there should be some link between the two reliefs. The Committee believes that the grant of a decree of judicial separation should be a first step, whereby a person could apply after a fixed period of time, from the granting of a judicial separation, for a decree of divorce.

This approach would have a number of advantages. To see the remedy of judicial separation as a first step, which spouses would be required to negotiate as a prerequisite to petitioning for a decree of divorce, would have the effect of giving time to the parties to consider their respective positions and the implications for any children of the marriage. Further there would be a period of time after the judicial separation had been obtained, for all the parties affected to become accustomed to the new situation in which the family finds itself, before either spouse could obtain a divorce or remarry. Also the basis upon which the parties are to live separate and apart would be decided at the date of the judicial separation. This would ensure that the interests of the dependent members of the family and particularly the children would be protected from an early stage.

Chapter 8

Mediation

8.1 A recurrent theme in many of the submissions made by various groups to the Committee is the need for some form of mediation service to be available to parties involved in marital disputes. This positive attitude to mediation would seem to reflect a shared feeling held by many groups and organisations involved in different aspects of marital breakdown that an alternative approach should be available to husbands and wives who wish to resolve matters on the basis of consent rather than conflict.

8.2 The Committee is aware that confusion can be caused by using terms which sound the same, but which have different meanings. "Reconciliation" and "Conciliation" exemplify this and, for this reason, the Committee has adopted the term "mediation" — which has the same meaning as conciliation.

8.3 The Purposes of Mediation

Conciliation — which as has been stated above, has the same meaning as mediation — is defined in the Finer Report[1] on one-parent families as "the process of engendering common sense, reasonableness and agreement in

[1]Report of the Committee on One-parent Families CMND. 5629 (1974) P. 183.

dealing with the consequences of estrangement" and "assisting parties to deal with the consequences of the established breakdown of their marriage". A more practical definition of what is involved in mediation is contained in the report of the Inter-Departmental Committee on Conciliation[2] when it says "conciliation means some kind of structure, scheme, or facility for promoting a settlement between parties". It is clear from these definitions that mediation is about promoting agreement and reducing disagreement. A number of points should, however, be noted about these definitions:

(1) Mediation accepts that the parties' marriage has broken down: therefore it is a completely different concept to reconciliation which involves helping couples to overcome their difficulty whereby they reach an understanding which allows their marriage to continue.

(2) These definitions convey the idea that the parties should be responsible for resolving their disputes themselves, as opposed to decisions being made for them by a third party. Mediation represents a desire to move control over the management of disputes from outside agencies, to the parties immediately involved, while minimising the intervention of outside professionals such as lawyers.

(3) The aim of mediation is to deal with specific problems caused by breakdown. It does not attempt to improve the relationship between the parties or to effect a reconciliation, but seeks to minimise the stress and bitterness resulting from a broken marriage and to assist couples to deal with the consequences of breakdown. It may also provide the basis for continued interaction and co-operation between the spouses particularly where conflict between a couple will remain ongoing.

8.4 In a recent article dealing with mediation in family disputes four theoretical models for the resolution of family disputes have been identified.[3] These are:

(a) Simple bilateral negotiations — this occurs when the parties to the dispute attempt to reach a resolution through simple bilateral discussion without the intervention of third parties.

(b) Supported negotiations — this is similar to bilateral negotiation except that the parties have the assistance of outsiders in the negotiation. Such outsiders can be informal, such as a relative or friend, or more formal, such as a legal adviser. Sometimes the outsider can

[2]Report on Inter-Departmental Committee on Conciliation HMSO 1983 P. 2.

[3]Mr. Simon Roberts, Reader in Law, London School of Economics. Mediation in Family Disputes Vol. 46, Modern Law Review, Sept. 1983 P. 543.

take over the negotiation and act as a "champion" on behalf of one of the parties. In such cases the outcome of negotiations may be determined by the strength and quality of the assistance which each party is getting.

(c) Mediation — in this case the structure of the dispute is changed by the introduction of a third party who intervenes to act from a position of neutrality, to help the parties towards an agreed outcome. The third party provides a forum and ground rules for negotiation. He or she may further assist the parties by helping them to formulate their position, identify options and outline the consequences of those options and the possible consequences of their failing to reach agreement.

(d) Umpiring — the essential departure in terms of structure is that the power to decide the resolution of the dispute is given to a third party. The Umpire can be a judge or an arbitrator privately agreed between the parties. Procedures can be formal or informal and can be inquisitorial or adversarial in nature. In some cases the decision reached by the Umpire can be imposed by force as in the case of court decisions.

8.5 The Committee is of the opinion that model (c), a mediation structure, has advantages for dealing with situations of marital breakdown for the following reasons:

(1) It enables the parties to retain greater control over the conduct and the outcome of their case. The reaching of decisions is a mutual responsibility, and decisions made on such a basis are likely to be of a higher quality and have a greater chance of being satisfactorily implemented.

(2) It allows the parties' individual interpretation of their differences to be taken into account.

(3) It provides a degree of support which can result in the parties modifying their view of the dispute and what they see as fair. It can lead to a situation of more "give and take" between husband and wife.

(4) It encourages the husband and wife to focus on the interests of the family as a whole. Mediation can alert parents to the fears and needs of their children in a situation of breakdown. Appropriate action and reassurance by the parents can greatly reduce the trauma of breakdown for children.

(5) It establishes a pattern of communication between the husband and wife which will help in regard to future negotiations.

(6) It avoids the bitterness which is often engendered by legal proceedings; and

(7) It can reduce the expense, delay and costs involved for persons whose marriages have broken down. It can also help reduce the cost to the State brought about by marital breakdown by a reduction in the number of court cases, with a concurrent saving in administrative expenses and legal aid costs.

8.6 It is worth focusing in somewhat more depth on how the process of mediation can further the welfare of children who are affected by the breakdown of a marriage. The sudden unexplained departure of one parent can have a traumatic affect on children.[4] Trust in their parents and in adults in general can be greatly affected. Often parents are so taken up with their own dispute that they fail to give the necessary care and reassurance to the children. Mediation can ensure that the parents are alerted to these dangers at an early stage. Also in some cases parents choose to fight out their marital battles through their children. Mediation offers an opportunity to discuss the future of the children directly without involving the children in the dispute. In certain circumstances the views of the children can be taken into account by the mediator meeting them informally. It is obviously easier to have a greater element of flexibility in a custody or access arrangement worked out by agreement rather than under a court order. Such flexibility is in the interest of all the parties. Finally, custody and access arrangements worked out through mediation are more likely to reassure both parents that they will each continue to have a role in the upbringing of the children.

8.7 The Structure of a Mediation Service

There are a number of elements that should be incorporated into any mediation structure:

- (1) It should be designed in such a way as to allow the parties to reach their own resolution of their difficulties. This will require a considerable amount of time, skill and patience. For this reason it will be necessary that sufficient time be available to allow what may often be a slow process of agreement to emerge;

(2) The Mediation Service should attempt to ensure that the parties have recourse to it as early as possible in the dispute. It is easier to

[4]See remarks of Lisa Parkinson, "Concilation, Pros and Cons" 1983 Family Law Page 24.

establish contact between the parties before entrenched positions are taken up; and

(3) Access to the service should be quick and simple; a breakdown of a marriage presents immediate problems which cannot be left to fester while the husband and wife wait for an appointment to visit a mediator.

8.8 Having regard to the experience of conciliation schemes in England, there are three basic means by which mediation can be offered:

(1) An independent mediation service.
(2) Mediation through the Court Welfare Service.
(3) Mediation by a Judge or someone in a quasi-judicial capacity.

An Independent Mediation Service

8.9 The Committee is of the view that such a mediation service should be used at an early stage, and preferably before any question of court proceedings has arisen. It should be staffed by specialists whose sole function would be to attempt mediation and to provide a resolution by agreement. In England, such independent service exists in different areas, sometimes on foot of local initiative, which can lead to difficulties as regards consistency of approach, levels of staffing and organisation. Since no such service[5] is available in this country, the Committee sees no reason why one independent agency to cover the country could not be established. People should have direct access to the service, without a need to be referred by any other person, organisation or agency.

Mediation through the Court Welfare Service

8.10 This type of mediation is classified as "in court" mediation, inasmuch as access to the service takes place after the initiation of court proceedings. A very practical difficulty in relation to such an approach in this country is the limited nature of the Welfare Service attached to the courts. Even if a proper Welfare Service attached to the Family Court is organised, it is very likely that such a Welfare Service will have as one of its chief functions to prepare independent reports for the courts on family circumstances. It is unlikely that persons will enter into mediation, if they have a suspicion, however unwarranted, that what they say or do will be reported in any court proceedings. Also persons may have an irrational fear of disclosing matters to a statutory agency, for fear that an agency may take punitive action against them, for example by the taking of children into care.

[5]The Marriage and Family Institute, North Fredrick Street, Dublin provides a limited mediation service.

Mediation by a Judge or someone in a Quasi-Judicial Capacity

8.11 This type of service would again be another aspect of "in court" mediation. It involves a judge or someone with judicial authority trying to mediate between the parties on specific legal issues. One of the difficulties with this type of mediation is that the parties may be intimidated by the status of the mediator and the surroundings in which the mediation takes place. Most people see judges as persons who make decisions. This, in itself, could make it difficult for persons who attend a mediation meeting with a judge, to understand that it is up to them to reach a solution. It is very easy, particularly in the case of a judge, who is not skilled or suited to the task, for such mediation to become a form of adjudication. It must be very doubtful whether it would be possible for sufficient time to be set aside in a court system for effective mediation to take place. As one commentator has noted—

> "A strong case can be made for keeping mediatory forms of intervention quite separate from the places and personnel of the law".[6]

This is particularly the case in this country where many who have been involved in situations of marital breakdown, see the courts, for better or for worse, as hopelessly adversarial in nature and have little confidence in their ability to deal in any reasonable manner with marital breakdown.

Opinions of the Committee

8.12 From an examination of these three possible structures, the Committee is of the view that an independent mediation service is the most attractive. The Committee sees no reason why such a service could not interact with other organisations and services, both statutory and voluntary. This approach would have practical advantages. Persons attending marriage counselling who come to a conclusion that they wish to separate could be immediately referred to the mediation service before relations between them deteriorate further; equally if during mediation meetings a prospect of reconciliation emerges, referral to the marriage counselling service could then take place. It would be necessary, however, for each service to be autonomous and have due regard to the differing functions and goals of each of the other services.

Scope of a Mediation Service

8.13 In its code of practice for conciliation services, the National Family Conciliation Council, the umbrella organisation for independent conciliation services in England, makes it clear that mediation is a process which is most appropriate for dealing with custody and access disputes.[7] The code of practice

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[6]Simon Roberts "Mediation in Family Disputes" 46 Modern Law Review Sept. 1983 Page 557
[7]Published Law Society Gazette.

provides that mediation may include only outline discussion on issues of finance and property where these are inextricably linked with issues concerning the children. The reason for this limitation in the scope of the service would appear to be that questions of finance and property sometimes raise difficult legal issues and also involve disclosure of information by spouses in relation to resources which may not be accurate. While there are obviously difficulties in regard to mediation in relation to financial and property matters, on balance it would appear that these difficulties are not insurmountable.[8] It is inevitable that the mediator will have to have a good working knowledge of the law in regard to marriage breakdown. Also the parties to the mediation will continue to receive independent legal advice from their solicitors and obviously each party would discuss the implications of any financial or property arrangements that were being proposed, with their legal adviser. It would appear to be going too far to rule out issues of finance and property from the functions of a mediation scheme. Practical difficulties in regard to access to reliable information about the resources of each party may mean that mediation in these areas will not be as fruitful as in the areas of custody and access.

Staffing

8.14 While the Committee observes that no formal mediation service exists in the State, the principle of mediation as a means of resolving disputes is well established and probably universal at an informal level. In this country it has been normal for certain categories of people to mediate between persons in dispute. When one recognises this fact it becomes apparent that one does not have to be a professional or an expert to have the capacity to mediate.

8.15 The following elements have been identified in a recent article as being necessary in persons carrying on mediation:[9]

(1) Never to give emotional support to one party to a dispute at the expense of the other.

(2) To encourage both sides to express their true feelings while ensuring that the points made by each are listened to and understood.

(3) To ensure that the discussions remain focused on the issue.

(4) To control and limit heated exchange so that, whilst anger and distress are acknowledged they are not allowed to overwhelm the proceedings.

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[8]See the comments of William Duncan, Lecturer in Family Law, Trinity College, in his Paper "Conciliation and the Legal Process in Ireland."

[9]Gwynn Davis, Research Fellow in the Department of Social Administration in the University of Bristol. "Conciliation and the Professions" — 1983 Vol 13 Family Law P.6

(5) To adhere to the parties' understanding of their differences rather than imposing an interpretation upon them.

(6) To be willing to offer clarification and restatement in respect of positions.

To these the Committee wishes to add two further attributes:

(1) A mediator should adopt a non-judgmental view of the parties and their conduct.

(2) The manner in which the mediation is carried out should be non-directive, allowing the parties scope to find their own solutions.

8.16 To establish a mediation service in this country the Committee believes that it will be necessary to recruit a core group of full-time workers to establish the service and to train others in the skills of mediation. A combination of full-time professionals and part-time volunteers would appear to give the best hope of intermingling learnt skills with practical experience. Such an approach, which would continue the tradition of voluntary involvement in regard to support services for marriage in this country, would reduce the cost of setting up and running a mediation service.

It is vital, however, that proper training should be available to those willing to act as mediators as it would be highly undesirable if well-meaning but unskilled volunteers were allowed to take on the delicate role of mediator. Training should be provided with a view to bringing out and cultivating the qualities necessary in a mediator, which we have attempted to list above.

The role of mediator is a difficult but rewarding one and every effort must be made to ensure that not only adequate training but also adequate facilities are available to those willing and able to carry out the task. This may well involve the allocation of considerable resources to the new service as it will be necessary to provide suitable comfortable accommodation in which mediation meetings can take place.

It must also be a truly national service providing skilled help and assistance to those whose marriages have broken down, at a local level without the necessity of travelling long distances, which might militate against the chances of a successful conclusion.

8.17 Finance

The setting up and organisation of a national mediation scheme will obviously entail a considerable expenditure by the State. Such expenditure must be considered in the light of reduced State expenditure in other related spheres. Such saving is most likely to occur in regard to reduced legal aid costs brought about by fewer applications to the court. The Committee believes that access

to the service should not be governed by the financial resources of those who need help. The Committee is, accordingly, of the view that this service should be provided free of charge to participants.

Cumbersome means-tests or entry requirements would not be acceptable and the Committee believes that the effect of this service would, by reducing the number of the couples who need to go to court at present to resolve their marital difficulties, realise a saving to the State in terms of legal and administrative costs.

8.18 Methods of Referral

In a recent paper entitled "Conciliation and the Legal Process in Ireland" it has been noted that

> "One of the problems with voluntary out-of-court conciliation is the relatively low referral rate. Such a scheme is likely to be by-passed by many couples whose disputes may nevertheless be amenable to conciliation".[10]

The author cites the example of a Custody Mediation Project in Denver in the United States where it was found that at least one-half of those eligible did not accept mediation. It is obviously highly desirable that if a mediation service is introduced, it should be used as widely as possible. An obvious method of ensuring such widespread use is to make participation in a mediation scheme a compulsory preliminary step before a person could apply to have a family dispute resolved in court. Coercion would appear to be contrary to the concept of mediation. As one commentator has noted:

> "The first requirement for effective conciliation is the voluntary participation of both parties."[11]

To force persons to go through a meaningless charade would be likely to undermine the whole basis and effectiveness of a mediation service. The Committee is of the opinion, nevertheless, that active steps should be taken to inform parties of the existence and the nature of the mediation scheme and to positively encourage them to avail of it.

8.19 The mediation service should be publicised and promoted as the obvious avenue for those who are dealing with the consequences of their broken marriage. To achieve this end it will be necessary that the existence and the nature of the service should be widely publicised and that it should be perceived by those with such problems as an attractive and satisfactory

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[10]William Duncan, a lecturer on Family Law, in Trinity College. "Conciliation and the Legal Process".
[11]Lisa Parkinson, "Bristol Courts Family Conciliation Service" — 1982 Vol 12 Family Law. P. 13.

option. Extensive publicity in regard to the scheme should also be aimed at those who regularly deal with different aspects of marital breakdown. It is to be hoped that persons such as lawyers, social workers, doctors, counsellors and staff in Community Information Centres will refer persons to the mediation service. Every effort should be made to ensure that people first have contact with the service which can help them to reach a solution by agreement, before they become involved in seeking a legal remedy. Even at this stage when persons have become involved in the legal system, either by seeing a solicitor or by instituting proceedings, every possible step should be taken to divert them into a mediation service.

8.20 The attention of the Committee has been drawn to services of a similar nature which exist in England and, in particular, the Bristol Family Court Conciliation Service. One of the main contributing factors to the acknowledged success of the Bristol Scheme has been the active support and encouragement given to it by members of the legal profession in the area. It is to be hoped that a similar degree of co-operation will be forthcoming in this State. Many of the solicitors in the Bristol area refer cases to that scheme and they have found that this has a beneficial effect for all concerned. In a recent article concerning the Bristol Scheme it has been noted that

> "... the triangular relationship between clients, solicitors and conciliators can enable all concerned to work more productively and economically on what might otherwise be intractable problems".[12]

Such active co-operation could be furthered by the introduction of a statutory obligation on solicitors when first instructed by a client in regard to a situation of marital breakdown. This obligation would be to inform the client of the existence of a mediation service and of the possible advantage to him or her of using such a service rather than going to court.

8.21 The Committee believes that another source of referral for a mediation service should be the courts themselves. The originating document in family proceedings should contain a paragraph informing the parties about the mediation service, what it is and why it could assist them by reducing bitterness and saving costs. Adjournments of cases should be readily available if both parties wish to attend mediation and judges should have a discretion to adjourn cases at their own volition to give the parties who wish to do so, the chance to make use of the mediation service.

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[12]Lisa Parkinson, Training Officer for the National Family Conciliation Council. Bristol Courts Family Conciliation Service — 1982 Vol 12 Family Law Page 13.

8.22 The Interaction between the Mediation Service and a Family Court

"When a husband and wife negotiate about custody of and access to children and about maintenance and property rights, they do so, not in a vacuum but in the shadow of the law."[13] That shadow must be reduced to a minimum, so that it does not prevent that process of negotiation from reaching a fruitful conclusion. If the parties to mediation are afraid that what they say, or what they offer to do, at a mediation meeting, will be brought up at a later stage in court, it is very unlikely that they will approach the mediation process in an open manner, likely to lead to a resolution. The parties must be sure that what takes place during mediation is a private matter between them and the mediator. To this end it will be necessary that all communications between spouses in the context of the mediation process must be privileged. This will mean that evidence of what has taken place at a mediation meeting cannot be given in court without the consent of both of the parties. Also the mediator should not be a competent or compellable witness in any family proceedings between the parties; this will ensure that the mediator cannot give evidence in such proceedings.

The basic concept of mediation is that the parties to a broken marriage should be allowed to find their own solution to their difficulties, with the help of a trained mediator. However a question arises how far this freedom to make their own arrangements should go and where and when the law should step in to modify or alter those arrangements. The answer to this question would appear to lie in the principle that, in general, the law should intervene in this area as little as possible.

A simple and inexpensive procedure should exist to allow parties who have reached an agreement through mediation to have this agreement noted and accepted by the Family Tribunal. In carrying out this function the Family Tribunal should act on a principle of minimal judicial intervention. As has been pointed out by Mr. William Duncan in his article on Conciliation and the Legal Process in Ireland[14]

> "It would seldom help the child for the court to impose a solution which the parents do not want. Is it not at any rate a proper function of parents, rather than the State to take responsibility for decisions about their children? One view is that the State only has a right to interfere with the parents' wishes in cases where the child is at risk".

This would appear to be a sensible approach which would ensure that the legal process would not undermine the whole concept of mediation. At any

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[13]William Duncan "Conciliation and the Legal Process in Ireland".
[14]Delivered by William Duncan in Trinity College, Conference on Conciliation.

rate, decisions reached through a process of mediation would by their nature be liable to change at a later date, either through further mediation or, if necessary, through proceedings in court. The parties who engage in mediation should see the agreement that results from that mediation as binding upon them, not because of any legal obligation, but because that agreement reflects a solution come to by both of them.

8.23 The Success of Mediation

Recent surveys show that the level of success in the independent mediation scheme in Bristol is quite high.[15] In custody disputes agreement on all contested issues was reached in 58% of cases while the figure was 54% in disputes over the dissolution of marriage. Taking an overall view of all referred disputes agreement on all contested issues was reached in 35% to 40% of cases. When considering these statistics however one must remember that almost any approach will work most of the time, when dealing with marriage disputes. At the moment the vast majority of cases are "settled" without the requirement of a court hearing. What is really important, as was pointed out by Mr. Gwynn Davis in his article[16] on "Conciliation and the Professions" is the timing and quality of the settlement. In many respects this is a private assessment which can only be made by the parties involved. The important factor in this situation is that the parties themselves should be satisfied with the negotiated settlement. A distinction must be drawn between a settlement and a real resolution of a dispute. The Committee is of the view that it is more likely that such a real resolution will result from a negotiated agreement through mediation.

8.24 An efficient national mediation service working in the type of environment outlined by the Committee can provide a constructive method for those who are coping with the consequences of a broken marriage to find a real solution with the minimum possible distress and upset. The Committee believes that the introduction of such a service, in liaison with counselling services, would be a major step in dealing with the problems which are caused by marriage breakdown.

[15]Gwynn Davis "Conciliation of Litigation" L.A.G. Bulletin April 1982 Page 11.
[16]Gwynn Davis "Conciliation and the Professions" — 1983 Vol 13 Family Law Page 6.

Chapter 9

Towards a New Family Court Structure

9.1 In the previous chapter the introduction and format of a mediation service was discussed. No matter how successful and attractive such a mediation service may be, it is unfortunately inevitable that a certain proportion of cases will still require an adjudication. The primary emphasis in dealing with marriage problems should be to assist the parties to reach a resolution of their difficulties by agreement. Given this approach, every case in which it becomes necessary to have an imposed decision made by a court or other outside agencies, must be seen to be a failure. The approach of a court in family cases must be designed to limit the detrimental and damaging effects of such failure for the husband and the wife but most importantly for the children of the marriage. This will require the introduction of structures and procedures which keep bitterness and dispute to a minimum, while still, even at this late stage, attempting to foster agreement. The Committee is of the view that a unified Family Court is necessary.

9.2 **The Objectives of a Family Court**

The main objectives of a Family Court should be as follows:—

(1) To provide a sympathetic means for the taking of decisions in regard to family disputes, which causes the minimum disruption and upset for the members of the family.

(2) To safeguard the welfare of children affected by marriage breakdown or family difficulties.

(3) To reduce the adversarial element inherent in the resolution of family disputes.

(4) To provide a uniform approach in the adjudication of family disputes.

(5) To minimise the costs involved in family proceedings.

9.3 The Structure of a Family Court

At the moment the District Court, the Circuit Court and the High Court all have different types of originating jurisdiction in regard to family matters while the Circuit Court, the High Court and the Supreme Court also have an appellate jurisdiction in such cases. The practical effect of this multiplicity of court jurisdiction is that a large number of judges and justices hear and determine family cases in the course of their work. This leads to a great disparity in the manner in which the cases are heard, and the decisions that are reached. Different aspects of a family dispute are sometimes being dealt with at the same time in different courts. The type of court documentation required varies from court to court and from application to application. It would appear that the manner in which family cases are dealt with has little foundation in logic, but rather has developed in a haphazard way over the years.

9.4 It is the opinion of the Committee that a new court system must be established with full and exclusive power to deal with all types of family cases.

The objectives, procedure and atmosphere of this body should be different from that of any ordinary court. It should sit at different locations throughout the country to hear family matters. Under the present constitutional structure, the Committee has been advised that, to set up such a body with full and exclusive powers, it is necessary that it should form part of the High Court. Whilst it would for legal and constitutional purposes form part of the High Court, it should not operate as just another court, but have a completely separate and unique structure, suited to the purposes for which it is established. If the status of a High Court should prove an insurmountable bar to the new body carrying out its objectives in a suitable manner and at a reasonable cost, then special constitutional provision must be made for such a body to allow it to perform its functions in the best possible manner. In particular the status of a High Court must not be allowed to stop those with marital problems from having easy and inexpensive access to a remedy. Since the concept of a court is off-putting to many, this new structure should be referred to other than as a court, perhaps with a title such as "The Family Tribunal".

9.5 **Staffing**

The new body must be staffed with a sufficient number of judges to ensure that family cases are heard fully and speedily and at locations which are reasonably convenient to the parties. The number of judges needed will, to a large extent, be governed by the demands upon the service. Judges should be appointed solely to hear family cases and different criteria should be applied in selecting judges for this purpose. Consideration should be given to the capacity of a potential judge to carry out the objectives of a new tribunal, to have a real understanding of the types of difficulties with which he or she is dealing and in particular to hear such cases in a compassionate and sympathetic way. Broadening of the present statutory requirements to become a judge may be necessary to allow for the appointment of suitable candidates and considering the onerous duty they will perform, consideration should be given to limiting such appointment to a fixed period of years.

9.6 The Committee feels that suitable training should be provided to give both judges and lawyers who regularly deal with family law matters a proper insight into the social and psychological aspects of the type of cases that occur. The skills and experience of experts such as child psychiatrists, social workers and marriage counsellors must be harnessed and made available to those who take on the obligation to act and make decisions in such cases, so that they are better able to appreciate the problems which occur and the appropriate remedies.

9.7 **A Welfare Service**

One of the most disturbing aspects of the present court structure for dealing with family cases is the total lack of any proper in-court welfare service. The majority of family cases are heard without the benefit of any professional evidence and without any investigation of family circumstances by an independent agency. Decisions made in such a vacuum are much more likely to be unsatisfactory; the subjective evidence of both spouses is a very unreliable basis on which to decide the future of a family. Full social work reports, together with, where necessary, supplemental psychiatric evidence, should be a normal feature in family cases.

9.8 The Committee is of the opinion that a comprehensive welfare service should be attached to the new Family Tribunal. This welfare service should be staffed by social workers, preferably with experience in dealing with marital difficulties. The service should, *inter alia*,

(a) carry out investigations into family circumstances on behalf of the court,

(b) report to the court on family circumstances,

(c) arrange for the provision of further professional advice, such as the assessment of children by a child psychiatrist or psychologist,

(d) help the parties with the practical difficulties resulting from their marital problems such as child care and finance,

(e) provide referrals to other agencies, such as mediation and suitable counselling, and

(f) provide support and assistance for the members of the family, especially children, during and after the determination of the proceedings.

9.9 It is to be expected that a representative of the welfare service should be present during the hearing of all family cases.

9.10 **Accommodation**

At the moment many family cases are heard in inadequate and unsuitable accommodation. Hearings take place in the same buildings as ordinary cases, the difference being that the court is cleared of members of the general public. Some judges and justices hear family cases in their chambers, an indication in itself of the unsuitable nature of the accommodation available. Often there are no suitable consultation facilities and parties end up seeing their solicitor in the street or in the foyer of the court. In the Dublin area there is a purpose-built District Court for the hearing of family cases, but no such facility exists in the rest of the country. A specially-designed building provided for the hearing of High Court family law cases in Dublin is not fully used due to problems with the ventilation of the building. A court-room which was intended for the hearing of family cases in the Circuit Court in Dublin is again no longer used due to difficulties of design, in particular that the walls are so thin that evidence could be overheard. Urgent attention should be given to the provision of more suitable facilities.

9.11 The actual environment in which family cases are heard is very important to those involved in such cases. For this reason, the Family Tribunal, which the Committee envisages, must operate in proper accommodation. The Committee feels such accommodation should have a number of features:

(a) It should be private.

(b) It should seek to reduce the hostile and intimidating atmosphere of a normal court-room. This could be done by having all parties sitting around the table rather than having the judge in an elevated position, with the opposing parties seated behind their respective legal teams.

(c) There should be adequate facilities for parties to see their advisors and in which they await the hearing of their case. It is often upsetting for people to have to wait around outside the court, within sight of

their spouse, and in such a manner that it is obvious to others, that they are there in relation to a family law matter; and

(d) Ancillary facilities to see social workers attached to the court should be available.

9.12 It will obviously be necessary for the Family Tribunal to sit at various locations throughout the country and this will require the use of existing facilities. In some cases it may be found that court-house accommodation can be used successfully for this purpose; other types of accommodation, however, may be more easily adapted, for instance, conference rooms or meeting rooms in suitable community facilities. It will be essential that the Tribunal sits in as many centres of population as possible to ensure easy access to the service. In the more densely populated areas, specialised facilities should be made available on a permanent basis, providing a suitable atmosphere for such hearings.

9.13 **Procedure**

At present commencing a family case can be a difficult and expensive matter. The type of documentation involved differs from court to court and in relation to the remedy sought. The Committee has inspected a cross-section of the documents normally used in family cases and it is apparent that they are generally complex and intimidating in nature and use a type of language and format which is off-putting and unintelligible to most people. The degree of difficulty and complexity of the paperwork would appear to increase from District Court to High Court. While District Court forms in family cases are usually short and easy to understand, they are open to criticism in that little or no information is given as to the nature of the case that a person will have to meet.

9.14 Given that all remedies in family matters will be available in the new Tribunal, the Committee sees no reason why the one type of form should not be used when seeking any such remedy. This will reduce the amount of paperwork which occurs at present. The purpose of the standard application form should be to:

(a) state the remedy sought,

(b) give the grounds on which the application is based, and

(c) indicate to the recipient of the form the steps that he or she should take.

The format and wording should be as simple and straightforward as possible. Rather than discussing parts of such a document, we have included a possible draft in Appendix F.

9.15 The manner in which family cases are heard must also be modified, with the aim of reducing the formal adversarial nature of such proceedings. An obvious step in this direction would be the abolition of the wearing of wigs and gowns by judges and counsel. Cases will continue to follow the same basic format as at present — one side presenting their case and the other side attempting to meet and rebut it. To this end, witnesses for each side will give evidence and will be open to cross-examination. It would appear to be advisable that this manner of hearing where each side is responsible for presenting its own case should continue. However, the damaging effects of this means of progress should be lessened, if possible. This could be achieved by giving general discretion to the judge to waive the normal rules of evidence if this is desirable in the interest of justice. This should allow for a greater degree of informality and flexibility in the hearing of such cases. A further step in this direction would be achieved by allowing the judge to play a more inquisitorial role; for instance, the judge could have the power to direct that further evidence, other than that produced by the parties, should be heard by the court.

9.16 Family cases are an exception to the general rule that court proceedings in this country are heard in public; this general principle is given constitutional expression in Article 34.1 of the Constitution. The reasons why family proceedings are dealt with in private, sometimes referred to as *in camera*, is that frequently evidence in the cases refers to personal and intimate aspects of the parties' lifestyle. If such matters were dealt with in open court, many who have a just cause of action might be deterred from proceeding further. One of the fears often expressed to lawyers at an initial consultation is that the marital difficulties will become public knowledge. *In camera* hearings do, however, have a detrimental side-effect. Public scrutiny is the natural enemy of arbitrariness and injustice in a legal system. Our courts, while hearing family cases, have operated without this salutary check. When decisions are made in private, members of the general public can often misunderstand what takes place in the court. This can diminish confidence in the fairness of the administration of justice in this particular field.

9.17 As we have previously stated, the Committee sees the establishment of a Family Tribunal as a new beginning. It is vital that this new system of dealing with marriage problems has the confidence of all. This system must not only operate in a fair and effective manner but must be seen to do so. The Committee agreed that written court judgements in such cases should be available publicly, should be designed to ensure anonymity of the parties and should exclude the reporting of names or any other details which might cause the parties to be identified.

9.18 **Costs**

There is little doubt that the costs of resolving marital disputes through the legal process constitute a major burden on persons obliged to have recourse to the system. The Committee has been informed that the legal costs involved in taking an average family case through the various steps to a one-day full hearing in either the Circuit or the High Court could be in the region of £1,000 to £2,500. This level of legal costs is a major disincentive and in many cases effectively prevents people obtaining the remedy they require. The Committee is of the view that the emphasis in marital disputes will shift from outside adjudication to the parties seeking a settlement through mediation and negotiation. This, in itself, should lower the cost of finding a solution for many. The simplification of the procedure in the new Tribunal should lead to a reduction in legal costs and allow more persons to represent themselves if they wish. Every effort must be made to reduce the cost of resolving marital disputes. The Committee sees no point in having an efficient and sympathetic Tribunal if many of those in need cannot afford to avail of it.

9.19 No matter how much legal costs are reduced people will still exist who cannot afford to pay from their own resources for legal help. Access to justice must be available to all irrespective of their means. For this reason there must be a comprehensive system of civil legal aid in respect of family matters. The present system of Government Law Centres is quite inadequate to meet existing needs. The deficiencies in the legal aid scheme are particularly noticeable in country areas. A fundamental reassessment of the legal aid scheme and its means of operation is now urgently required. The experience of its operation since its establishment suggests that the present structure is grossly inadequate, in that it certainly does not assure equality of treatment for all. The committee is also of the view that there should be no stamp duty on court documents in family cases and that VAT should not be payable in respect of legal fees incurred in family law cases.

9.20 Until now family cases have been relegated to an inferior position in a legal process totally unsuited to their resolution. In the future they must be treated as a special area which requires a fundamentally different approach and structure for their determination. The changes which are outlined will greatly reduce the trauma and distress for those trying to resolve marital difficulties and will constitute a better, more sympathetic and less expensive method of handling such problems. In our view such changes would be of immense benefit to those experiencing family problems and would be a concrete step towards protecting the welfare of such families.

Chapter 10

Summary of Opinions of Committee

Chapter 3

The Protection of Marriage and Family Life

Education

The Committee is of the opinion that:

The State should ensure that a cohesive and comprehensive educational programme designed to prepare people for marriage is provided within the present educational system. (*Paragraph 3.1.4*)

Anyone wishing to marry should have access to a premarriage guidance service, and they should be encouraged to avail of such a service. (*Paragraph 3.1.7*)

Counselling

The Committee is of the opinion that an easily accessible and effective counselling service should be available to married persons, and in particular to persons who are experiencing marital difficulties. (*Paragraph 3.2.3*)

The Age for Marriage

The Committee is of the opinion that:

Consideration should be given to the introduction of a 3 month "waiting period" in Civil Law between the time a couple decide to marry and the date of marriage. (*Paragraph 3.4.8*)

That the minimum age for marriage should be raised from 16 years to 18 years. Marriage of persons between 16 years and 18 years should be permitted if the prior consent of any guardian or guardians and the prior consent of the court is obtained. Any marriage of a person under 18 years, without the necessary consent, should be considered null and void. (*Paragraph 3.4.7*)

Chapter 4

Marriage Breakdown

Environmental Factors

The Committee is of the opinion that there is a need for a campaign of awareness to be launched by the State in regard to the question of the abuse of alcohol and drug abuse, including the excessive use of some proprietary anti-depressant and other prescribed drugs. (*Paragraph 4.3.11*)

Chapter 6

Statistics

The Committee criticises the unavailability of comprehensive statistics relating to marriage breakdown in the State and is of the opinion that any future census should seek to ascertain precisely the extent of marital breakdown in the State, as manifested by separation or desertion. (*Paragraph 6.4*)

Chapter 7

The Legal Remedies

Nullity

The Committee is of the opinion:

That legislation should be introduced to up-date the law of nullity in the following ways:—

> Mental illness at the time of marriage which causes an inability to understand the nature of marriage and its obligations should continue to be a ground of nullity which renders a marriage void.
>
> Mental disorder of such a nature as to render a person incapable of discharging the essential obligations of marriage, should be a ground of nullity which renders a marriage voidable. A definition of mental disorder

should be set out in such legislation in accordance with the principle discussed by the Committee in paragraph 7.1.21.

That the following grounds should continue to render a marriage void under the general heading of lack of capacity in addition to mental illness:

(a) Where one or other party is, at the date of the marriage, a party to a prior existing marriage.

(b) Where one or both parties are under age.

(c) Where the parties are within the prohibited degrees of a relationship.

(d) Where the parties are of the same sex.

That the Act to prevent the marriage of lunatics should be repealed.

That the formalities for validly marrying should be simplified, uniformly applicable, and given clear legislative force. Wilful non-observance of the simplified formalities should render a marriage null and void.

That a separate part of the church ceremony of marriage should be set aside, in which the civil aspect of marriage is clearly set out.

That defective consent should render a marriage void in circumstances of mistake, duress, fraud, or misrepresentation, as are at present accepted under the law of nullity.

That impotence existing at the time of marriage, resulting in an inability to consummate the marriage, should continue to render a marriage voidable.

That the court should have a discretion to refuse to grant a decree of nullity where justice requires, on the grounds of impotence.

That wilful refusal to consummate should render a marriage voidable.

That the court should be empowered to grant a decree of nullity on the grounds of the impotence of the petitioner, without the need for repudiation of the marriage by the other party.

That a grant of a decree of nullity should not render the children of the parties declared illegitimate.

That the court should be empowered to grant ancilliary orders relating to guardianship, custody and maintenance, when granting a decree of nullity. (*Paragraphs 7.1.16, 7.1.21-7.1.26*)

Separation Agreements

The Committee is of the opinion that persons in a situation of marital breakdown should firstly be informed of the availability of a counselling and/or

mediation service. In the event of such advice not being acted upon, or in the event of such counselling and/or mediation not being successful, they should before being advised to institute legal proceedings be apprised of the possibility of entering into a separation agreement unless the circumstances are such that legal proceedings must be instituted as a matter of urgency. (*Paragraph 7.2.10*)

Judicial Separation

The Committee is of the opinion that:

Irretrievable breakdown should be the one overall ground for the grant of a decree of Judicial Separation. (*Paragraph 7.3.8*)

The court should be satisfied that such irretrievable breakdown has taken place if the applicant proves any one of the following:

(a) That his or her spouse has behaved in such a way that the applicant cannot reasonably be expected to co-habit with that spouse.

(b) That his or her spouse is guilty of adultery.

(c) That his or her spouse is in desertion or is in constructive desertion of the applicant.

(d) That the applicant has been living separate and apart from the other spouse for a continuous period of not less than one year and the other spouse consents to the making of a decree.

(e) That the applicant has been living separate and apart from the other spouse for a continuous period of three years.

(f) That such other facts and/or reasons exist or existed which in all circumstances make it reasonable for the applicant to live separate from and not co-habit with the other spouse. (*Paragraph 7.3.8*)

The court should have an ancillary power to decide who should have the right to live in the family home, as and from the date of the making of a decree of Judicial Separation. In exercising this power the court should be obliged to base its decision on what is in the best interests of the family as a whole, and in the event of a conflict as to the best interests of the various members of the family, the interests of the children should be paramount during their minority. (*Paragraph 7.3.8*)

The court should have an ancillary power to divide the various property or properties of the spouses, between the spouses, upon it making a decree of Judicial Separation and the court should have power to transfer the title of any relevant property as it deems just and equitable. Again the court should be obliged to exercise this power on the basis of the best interests of the family. (*Paragraph 7.3.8*)

The court should be empowered to vary or discharge a spouse's right to succession following the grant of a decree of Judicial Separation, having regard to all the circumstances of the parties, in the context of determining what orders, if any, should be made for the division or transfer of property between the spouses. (*Paragraph 7.3.8*)

The court should have ancillary powers, as are necessary pursuant to the Guardianship of Infants Act, 1964, to ensure that the best interests of the children are protected if a decree of Judicial Separation is made by the court. In particular the court should have the power to decide questions of custody and access. (*Paragraph 7.3.9*)

The court should have an ancillary power to award maintenance pursuant to the provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976, if a decree of Judicial Separation is made by the court. (*Paragraph 7.3.10*)

The defences of recrimination, condonation, connivance and collusion should be abolished. (*Paragraph 7.3.11*)

The court should have power, on the application of both parties, to convert a legal separation agreement into an order of Judicial Separation and any order so made by the court should incorporate the terms of the separation agreement into the decree. In doing so the court should not be entitled to incorporate or impose any terms on the parties not in the original agreement. The court should only convert a separation agreement into a decree of Judicial Separation, if it is satisfied that the terms set out in the separation agreement are just and reasonable and in the best interests of the family and in particular the dependant spouse and children, if any. (*Paragraph 7.3.12*)

The court should have power to discharge a decree of Judicial Separation if both spouses apply to have the decree so discharged. (*Paragraph 7.3.13*)

Maintenance

The Committee is of the opinion that:

Legislation should be introduced to afford persons who are affected by the difficulty of enforcing maintenance awards, an effective means of enforcing such awards. In particular, the State should be empowered to make payments of maintenance to victims of such default and to recoup monies owed by defaulters, with an appropriate system of sanction in the case of continued default. (*Paragraph 7.4.13*)

The parties to a maintenance application should be under an obligation to provide the court with a statement of their income and assets, to assist the

court in determining the level of maintenance to be awarded, if any. (*Paragraph 7.4.16*)

The court should have power to waive the need to prove a failure to maintain, if the exceptional circumstances of the case require it. (*Paragraph 7.4.17*)

Desertion or adultery should be a discretionary bar to maintenance for the applicant spouse, unless the conduct of the defendant is or was such as to make it inappropriate and unfair that he or she should be entitled to rely on the applicant's desertion or adultery. (*Paragraph 7.4.18*)

The factors to be taken into account by the court, under the Family Law (Maintenance of Spouses and Children) Act, 1976, in deciding whether to make a maintenance order, and in deciding the amount of any such order, should be extended to include the following:

(a) The extent of any property transfer orders between the spouses that have been made by this or any other court.

(b) The making by this court or any other court of an order granting the sole right to reside in the family home to either the applicant or the defendant and the need of the spouse who does not have the right to reside in the family home, to provide adequate and suitable accommodation, for himself or herself together with any person with whom they may be living. (*Paragraph 7.4.19*)

Provision should be made to allow the court to award lump sum payments. In making such provision, there is a need to examine this matter in greater depth having particular regard to the need to protect the interests of all parties concerned in determining whether a lump sum maintenance award is appropriate. (*Paragraph 7.4.20*)

It is important that there be as high as possible a degree of judicial uniformity in regard to the level of maintenance awards. (*Paragraph 7.4.21*)

The EEC Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters should be implemented as soon as practicable, as a means of making evasion of payment of maintenance more difficult. (*Paragraph 7.4.22*)

Guardianship and Custody

The Committee is of the opinion that:

Other than in emergency situations, where for reasons of time such reports are not available there should be a statutory obligation on a Judge, in deciding a custody or access matter, to hear suitable evidence from appropriate professional witnesses as to the welfare of the child before deciding the issue. (*Paragraph 7.5.11*)

It is essential that a court when making a custody order should ensure that both parents understand that they remain joint guardians of their children with all that implies and that the parent granted custody understands the necessity of ensuring that children maintain a continuous relationship with the non-custodial parent. (*Paragraph 7.5.13*)

The emphasis in deciding custody disputes, should be on assessing the parenting capacity of each parent and the relationship between a parent and the children while at the same time recognising the need for continuity in the lives of children, particularly young children. (*Paragraph 7.5.14*)

Matrimonial Property

The Committee is of the view that:

A study into the question of the operation of a system of community property should be commenced at the earliest possible opportunity. (*Paragraph 7.6.22*)

A dependant spouse should not be prejudiced in any determination of property rights by the fact that he/she gave up employment in the course of a marriage to attend to duties in the home. (*Paragraph 7.6.23*)

Legislative action should be taken immediately in order to prevent the spirit of the Family Home Protection Act, 1976, from being defeated whereby judgment mortgages can be used to enforce the sale of the family home without the consent of either or both spouses. (*Paragraph 7.6.24*)

Section 5 of the Family Home Protection Act, 1976, should be interpreted in such a manner that a spouse is presumed to intend the natural consequences of his/her action. (*Paragraph 7.6.24*)

It is desirable that there be greater uniformity in judicial decisions in regard to family property. (*Paragraph 7.6.25*)

Barring Orders

The Committee is of the opinion that:

Cases of an irretrievable breakdown of a marriage are more appropriately dealt with by way of another remedy such as judicial or legal separation, rather than the use of a Barring Order. The sole role of a Barring Order should be to afford protection and it should not be seen as the principal legal process in cases of irretrievable breakdown. (*Paragraph 7.7.14*)

In any legislation dealing with Barring Orders the definition of conduct such as gives rise to the granting of a Barring Order, should ensure that Barring Orders can continue to be obtained, where the health, safety and welfare of

the spouse or children is at risk and not only in situations involving physical violence. (*Paragraph 7.7.14*)

A most unsatisfactory aspect of the present structure in regard to the making of Barring Orders is that in practically all cases no help is available through the court structure to resolve the difficulties that have arisen between the spouses. A spouse who is barred from the family home should have access to professional assistance to help him/her form an insight as to why their conduct was unacceptable, and to ensure that similar conduct will not recur. (*Paragraph 7.7.15*)

Divorce

The Committee is of the opinion that:

A referendum should be held in relation to the question whether the Oireachtas should be empowered to introduce divorce legislation. (*Paragraph 7.8.29*)

Any such referendum should be in a positive format, replacing the present Article 41.3.2° of the Constitution with a provision, specifically authorising the Oireachtas to legislate for the dissolution of marriage. (*Paragraph 7.8.29*)

Any such amendment should be drafted in such a way as to ensure that the basic emphasis of Article 41 is not altered, in that the Article should continue to place a duty on the State to protect the family and the institution of marriage and to recognise the family as the natural, primary and fundamental unit group of society. (*Paragraph 7.8.30*)

If any such referendum should be held and should be passed:

(a) A situation of divorce on demand would not be appropriate in this country and would not be acceptable to the people.

(b) It is essential that adequate safeguards must be built into any divorce legislation to take account of the State interest in fostering and protecting marriage and the family.

(c) It is essential that any divorce legislation should make proper provision for the protection of the dependant spouses and the welfare of dependant children who might be affected by the grant of a decree of divorce.

(d) Any such divorce legislation should be based on the concept of marital breakdown.

(e) A decree of judicial separation should be a first step whereby a person could apply after a fixed period of time, from the granting of a Judicial Separation, for a decree of divorce. (*Paragraphs 7.8.33, 34, 35*)

Chapter 8

Mediation

The Committee is of the opinion that:

A mediation service should be established to help spouses resolve the problems caused by the breakdown of a marriage. (*Paragraph 8.5*)

The mediation service should be designed in such a way as to allow the parties to reach their own resolution of their difficulties. (*Paragraph 8.7*)

The mediation service should attempt to ensure that the parties have recourse to it as early as possible in the dispute. (*Paragraph 8.7*)

Access to the mediation service should be quick and simple. (*Paragraph 8.7*)

An independent mediation service is a more attractive option than mediation through the court welfare service or mediation by a Judge or someone in a quasi-judicial capacity. (*Paragraph 8.12*)

Issues of finance and property should come within the ambit of a mediation service as well as questions of custody and access. (*Paragraph 8.13*)

To establish a mediation service in this country, it will be necessary to recruit a core group of fulltime workers to establish the service and to train others in the skills of mediation. The service should be staffed by a combination of fulltime professionals and part-time volunteers. (*Paragraph 8.16*)

Any mediation service established should be a truly national service providing skilled help and assistance at a local level without the necessity of travelling long distances. (*Paragraph 8.16*)

The service should be provided free of charge to participants. (*Paragraph 8.17*)

Active steps should be taken to inform parties of the existence and nature of the mediation service, and to encourage them to avail of this. (*Paragraph 8.18*)

The mediation service should be publicised and promoted as the obvious and apparent avenue for those who are trying to deal with the consequences of a broken marriage. To achieve this end, extensive publicity in regard to this scheme should be made available to those who regularly deal with different aspects of marital breakdown. (*Paragraph 8.19*)

There should be a statutory obligation on solicitors, when first instructed by a client, in regard to a situation of marital breakdown to inform the client of the existence of a mediation service and about the possible advantage to him/her of using such a service rather than going to court. (*Paragraph 8.20*)

The originating document in family proceedings should contain a paragraph informing the parties about the mediation service. (*Paragraph 8.21*)

All communications between spouses in the context of the mediation process should be privileged and to this end a mediator should not be a competent or compellable witness in any family proceedings between the parties. (*Paragraph 8.22*)

A simple and inexpensive procedure should be established to allow parties who have reached an agreement by mediation to have this agreement noted and accepted by the Family Tribunal. (*Paragraph 8.22*)

Chapter 9

Towards a new Family Court Structure

The Committee is of the opinion that:

A new body must be established with full and exclusive powers to deal with all types of family cases. Such a body should form part of the High Court. (*Paragraph 9.4*)

This body should be referred to other than as a court, and should be known as the "Family Tribunal". (*Paragraph 9.4*)

The Family Tribunal should be staffed with a sufficient number of Judges to ensure that family cases are held fully and speedily at a location which is reasonably convenient to the parties. (*Paragraph 9.5*)

Judges should be appointed solely to hear family cases and different criteria should be applied in selecting Judges for this purpose. Broadening of the present statutory requirements to become a Judge may be necessary to allow for the appointment of suitable candidates. (*Paragraph 9.5*)

Consideration should be given to limiting the appointment of a Judge to the Family Tribunal to a fixed period of years. (*Paragraph 9.5*)

Suitable training should be provided to give both Judges and lawyers, who regularly deal with family law matters, a proper insight into the social and psychological aspects of the type of cases that occur. (*Paragraph 9.6*)

A comprehensive welfare service should be attached to the new Family Tribunal. This welfare service should be staffed by social workers preferably with experience in dealing with marital difficulties. (*Paragraph 9.8*)

A representative of the welfare service should be present during the hearing of all family cases. (*Paragraph 9.9*)

Proper accommodation in which to hear family cases should be provided for

the Family Tribunal. In some cases it may be possible to use present courthouse accommodation for the purpose. Suitable community facilities may also be available locally in which the Family Tribunal can sit. (*Paragraph 9.11*)

It will be essential that the Family Tribunal sits in as many centres of population as possible to ensure easy access to the service. In the more densely populated areas, specialised facilities should be made available on a permanent basis providing a suitable atmosphere for the hearing of family cases. (*Paragraph 9.12*)

One type of form should be used to initiate any type of family application. (*Paragraph 9.14*)

The manner in which family cases are at present heard should be modified with the aim of reducing the formal adversarial nature of such proceedings. An obvious step in this direction would be the abolition of the wearing of wigs and gowns by Judges and counsel. (*Paragraph 9.15*)

A Judge sitting in the Family Tribunal should have a general discretion to waive the normal rules of evidence if this is desirable in the interest of justice. Also a Judge sitting in the Family Tribunal should have the power to direct that further evidence other than that produced by the parties should be heard by the Tribunal. (*Paragraph 9.15*)

Written court judgments in family cases should be made available publicly in such a manner as to ensure the anonymity of the parties. (*Paragraph 9.17*)

Every effort should be made to reduce the costs of resolving marital disputes and a shift from outside adjudication to the parties seeking a settlement through mediation and negotiation should help to achieve this goal. This simplification of procedure in the Family Tribunal should lead to a reduction in legal costs and allow more people to represent themselves as they wish. (*Paragraph 9.18*)

A comprehensive system of civil legal aid in respect of family matters should be introduced. (*Paragraph 9.19*)

There should be no Stamp Duty payable on court documents in family cases and VAT should not be payable in respect of legal fees incurred in a family law matter. (*Paragraph 9.19*)

(*Signed*) Willie O'Brien, TD
Chairman of the Joint Committee

27*th March*, 1985

APPENDICES

Chapter 11

Appendices

List of Appendices

Appendix A

List of Witnesses

The following groups and individuals who gave oral evidence to the Committee are listed hereunder:

1. The Presbyterian Church in Ireland
2. AIM—Group for Family Law Reform
3. Order of the Knights of St. Columbanus
4. Dr. J. Dominian, Senior Clinical Psychiatrist, Central Middlesex Hospital
5. Divorce Action Group
6. Family Life Research Centre
7. Irish Commission for the Laity
8. Law Centre Solicitors
9. Barnardos
10. The Workers' Party
11. The Church of Ireland
12. The Royal College of Psychiatrists
13. Law Society Solicitors
14. The Irish Theological Commission
15. The Irish Congress of Trade Unions
16. The Catholic Marriage Advisory Council
17. Gingerbread
18. Family Law Reform Group-Dublin
19. Family Law Reform Group-Cork
20. The Irish Family League
21. The Council for the Status of Women
22. The Dublin Regional Marriage Tribunal
23. DADS against discrimination
24. The Irish Association of Social Workers

The Minutes of evidence of these hearings are published under separate cover.

Appendix B

List of Government Departments, State Bodies and other organisations consulted by the Committee.

Diplomatic Representations
The Embassy of Australia
The Embassy of Canada
The Embassy of New Zealand
The Embassy of the United Kingdom

European Community
The European Commission
The European Parliament

Civil Service
The Office of the Attorney General
The Central Statistics Office
The Department of Education
The Department of the Environment
The Department of Finance
The Department of Foreign Affairs
The Government Information Services
The Department of Health
The Department of Justice
The Department of Labour
The Department of Social Welfare
The Department of the Taoiseach

Local Authorities
Dublin Corporation
Dublin County Council
The Health Boards

State Sponsored Bodies
The Law Reform Commission
The Legal Aid Board
The Medical Research Council
The Medico-Social Research Board
Radio Telefís Éireann

Higher Education
The Royal College of Psychiatrists

University College, Dublin
University of Dublin, Trinity College

Professional Organisations
The General Council of the Bar of Ireland
The Honourable Society of Kings Inns
The Incorporated Law Society
The Irish Congress of Trade Unions
The Psychological Society of Ireland

Social Organisations
AIM—Group for Family Law Reform
The Council for the Status of Women
The Catholic Marriage Advisory Council
The Divorce Action Group
The Economic and Social Research Institute
The Marriage Counselling Service

Appendix C

Statistical Information

The following pages contain statistical data which has been considered by the Committee in its deliberations. The Committee has commented on these statistics at Chapter 6.

The Committee has utilised statistics from a number of sources — the Central Statistics Office, the Departments of Justice and Social Welfare and the Dublin Regional Marriage Tribunal of the Catholic Church. The Committee also reproduces in the following pages extracts from both the 1981 Census of Population and the 1983 Labour Force Survey which are relevant to the Committee's work and an extract from the Eurostat Review, 1972-81.

The Courts Act, 1981 came into force in regard to Family Law matters on the 12th May, 1982. This Act greatly increased the powers of the District Court and the Circuit Court in relation to the types of family law matter that could be heard by these courts. After the 12th May, 1982 the High Court Office refused to accept any summonses under the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children Act) 1976 and the Family Law (Protection of Spouses and Children) Act, 1981 until it was established by a test case in January 1984 that the High Court continued to have jurisdiction to hear applications under these Acts.

The jurisdiction to grant Barring Orders under the Family Law (Protection of Spouses and Children) Act, 1981, which came into effect in or about the end of July, 1981 increased the jurisdiction of the District Court to grant Barring Orders for a period of twelve months and for the first time gave the Circuit Court an originating jurisdiction to grant Barring Orders.

It is common practice for one family case to involve a number of applications under different Acts. For this reason there may be a certain element of duplication in the above figures. Some cases may appear under a number of different categories. The best indicator may be the number of guardianship applications as most cases which go to court as a result of the breakdown of a marriage, involve an application for custody or access.

1. Marriage Rates

Year	'71	'72	'73	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83
Per 1000 population	7.4	7.4	7.4	7.3	6.7	6.4	6.1	6.4	6.2	6.4	6.0	5.9	5.5
Total Marriages	22014	22302	22816	22833	21280	20580	20016	21184	20806	21792	20612	20441	19181

Information supplied by Central Statistics Office

2. Nullity Petitions

Year	'73	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83
No. of Applications	3	8	8	3	11	11	10	16	21	21	33
No. of Decrees	2	4	—	3	1	5	3	10	8	12	—

3. Applications under the Married Women (Status) Act, 1957

Year	'78	'79	'80	'81	'82	'83
No.	114	151	238	269	148	11

4. Divorce *a mensa et thoro* (Judicial Separation) Petitions/ Applications in the High Court

Year	'73	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83
No.	26	51	43	37	29	39	34	27	25	20	8

5.1 Applications for Maintenance Orders in the High Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 (excluding applications to vary existing Orders)

Year	'76	'77	'78	'79	'80	'81	'82
No.	50	148	196	263	370	428	165

5.2 Applications for Maintenance Orders in the Circuit Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 (excluding applications to vary existing Orders).

Year ending	31/7/76	31/7/77	31/7/78	31/7/79	31/7/80	31/7/81	31/7/82	31/7/83
Maintenance Summonses Issued	Nil	Nil	Nil	Nil	1	4	39	297
Maintenance Orders made	3	9	20	28	31	38	18	133

5.3 Applications for Maintenance Orders in the District Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 (excluding applications to vary existing Orders).

Year ending	31/7/79	31/7/80	31/7/81	31/7/82	31/7/83
Maintenance Summonses issued	1,706	1,842	2,095	1,812	872
Maintenance Orders made	—	1,038	1,329	984	483

6.1 Applications for Barring Orders in the District Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 and the Family Law (Protection of Spouses and Children) Act, 1981.

Year	'79	'80	'81	'82	'83
No. of Applications	1,493	1,917	2,225	2,428	1,697
No. of Orders made	508	56	1,188	1,171	848

6.2 Applications for Barring Orders in the Circuit Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 and the Family Law (Protection of Spouses and Children) Act, 1981.

Year Ended	31/7/79	31/7/80	31/7/81	31/7/82	31/7/83
No. of Applications	2	1	6	23	242
No. of Orders made	—	—	—	—	129

7. Applications under the Family Home Protection Act, 1976

Year	'78	'79	'80	'81	'82	'83
No.	83	121	242	341	139	17

8.1 Applications in the High Court under the Guardianship of Infants Act, 1964

Year	'76	'77	'78	'79	'80	'81	'82	'83
No. of Applications	86	182	211	285	379	478	335	1

8.2 Applications in the Circuit Court under the Guardianship of Infants Act, 1964

Year Ending	31/7/81	31/7/82	31/7/83
No. of Applications	8	54	370

(Separate statistics in relation to family law proceedings in the Circuit Court are available only from the year ending 31/7/81—Information supplied by the Department of Justice).

8.3 Applications in the District Court under Guardianship of Infants Act, 1964

Year Ending	31/7/82	31/7/83
No. of Applications	Nil	110

The District Court did not have jurisdiction under the above Act until the commencement of the Courts Act, 1981 on the 12th May, 1982.

9 Applications to the Regional Marriage Tribunals of the Catholic Church for Ecclesiastical Annulments

Year	'76	'77	'78	'79	'80	'81	'82	'83
No. of Applications	732	813	698	567	954	584	580	631
No. of Orders made	79	104	91	75	76	73	83	94

Figures supplied by the Dublin Regional Marriage Tribunal.

10.1 Deserted Wives' Allowance

Year	'76	'77	'78	'79	'80	'81	'82	'83	'84
No. of Wives in Receipt	3,110	3,176	3,022	2,856	2,920	3,063	3,232	3,478	3,653
No. of Dependent Children	3,819	4,140	4,231	3,937	4,174	4,431	4,748	5,220	5,759

10.2 Deserted Wives' Benefit

Year	'76	'77	'78	'79	'80	'81	'82	'83	'84
No. of Wives in Receipt	1,675	1,992	2,215	2,525	2,873	3,124	3,416	3,825	4,403
No. of Dependent Children	3,253	3,630	4,244	4,722	5,394	5,735	6,271	6,922	8,029

Figures supplied by the Department of Social Welfare.

Extracts from the 1981 Census of Population

Table G shows the percentage of the population who were single in different age groups for 1981 and for earlier Censuses, in so far as the figures are available, back to the year 1841:

TABLE G

Percentage Single in certain Age Groups—1841 to 1981

Year	Age group						
	15-19 years	20-24 years	25-34 years	35-44 years	45-54 years	55-64 years	65 years and over
Males							
1841	†	†	43.3*	15.4*	10.0*	†	†
1851	†	†	60.7	20.9	11.6	†	†
1861	99.8	91.9	56.8	23.9	14.3	11.1	11.7
1871	99.8	92.6	57.3	25.5	16.4	12.7	12.2
1881	99.9	94.1	62.0	27.1	16.4	13.4	12.0
1891	99.9	95.8	67.3	33.0	19.7	15.6	13.8
1901	99.9	96.3	71.8	38.3	23.8	18.2	15.5
1911	99.9	96.6	74.5	44.5	28.6	22.7	17.7
1926	99.9	96.0	71.7	45.0	31.4	26.2	20.5
1936	99.9	96.2	73.8	44.2	33.5	28.2	23.6
1946	99.8	95.0	70.4	43.0	32.1	30.0	25.4
1951	99.9	94.9	67.4	40.5	31.0	28.8	26.6
1961	99.8	92.5	58.0	36.2	29.7	28.1	26.7
1966	99.7	89.6	49.8	33.4	29.1	27.7	26.8
1971	99.5	84.6	41.3	28.9	28.1	27.1	26.8
1979	99.3	81.6	34.1	21.1	25.3	26.6	26.3
1981	99.4	82.4	34.2	19.4	23.9	26.3	26.0
Females							
1841	†	†	28.0*	14.7*	11.7*	†	†
1851	†	†	39.1	15.2	11.4	†	†
1861	97.8	76.2	39.1	18.5	13.5	13.3	13.5
1871	98.1	77.7	38.2	19.8	15.2	13.4	14.3
1881	98.8	82.5	41.2	19.2	15.5	13.7	13.7
1891	99.2	86.0	48.1	23.1	16.6	15.8	15.3
1901	99.4	88.0	52.9	27.8	20.0	17.3	17.4
1911	99.5	88.4	55.5	31.0	24.0	20.8	18.5
1926	99.3	87.0	52.6	29.5	23.9	23.6	19.8
1936	99.1	86.4	54.8	30.2	25.1	23.7	22.7
1946	98.4	82.5	48.3	30.0	25.6	24.4	23.3
1951	98.9	82.3	45.6	27.6	25.7	24.7	23.7
1961	98.9	78.2	37.1	22.7	23.1	25.0	24.3
1966	98.4	74.8	31.0	20.4	20.8	24.4	24.8
1971	97.9	68.9	25.7	17.5	18.8	22.0	25.1
1979	97.3	66.3	21.5	12.3	15.7	18.9	23.8
1981	97.7	67.7	21.9	11.4	14.6	18.2	23.2

**Age groupings for 1841 were 26.35, 36-45, 46-55 and 56 and over.*
†Particulars not available.

From about 1936 to 1979 there has been a continuing decrease in the proportion single in virtually all age groups for both males and females. Between 1979 and 1981, however, the proportion single have increased a little for age groups under 35 years, for both males and females. Whether this slight upward movement represents a change in the nuptiality patterns for the younger age groups or merely a temporary short-term pause remains to be seen however. For age groups over 35 years there was a continuing decrease in the proportion single for both males and females.

The trends between 1926 and 1981, in the percentage single in the various age groups in the Aggregate Town and Aggregate Rural Areas are shown in Table H.

Marital Status

In the 1981 Census of Population, returns on marital status were sought on the basis of "present legal status" with provision for four categories—"single", "married", "widowed" and "other status". This latter category was intended to relate only to "persons who had obtained a divorce in another country". However, 14,117 persons (5,116 males and 9,001 females) returned themselves as "Other Status", some of whom gave additional information from which in most instances it appears that the "present legal status" was "married". The 1981 figures contrast with the 1979 Census figure of 7,624 (2,379 males and 5,245 females) and suggests that the increased level of public interest in 1981 concerning this Census question affected the pattern of answering more than in 1979. It was therefore decided to include all persons returning themselves as "other status" with the "married" category in the tabulations but particulars of age distribution and geographic distribution are given in Appendix A for those 14,117 persons returned as "other status".

TABLE F

Population Aged 15 years and over classified by Marital Status 1961-81

Marital Status	Population (000)				Change in Population 1979-81		Percentage Change	
	1961	1971	1979	1981	Actual (000)	Per-centage %	1961-71 %	1971-81 %
				Males				
Single	468.4	465.9	508.4	516.8	+ 8.4	−1.7	− 0.5	+10.9
Married	453.6	514.9	619.9	639.8	+19.9	+3.2	+13.5	+24.3
Widowed	45.8	39.1	37.9	37.3	− 0.6	−1.6	−14.5	− 4.6
Total	967.8	1,020.0	1,166.2	1,193.9	+27.7	+2.4	+ 5.4	+17.1

Females

Single	378.6	374.3	404.8	415.2	+10.4	+2.6	− 1.2	+10.9
Married	468.2	523.1	626.7	648.3	+21.5	+3.4	+11.7	+23.9
Widowed	126.4	129.8	140.6	142.3	+ 1.7	+1.2	+ 2.7	+ 9.6
Total	973.3	1,027.1	1,172.1	1,205.7	+33.7	+2.9	+ 5.5	+17.4

Table F gives information on the total population aged 15 years and over, for the 1961 Census and for each Census since 1971, classified by marital status. It can be seen that between 1979 and 1981 there was an increase of almost 28,000 males and 34,000 females, with about 72 per cent and 64 per cent, respectively, of these increases arising in the married category. In the ten year period between 1961 and 1971 the number of males and females aged 15 years and over increased by 52,000 and 54,000 respectively, in both cases the increases occurred mainly in the numbers married. These increases represented only about 30 per cent of the corresponding increases of 174,000 males and 179,000 females occurring in the following ten year period 1971 to 1981. In the 1971-81 period the rate of increases in percentage terms in the numbers married was about twice that of the previous ten year period for both males and females. In the more recent period the number of single males and females increased by about 11 per cent compared to slight declines in the earlier period. The number of males who were widowed continued to decline during the 1971-81 period while the number of widowed females increased by 12,500 or just under 10 per cent.

TABLE A1

Persons who were returned in the Marital Status Category "Other Status" classified by sex and single year of age.

Age last Birthday	Persons	Males	Females	Age last Birthday	Persons	Males	Females
15 years	1	—	1	60 years	164	60	104
16 years	12	6	6	61 years	166	63	103
17 years	22	11	11	62 years	151	51	100
18 years	39	15	24	63 years	108	38	70
19 years	61	12	49	64 years	139	57	82
20 years	86	25	61	65 years	130	49	81
21 years	113	33	80	66 years	151	43	108
22 years	119	32	87	67 years	147	65	82
23 years	202	58	144	68 years	119	41	78
24 years	240	74	166	69 years	105	44	61
25 years	248	70	178	70 years	97	44	53
26 years	298	89	209	71 years	87	39	48
27 yeara	303	92	211	72 years	69	34	35
28 years	391	124	267	73 years	61	25	36
29 years	356	114	242	74 years	54	21	33
30 years	441	156	285	75 years	75	32	43
31 years	424	147	277	76 years	63	28	35
32 years	468	148	320	77 years	46	19	27
33 years	458	175	283	78 years	45	22	23
34 years	451	169	282	79 years	38	13	25
35 years	453	170	283	80 years	35	20	15
36 years	420	147	273	81 years	26	16	10
37 years	443	171	272	82 years	23	10	13
38 years	365	135	230	83 years	16	7	9
39 years	384	142	242	84 years	26	13	13
40 years	385	142	243	85 years	12	7	5
41 years	383	133	250	86 years	14	9	5
42 years	325	129	196	87 years	3	1	2
43 years	305	104	201	88 years	12	5	7
44 years	338	122	216	89 years	6	3	3
45 years	307	121	186	90 years	5	3	2
46 years	268	113	155	91 years	8	5	3
47 years	291	118	173	92 years	—	—	—
48 years	233	98	135	93 years	2	1	1
49 years	238	83	155	94 years	3	—	3
50 years	217	72	145	95 years	1	—	1
51 years	215	88	127	96 years	—	—	—
52 years	224	95	129	97 years	2	1	1
53 years	237	88	149	98 years	—	—	—
54 years	205	79	126	99 years	—	—	—
				100 and over	1	—	1
55 years	192	71	121				
56 years	186	67	119				
57 years	173	52	121				
58 years	186	70	116				
59 years	201	67	134				
				Total	14,117	5,116	9,001

TABLE A2

Persons who were returned in the Marital Status Category "Other Status" at or over each year of age classified by sex.

Age last Birthday	Persons	Males	Females	Age last Birthday	Persons	Males	Females
15 years and over	14,117	5,116	9,001	60 years and over	2,210	889	1,321
16 years and over	14,116	5,116	9,000	61 years and over	2,046	829	1,217
17 years and over	14,104	5,110	8,994	62 years and over	1,880	766	1,114
18 years and over	14,082	5,099	8,983	63 years and over	1,729	715	1,014
19 years and over	14,043	5,084	8,959	64 years and over	1,621	677	944
20 years and over	13,982	5,072	8,910	65 years and over	1,482	620	862
21 years and over	13,896	5,047	8,849	66 years and over	1,352	571	781
22 years and over	13,783	5,014	8,769	67 years and over	1,201	528	673
23 years and over	13,664	4,982	8,682	68 years and over	1,054	463	591
24 years and over	13,462	4,924	8,538	69 years and over	935	422	513
25 years and over	13,222	4,850	8,372	70 years and over	830	378	452
26 years and over	12,974	4,780	8,194	71 years and over	733	334	399
27 years and over	12,676	4,691	7,985	72 years and over	646	295	351
28 years and over	12,373	4,599	7,774	73 years and over	577	261	316
29 years and over	11,982	4,475	7,507	74 years and over	516	236	280
30 years and over	11,626	4,361	7,265	75 years and over	462	215	247
31 years and over	11,185	4,305	6,980	76 years and over	387	183	204
32 years and over	10,761	4,058	6,703	77 years and over	324	155	169
33 years and over	10,293	3,910	6,383	78 years and over	278	136	142
34 years and over	9,835	3,735	6,100	79 years and over	233	114	119
35 years and over	9,384	3,566	5,818	80 years and over	195	101	94
36 years and over	8,931	3,396	5,535	81 years and over	160	81	79
37 years and over	8,511	3,249	5,262	82 years and over	134	65	69
38 years and over	8,068	3,078	4,990	83 years and over	111	55	56
39 years and over	7,703	2,943	4,760	84 years and over	95	48	47
40 years and over	7,319	2,801	4,518	85 years an over	69	35	34
41 years and over	6,934	2,659	4,275	86 years and over	578	28	29
42 years and over	6,551	2,526	4,025	87 years and over	43	19	24
43 years and over	6,226	2,397	3,829	88 years and over	40	18	22
44 years and over	5,921	2,293	3,628	89 years and over	28	13	15
45 years and over	5,583	2,171	3,412	90 years and over	22	10	12
46 years and over	5,276	2,050	3,226	91 years and over	17	7	10
47 years and over	5,008	1,937	3,071	92 years and over	9	2	7
48 years and over	4,717	1,819	2,898	93 years and over	9	2	7
49 years and over	4,484	1,721	2,763	94 years and over	7	1	6
50 years and over	4,246	1,638	2,608	95 years and over	4	1	3
51 years and over	4,029	1,566	2,463	96 years and over	3	1	2
52 years and over	3,814	1,478	2,336	97 years and over	3	1	2
53 years and over	3,590	1,383	2,207	98 years and over	1	—	1
54 years and over	3,353	1,295	2,058	99 years and over	1	—	1
				100 years and over	1	—	1
55 years and over	3,148	1,216	1,932				
56 years and over	2,956	1,145	1,811				
57 years and over	2,770	1,078	1,692				
58 years and over	2,597	1,026	1,571				
59 years and over	2,411	956	1,455				

TABLE A3

Percentage of persons who were returned in the Marital Status Category "Other Status" at or over each year of age classified by sex.

Age last Birthday	Persons	Males	Females	Age last Birthday	Persons	Males	Females
15 years and over	100.0	100.0	100.0	50 years and over	30.1	32.0	29.0
16 years and over	100.0	100.0	100.0	51 years and over	28.5	30.6	27.4
17 years and over	99.9	99.9	99.9	52 years and over	27.0	28.9	26.0
18 years and over	99.8	99.7	99.8	53 years and over	25.4	27.0	24.5
19 years and over	99.5	99.4	99.5	54 years and over	23.8	25.3	22.9
20 years and over	99.0	99.1	99.0	55 years and over	22.3	23.8	21.5
21 years and over	98.4	98.7	98.3	56 years and over	20.9	22.4	20.1
22 years and over	97.6	98.0	97.4	57 years and over	19.6	21.1	18.8
23 years and over	96.8	97.4	96.5	58 years and over	18.4	20.1	17.5
24 years and over	95.4	96.2	94.9	59 years and over	17.1	18.7	16.2
25 years and over	93.7	94.8	93.0	60 years and over	15.7	17.4	14.7
26 years and over	91.9	93.4	91.0	61 years and over	14.5	16.2	13.5
27 years and over	89.8	91.7	88.7	62 years and over	13.3	15.0	12.4
28 years and over	87.6	89.9	86.4	63 years and over	12.2	14.0	11.3
29 years and over	84.9	87.5	83.4	64 years and over	11.5	13.2	10.5
30 years and over	82.4	85.2	80.7	65 years and over	10.5	12.1	9.6
31 years and over	79.2	82.2	77.5	66 years and over	9.6	11.2	8.7
32 years and over	76.2	79.3	74.5	67 years and over	8.5	10.3	7.5
33 years and over	72.9	76.4	70.9	68 years and over	7.5	9.1	6.6
34 years and over	69.7	73.0	67.8	69 years and over	6.6	8.2	5.7
35 years and over	66.5	69.7	64.6	70 years and over	5.9	7.4	5.0
36 years and over	63.3	66.4	61.5	71 years and over	5.2	6.5	4.4
37 years and over	60.3	63.5	58.5	72 years and over	4.6	5.8	3.9
38 years and over	57.2	60.2	55.4	73 years and over	4.1	5.1	3.5
39 years and over	54.6	57.5	52.9	74 years and over	3.7	4.6	3.1
40 years and over	51.8	54.7	50.2	75 years and over	3.3	4.2	2.7
41 years and over	49.1	52.0	47.5	76 years and over	2.7	3.6	2.3
42 years and over	46.4	49.4	44.7	77 years and over	2.3	3.0	1.9
43 years and over	44.1	46.9	42.5	78 years and over	2.0	2.7	1.6
44 years and over	41.9	44.8	40.3	79 years and over	1.7	2.2	1.3
45 years and over	39.5	42.4	37.9	80 years and over	1.4	2.0	1.0
46 years and over	37.4	40.1	35.8	81 years and over	1.1	1.6	0.9
47 years and over	35.5	37.9	34.1	82 years and over	0.9	1.3	0.8
48 years and over	33.4	35.6	32.2	83 years and over	0.8	1.1	0.6
49 years and over	31.8	33.6	30.7	84 years and over	0.7	0.9	0.5
				85 years and over	0.5	0.7	0.4

TABLE A4

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	State			Leinster		
15-19 years	135	44	91	77	25	52
20-24 years	760	222	538	506	141	365
25-29 years	1,596	489	1,107	1,065	323	742
30-34 years	2,242	795	1,447	1,482	515	967
35-39 years	2,065	765	1,300	1,413	509	904
40-44 years	1,736	630	1,106	1,127	384	743
45-49 years	1,337	533	804	882	340	542
50-54 years	1,098	422	676	687	245	442
55-59 years	938	327	611	576	191	385
60-64 years	728	269	459	443	150	293
65-69 years	652	242	410	360	109	251
70-74 years	368	163	205	192	74	118
75-79 years	267	114	153	144	59	85
80-84 years	126	66	60	68	35	33
85 and over	69	35	34	23	10	13
TOTAL	14,117	5,116	9,001	9,045	3,110	5,935
	Carlow			Dublin Co. and Co. Borough		
15-19 years	1	—	1	58	20	38
20-24 years	11	5	6	367	103	264
25-29 years	14	5	9	801	235	566
30-34 years	5	2	3	1,123	398	725
35-39 years	12	4	8	1,018	355	663
40-44 years	9	4	5	806	262	544
45-49 years	15	5	10	645	245	400
50-54 years	10	3	7	479	161	318
55-59 years	11	5	6	397	124	273
60-64 years	13	3	10	282	89	193
65-69 years	3	2	1	242	67	175
70-74 years	5	1	4	113	46	67
75-79 years	—	—	—	80	26	54
80-84 years	1	1	—	40	15	25
85 and over	—	—	—	16	8	8
TOTAL	110	40	70	6,467	2,154	4,313
	Dublin Co. Borough			Dun Laoghaire Borough		
15-19 years	39	15	24	5	2	3
20-24 years	216	60	156	29	11	18
25-29 years	452	139	313	57	18	39
30-34 years	562	222	340	87	34	53
35-39 years	502	206	296	95	37	58
40-44 years	414	142	272	80	24	56
45-49 years	355	143	212	74	31	43
50-54 years	290	89	201	64	28	36
55-59 years	259	80	179	41	15	26
60-64 years	186	55	131	37	9	28
65-69 years	159	41	118	27	9	18
70-74 years	67	33	34	21	3	18
75-79 years	55	19	36	11	2	9
80-84 years	24	9	15	3	1	2
85 and over	10	6	4	1	—	1
TOTAL	3,590	1,259	2,331	632	224	408

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Dublin*			Kildare		
15-19 years	14	3	11	5	2	3
20-24 years	122	32	90	20	6	14
25-29 years	292	78	214	47	13	34
30-34 years	474	142	332	68	25	43
35-39 years	421	112	309	67	26	41
40-44 years	312	96	216	42	17	25
45-49 years	216	71	145	35	14	21
50-54 years	125	44	81	25	12	13
55-59 years	97	29	68	20	10	10
60-64 years	59	25	34	19	9	10
65-69 years	56	17	39	12	1	11
70-74 years	25	10	15	6	3	3
75-79 years	14	5	9	9	5	4
80-84 years	13	5	8	2	2	—
85 and over	5	2	3	—	—	—
TOTAL	2,245	671	1,574	377	145	232
	Kilkenny			Laoighis		
15-19 years	4	—	4	—	—	—
20-24 years	10	3	7	5	1	4
25-29 years	30	11	19	9	4	5
30-34 years	28	11	17	17	7	10
35-39 years	34	15	19	6	4	2
40-44 years	19	5	14	12	6	6
45-49 years	11	5	6	13	4	9
50-54 years	21	12	9	9	3	6
55-59 years	14	2	12	14	5	9
60-64 years	11	2	9	11	3	8
65-69 years	10	4	6	4	4	—
70-74 years	10	2	8	6	4	2
75-79 years	3	1	2	3	2	1
80-84 years	5	3	2	3	3	—
85 and over	2	2	—	—	—	—
TOTAL	212	78	134	112	50	62
	Longford			Louth		
15-19 years	—	—	—	2	—	2
20-24 years	3	1	2	19	4	15
25-29 years	7	4	3	33	11	22
30-34 years	11	3	8	63	16	47
35-39 years	9	5	4	67	31	36
40-44 years	10	4	6	47	13	34
45-49 years	6	5	1	19	3	16
50-54 years	4	1	3	25	6	19
55-59 years	5	5	—	21	5	16
60-64 years	6	3	3	19	10	9
65-69 years	2	1	1	19	5	14
70-74 years	3	2	1	8	6	2
75-79 years	3	1	2	4	2	2
80-84 years	2	2	—	—	—	—
85 and over	—	—	—	—	—	—
TOTAL	71	37	34	346	112	234

*Excluding Dun Laoghaire Borough.

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Meath			Offaly		
15-19 years	—	—	—	—	—	—
20-24 years	15	4	11	7	2	5
25-29 years	20	5	15	8	2	6
30-34 years	39	16	23	20	5	15
35-39 years	47	19	28	13	5	8
40-44 years	41	18	23	12	6	6
45-49 years	28	11	17	9	5	4
50-54 years	24	12	12	10	5	5
55-59 years	8	3	5	13	5	8
60-64 years	19	7	12	10	6	4
65-69 years	6	2	4	12	3	9
70-74 years	6	2	4	4	—	4
75-79 years	7	5	2	4	3	1
80-84 years	1	1	—	2	2	—
85 and over	1	—	1	—	—	—
TOTAL	262	105	157	124	49	75
	Westmeath			Wexford		
15-19 years	3	1	2	3	2	1
20-24 years	12	1	11	8	3	5
25-29 years	20	8	12	26	13	13
30-34 years	13	3	10	25	5	20
35-39 years	15	4	11	40	10	30
40-44 years	26	13	13	40	14	26
45-49 years	13	6	7	29	14	15
50-54 years	16	5	11	22	10	12
55-59 years	13	7	6	22	10	12
60-64 years	12	6	6	20	6	14
65-69 years	14	5	9	14	8	6
70-74 years	3	—	3	10	—	10
75-79 years	7	4	3	10	4	6
80-84 years	3	3	—	3	—	3
85 and over	1	—	1	2	—	2
TOTAL	171	66	105	274	99	175
	Wicklow			Munster		
15-19 years	1	—	1	42	12	30
20-24 years	29	8	21	180	58	122
25-29 years	50	12	38	405	120	285
30-34 years	70	24	46	547	205	342
35-39 years	85	31	54	443	167	276
40-44 years	63	22	41	422	171	251
45-49 years	59	23	36	304	118	186
50-54 years	42	15	27	273	117	156
55-59 years	38	10	28	252	88	164
60-64 years	21	6	15	180	67	113
65-69 years	22	7	15	182	75	107
70-74 years	18	8	10	108	52	56
75-79 years	14	6	8	62	26	36
80-84 years	6	3	3	29	14	15
85 and over	1	—	1	30	14	16
TOTAL	519	175	344	3,459	1,304	2,155

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Clare			Cork Co. and Co. Borough		
15-19 years	4	4	—	21	5	16
20-24 years	13	5	8	70	22	48
25-29 years	34	9	25	186	59	127
30-34 years	41	15	26	269	100	169
35-39 years	45	13	32	208	89	119
40-44 years	36	13	23	186	74	112
45-49 years	16	8	8	113	47	66
50-54 years	16	9	7	127	50	77
55-59 years	17	7	10	111	41	70
60-64 years	15	6	9	74	28	46
65-69 years	13	5	8	89	35	54
70-74 years	8	5	3	51	23	28
75-79 years	2	1	1	29	8	21
80-84 years	1	—	1	14	9	5
85 and over	2	2	—	12	3	9
TOTAL	263	102	161	1,560	593	967
	Cork Co. Borough			Cork		
15-19 years	11	3	8	10	2	8
20-24 years	38	9	29	32	13	19
25-29 years	93	29	64	93	30	63
30-34 years	127	47	80	142	53	89
35-39 years	82	28	54	126	61	65
40-44 years	90	36	54	96	38	58
45-49 years	55	19	36	58	28	30
50-54 years	54	22	32	73	28	45
55-59 years	47	13	34	64	28	36
60-64 years	25	7	18	49	21	28
65-69 years	32	11	21	57	24	33
70-74 years	16	6	10	35	17	18
75-79 years	7	3	4	22	5	17
80-84 years	2	2	—	12	7	5
85 and over	—	—	—	12	3	9
TOTAL	679	235	444	881	358	523
	Kerry			Limerick Co. and Co. Borough		
15-19 years	1	—	1	6	1	5
20-24 years	21	5	16	37	12	25
25-29 years	40	12	28	76	21	55
30-34 years	60	25	35	92	32	60
35-39 years	43	13	30	87	31	56
40-44 years	51	20	31	68	31	37
45-49 years	34	14	20	65	29	36
50-54 years	33	19	14	51	21	30
55-59 years	27	11	16	33	8	25
60-64 years	17	9	8	33	10	23
65-69 years	24	14	10	17	7	10
70-74 years	14	9	5	14	6	8
75-79 years	8	3	5	10	5	5
80-84 years	—	—	—	3	1	2
85 and over	3	1	2	5	2	3
TOTAL	376	155	221	597	217	380

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Limerick Co. Borough			Limerick		
15-19 years	4	1	3	2	—	2
20-24 years	27	8	19	10	4	6
25-29 years	53	15	38	23	6	17
30-34 years	55	17	38	37	15	22
35-39 years	52	17	35	35	14	21
40-44 years	45	20	25	23	11	12
45-49 years	38	11	27	27	18	9
50-54 years	34	14	20	17	7	10
55-59 years	16	2	14	17	6	11
60-64 years	15	6	9	18	4	14
65-69 years	6	2	4	11	5	6
70-74 years	7	3	4	7	3	4
75-79 years	5	2	3	5	3	2
80-84 years	1	—	1	2	1	1
85 and over	3	1	2	2	1	1
TOTAL	361	119	242	236	98	138
	Tipperary (N.R. & S.R.)			Tipperary N. R.		
15-19 years	6	—	6	1	—	1
20-24 years	20	10	10	9	4	5
25-29 years	35	7	28	13	3	10
30-34 years	42	15	27	17	7	10
35-39 years	26	10	16	11	4	7
40-44 years	40	20	20	14	8	6
45-49 years	40	8	32	21	3	18
50-54 years	21	9	12	7	2	5
55-59 years	34	11	23	12	2	10
60-64 years	24	7	17	9	4	5
65-69 years	21	7	14	11	4	7
70-74 years	10	4	6	4	1	3
75-79 years	10	8	2	5	4	1
80-84 years	7	2	5	4	1	3
85 and over	7	6	1	1	1	—
TOTAL	343	124	219	139	48	91
	Tipperary S.R.			Waterford Co. and Co. Borough		
15-19 years	5	—	5	4	2	2
20-24 years	11	6	5	19	4	15
25-29 years	22	4	18	34	12	22
30-34 years	25	8	17	43	18	25
35-39 years	15	6	9	34	11	23
40-44 years	26	12	14	41	13	28
45-49 years	19	5	14	36	12	24
50-54 years	14	7	7	25	9	16
55-59 years	22	9	13	30	10	20
60-64 years	15	3	12	17	7	10
65-69 years	10	3	7	18	7	11
70-74 years	6	3	3	11	5	6
75-79 years	5	4	1	3	1	2
80-84 years	3	1	2	4	2	2
85 and over	6	5	1	1	—	1
TOTAL	204	76	128	320	113	207

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Waterford Co. Borough			Waterford		
15-19 years	4	2	2	—	—	—
20-24 years	8	1	7	11	3	8
25-29 years	17	9	8	17	3	14
30-34 years	24	11	13	19	7	12
35-39 years	20	5	15	14	6	8
40-44 years	22	8	14	19	5	14
45-49 years	21	8	13	15	4	11
50-54 years	13	4	9	12	5	7
55-59 years	11	3	8	19	7	12
60-64 years	8	1	7	9	6	3
65-69 years	7	3	4	11	4	7
70-74 years	4	2	2	7	3	4
75-79 years	2	1	1	1	—	1
80-84 years	1	—	1	3	2	1
85 and over	—	—	—	1	—	1
TOTAL	162	58	104	158	55	103
	Connacht			Galway		
15-19 years	9	4	5	1	1	—
20-24 years	56	15	41	35	10	25
25-29 years	90	34	56	53	17	36
30-34 years	141	53	88	79	32	47
35-39 years	133	56	77	74	32	42
40-44 years	128	48	80	63	21	42
45-49 years	99	48	51	41	22	19
50-54 years	86	35	51	41	15	26
55-59 years	72	34	38	31	16	15
60-64 years	63	37	26	19	9	10
65-69 years	64	28	36	23	10	13
70-74 years	34	18	16	13	6	7
75-79 years	37	16	21	19	6	13
80-84 years	19	11	8	7	5	2
85 and over	9	6	3	4	3	1
TOTAL	1,040	443	597	503	205	298
	Leitrim			Mayo		
15-19 years	2	—	2	1	1	—
20-24 years	2	1	1	9	2	7
25-29 years	2	1	1	21	9	12
30-34 years	11	4	7	27	10	17
35-39 years	5	1	4	29	11	18
40-44 years	2	1	1	28	12	16
45-49 years	3	2	1	28	12	16
50-54 years	5	2	3	18	11	7
55-59 years	6	4	2	16	9	7
60-64 years	4	3	1	21	11	10
65-69 years	3	2	1	22	10	12
70-74 years	4	3	1	8	4	4
75-79 years	1	—	1	13	8	5
80-84 years	1	1	—	7	3	4
85 and over	1	—	1	2	1	1
TOTAL	52	25	27	250	114	136

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Roscommon			Sligo		
15-19 years	4	2	2	1	—	1
20-24 years	3	—	3	7	2	5
25-29 years	3	1	2	11	6	5
30-34 years	6	3	3	18	4	14
35-39 years	9	5	4	16	7	9
40-44 years	8	2	6	27	12	15
45-49 years	6	2	4	21	10	11
50-54 years	9	5	4	13	2	11
55-59 years	7	3	4	12	2	10
60-64 years	10	10	—	9	4	5
65-69 years	9	4	5	7	2	5
70-74 years	4	3	1	5	2	3
75-79 years	1	—	1	3	2	1
80-84 years	1	1	—	3	1	2
85 and over	1	1	—	1	1	—
TOTAL	81	42	39	154	57	97
	Ulster			Cavan		
15-19 years	7	3	4	2	1	1
20-24 years	18	8	10	3	2	1
25-29 years	36	12	24	3	2	1
30-34 years	72	22	50	19	4	15
35-39 years	76	33	43	15	6	9
40-44 years	59	27	32	7	4	3
45-49 years	52	27	25	11	6	5
50-54 years	52	25	27	10	4	6
55-59 years	38	14	24	7	4	3
60-64 years	42	15	27	8	3	5
65-69 years	46	30	16	8	5	3
70-74 years	34	19	15	9	5	4
75-79 years	24	13	11	7	3	4
80-84 years	10	6	4	2	—	2
85 and over	7	5	2	—	—	—
TOTAL	573	259	314	111	49	62
	Donegal			Monaghan		
15-19 years	4	2	2	1	—	1
20-24 years	14	6	8	1	—	1
25-29 years	26	8	18	7	2	5
30-34 years	43	16	27	10	2	8
35-39 years	41	19	22	20	8	12
40-44 years	42	18	24	10	5	5
45-49 years	31	15	16	10	6	4
50-54 years	33	17	16	9	4	5
55-59 years	24	8	16	7	2	5
60-64 years	21	8	13	13	4	9
65-69 years	27	17	10	11	8	3
70-74 years	23	13	10	2	1	1
75-79 years	13	7	6	4	3	1
80-84 years	6	4	2	2	2	—
85 and over	7	5	2	—	—	—
Total	355	163	192	107	47	60

TABLE A5

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each planning region.

Age group	Persons	Males	Females	Persons	Males	Females
	East			South West		
15-19 years	64	22	42	22	5	17
20-24 years	431	121	310	91	27	64
25-29 years	918	265	653	226	71	155
30-34 years	1,300	463	837	329	125	204
35-39 years	1,217	431	786	251	102	149
40-44 years	952	319	633	237	94	143
45-49 years	767	293	474	147	61	86
50-54 years	570	200	370	160	69	91
55-59 years	463	147	316	138	52	86
60-64 years	341	111	230	91	37	54
65-69 years	282	77	205	113	49	64
70-74 years	143	59	84	65	32	33
75-79 years	110	42	68	37	11	26
80-84 years	49	21	28	14	9	5
85 and over	18	8	10	15	4	11
TOTAL	7,625	2,579	5,046	1,936	748	1,188
	South East			North East		
15-19 years	17	4	13	5	1	4
20-24 years	59	21	38	23	6	17
25-29 years	126	45	81	43	15	28
30-34 years	126	44	82	92	22	70
35-39 years	135	46	89	102	45	57
40-44 years	135	48	87	64	22	42
45-49 years	110	41	69	40	15	25
50-54 years	92	41	51	44	14	30
55-59 years	99	36	63	35	11	24
60-64 years	76	21	55	40	17	23
65-69 years	55	24	31	38	18	20
70-74 years	42	11	31	19	12	7
75-79 years	21	10	11	15	8	7
80-84 years	16	7	9	4	2	2
85 and over	11	7	4	—	—	—
TOTAL	1,120	406	714	564	208	356
	Mid West			Midlands		
15-19 years	11	5	6	7	3	4
20-24 years	59	21	38	30	5	25
25-29 years	123	33	90	47	19	28
30-34 years	150	54	96	67	21	46
35-39 years	143	48	95	52	23	29
40-44 years	118	52	66	68	31	37
45-49 years	102	40	62	47	22	25
50-54 years	74	32	42	48	19	29
55-59 years	62	17	45	52	25	27
60-64 years	57	20	37	49	28	21
65-69 years	41	16	25	41	17	24
70-74 years	26	12	14	20	9	11
75-79 years	17	10	7	18	10	8
80-84 years	8	2	6	11	11	—
85 and over	8	5	3	2	1	1
TOTAL	999	367	632	559	244	315

TABLE A5 (contd).

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each planning region.

Age group	Persons	Males	Females	Persons	Males	Females
	West			North West		
15-19 years	2	2	—	3	—	3
20-24 years	44	12	32	9	3	6
25-29 years	74	26	48	13	7	6
30-34 years	106	42	64	29	8	21
35-39 years	103	43	60	21	8	13
40-44 years	91	33	58	29	13	16
45-49 years	69	34	35	24	12	12
50-54 years	59	26	33	18	4	14
55-59 years	47	25	22	18	6	12
60-64 years	40	20	20	13	7	6
65-69 years	45	20	25	10	4	6
70-74 years	21	10	11	9	5	4
75-79 years	32	14	18	4	2	2
80-84 years	14	8	6	4	2	2
85 and over	6	4	2	2	1	1
TOTAL	753	319	434	206	82	124
	Donegal					
15-19 years	4	2	2			
20-24 years	14	6	8			
25-29 years	26	8	18			
30-34 years	43	16	27			
35-39 years	41	19	22			
40-44 years	42	18	24			
45-49 years	31	15	16			
50-54 years	33	17	16			
55-59 years	24	8	16			
60-64 years	21	8	13			
65-69 years	27	17	10			
70-74 years	23	13	10			
75-79 years	13	7	6			
80-84 years	6	4	2			
85 and over	7	5	2			
TOTAL	355	163	192			

Extracts from the First Results of the 1983 Labour Force Survey

1983 LABOUR FORCE SURVEY

Results

Introduction

This report contains first results from the Labour Force Survey carried out in April/May 1983. A second report will be released in the near future.

As with the 1975, 1977, and 1979 inquiries (1), the 1983 Survey was carried out as part of a simultaneous exercise in all EEC Member States (2), and as such, was partly financed from community funds. Labour force surveys are now carried out annually: interviewing for the 1984 survey took place in April/May of this year.

The Survey was conducted by personal interview with the residents of approximately 40,000 private households, and of 372 non-private households. The sample consisted of some 147,000 persons, or about 4% of the total population. The Central Statistics Office wishes to thank the participating households for their public-spirited co-operation, and the specially appointed field force for their efforts, without which the Survey field work could not have been brought to a successful conclusion.

In addition to basic demographic information such as age, sex, and marital status, a comprehensive range of questions on the subjects of employment, unemployment, and search for work was asked. The data in this report are presented as estimated totals, rather than sample counts or percentage distributions of respondents, and have been reweighted by sex and age group to ensure agreement with independent population estimates.

The Statistical Office of the European Communities also publishes reports on the surveys. These reports contain results derived from the surveys carried out in each of the member states, but there are a number of differences in the estimates published at Community level and those appearing in this report. Firstly, the EEC reports relate only to persons who are the usual residents of private households, and exclude the residents of non-private households. Secondly, in this report the classifications according to principal economic status are for persons aged 15 or over at the time of the Survey, whereas in the Community publication the data include 14 years olds.

Reservations

Although this report contains several tables showing demographic and labour force information of a type analogous to that obtained from Censuses of Population, there are important methodological differences which must be

(1) for the results of these surveys see "Labour Force Survey 1979 results (incorporating detailed revisions to the 1977 and 1975 Survey results), Pl. 113

(2) EEC Regulation No. 603/83

taken into consideration when comparing Labour Force Survey estimates with Census-based data. Census returns are largely self-completed, and the replies are therefore more subjective than those received in the Labour Force Survey, where the interview process allows an individual's situation regarding employment, unemployment, etc. to be ascertained more clearly.

In addition, when interpreting the results of the Labour Force Survey it must be borne in mind that the estimates are derived from a sample of about one in twenty households, and are therefore subject to sampling errors. In general, the magnitude of this error, in percentage terms, is lower for the larger and more widely spread estimates, such as the total at work, and is greater for smaller, more concentrated estimates, such as for instance, the number unemployed in a particular age-group is a given region.

In order to provide as much information as reasonably possible, the estimates have been shown in somewhat more detail than the sample size warrants. All estimates are shown to the nearest hundred but this should not be taken as implying a corresponding level of accuracy. In the reports of previous labour force surveys any estimates less than 1,000 were suppressed. The change of approach adopted in this report is purely one of presentation and should not be construed as representing any improvement in the underlying levels of accuracy.

Caution should also be exercised when comparing the results of this Survey with those of the 1981 Census of Population and of the previous Labour Force Surveys. Apart from the methodological differences referred to above, it must be remembered that the sampling error of the difference between two estimates derived from independent samples is greater than the sampling errors of the separate estimates, and may indeed exceed the measured difference between the estimates.

Marital Status

For the 1983 Survey information was sought for the first time on actual marital status—previous Surveys and Censuses sought information on legal status. Two questions were used: the first asked "Were you ever married?": those who answered yes were asked "What is your present marital status?", and shown a card from which they chose one of seven options, arranged as follows:

Widowed—1
Married—2
Married but separated:
    Deserted—3
    Marriage Annulled—4
    Legally Separated—5
    Other seperated—6
Divorced in another country—7

Table C gives estimates of the population aged 15 or over by marital status and sex.

TABLE C: Estimated Population Aged 15 or Over Classified by Sex and Marital Status and Sex.

Marital Status	Males	Females	Total
	000		
Single	523.6	428.3	951.9
Married	650.4	652.0	1,302.4
Married but separated			
Deserted	1.4	4.5	5.9
Marriage Annulled	0.2	0.3	0.5
Legally Separated	2.0	2.8	4.8
	8.3	12.8	21.1
Other Separated	4.1	4.3	8.3
Divorced	0.6	0.9	1.5
Widowed	38.9	140.5	179.3
TOTAL	1,221.1	1,233.6	2,454.7

The overall estimates for ever-married persons returned as separated (including divorced) are 8,300 males and 12,800 females, giving a total of 21,100 persons. This group has been shown separately under the heading "Separated" in any tables containing a marital status classification. Estimates for each sub-group are available on request from the Central Statistics Office.

Although as mentioned above the format of the marital status question has been changed, it is possible that some replies relate to legal status. There is some further analysis of the Survey data which suggests, indirectly, that the total for "separated" may be somewhat higher than estimated above. For the first time in the Labour Force Survey an analysis is being carried out by household and family type, as distinct from individuals, and the results will form part of the second report. From this analysis an estimate has been made of the number of persons returned as "married" whose spouse was not recorded as usually resident in the household. The estimated numbers derived from this analysis were 5,500 males and 10,900 females, giving a total of 16,400.

The estimates include married persons whose spouse was usually away and did not return at least one night per week (see definition of "usually resident" in Appendix A); no estimate is available for this group. The totals also include married persons whose spouse was a long stay resident (over 6 months) in an institution; the Survey yielded an estimate of some 3,300 married persons (1,600 males, 1,700 females) in institutions. For other persons included, it is likely that "separated" would be a more accurate description.

TABLE 3: Estimated Population Aged 15 years and Over Classified by Sex, Marital Status and Region

Sex and Marital Status	Region										Total
	Dublin	Rest of East	East	South-West	South-East	North-East	Mid-West	Midlands	West	North-West and Donegal	
	000										
Male											
Single	149.3	36.8	186.2	85.4	56.1	28.6	42.0	40.4	48.9	36.0	523.6
Married	186.4	56.5	242.8	101.2	72.1	35.4	58.5	48.5	53.2	38.6	650.4
Separated*	3.5	.6	4.1	1.1	1.1	.2	.3	.4	.7	.3	8.3
Widowed	9.8	2.9	12.7	6.8	4.4	2.1	3.3	3.1	3.5	2.8	38.9
Total	349.0	96.9	445.8	194.5	133.7	66.3	104.1	92.5	106.3	77.7	1,221.1
Female											
Single	160.9	27.2	188.1	60.5	40.5	20.7	33.6	26.3	35.9	22.6	428.3
Married	186.7	56.6	243.4	101.5	72.1	35.8	58.5	49.0	53.2	38.6	652.0
Separated*	5.7	1.0	6.7	1.9	1.1	.5	.8	.6	.8	.5	12.8
Widowed	37.4	10.1	47.5	24.2	15.7	7.5	12.0	11.2	13.4	9.0	140.5
Total	390.7	94.9	485.6	188.1	129.3	64.5	104.9	87.1	103.3	70.8	1,233.6
Total											
Single	310.2	64.1	374.3	145.9	96.5	49.3	75.7	66.7	84.8	58.6	951.9
Married	373.1	113.1	486.2	202.7	144.2	71.2	117.0	97.5	106.4	77.2	1,302.4
Separated*	9.1	1.6	10.7	3.0	2.2	.6	1.1	1.1	1.5	.8	21.1
Widowed	47.2	13.0	60.2	31.0	20.1	9.7	15.3	14.3	16.9	11.8	179.3
Total	739.6	191.8	931.4	382.7	263.0	130.8	209.1	179.6	209.6	148.5	2,454.7

* including divorced

TABLE 4: Estimated Population Aged 15 years and Over Classified by Sex, Marital Status and Age Groups

Sex and Marital Status	Age Group										
	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65 or over	Total
	000											
Male												
Single	166.0	125.5	61.7	29.8	18.6	16.1	15.9	16.0	17.4	16.4	40.3	523.6
Married	.7	19.1	67.1	90.3	87.2	72.9	62.2	56.3	51.6	46.2	96.9	650.4
Separated*	—	.2	.7	1.1	.9	1.1	.9	1.2	.9	.5	.9	8.3
Widowed	.0	—	.1	.1	.4	.6	1.2	1.9	2.5	4.5	27.5	38.9
Total	166.7	144.9	129.5	121.3	107.0	90.8	80.1	75.3	72.4	67.5	165.7	1,221.1
Female												
Single	156.3	104.5	40.5	17.9	11.1	9.4	9.7	10.0	11.2	12.2	45.4	428.3
Married	2.7	34.4	84.1	97.1	88.6	73.1	60.5	55.3	49.8	41.3	65.1	652.0
Separated*	—	.6	1.4	2.1	1.6	1.5	1.6	1.1	1.1	.7	1.2	12.8
Widowed	—	.1	.3	.4	1.2	2.2	4.5	7.4	12.5	17.4	94.4	140.5
Total	159.0	139.6	126.4	117.5	102.5	86.2	76.3	73.7	74.6	71.7	206.3	1,233.6
Total												
Single	322.3	230.1	102.2	47.7	29.6	25.5	25.6	26.0	28.6	28.6	85.7	951.9
Married	3.4	53.5	151.2	187.3	175.8	146.1	122.7	111.5	101.4	87.5	162.0	1,302.4
Separated*	—	.8	2.1	3.2	2.4	2.6	2.4	2.3	2.0	1.1	2.2	21.1
Widowed	.0	.1	.4	.5	1.6	2.8	5.7	9.2	15.0	21.9	122.0	179.3
Total	325.8	284.4	255.9	238.7	209.5	177.0	156.4	149.0	147.0	139.2	371.9	2,454.7

* including divorced

Estimated Separated Population aged 15 years and over classified by Sex, Marital Status and Age Groups

Marital Status and Sex	Age Group										
	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65 or over	Total
	000											
Male												
Married but separated												
Deserted	—	.0	.1	.2	.0	.1	.2	.2	.2	.0	.2	1.4
Marriage annulled	—	—	—	.1	—	.0	.1	.0	—	.0	—	.2
Legally separated	—	.0	.2	.3	.3	.2	.2	.3	.2	.0	.2	2.0
Other separated	—	.1	.3	.4	.4	.7	.4	.5	.4	.3	.5	4.1
Divorced	—	—	.0	.1	.1	.1	.0	.1	.1	.1	.1	.6
Total	—	.2	.7	1.1	.9	1.1	.9	1.2	.9	.5	.9	8.3
Female												
Married and separated												
Deserted	—	.2	.6	.8	.4	.5	.5	.5	.5	.2	.4	4.5
Marriage annulled	—	.0	.0	—	.0	.1	.0	.0	—	.0	.0	.3
Legally separated	—	.1	.3	.5	.5	.3	.5	.2	.3	.1	.2	2.8
Other separated	—	.2	.5	.6	.4	.5	.5	.2	.3	.3	.6	4.3
Divorced	—	—	.1	.2	.2	.1	.1	.2	.0	.1	.0	.9
Total	—	.6	1.4	2.1	1.6	1.5	1.6	1.1	1.1	.7	1.2	12.8
TOTAL												
Married but separated												
Deserted	—	.3	.7	1.0	.5	.6	.6	.7	.7	.3	.5	5.9
Marriage annulled	—	0.0	0.0	0.1	0.0	0.1	0.1	0.1	—	0.1	0.0	0.5
Legally separated	—	.1	.4	.8	.8	.4	.7	.5	0.5	.1	.4	4.8
Other separated	—	.4	.8	1.1	.9	1.2	.9	.7	.7	.5	1.1	8.3
Divorced	—	—	.1	.2	.2	.2	.1	.3	.1	.2	.1	1.5
Total	—	.8	2.1	3.2	2.4	2.6	2.4	2.3	2.0	1.1	2.2	21.1

Source: Labour Force Survey, 1983.

Estimated Separated Population aged 15 years and over Classified by Marital Status , Sex and Region

Marital Status and Sex	Region										
	Dublin	Rest of East	East	South-West	South-East	North-East	Mid-West	Mid-lands	West	North-West and Donegal	Total
	000										
Male											
Married but separated											
Deserted	.4	.1	.5	.2	.2	.0	.1	.1	.1	.1	1.4
Marriage annulled	.1	—	.1	.0	—	—	—	—	.1	.0	.2
Legally separated	1.0	.2	1.1	.3	.3	.0	.1	.1	.0	.1	2.0
Other separated	1.9	.3	2.2	.5	.4	.1	.1	.2	.4	.2	4.1
Divorced	.1	.1	.2	.2	.2	—	—	.0	.1	—	.6
Total	3.5	.6	4.1	1.1	1.1	.2	.3	.4	.7	.3	8.3
Female											
Married but separated											
Deserted	1.7	.4	2.0	.7	.5	.2	.4	.2	.4	.2	4.5
Marriage annulled	.1	.0	.2	.0	.0	—	—	—	.1	.0	.3
Legally separated	1.3	.2	1.5	.3	.3	.1	.2	.1	.1	.1	2.8
Other separated	2.2	.3	2.5	.6	.3	.2	.1	.2	.2	.2	4.3
Divorced	.3	.1	.4	.3	.0	—	.1	—	.1	—	.9
Total	5.7	1.0	6.7	1.9	1.1	.5	.8	.6	.8	.5	12.8
Total											
Married and separated											
Deserted	2.0	0.5	2.5	0.9	0.7	0.2	0.5	0.4	0.5	0.2	5.9
Marriage annulled	.2	.0	.2	.1	.0	—	—	—	.1	.0	.5
Legally separated	2.3	.4	2.7	.5	.5	.1	.3	.4	.1	.2	4.8
Other separated	4.2	.6	4.8	1.1	.7	.3	.2	.3	.6	.3	8.3
Divorced	.4	.2	.6	.5	.2	—	.1	.0	.2	—	1.5
Total	9.1	1.6	10.7	3.0	2.2	.6	1.1	1.1	1.5	.8	21.1

Estimated Separated Population aged 15 years and over Classified by Principal Economic Status and Sex

Principal Economic Status and Sex	Marital Status					
	Deserted	Marriage annulled	Legally separated	Other separated	Divorced	Total
	000					
Male						
At work	0.6	0.2	1.2	2.3	0.4	4.7
Looking for first regular job	—	—	—	—	—	—
Unemployed, having lost of given up previous job	.5	.0	.3	1.0	.1	1.9
Students	—	—	—	—	—	—
On home duties	.1	—	.0	.0	—	.1
Retired	.2	.0	.3	.4	.1	1.0
Unable to work owing to permanent sickness or disability	.0	—	.1	.3	—	.5
Other	.0	—	—	—	—	.0
Total	1.4	.2	2.0	4.1	.6	8.3
Female						
At work	1.0	0.1	1.2	1.5	0.4	.2
Looking for first regular job	—	—	—	—	—	—
Unemployed, having lost of given up previous job	.3	.0	.2	.4	.1	1.0
Students	—	—	—	—	—	—
On home duties	3.0	.1	1.2	1.9	.3	6.5
Retired	.1	.0	.1	.3	.1	.6
Unable to work owing to permanent sickness or disability	.2	—	.1	.2	—	.4
Other	—	—	—	.0	.0	.0
Total	4.5	.3	2.8	4.3	.9	12.8
TOTAL						
At work	1.6	0.3	2.4	3.8	0.7	8.9
Looking for first regular job	—	—	—	—	—	—
Unemployed, having lost or given up previous job	.7	.1	.6	1.4	.2	2.9
Students	—	—	—	—	—	—
On home duties	3.0	.1	1.2	1.9	.3	6.6
Retired	.3	.1	.5	.7	.2	1.6
Unable to work owing to permanent sickness or disability	.2	—	.2	.5	—	.9
Other	.0	—	—	.0	.0	.0
Total	5.9	.5	4.8	8.3	1.5	21.1

Estimated Number of Separated Males in the Labour Force and not in the Labour force and Estimated participation rates by Age Group

Marital Status	Age Group								
	15-19	20-24	25-34	35-44	45-54	55-59	60-64	65 or over	Total
	000								
	Total								
In the Labour Force									
Married but separated									
Deserted	—	.0	.3	.2	.3	.2	—	.0	1.1
Marriage annulled	—	—	.1	.0	.1	—	—	—	.2
Legally separated	—	.0	.4	.4	.5	.1	.0	—	1.6
Other separated	—	.1	.7	1.0	.8	.4	.2	.1	3.3
Divorced	—	—	.1	.2	.1	.0	.1	—	.5
Total	—	.2	1.7	1.8	1.8	.7	.3	.1	6.6
Not in the Labour Force									
Married but separated									
Deserted	—	—	.0	.0	.0	.0	.0	.1	.3
Marriage annulled	—	—	—	—	—	—	.0	—	.0
Legally separated	—	—	—	.0	.1	.1	—	.2	.5
Other separated	—	—	.0	.1	.1	—	.1	.4	.8
Divorced	—	—	—	—	—	.0	.0	.1	.1
Total	—	—	.1	.2	.2	.1	.2	.8	1.7
	%								
Participation Rates									
Married but separated									
Deserted	—	100.0	85.6	92.7	91.9	92.7	—	17.2	87.8
Marriage annulled	—	—	100.0	100.0	100.0	—	—	—	90.8
Legally separated	—	100.0	100.0	91.1	85.1	52.0	100.0	—	77.4
Other separated	—	100.0	95.6	87.9	90.1	100.0	57.0	14.2	80.9
Divorced	—	—	100.0	100.0	100.0	56.7	77.9	—	81.4
Total	—	100.0	95.3	90.4	89.9	84.0	57.3	9.8	79.9

Source: Labour Force Survey, 1983

Estimated Number of Separated Females in the Labour Force and not in the Labour force and Estimated participation rates by Age Group

Marital Status	Age Group								
	15-19	20-24	25-34	35-44	45-54	55-59	60-64	65 or over	Total
	000								
	Total								
In the Labour Force									
Married but separated									
Deserted	—	.1	.4	.4	.3	.1	.0	.0	1.3
Marriage annulled	—	.0	.0	.0	.1	—	—	—	.2
Legally separated	—	.1	.4	.4	.4	.1	.0	—	1.4
Other separated	—	.1	.6	.6	.4	.1	.1	.0	1.9
Divorced	—	—	.2	.2	.1	.0	—	—	.5
Total	—	.2	1.6	1.6	1.2	.4	.1	.1	5.2
Not in the Labour Force									
Married but separated									
Deserted	—	.2	1.0	.0	.7	.3	.2	.3	3.2
Marriage annulled	—	—	—	.1	—	—	.0	.0	.1
Legally separated	—	.0	.4	.3	.2	.2	.1	.2	1.4
Other separated	—	.1	.5	.3	.4	.2	.2	.6	2.4
Divorced	—	—	.0	.1	.2	—	.1	.0	.4
Total	—	.3	1.9	1.5	1.5	.7	.5	1.2	7.6
	%								
Participation Rates									
Married but separated									
Deserted	—	28.4	28.1	59.0	29.8	31.5	7.3	8.6	28.6
Marriage annulled	—	100.0	100.0	32.7	100.0	—	—	—	54.2
Legally separated	—	70.4	49.9	57.1	65.8	40.5	14.1	—	50.4
Other separated	—	41.7	54.3	63.5	46.3	33.4	33.9	5.0	44.2
Divorced	—	—	88.6	53..3	40.1	100.0	—	—	53.3
Total	—	42.9	45.6	52.3	46.0	35.0	17.8	5.0	40.9

Source: Labour Force Survey, 1983

Total	—	42.9	45.6	52.3	46.0	35.0	17.8					

Source: Labour Force Survey, 1983

WORLD STATISTICS

Population
Marriage and divorce

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1972	1981
3.1.19	All marriages (1,000)										% population	
Belgique/Belgie	74	74	74	72	71	69	67	65	66	64	7.7	6.5
Danmark	31	31	33	32	31	32	29	28	26	25	6.2	4.9
BR Deutschland	415	395	377	387	366	358	328	345	362	360	6.7	5.8
Greece	60	74	68	76	64	76	73	79	62	71	6.8	7.3
France	417	401	395	387	374	368	354	340	334	315	8.1	5.8
Ireland	22	23	23	21	21	20	21	21	22	21	7.4	6.2
Italia	419	418	403	374	354	348	336	326	323	314	7.7	5.5
Luxembourg	2.3	2.1	2.2	2.4	2.2	2.2	2.1	2.1	2.1	2.0	6.6	5.0
Nederland	118	108	110	100	97	93	89	86	90	86	8.8	6.1
United Kingdom	480	454	437	431	406	404	416	415	418	400	8.6	7.1
EUR 10	2,038	1,978	1,921	1,882	1,786	1,771	1,716	1,706	1,705	1,658	7.7	6.1
España	262	269	267	271	261	262	258				7.6	
Portugal	77	84	82	103	102	92	81	78	73	84	8.6	8.5
Sverige	39	38	45	44	45	40	38	37	38	38	4.8	4.5
USA	2,282	2,284	2,226	2,127	2,133	2,190	2,246				10.9	
Nippon (Japan)	1,109	1,072	1,000	942	872	831					10.4	

Population
Marriage and divorce

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1972	1981
	Average age of women at first marriage Years										EUR=100	
Belgique/België	22.2	22.0	22.0	22.0	22.0	22.0	22.1	22.1			96	
Danmark	23.1	23.3	23.5	23.7	23.9	24.0	24.4	24.5	24.8	25.1	100	
BR Deutschland	22.9	22.9	22.9	22.7	22.9	22.9	23.1	23.2	23.4	23.6	99	
Greece	22.8	22.7	22.6	22.8	22.4	22.4	22.3	23.3			99	
France	22.4	22.4	22.4	22.5	22.6	22.7	22.8	22.9	23.0		97	
Ireland	24.5	24.5	24.3	24.4	23.8	24.1	24.1	24.9	25.0	24.9	106	
Italia	24.5	24.2	24.1	24.0	24.2	23.9	24.2	23.7			106	
Luxembourg	23.0	22.7	22.8	23.3	23.1	23.6	23.9	24.0	24.5	24.5	100	
Nederland	22.9	22.7	22.7	22.7	22.7	22.8	23.0	23.1	23.2	23.3	99	
United Kingdom	22.9	22.7	22.7	22.8	22.8	22.9	22.9	22.9	22.9	23.0	99	
EUR 10	23.1	23.0	23.0	23.0	23.1	23.1					100	
España	24.4	24.3	24.3	23.4	23.2	23.1	23.0				106	
Portugal	24.2	24.4	24.1	23.7	23.6	23.7	23.7				105	
Sverige	24.4	24.6	24.8	25.1	25.3	25.5	25.8	26.2	26.4	26.6	106	
USA												
Nippon (Japan)												

Population
Marriage and divorce

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981 1972 1981		
	Divorces (1,000)										% existing marriages	
Belgique/Belgie	8	8	10	11	13	13	14	14	15	16	3.2	6.3
Danmark	13	13	13	13	13	13	13	13	14	14	10.9	12.1
BR Deutschland	87	90	99	107	108	75	32	79	96	110	5.5	7.0
Greece	3	4	4	4	4	5	4	5	4			
France	50	50	59	61	65	74	82	89	92		4.0	7.2
Ireland	0	0	0	0	0	0	0	0	0	0	0	0
Italia	33	18	18	11	12	11	10	11	12	11	2.5	0.8
Luxembourg	0.3	0.3	0.3	0.2	0.4	0.4	0.5	0.4	0.6	0.5		
Nederland	15	18	19	20	21	21	22	24	25	29	4.6	8.3
United Kingdom	125	114	121	129	136	138	153	148	160	157	9.5	11.8
EUR 10	334	315	344	356	373	350	331	382	419			
España	0	0	0	0	0	0	0	0	0			
Portugal	1	1	1	2	5	8	7	6	6	7		
Sverige	15	16	27	25	22	20	20	20	20	20	7.9	11.4
USA	845	915	977	1,026	1,077							
Nippon (Japan)	110	112	114	119	125							

Eurostat Review, 1972-81—Official Publication of the European Communities.

Appendix D

An example of a typical legal separation agreement is set out hereunder:

SEPARATION AGREEMENT

THIS AGREEMENT made the day of BETWEEN , in the county of (hereinafter called "the Husband") of the first part and , in the county of (hereinafter called "the Wife") of the second part.

WHEREAS

(a) the husband and the wife were lawfully married on the day of at in the County of according to the rites of the Church.
(Insert as appropriate).

(b) There are children of the said marriage namely born (hereinafter called "the children").

(c) Unhappy differences have arisen between the husband and wife and as they have lived separately and apart from each other since and they have mutually agreed as hereinafter more particularly appears to continue to live separately and apart from each other.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:—

1. The husband and the wife may at all times hereafter live separately and apart and free from the matrimonial control of the other and shall in all things live as if they were unmarried and each party shall be entitled to carry on any profession vocation or occupation without interference from the other party provided that each party shall be liable personally for all taxes payable on their respective earnings and further each party shall be liable personally for all tax whether of an income or capital nature payable on their respective earnings arising out of any personal investments made by either party.

2. Neither the husband nor the wife shall directly or indirectly molest, annoy, disturb, or interfere with the person of the other or with his or her relations, friends, or acquaintenances or interfere in any way with his or her profession, vocation or occupation in life.

3. The husband and the wife shall be joint guardians of the children. The wife shall have sole custody, care and control of the children during their minority and the husband shall in no way interfere with such custody subject to the provisions hereinafter mentioned.

4. The husband shall have access to the children every alternate Sunday or at such times as may be agreed between the parties. The said access is to continue until the day of and thereafter the husband is to have such access to the children as shall be agreed between the parties. In default of such agreement, times and modes of access shall be fixed by the Court.

5. The wife in consideration of the terms and conditions hereinafter contained shall transfer and convey to the husband or to his parents the entire of her interest in the family home at in the County of to the intent that the husband shall have sole ownership of the said family home. In consideration of the said transfer of the wife's interest in the family home by the wife to the husband the husband shall pay to the wife the sum of The said transfer is to be completed on or before the day of and payment of the said sum of is to be made on completion of the said transfer.

6. The wife agrees that the family home for all purposes of the Family Home Protection Act, 1976 is in the County of and the wife hereby consents to the sale or transfer of the said family home at in the County of aforesaid and further the wife consents to the sale or transfer of any such family home in which the husband may reside in the future should such consent be deemed necessary by virtue of the provisions of the Family Home Protection Act, 1976 or any Act of the Oireachtas amending or extending the provisions of the said Family Home Protection Act 1976.

7. The husband hereby consents to the sale or transfer by the wife of any house or property which she now owns or in the future may purchase or acquire by inheritance or otherwise obtain should such consent be deemed necessary by virtue of the provisions of the Family Home Protection Act, 1976 or any Act of the Oireachtas amending or extending the said Family Home Protection Act, 1976.

8. The husband and the wife hereby mutually surrender and renounce all rights under the Succession Act, 1965 (or any other Act of the Oireachtas which may in the future extend or amend the Succession Act, 1965) to the estate of the other and furthermore undertake not to interfere in any way with

the extraction of a Grant of Probate or Administration as the case may be to the estate of the other.

9. The husband in consideration of the terms and conditions contained herein shall upon the completion of the aforementioned transfer of the wife's interest in the family home at in the County of hand over to the wife the items of furniture from the said family home which are listed in the schedule annexed to this Agreement.

10. In consideration of the premises the husband hereby covenants with the wife that the husband shall pay to the wife in respect of the maintenance of the children such yearly sum as after deduction of income tax shall amount to the sum of per month, the first payment to be made on or before the day of and monthly payments to be made thereafter on or before the day of each month. The said payments are to be lodged to the wife's bank account at in the County of Account No. The said maintenance payment is to be reviewed annually on the day of the first review to take place on the 1st day of and in default of agreement concerning the said review either party has liberty to apply to the Court.

11. The wife shall at all times hereafter keep indemnified the husband from all debts and liabilities heretofore and hereafter contracted or to be contracted or incurred by the wife and from all actions, costs, proceedings, claims, demands, expenses or liabilities whatsoever in payment of such debts and liabilities or any of them for which the wife shall be liable and shall in no way pledge the husband's credit and the husband shall at all times hereafter keep indemnified the wife from all debts and liabilities heretofore and hereafter contracted or to be contracted or incurred by the husband and from all actions, costs, proceedings, claims, demands, expenses or liabilities whatsoever in payment of such debts and liabilities or any of them for which the husband shall be liable and shall in no way pledge the wife's credit.

12. If the husband and the wife shall be reconciled and return to co-habit with each other then in such event all covenants and conditions herein contained shall become void but without prejudice to any act previously made or done hereunder or any proceedings on the part of either of them in respect of any antecedent breach of any of the covenants and provisions herein contained.

13. Each of them the husband and the wife and their respective heirs, executors, administrators and assigns shall at any time hereafter execute and

do all such assurances and things as the other of them or his or her executors, administrators, executors and assigns shall reasonably require for the purpose of giving effect to these convenants and provisions herein contained.

14. The husband shall pay the stamp duty on this Agreement.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

SIGNED SEALED AND DELIVERED
by the said
in the presence of:—

SIGNED SEALED AND DELIVERED
by the said
in the presence of:—

Appendix E

Divorce laws in other Jurisdictions

This appendix contains a summary of the types of divorce legislation which exists in the following Jurisdictions:

1. Australia
2. California
3. Colorado
4. England & Wales
5. Germany
6. Italy
7. New York
8. New Zealand
9. Northern Ireland
10. Spain
11. Sweden

Divorce laws in other jurisdictions

Australia

The principal statute is the Family Law Act 1975.

Divorce is granted if the marriage has broken down irretrievably. This is established by 12 months separation.

The court shall not make a decree if satisfied that there is a reasonable likelihood of cohabitation being resumed.

Where the parties have been married less than two years the court shall not hear the proceedings unless satisfied that the parties have considered reconciliation with the aid of a marriage counsellor.

Where there are minor children a decree nisi will not become absolute unless the court is satisfied that proper arrangements have been made for their welfare.

Special Family Courts were set up by the principal Statute. There are provisions to reduce formalities and humanise proceedings as far as is compatible with the inherently judicial and in the last analysis adversarial nature of the proceedings. Provisions include closed courts, no undue formality (including the abolition of robes and wigs) or protracted proceedings. There are also provisions setting up a court-based reconciliation and conciliation service. Officers who are defined as both marriage counsellors and welfare officers are attached to the court. There is also provision for a pre-trial mediation conference before a registrar.

California

The principal statute is the Act of January 1, 1970, Public Law No. 1608.

The only grounds for divorce are irreconcilable differences leading to irremedial breakdown of marriage and incurable insanity. Irreconcilable differences are those grounds which are determined by the courts to be substantial reasons for not continuing marriage and which make it appear marriage should be dissolved.

There is a court-linked counselling and mediation service.

A summary dissolution procedure is available where both parties consent, there are no children, they are married less than five years, do not have debts of more than a certain amount, do not have community or separate property of more than a certain amount, have waived any rights to spousal support and have executed an agreement concerning their rights and liabilities.

Colorado

The principal statute is the Act of June 2 1971, Public Law No. 130, as amended. This is a somewhat modified adoption of the Uniform Marriage and Divorce Act (1970-1973).

The sole ground is the irretrievable breakdown of the marriage. This is established either

(a) By the parties living separate and apart for at least 180 days

(b) By establishing that there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage and there is no reasonable prospect of reconciliation.

Where the respondent denies that the marriage is irretrievably broken the court may adjourn the matter for further hearing. This adjournment to be at least thirty and no more than sixty days. Furthermore the court may, or if so requested by one of the parties must, order a conciliation conference.

The court may bifurcate the issues, rendering an interlocutory judgement of dissolution of marriage, whilst expressly reserving jurisdiction as to all ancillary issues.

A marriage may be dissolved summarily, by affidavit, where:

> There are no minor children and the wife is not pregnant or where the spouses, both with legal advice, have entered into a separation agreement setting out the amount of child support and granting custody to one or both parties. Furthermore there must be no material fact in issue and there must be either a division of property by agreement or no property to be divided.

England and Wales

The principal statute is the Matrimonial Causes Act, 1973, as amended.

The sole ground on which a petition for divorce may be based is that the marriage has broken down irretrievably. To establish this the petitioner must satisfy one or more of the following facts:

(a) That the respondent has committed adultery and that the petitioner finds it intolerable to live with them. The use of this fact is barred however if the petitioner, after learning of the respondents adultery, lives with them for an aggregate period exceeding six months.

(b) That one respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with them.

(c) That the respondent has deserted the petitioner for a continuous period of at least two years. The use of this fact is barred by condonation.

(d) That the parties have been separated for at least two years and that the respondent consents to the grant of a decree.

(e) That the parties have been separated for at least five years. If however the respondent opposes the petition on the basis that it would cause them grave financial or other hardship, the court, if it accepts this, may dismiss the petition.

There is an absolute bar on divorce for one year after marriage.

Where there are minor children the court will not, in the absence of special circumstances, make absolute a decree of divorce unless satisfied that arrangements for their welfare are satisfactory or the best that can be devised.

The court may adjourn divorce proceedings for such period as it thinks fit if it believes there to be a reasonable possibility of reconciliation, to enable attempts to be made to effect such. Furthermore the petitioner's solicitor must supply the court with a certificate certifying that he has mentioned the possibility of reconciliation to the petitioner.

Divorce is dealt with by the Family Division of the High Court and by such County Councils as are designated Divorce County Courts. If the petition is undefended there is a procedure called the Special Procedures List. The petitioner lodges an affidavit to the Registrar of the divorce Registry. If this proves that the contents are to the Registrar's satisfaction he will so certify. Where there are minor children the Registrar must arrange an appointment with a judge in the chambers who will consider the arrangements for the children. All other ancillary matters being settled, this will lead to the court granting the decree without a hearing.

Decrees will be nisi, in the first instance. They will usually be made absolute in six weeks.

Germany

The principal statute is the Law of Marriage of 14 June 1976.

Breakdown of marriage is the only ground for divorce. This is taken to have occurred if the spouses are no longer on living terms and it is not to be expected that they can re-establish the society that they have lost.

There is an irrebuttable presumption that the marriage has broken down if the spouses have lived apart

(a) For one year, where both consent to divorce

(b) For three years, otherwise.

Spouses who have lived apart for less than one year can only be divorced if it would be an unbearable hardship on the complainant, in view of some personal characteristic of the respondent, to have the marriage continue.

Even where the marriage has broken down a divorce will not be granted if

(a) The divorce would be a severe hardship to the respondent by virtue of some unusual circumstances.

(b) If, for some special reason, the marriage must be kept afloat in the interests of the children.

Neither of the above apply when the parties have lived apart for more than five years.

The Law of 1976 set up a system of family courts with jurisdiction over all family and matrimonial issues.

Italy

The principal statutes are the Laws of December 1, 1970 and September 25, 1975.

Divorce may be granted where:

(1) The respondent is convicted of certain offences or sentenced to certain periods of imprisonment or acquitted of certain offences on the grounds of total unsoundness of mind or other specified reasons.

(2) There is non-consummation of the marriage.

(3) The respondent being a foreign national has obtained an annulment or dissolution abroad, and has subsequently remarried.

(4) Where there has been a judicial separation or a consensual separation ratified by the court. The petition for divorce may be made after five years if there is mutual consent, six years if the respondent objects but the initial separation was by consent, or seven years where the respondent objects and the initial separation was on foot of a judicial separation caused by a fault of the petitioner.

The court may refuse to ratify a separation agreement if not satisfied with the arrangements made for childrens material or moral welfare. This obliges the parties to come up with an arrangement which will satisfy the court.

The court must attempt to achieve a reconciliation of the parties. They will be heard first separately and then together. If the court forms the opinion that there is a possibility of reconciliation it can delay the trial for up to a year; if the reconciliation is refused however the court must, finally, accept this.

New York

The principal statute is the Domestic Relations Law.

The following can be grounds for divorce:

(a) Cruel and inhuman treatment such that the respondent's conduct so endangers the petitioner's physical and mental well-being as to render cohabitation unsafe or improper.

(b) Abandonment by one respondent for one year.

(c) Imprisonment, after marriage, of the respondent for three consecutive years.

(d) Adultery or sexually deviate intercourse by the respondent. Adultery is barred however where there is procurement or connivance by the petitioner, or the petitioner affirmatively forgives the adultery, or cohabits voluntarily with the respondent knowing of the adultery, or the action is not commenced within five years of the adultery, or where the petitioner is guilty of adultery in circumstances such that the respondent would have been entitled, if innocent, to divorce.

There are provisions for conciliation proceedings by reference to the Family Court.

Default judgements can be entered in uncontested divorces without any court appearance.

New Zealand

The principal statute is the Family Proceedings Act 1980.

Marriages may be dissolved if the marriage has broken down irreconcilably. The unique fact which establishes this is two years separation.

The court may adjourn dissolution proceedings and refer the spouses to a counsellor for the purposes of reconciliation or conciliation, where it is of the opinion that there is a reasonable possibility of such. Furthermore the petitioner's legal advisers must certify that they have made their clients aware of the facilities available for promoting reconciliation and conciliation and that they have taken any further steps such as might assist in the promotion thereof. To this end the parties may request the Registrar of the Family Court to arrange for such counselling.

Where there are minor children the court will postpone final dissolution until it is satisfied with the arrangements made for their welfare.

The Family Courts Act 1980 set up a system of Family Courts. Special features of these courts include:

> The fact that the court may receive any evidence it thinks fit, whether otherwise admissible in a court of law or not. The court may call as a witness any person whose evidence they believe may be of assistance to the court.
>
> In undefended, including joint, proceedings the order dissolving the marriage takes effect on being made. In defended proceedings it automatically takes effect after a month, in the absence of an appeal to the High Court.
>
> There is also provision for a mediation conference before a judge prior to the trial.

Northern Ireland

The principal statute is the Matrimonial Causes (N.I.) Order 1978. This is based on and substantially similar to the English Matrimonial Causes Act 1973.

Note however:—

(1) That there is no absolute bar in the first year of marriage. There is instead a three year bar on bringing a petition in the absence of exceptional hardship suffered by the petitioner or exceptional depravity on the part of the respondent.

(2) There is no need for the petitioner's solicitor to certify that he has mentioned the possibility of reconciliation to the petitioner.

(3) The Special Procedures List does not exist as in England and Wales.

Spain

Divorce was introduced by Law No. 30/1981 of July 7, 1981.

Marriage may be dissolved where:

(1) There has been one year's separation from the date of bringing a petition for judicial separation jointly or by consent.

(2) One year's separation from the bringing of a petition (or counterpetition) for judicial separation. The grounds for judicial separation include

(a) Desertion, adultery (not if spouses separated by mutual consent or by the act of spouse alleging adultery), injurious or vexatious conduct and any other serious or repeated breach of matrimonial duties.

(b) Any serious or repeated breach of duties towards children of the marriage or those of either spouse living in the family home.

(c) Conviction followed by imprisonment exceeding six years.

(d) Alcoholism, use of narcotics or mental derangement whenever the interest of the other spouse or of the family demands the suspension of cohabitation.

(e) There are also several distinct separation grounds.

(3) Two years separation since:

(a) The freely agreed actual separation of the spouses.

(b) One of the spouses has been declared missing, on the petition of the other spouse.

(c) The actual separation of the spouses when the petitioner alleges that the other spouse had given him cause sufficient for judicial separation.

(4) Five years separation on the petition of either spouse.

(5) Conviction for an attempt on the life of the petitioner, his ancestors or descendants.

Sweden

The principal statute is the Law of June 5, 1973.

The unique ground for divorce is that one or both of the spouses has no wish to continue the marriage. The court has no discretion.

Where there are minor children or where one of the spouses opposes the divorce there must be a six month reflection and reconsideration period before divorce can be decreed. This is not necessary however, where the parties have lived apart for at least two years.

There is a statutory counselling service and this will be adverted to but mediation is now voluntary.

Appendix E

Specimen Family Summons

Part 1

Record No.

To Mr Maurice Smith of Gasworks Lane, Dublin 2.

This Summons requires you to attend before the High Court sitting at on the day of at 10.30 a.m. where proceedings are to take place in which your Wife, Jacqueline Smith of Gasworks Lane, Dublin 2 is seeking the remedies set out in Part 2 of this Summons. This case may be heard on that date or on such other date as the Court may specify. You should attend in Court and/or be represented by a solicitor as orders may be made which will seriously affect you. Please read the rest of this Summons carefully.

Part 2 sets out the remedies sought by your Wife.

Part 3 lays out the grounds on which she seeks the remedies set out in Part 2.

Part 4: If you wish to be heard in Court in relation to these proceedings you, or your solicitor should lodge this part of the Summons duly completed in the Court Office at the address given in Part 4, within ten days of the service of this Summons upon you. Please note:

(a) There is a mediation service available should you and your wife wish to attempt to resolve the matters in dispute between you by agreement. Details of this service can be obtained by contacting the following address:

(b) It is in your interest to have legal advice in regard to these proceedings. If you cannot afford a private solicitor, you may be entitled to legal aid provided by the State at a minimum cost to you. Details of this legal aid service are available at the following address:

The date of issue of this Summons is . The Summons must be served not less than ten days before the date on which the case is to be heard in Court.

Part 2.
The following are the remedies sought in these proceedings:

Part 3.
The following are the grounds upon which the applicant will reply:

Part 4.
Record No.

To Jacqueline Smith of Gasworks Lane, Dublin 2 I intend to oppose all/the following remedies sought by the applicant

The grounds upon which I intend to oppose the granting of these remedies are as follows:—

This day of 19 .

Signed respondant/solicitor for respondant. . . . . .

Note: If you intend to defend all/or part of the applicants claims you should fill in this part of the document and lodge it with the Court Office at at least seven days before the date for the hearing of this case. You should also send a copy of this section of the document to the applicant and/or his or her solicitor.

Wt. 151410. 2,000. 4/85. Cahill. (3537). G.Spl.

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TITHE AN OIREACHTAS

Tuarascáil ón gComhchoiste um Chliseadh Póstaí

Report of the Joint Committee on Marriage Breakdown

REPORT ON MARRIAGE BREAKDOWN

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Tuarascáil ón gComhchoiste um Chliseadh Póstaí

Report of the Joint Committee on Marriage Breakdown

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR.

Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN,
BAILE ÁTHA CLIATH 2,
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(Pl. 3074) *27th March 1985*

Contents

Orduithe Tagartha
Orders of Reference

Dáil Éireann

7 *Iúil* 1983: *Ordaíodh:*— (1) Go gceapfar Roghchoiste ar a mbeidh 11 Chomhalta de Dháil Éireann a bheidh le comhcheangal le Roghchoiste a cheapfaidh Seanad Éireann chun bheith ina Chomhchoiste um Chliseadh Póstaí chun cosaint an phósta agus shaol an teaghlaigh a mheas agus chun scrúdú a dhéanamh ar na fadhbanna a tharlaíonn de bhíthin pósadh cliseadh, agus chun tuairisc ar an gcéanna a thabhairt do Thithe an Oireachtais.

(2) Go ndéanfar Tuarascáil an Chomhchoiste a leagan faoi bhráid dhá Theach an Oireachtais laistigh de thréimhse bliana.

(3) Go mbeidh cumhacht ag an gComhchoiste fios a chur ar dhaoine, ar pháipéir agus ar thaifid agus, faoi réir thoiliú Aire na Seirbhíse Poiblí, seirbhísí daoine ag a bhfuil saineolas nó eolas teicniúil a fhostú chun cabhrú leis maidir le fiosruithe áirithe.

(4) Go ndéanfaidh an Comhchoiste, roimh thosach gnó, duine dá Chomhaltaí a thoghadh mar Chathaoirleach, agus gan aige ach vóta amháin.

(5) Go ndéanfar na ceisteanna go léir sa Chomhchoiste a chinneadh trí thromlach vótaí na gComhaltaí a bheidh i láthair agus a vótálfaidh agus i gcás comhionannas vótaí go gcinnfear gur freagra diúltach a thabharfar ar an gceist.

(6) Go mbeidh cumhacht ag an gComhchoiste miontuairiscí fianaise a ghlacfar os a chomhair mar aon le cibé doiciméid ghaolmhara is cuí leis a chlóbhualadh agus a fhoilsiú ó am go ham.

(7) Gur cúig Chomhalta den Chomhchoiste is córam dó agus duine amháin ar a laghad díobh ina Chomhalta de Dháil Éireann agus duine amháin ar a laghad díobh ina Chomhalta de Sheanad Éireann.

(8) Go ndéanfar Tuarascáil an Chomhchoiste, ar an gComhchoiste do ghlacadh léi, a leagan faoi bhráid dhá Theach an Oireachtais láithreach agus as a aithle sin go mbeidh ar chumas an Chomhchoiste an Tuarascáil sin a chlóbhualadh agus a fhoilsiú i dteannta cibé doiciméid ghaolmhara is cuí leis.

7th July 1983: *Ordered:*— (1) That a Select Committee consisting of 11 Members of Dáil Éireann be appointed to be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on Marriage Breakdown to consider the protection of marriage and of family life, and to examine the problems which follow the breakdown of marriage, and to report to the Houses of the Oireachtas thereon.

(2) That the Report of the Joint Committee shall be laid before both Houses of the Oireachtas within a period of one year.

(3) That the Joint Committee shall have power to send for persons, papers and records and, subject to the consent of the Minister for the Public Service, to engage the services of persons with specialist or technical knowledge to assist it for the purposes of particular enquiries.

(4) That the Joint Committee, previous to the commencement of business, shall elect one of its Members to be Chairman, who shall have only one vote.

(5) That all questions in the Joint Committee shall be determined by a majority of votes by the Members present and voting and in the event of there being an equality of votes the question shall be decided in the negative.

(6) That the Joint Committee shall have power to print and publish from time to time minutes of evidence taken before it together with such related documents as it thinks fit.

(7) That five members of the Joint Committee shall form a quorum, of whom at least one shall be a Member of Dáil Éireann and at least one shall be a Member of Seanad Éireann.

(8) That the Report of the Joint Committee shall, on adoption by the Joint Committee, be laid before both Houses of the Oireachtas forthwith whereupon the Joint Committee shall be empowered to print and publish such Report together with such related documents as it thinks fit.

Ordaíodh: 28 *Meitheamh*, 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 1 Nollaig, 1984.

Ordered: 28*th June*, 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to 1st December, 1984.

Ordaíodh: 29 *Samhain*, 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 19 Feabhra, 1985.

Ordered: 29*th November*, 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 19th February, 1985.

Ordaíodh: 19 *Feabhra*, 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 21 Márta, 1985.

Ordered: 19*th February*, 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 21st March, 1985.

Ordaíodh: 21 *Márta*, 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 2 Aibreán, 1985.

Ordered: 21*st March*, 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 2nd April, 1985.

Seanad Éireann

Ordaíodh: 12 *Iúil* 1983:— (1) Go gceapfar Roghchoiste ar a mbeidh 5 Chomhalta de Sheanad Éireann a bheidh le comhcheangal le Roghchoiste a cheapfaidh Dáil Éireann chun bheith ina Chomhchoiste um Chliseadh Póstaí chun cosaint an phósta agus shaol an teaghlaigh a mheas agus chun scrúdú a dhéanamh ar na fadhbanna a tharlaíonn de bhíthin pósadh cliseadh, agus chun tuairisc ar an gcéanna a thabhairt do Thithe an Oireachtais.

Ordered: 12*th July*, 1983:— (1) That a Select Committee consisting of 5 Members of Seanad Éireann be appointed to be joined with a Select Committee to be appointed by Dáil Éireann to form the Joint Committee on Marriage Breakdown to consider the protection of marriage and of family life, and to examine the problems which follow the breakdown of marriage, and to report to the Houses of the Oireachtas thereon.

(2) Go ndéanfar Tuarascáil an Chomhchoiste a leagan faoi bhráid dhá Theach an Oireachtais laistigh de thréimhse bliana.

(2) That the Report of the Joint Committee shall be laid before both Houses of the Oireachtas within a period of one year.

(3) Go mbeidh cumhacht ag an gComhchoiste fios a chur ar dhaoine, ar pháipéir agus ar thaifid agus, faoi réir thoiliú Aire na Seirbhíse Poiblí, seirbhísí daoine ag a bhfuil saineolas nó eolas teicniúil a fhostú chun cabhrú leis maidir le fiosruithe áirithe.

(3) That the Joint Committee shall have power to send for persons, papers and records and, subject to the consent of the Minister for the Public Service, to engage the services of persons with specialist or technical knowledge to assist it for the purposes of particular enquiries.

(4) Go ndéanfaidh an Comhchoiste, roimh thosach gnó, duine dá Chomhaltaí a thoghadh mar Chathaoirleach, agus gan aige ach vóta amháin.

(4) That the Joint Committee, previous to the commencement of business, shall elect one of its Members to be Chairman, who shall have only one vote.

(5) Go ndéanfar na ceisteanna go léir sa Chomhchoiste a chinneadh trí thromlach vótaí na gComhaltaí a bheidh i láthair agus a vótálfaidh agus i gcás comhionannas vótaí go gcinnfear gur freagra diúltach a thabharfar ar an gceist.

(5) That all questions in the Joint Committee shall be determined by a majority of votes by the Members present and voting and in the event of there being an equality of votes the question shall be decided in the negative.

(6) Go mbeidh cumhacht ag an gComhchoiste miontuairiscí fianaise a ghlacfar os a chomhair mar aon le cibé doiciméid ghaolmhara is cuí leis a chlóbhualadh agus a fhoilsiú ó am go ham.

(6) That the Joint Committee shall have power to print and publish from time to time minutes of evidence taken before it together with such related documents as it thinks fit.

(7) Gur cúig Chomhalta den Chomhchoiste is córam dó agus duine amháin ar a laghad díobh ina Chomhalta de Dháil Éireann agus duine amháin ar a laghad díobh ina Chomhalta de Sheanad Éireann.

(7) That five members of the Joint Committee shall form a quorum, of whom at least one shall be a Member of Dáil Éireann and at least one shall be a Member of Seanad Éireann.

(8) Go ndéanfar Tuarascáil an Chomhchoiste, ar an gComhchoiste do ghlacadh léi, a leagan faoi bhráid dhá Theach an Oireachtais láithreach agus as a aithle sin go mbeidh ar chumas an Chomhchoiste an Tuarascáil sin a chlóbhualadh agus a fhoilsiú i dteannta cibé doiciméid ghaolmhara is cuí leis.

(8) That the Report of the Joint Committee shall, on adoption by the Joint Committee, be laid before both Houses of the Oireachtas forthwith whereupon the Joint Committee shall be empowered to print and publish such Report together with such related documents as it thinks fit.

Ordaíodh: 28 *Meitheamh* 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 1 Nollaig, 1984.

Ordered: 28*th June* 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to 1st December, 1984.

Ordaíodh: 29 *Samhain* 1984:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 19 Feabhra, 1985.

Ordered: 29*th November* 1984:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 19th February, 1985.

Ordaíodh: 13 *Feabhra* 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gComhchoiste um Chliseadh Póstaí a fhadú go dtí an 21 Márta, 1985.

Ordered: 13*th February* 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 21st March, 1985.

Ordaíodh: 20 *Márta* 1985:— Go ndéanfar an tréimhse chun tuarascáil a thabhairt ar ais ón gChomhcoiste um Chliseadh Póstaí a fhadú go dtí an 2 Aibreán, 1985.

Ordered: 20*th March* 1985:— That the period for reporting back of the Joint Committee on Marriage Breakdown be extended to the 2nd April, 1985.

Comhaltaí

List of Members

Dáil Members
Myra Barry
Eileen Desmond
Dick Dowling
Pádraig Flynn
Máire Geoghegan-Quinn
Mary Harney
Willie O'Brien
Rory O'Hanlon
Alan Shatter
Madeline Taylor-Quinn
Michael Woods

Seanad Members
Katharine Bulbulia
Tras Honan
Thomas Hussey
Catherine I. B. McGuinness
Mary T. W. Robinson

Chairman of the Joint Committee
The Joint Committee at its meeting on the 14th September, 1983, elected Deputy Willie O'Brien as Chairman.

Clerk to the Joint Committee
Mr. Rory MacCabe was assigned to be Clerk to the Committee on the 16th November, 1983.

REPORT

Chapter 1

Introduction

1.1 The Joint Committee was established by Order of the Dáil on the 7th July, 1983 and of the Seanad on the 12th July, 1983.

Following this formal establishment, the committee met and elected Willie O'Brien T.D. as Chairman.

The Committee decided that, in order to fully comply with the Orders of Reference, a detailed examination of the social and legal factors which constitute marriage would be necessary. The Committee decided to embark on this examination immediately and also to seek the views of interested parties and, if necessary, invite submissions from specific persons or organisations with particular expertise in this area, as a means of gathering such information as would be necessary.

The Committee recognised the pre-eminent desire of all concerned to ensure insofar as possible the preservation and protection of marriage. The majority of marriages which are contracted in the State are, and remain, viable and stable. The Committee emphasised the need to ensure that the social and legal infrastructure of the State should not work to increase the pressure which can be placed on marriage and much of the Committee's deliberations consequently focused on the protection of marriage and of family life.

The Committee recognises that the number of people who marry has not increased at the same rate at which the persons of marriageable age has increased, and has not been matched by the numbers of people who have married (see Appendix C). The numbers of marriages taking place has

decreased and this gives cause for concern. The Committee is of the opinion that it will be necessary to tackle the problems which give rise to this in order to make marriage as secure and viable as is humanly possible, and to offer married persons adequate social and legal protection where it is not so possible.

The Committee acknowledged that the present law does not provide adequate protection for those persons whose marriages do not remain viable and that this, in itself, is a threat to marriage.

1.2 Method of Enquiry

The Committee placed advertisments in the daily newspapers on the 22nd September, 1983 and the 25th November, 1983 and in the Sunday newspapers on the 25th September, 1983 and on the 27th November, 1983, seeking submissions from interested parties on matters covered by the Committee's Orders of Reference. In response to these advertisements, the Committee received submissions from a wide variety of religious, social, medical, legal and political organisations and from individual members of the public. More than 700 written submissions were received. All of these drew attention to the lack of protection for marriage, the inadequacy of legal remedies and the need for legal and social reform.

1.3 The Committee decided to invite selected groups and individuals to make oral presentations in order to give them the opportunity to expand on their written submissions and to reply to questions from the Committee. Of those invited, 24 groups or individuals, listed at Appendix A, gave evidence to the Committee.

1.4 As a result of the quality of the submissions received, the Committee acquired a body of information which provided source material for all the various questions which arose in the course of the Committee's deliberations and the Committee wishes to thank all those organisations and individuals who made submissions and participated in oral hearings. The transcripts of the oral hearings are published separately.

1.5 In the normal course, the Committee would provide a list of the organisations and individuals who made submissions, but in view of the personal and confidential nature of many of the submissions the Committee decided to confine itself to listing, at Appendix A, the organisations or representative bodies which made submissions.

1.6 The Committee had occasion to consult Government Departments, State Bodies and many other organisations in relation to particular questions which arose for consideration. A list of these organisations is contained at

Appendix B. Valuable information was thereby obtained and the Committee wishes to acknowledge the co-operation and assistance which was received.

1.7 Due to the magnitude of the task which was entrusted to the Committee it became clear that the reporting date of the end of July, 1984 could not be met. For that reason the Dáil and Seanad agreed on the 28th June, 1984, to extend the time for the Committee to complete its work to the 1st December, 1984. The Committee found it necessary to request further extensions to the 19th February, 1985, in the first instance and then to the 1st March, 1985, and the Dáil and Seanad acceded to these requests. A final extension until the 2nd April, 1985 was granted.

1.8 The Committee engaged Mr. Gerard Durcan, Barrister-at-Law, as legal advisor to the Committee and wishes to acknowledge the invaluable service which was provided by him. The Committee also wishes to acknowledge the invaluable service provided by its Clerk, Mr. Rory MacCabe, Barrister-at-Law, and the Secretariat of the Committee and also Mr. Séamus Phelan, Principal Committee Clerk, and his staff in the compilation and publication of this Report.

Chapter 2

Marriage and the Family — The Legal and Constitutional Position

2.1 Marriage is a legal contract entered into by the celebration of a marriage ceremony; marriage creates by law a new relationship between the parties and alters the status of both. The status of an individual [used as a legal term] means the legal position of the individual in or with regard to the rest of the community.

2.2 For a marriage to be valid in the State—

(i) each of the parties must, as regards age, mental capacity and otherwise, be capable of contracting marriage;

(ii) they must not be either prohibited by reason of kindred or affinity from marrying one another;

(iii) there must not be a valid subsisting marriage of either of the parties with any other person;

(iv) the parties, understanding the nature of the contract, must freely consent to marry one another; and

(v) certain forms and ceremonies must be observed.[1]

2.3 The law which governs the formalities of marriage is contained in a series of Statutes from 1844 to 1972.[1]

[1]See "Family Law in Ireland" by Alan Shatter, and Report of the Law Reform Commission on Nullity of Marriage (LRC 9/84).

2.4 Marriage is given express recognition in the Constitution (Article 41)[2] where the State pledges

> "to guard with special care the institution of marriage".

The Constitution recognises only the family founded on the institution of marriage and this has been confirmed by the Supreme Court.[3]

2.5 The extent of the protection offered to marriage by the Constitution has been stated by the Supreme Court as follows:—

> "The pledge (of Article 41.3.1) to guard with special care the institution of marriage is a guarantee that this institution in all its constitutional connotations, including the pledge given in Article 41.2.2 as to the position of the mother in the home, will be given special protection, so that it will continue to fulfil its functions as the basis of the family and as a permanent, indissoluble union of man and woman."[4]

2.6 The rights of the family, recognised by the Constitution, are "antecedent and superior to all positive law" and are firmly based on natural law which is:

> "of universal application and applies to all human persons".[5]

These rights are also "inalienable and imprescriptible".[6] "Inalienable" has been held to mean

> "that which cannot be transferred or given away",[7]

while "imprescriptible" has been held to mean

> "that which cannot be lost by the passage of time or abandoned by non-exercise".[8]

2.7 An indication as to the rights of the family is found in Article 41.1.2 where:

> "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".

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[2](Article 41.3.1).
[3]The State (Nicolaou) v An Bord Uchtála [1966] IR 567.
[4]Murphy v Attorney General [1982] IR 241.
[5]Northants Co. Council v A.B.F. [1982] ILRM 164.
[6]Article 41.1.1.
[7]Ryan v Attorney General [1965] IR 294.
[8]Ryan v Attorney General [1965] IR 294.

The Committee noted the provisions dealing with the Family contained in the European Convention on Human Rights. These are reproduced here as follows:—

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

The European Court of Human Rights has interpreted this Article as follows:—

"By guaranteeing the right to respect for family life, Article 8 presupposes the existence of a family. The Court concurs entirely with the Commission's established case-law on a crucial point, namely that Article 8 makes no distinction between the "legitimate" and the "illegitimate" family. Such a distinction would not be consonant with the word "everyone", and this is confirmed by Article 14 with its prohibition, in the enjoyment of the rights and freedoms enshrined in the Convention, of discrimination grounded on "birth".

In addition, the Court notes that the Committee of Ministers of the Council of Europe regards the single woman and her child as one form of family no less than others (Resolution (70) 15 of 15 May, 1970 on the social protection of unmarried mothers and their children).

Article 8 thus applies to the "family life" of the "illegitimate" family as it does to that of the "legitimate" family.[9]

2.8 The Committee notes the extent to which these provisions are at variance with the judicial interpretation given to the family as constitutionally defined by the Irish courts.

2.9 Submissions received by the Committee refer to extra-marital unions which are occurring in the State. Single persons living together, married persons who have separated and are living with single persons or with other separated persons, persons who have had their marriages annulled by the Ecclesiastical Courts and who have "remarried" within the Church, persons who have obtained divorces abroad which are not recognised by the State and

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[9]Marckx case, Strasbourg, 13th June, 1979.

have purported to remarry, are all, in varying degrees, living in extra-legal unions, enjoying only limited legal recognition and protection.

2.10 Extra-marital unions are not covered by the Constitutional protection afforded in Articles 41 and 42 to the family, as it is

> "quite clear that the family referred to in (Article 41) is the family which is founded on the institution of marriage and in the context of the Article, marriage means valid marriage under the law for the time being in force in the State."[10]

This also excludes from the definition of a family, a household consisting, for example, of an unmarried mother or father and her or his child.

The rights of the mother and father in a non-marital situation have been given a different interpretation under Article 40.3.1.

The Supreme Court stated that a mother of an illegitimate child:

> "as such. . . . .has rights which derive from the fact of motherhood and from nature itself. These rights are among her personal rights as a human being which the State is bound under Article 40.3.1 of the Constitution to respect and to defend and vindicate. As a mother she has the right to protect and care for and to have custody of her infant child. . . . .This right is clearly based on the natural relationship which exists between a mother and child."[11]

The Court has, however, not granted the same constitutional protection to the father of an illegitimate child:

> "It has not been shown to the satisfaction of this Court that the father of an illegitimate child has any natural right, as distinct from legal rights to either the custody or society of that child and the court has not been satisfied that any such right has ever been recognised as part of natural law."[12]

2.11 This failure to extend constitutional protection to the natural father of a child has been criticised in submissions made to the Committee and in modern Irish legal texts which deal with the subject.[13]

The Committee recognises the anomalous nature of this position having regard to the developments in legislation on equality between the sexes in other areas.

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[10]The State (Nicolaou) v An Bord Uchtála [1966] IR 567.

[11]G v An Bord Uchtála [1978] 113 ILTR 25.

[12]The State (Nicolaou) v An Bord Uchtála [1966] IR 643.

[13]See "Fundamental Rights in the Irish Law and Constitution" by Professor J. M. Kelly, and "Family Law in Ireland" by Alan Shatter.

The Committee considered this anomalous position in some detail and adverted to the work which has been done in this area by the Law Reform Commission. While deciding that this matter was not within the Orders of Reference of the Committee, the Committee understands that the drafting of amending legislation to deal with some of the problems in this area is at an advanced stage and urges swift presentation of such legislation to the Oireachtas.

Chapter 3

The Protection of Marriage and Family Life

Introduction

In later chapters — chapters 4 and 5 in particular — the factors which cause or contribute to the breakdown of marriage are dealt with in detail. This chapter concentrates on the prevention of marriage breakdown and, to a large extent, draws on the information received by the Committee and observations made by the Committee in other areas of this report. Such observations deal with the universally accepted causes of breakdown — personality defects, differing degrees of maturity, basic incompatibility of parties, all of which may be often manifested by argument, discord, alcohol and drug abuse, violence and cruelty, both mental and physical.

In addition, in considering how best the State can lead the way towards protecting marriage and family life, the Committee is conscious of the disturbing economic and social pressures which add to the interpersonal pressures which can arise in the course of a marriage. The Committee does not have the resources to engage in a detailed examination of these pressures and agreed that to do so would require research of a kind not envisaged in the Orders of Reference of the Committee and not, in any event, permitted by the real constraints which the schedule of work undertaken by the Committee dictated. The Committee urges that in-depth studies be undertaken as a matter of urgency by the appropriate bodies.

3.1 Education

3.1.1 Throughout the deliberations of the Committee, there was a constant emphasis on the importance of being prepared for marriage. Many submissions which were received by the Committee pointed out the need for a structured approach to educating people for marriage so that insofar as possible, all persons who marry are aware of the duties and obligations, rights and liabilities which are directly involved.

3.1.2 The Committee is conscious of the legal framework which surrounds marriage. When a marriage breaks down persons involved often find that the law is complex and open to misunderstanding and misapprehension.

3.1.3 The Committee is aware that some of the problems which give rise to the breakdown of marriage are present before the marriage. The Committee stressed the need for an educational process to reduce the element of uncertainty so as to promote awareness, reflection and mature consideration by all parties.

3.1.4 The Committee, aware of the constitutional provisions relating to the protection of the family, is of the view that the State has a specific responsibility to promote a system of education for marriage.

The Committee did not undertake a detailed analysis of the methods of educating people for marriage. Consistent with the principle, which runs through this report, of providing for the protection of marriage and prevention of marriage breakdown, the Committee draws attention to the absence of a cohesive and comprehensive educational programme designed to prepare people for marriage within the present educational system. The State, as part of its constitutional obligation to provide for the education of citizens, should ensure, as far as possible, that this programme should operate through the entire educational system. It should concentrate on the realities of life which are likely to confront all young people as they progress from childhood to adulthood, from childhood friendships through relationships of a more emotional and intimate nature to marriage and the raising of a family.

3.1.5 The Committee sees the role which the State plays through the educational system in this area as complementary to the primary responsibility which is placed on parents. In an oral submission to the Committee, Dr. Jack Dominian, Clinical Psychiatrist at the Central Middlesex Hospital said:

> "My image of the prevention of marital breakdown starts in the family. I would like to see the family as being the model. In regard to the schools, I have said again and again that in addition to "The Three R's", I want

a fourth "R" which stands for relationships to be an essential part of education in schools. We are doing research at the moment. I am not saying that you can teach boys and girls about marriage, because it is too big a leap for that age group, but you can teach them about personal relationships, about trust, about communication, about affection and about understanding. I would like to see that, which is the infrastructure of marriage, being an essential part of education".

3.1.6 The Committee recognises the role which is played by churches, schools, voluntary groups, third level and other educational institutions in this area. They commend these bodies for the work they have done and are doing. This work needs to be developed, augmented and financially supported.

3.1.7 In addition to formal education and the education which is given in the home, the Committee feels that the State has a special responsibility at the immediate pre-marriage stage. The parties should, from the time they formally declare their intention of marrying by notifying a clergyman, or applying to a registrar with powers to solemnise civil marriages, have access to a pre-marriage guidance service and be positively encouraged to avail of this service.

3.1.8 These services would have the task of ensuring that a couple intending to marry understand the nature of marriage, the importance of communications within marriage, assist them in obtaining an insight into the responsibilities and obligations which flow from it and discuss in depth any questions which relate to marriage.

3.1.9 As this service would essentially be personal, the Committee considers that staff would need to be specially recruited and trained in counselling skills. The Committee feels that considerable expertise already exists among voluntary bodies at present providing guidance services at pre-marriage stage and that the dissemination of this expertise would be invaluable in the expansion of pre-marriage guidance services as envisaged.

3.1.10 The Committee is of the view that prevention of marriage breakdown would be advanced considerably by heightening the level of awareness of persons contemplating marriage as to the true nature of marriage.

3.2 Counselling

3.2.1 Following on from counselling at the pre-marriage stage, the Committee has considered many submissions which stress the need for a comprehensive counselling service for married persons. The Committee was

impressed by the emphasis which the submissions placed on the importance of establishing a comprehensive nationwide State-aided counselling service, with trained and qualified personnel. This service would be available to assist persons who encounter difficulties within marriage.

3.2.2 The Committee is concerned that support for marriage, especially during the early years when marriages can be most vulnerable, is at best inadequate.

The Committee is of the view that those voluntary organizations at present engaged in marriage counselling are fulfilling a need where government intervention has been minimal. There is a need to support and develop existing services, in order to provide a service which is easily available and acceptable to the greatest possible number of people.

3.2.3 Among submissions received by the Committee, the following extracts are relevant:

> "The provision of such a counselling service would form the first line of defence so that couples with difficulties would have the opportunity to use the skilled help available to work at their problems."[1]
>
> "If the State is serious about its involvement in the area of marriage and the family, then it must review as a matter of urgency:
>
> (a) the availability of locally based statutory counselling services;
>
> (b) the improvement of Statutory support services (not necessarily of a financial nature).[2]
>
> "I think that the State has a supportive role. The State should finance voluntary bodies sufficiently well to support the preparation and support of marriages."[3]

3.2.4 The Committee is conscious of the vital role which education plays in preparing people for life. The Committee is not satisfied that the present facilities are adequate to cater for their educational needs as they relate to support for marriage.

3.2.5 The Committee is of the opinion that:

(a) the State is obliged to ensure that the educational system provides a means to educate persons for marriage; and

(b) the State is obliged to ensure that there is an easily accessible and effective counselling service available to married persons.

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[1]Submission to the Committee by the Marriage Counselling Service.
[2]Submission to the Committee by the Life Education and Research Network.
[3]Extract from oral submission to the Committee by Dr. J. Dominian.

3.3 Mediation

3.3.1 While this report deals with the provision of a mediation service at Chapter 8, it is appropriate here to draw attention to the educational role which is played by such a service and the association between a mediation service, which intervenes at the stage when marriage has broken down, and other educational and counselling services.

3.3.2 The Committee envisages a mediation service as complementary to both the pre-marriage counselling service dealt with at paragraph 3.2 above and the counselling service, dealt with earlier in this chapter. These services might well be closely associated and co-ordinated as the skills involved would, to a large degree, be based on the same principles.

It may happen that the personnel involved work in all three types of service. Such an approach would have the advantage of being based on the entirety of the marital relationship. Coordination of the work of the various services would be required. There should be the maximum co-operation and interaction between the personnel involved in all three services.

3.4 The age for marriage

3.4.1 The Committee received many submissions which stressed that marriages involving young persons are more likely to break down than marriages between persons of more mature years. This is a view which is widely held among social commentators. The Committee decided to examine the age at which persons marry, with a view to determining if the present legal framework governing this area requires modification.

3.4.2 The Marriages Act, 1972 sets out the law in regard to the age for marriage. Since the 1 January, 1975—

(1) A marriage between persons, either of whom is under sixteen, is not valid in law unless an exemption from the provision is obtained before the marriage from the President of the High Court (or a Judge nominated by him). An application for such an exemption can be made by or on behalf of either party to the intended marriage in an informal manner through the Office of the Wards of Court. To obtain such an exemption the applicant must show that its grant is justified by serious reasons and is in the interests of the parties to the intended marriage.

(2) A person who is under 21 years and who is not a widow, widower or a ward of court, must, prior to the marriage, obtain the consent of his or her guardians or sole guardian or if there is no guardian the

consent of the President of the High Court (or a Judge nominated by him). In the case of a Ward of Court the consent of the court must be obtained.

The requirement of the consent of a guardian can be dispensed with if a guardian

(a) refuses or withholds consent;

(b) is unknown;

(c) is of unsound mind; or

(d) is of whereabouts which would be unreasonably difficult to ascertain

and the President of the High Court (or a Judge of that Court nominated by him) consents to the intended marriage. Applications for such a dispensation are heard in an informal manner and in determining such an application the court must regard the child's welfare as the paramount consideration. If a marriage takes place between a person over 16 and under 21, without the required consent, the lack of such consent does not make the marriage invalid.

3.4.3 Recommendations of the Law Reform Commission[4]

The main recommendations of the Law Reform Commission contained in this report are as follows:

3.1 Marriage of a person under 16 years should be made null and void and intrinsically or essentially invalid.

3.2 Marriage of a person between 16 and 18 years should be made null and void and intrinsically or essentially invalid unless the consent of the parents or guardians or of a court or other appropriate authority is first obtained.

3.3 Where guardians disagree, or in the absence of guardians or if the minor is a ward of court, the High Court may give the necessary consent.

3.4 Where both guardians refuse their consent, this refusal should not be subject to appeal to the High Court.

3.5 Where the necessary consent has not been obtained the marriage will be void.

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[4]Report on the Law Relating to the Age of Majority, the Age of Marriage and Some Connected Subjects (LRC-5-1983) The Law Reform Commission.

3.4.4 Considerations regarding the absolute minimum age for marriage

4.1 Because of differences in individual's intelligence, judgement, temperament and social circumstances there is no easy way of designating what is the absolutely right age for marriage.

4.2 The average age for marriage in Ireland has been going down and there has been a considerable increase in the number of people aged 21 years and under who are getting married.[5]

4.3 Research in other countries indicates that the age of the couple at marriage does influence its outcome.

"It is well known 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".[6]

"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".[7]

"A correlation between young marriages, pre-marital pregnancy and marital breakdown has been found in other western countries".[7]

4.4 Statistics on Marital Breakdown are not sufficiently extensive in Ireland to permit similar inference with any degree of empirical certainty, but the increase in matrimonial court proceedings shows that marriages are breaking down with greater frequency in recent years[8]

There is no reason to suppose that in such circumstances the pattern of age-related marital breakdown in Ireland is any different from that in other countries where research has been carried out.

4.5 A study conducted by the Dublin Regional Marriage Tribunal of the Roman Catholic Church revealed that applicants in 1975 for

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[5]For Statistical data see Appendix C.
[6]G. Rowntree — Some aspects of Marriage Breakdown in Britain.
[7]J. Dominian, Marital Breakdown.
[8]See Appendix C.

Church annulments were, on average, younger at their date of marriage than the national average age of marriage in that year.

4.6 A further study[9] conducted by Dr. Kathleen Higgins (Economic and Social Research Institute) found that deserted wives were younger at marriage than the national average. These surveys support research in other European countries regarding the relationship between age at marriage and marriage breakdown.

4.7 It appears that pregnancy is one of the main reasons why a girl seeks permission to marry below the present minimum age in Ireland. Opinion, social, political and religious, is increasingly against pregnancy being a dominant factor in deciding whether or not to marry. Irish courts have recently held that in certain circumstances the marriage of a young person who is forced to marry because of pregnancy may be null and void.[10]

4.8 Many churches recognise that there is a need for a waiting period between the time parties decide to marry and the date of the actual marriage, to afford them the opportunity to reflect on the importance of the decision they have taken and the nature of the relationship into which they are entering.

At present the Roman Catholic Church in general imposes a 3 month waiting period. Other churches impose similar waiting periods. There is no similar provision for persons contracting civil marriages. Consideration should be given to introducing a similar provision in the Civil Law.

4.9 Concern has been expressed that the raising of the current absolute minimum age for marriage from 16 to 18 might adversely affect the travelling people, whose age of marriage, it was felt, is often 16 years or lower.

In the Report of the Review Body on the Travelling People published in February, 1983 at paragraph 2.3.4 (Page 88) it is accepted that travellers marry at a young age, but suggests from the result of the Census of Travelling People conducted by the Economic and Social Research Institute in 1981, that many travelling women are now postponing their marriages until their early twenties.[11]

[9]Marital Desertion in Ireland.
[10]McK V. F McC judgment of O'Hanlon J., 1982 ILRM 277.
[11]Economic & Social Research Institute — Census of the Travelling People.

Similar considerations would apply in the case of members of religions whose beliefs permit marriage at a young age.

Statistics at page 89 of the report show that no traveller under 16 years is married and that only 37 were married between 16 and 18 years of age.[12]

4.10 The Age of Majority Act, 1985, has now come into force. This has reduced the age of majority to eighteen (18) years.

3.4.5 Opinions of the Committee

The Committee considered that certain changes in the present law be made to take account of:

(i) the lowering of the age of majority to eighteen (18) years;

(ii) changes in the pattern of the age at which people are marrying in the present day;

(iii) the desirability of fixing a minimum age for marriage which would reflect the widely held view that marriages involving young persons are at greater risk than other marriages;

(iv) the need to ensure that marriage is with full and free consent and with full understanding of its nature and implications, social, economic and legal.

3.4.6 The Committee is of the opinion that the free age for marriage i.e. the age at which a person can freely contract a valid marriage without any prior requirement for parental consent, should be reduced from 21 years to 18 years.

3.4.7 The Committee is of the opinion that the minimun age for marriage should be 18 years and that any marriage contracted by a person under 18 years should be null and void. Marriages of persons between 16 and 18 years may, however, be permitted if such persons obtain the prior consent of guardian(s) and the prior consent of the court. Consent of the court should not be granted unless the court is satisfied that the marriage would, in all the circumstances of the case, be in the best interests of the parties. Welfare, in these circumstances, should comprise the moral, intellectual, physical and social welfare of the applicant. The court should also need to be satisfied that the applicant understands the nature and implications of marriage and consents fully and freely to the marriage.

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[12]Report of the Review Body on the Travelling People.

3.4.8 In forming the opinion that the free age of marriage should be reduced from 21 to 18 years, the Committee is conscious of the need for persons who intend to enter into marriage to receive the best possible education, preparation and advice in advance.

A comprehensive counselling service, allied with a specific educational input at secondary school level would go a considerable way to clarifying the social, legal and economic implications of marriage for such persons. This report deals in detail with this at paragraphs 3.1.4 to 3.1.6.

Chapter 4

Marriage Breakdown

4.1 Introduction

4.1.1 Having considered the nature and form of marriage, the Committee examined the factors which contribute to the breakdown of marriage. In so doing, the Committee drew from information supplied in submissions and in published works on marriage breakdown.

4.1.2 The Committee felt it was desirable to examine in detail the question of how and why marriages break down, in order to place the many elements of breakdown in the context of their opinions and observations on how best to protect marriage and family life and deal with problems which are caused by marriage breakdown.

4.1.3 The essence of marriage is a formal commitment, made in the presence of witnesses, to create and maintain a lasting and stable relationship between the spouses. The extent to which the stability of this relationship is subjected to pressure will vary. Pressure is brought about from within the relationship by the interaction of the personalities of spouses on each other and from outside the marriage by social, economic and environmental pressures such as bad housing, unemployment and the changing values and ethos of society. Most marriages in Ireland deal in the normal course with these pressures, but in an increasing number of cases these pressures can lead to

friction and conflict which cannot be resolved and which can lead to the breakdown of marriage.

4.1.4 As the Committee already stated, the incidence of marriage breakdown in Ireland is not easy to assess. Statistics available to the Committee from other jurisdictions generally relate to marriage and divorce. Divorce is a clearly defined termination of a valid marriage and can be accurately measured, while the breakdown of marriage is not so easily defined. Divorce shows only the numbers of marriages which have broken down and have been terminated. It does not include situations where spouses continue to live together in various stages of disharmony, or choose to separate or where one spouse is in desertion.

4.1.5 Studies conducted in other jurisdictions have found that the most vulnerable phase of marriage is the first five years. While these early years show the highest incidence of breakdown, marriages can and do break down after 30 years or more. A primary responsibility for marriage breakdown lies in the personality of the spouses and the specific interaction of the couple.

4.1.6 It is suggested that marriage breakdown can be divided broadly into at least two phases:—

(*a*) during the first five years of marriage, breakdown is often brought about by failure to establish the necessary minimum relationship, physically and emotionally; and

(b) marriages which negotiate the first phase with reasonable success enter into a second phase in which the relationship is subjected to different stresses — the increased maturity of the personality with the passage of time, and new needs which attain prominence and which may no longer be recognised or met by the partner, and the arrival and rearing of children.

4.1.7 The earlier the marriage starts the greater are the likely changes in the personality requiring considerable mutual adaptation later on. The Committee deal specifically with this matter in Chapter 3.

4.1.8 Finally, the marriage will experience a new situation when children grow up and leave the family home where both parents will be exposed to the challenge of re-directing their emotional and social lives. This will be particularly significant for the mother.

4.2 Personal Factors

4.2.1 The factors which attract one person to another and which cause them to marry are complex and are not always fully understood by the parties themselves. Modern sociological research has shown with considerable clarity that a person's place of residence, social class, age, intelligence and religion will, to a considerable extent, influence the field of people from whom a marriage partner is chosen.

4.2.2 Marked fluctuations in mood, loneliness, undue sensitivity, feelings of guilt and remorse, lack of self confidence, loss of temper, the need to dominate and inflexibility can affect the marriage adversely. While the consensus of opinion has accepted the view that marital selection based on the principle of like marrying like means in practice that the personality and neurotic problems of one partner are likely to be matched by those of the other, this does not exclude the possibility that one partner who has started with a normal personality becomes adversely affected in the course of the marriage by the other partner, or by internal changes in personality, not necessarily relating to any interaction with the other partner.

4.2.3 A further view with regard to personality needs is that people will marry one another precisely because they see in each other characteristics which they lack in themselves. So, if such persons fall in love their personalities may differ but be complementary in their psychological needs.

4.2.4 It is likely that both approaches influence the ultimate choice of the parties. The choice will bring about a close and intimate psychological relationship and the survival of every marriage depends on the capacity of each partner to meet the psychological needs of the other which in turn requires a sufficient degree of maturity and flexibility.

4.2.5 Marriage brings about a return to the close and intimate union which a child enjoyed with its parents. Spouses provide for further growth in their respective personalities, as well as for the requirements for the rearing of children. If the marital relationship is to be viable, it is necessary that both spouses have reached a sufficient degree of emotional independence, trust, self-acceptance, the ability to receive and give themselves to each other, and show no excessive anxiety or aggression.

4.2.6 The state of maturity of spouses and their ability to adjust, not only to the external changes imposed by a dynamic society, but also to the internal changes in their own personalities and the interaction of these factors will determine their ability to develop within marriage. The arrival of children or

the loss of a child will place new demands on the marriage. The passage of time itself may have the effect of one spouse maturing more rapidly than the other and the basic ability to meet each others minimum basic needs — love, affection, support, security, companionship and sexual relations — may no longer exist. These internal factors may be influenced by external factors.

4.3 Environmental Factors

4.3.1 Changes in the society in which a married couple live can be a cause of stress within the marriage. If the external pressure is combined with pressure which already exists from within the marriage then the chances of breakdown are increased. The breakdown of the traditional authority and power of the male head of the family and the fact that more women are working outside the home, give recognition to the equality of the sexes and it is accepted that distinctions which were perceived in the past were more often than not exclusively due to ignorance and prejudice.

Increasing economic independence for women has also contributed a new factor to the relationship between husband and wife.

Modern marriage is often seen more as a companionship than as an institution brought about and regulated by status. Marriage is veering away from the framework of mutual duties and rights towards the highest possible satisfaction of personal needs in an atmosphere of co-operative partnership.

4.3.2 The development of birth regulation is increasingly playing a large and important part in the fabric of family life. It can be argued that the time is now approaching when children will only be conceived when their parents want them and are, as a result, able to give them the unconditional care and love which is such a necessary prerequisite for the development of their health both physical and psychological.

4.3.3 Within the space of a few decades young people of all social classes have developed habits which are markedly different from those of one or two generations ago. Principal among these is felt to be the waning influence of parents and relatives whose views may not be taken into account in the choice of a future partner and are no longer in a position to arrange, strictly vet, and effectively disapprove of the choice of a future partner. This has become the primary concern of the participants themselves. Parental approval may or may not be sought and, while parental opposition may still dissuade some individuals or delay the event for others, it does not now constitute an insurmountable obstacle.[1]

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[1]See however the Discussion of a Statutory requirement of the consent of a Guardian or Guardians at Par. 3.4.2.

4.3.4 Industrialisation and the resulting decrease of numbers engaged in agriculture has also shifted the emphasis from the farming village or small town life to the larger towns and cities. The area of contact for individuals has been extended and the separation of the place of work from home, especially in cities, has added a new dimension to the range of possible choice of partners. While these changes have widened the range of possible contact, the immediate neighbourhood and social class remains the most likely meeting place for one's future partner.

4.3.5 Where persons marry for emotional reasons, they may not take into account the social, intellectual and emotional differences which may exist between them. Where these differences are considerable, such as when persons from different ethnic backgrounds marry, the internal qualities of the marriage must be such as to resist the added pressure as a result of such differences.

4.3.6 The growing permissiveness of western societies, living standards imposed by the social grouping in which the family exists and the comparative success of the family, having regard to its peers, can pressurise a marriage. The result of this pressure can be to place the marriage at greater risk or to actually strengthen it, depending on the ability of the family to deal with these influences. Large scale unemployment, poor housing or inadequate financial resources can, either individually or collectively, place marriages under strain and can exacerbate problems which may exist within the marriage.

4.3.7 Another important factor is the impact of Catholicism with its emphasis on the permanency of the marriage bond. This is particularly relevant in Ireland although the influence will ultimately vary according to the extent to which individuals adhere to the strict tenets of Catholicism.

4.3.8 Religious denominations encourage marriage between members of their own faith; both inter-church and inter-faith marriages continue to be discouraged. Nevertheless, such marriages are a growing feature of Irish life.

The Roman Catholic Church imposes conditions as to the ceremony and as to the religious upbringing of the children of these marriages. These conditions tend to vary in stringency in different dioceses. Where a marriage is stable and successful and where husband and wife have fully thought through the problems that may arise, differences in faith will not put a marriage at risk. Indeed, the life of the family can well be enriched and strengthened. However, where other stresses and interpersonal difficulties exist in the marriage there is a danger that religious differences over such matters as the upbringing of children can become an additional factor of risk or may be used as a scapegoat for the failure to recognise and resolve the interpersonal struggle.

4.3.9 Internal influences may, as mentioned earlier, be adequate to overcome external pressure. If the spouses do not enjoy a mininum ability to grow together and face the problems which arise as a partnership, there is the possibility that external pressures may overbear the ability of the spouses to resist. In such situations, the parties to the marriage come under such individual pressure that, without rapid intervention, breakdown becomes an inevitability. The logical conclusion from this is that the roots of marital failure will in some instances exist premaritally in the personality of the spouses. The capacity of the other party to contain or deal with these roots may ultimately decide the outcome of the marriage. When two immature persons marry, the risk of failure will be increased accordingly.

4.3.10 It is widely felt that alcoholism is a major contributory factor in the breakdown of marriage in Ireland. There can be little doubt that excessive consumption of alcohol, leading to drunkenness can lead to the release of tension which can manifest itself in abuse, either verbal or physical, of the other spouse and/or children. The view held by researchers is that excessive consumption of alcohol which results in abuse of this nature is not in itself a cause of marriage breakdown, but may conceal a failure in communication or may reveal a personality defect which, for any number of reasons, is only released through excessive consumption of alcohol. The personality defect can also reveal itself by other means — consumption of narcotic drugs, sexual deviation, extra marital affairs, impatience or open physical or verbal aggression unrelated to alcohol.

4.3.11 The attention of the Committee has been drawn in submissions to the large number of marriages where abuse of alcohol is seen as a major factor in breakdown. The Committee views the abuse of alcohol together with the increasing evidence of drug abuse — including the excessive use of some proprietary anti-depressant and other prescribed drugs — with concern and is of the opinion that there is a need for a campaign of awareness to be launched by the State in order to re-emphasise the dangers of such abuse.

Chapter 5

The Problems Caused by Marriage Breakdown

5.1 The critical factors which motivated the Oireachtas to establish the Committee were firstly the need to protect family life and secondly the growing awareness of marriage breakdown as a social reality, giving rise to social, economic and legal problems which required detailed examination and intervention by the State, if necessary, by legal or constitutional means.

5.2 It appears to the Committee from evidence received in submissions and from research conducted both in Ireland and in other countries which has been opened to the Committee, that western society is facing a major change in attitudes towards personal relationships and in particular towards marriage and the family. The effects of these changes are now being felt more strongly in Ireland — the increase in the rate of birth of illegitimate children and the numbers of single mothers who now keep their children supports this.

> "With an increase in mobility and a greater emphasis on personal autonomy, the concept of exclusive commitment to another person for life may not be as attractive at the present time as it was in the past. Making personal sacrifices is often thought of as foolish, where once it was thought to be heroic."[1]

[1]Submission from Life Education and Research Network.

5.3 Social and economic pressures, the adversarial nature of the legal system and the inadequacy of counselling and mediation services can individually or collectively, contribute to the breakdown of marriage, as has been considered in the previous chapter. When breakdown does occur, the individual concerned may look to the State, to voluntary organisations or to churches for support and to the legal system for a remedy for the problem or problems which have arisen.

5.4 From submissions received by the Committee, the scale and extent of problems which are caused by marriage breakdown are considerable.

> "The social and emotional costs of broken marriages are high. Marital conflict and the loss of intimacy are increasingly associated with physical and psychiatric disorders, of which depression is the most commonly cited (see for example Brown + Harris 1978). Long term effects for children of broken marriages include increased risk of delinquency (Langer + Michael 1963) and of disruption in their own subsequent marriages (Rutter 1972). However, these findings disguise the fact that the ending of a marriage is frequently preceded by intense conflict and there is a substantial body of evidence that it is destructive parental interaction which is associated with delinquency and disturbance in children rather than separation or divorce per se (Rutter + Madge 1977). Thus for many spouses and some children, the ending of the marriage brings relief from tension and hostility. Nonetheless, the process of adjustment to the ending of a marriage for spouses and children is painful and may be lengthy, especially when accompanied by ongoing recrimination (Wallerstein & Kelly 1980)."[2]

5.5 The Committee recognises that an increasing number of couples are separating and that the separation of spouses is essentially a public demonstration of the end of a marital relationship. The Committee also recognises, however, that many couples where marital relationship has irretrievably broken down are still residing under the one roof, and that although residing together are effectively leading separate lives. Many such couples wish to separate but are unable to do so as they cannot reach agreement between themselves as to the basis upon which they should separate. Under the existing legal system there are no legal remedies available, whereby the courts can resolve disputes as to the basis upon which a separation should take place without proof of fault, such as adultery, cruelty or unnatural practices.

The Committee acknowledges that there are many thousands of couples

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[2]Submission from the Irish Association of Social Workers.

who find themselves in a legal limbo — tied into a legal marriage that in social reality no longer exists.

5.6 Persons whose marriages have broken down may form second relationships, many of which are stable and loving and have many of the appearances of a marriage. Such couples cannot validly marry and, looking ahead, under the present law, given that marriages will continue to break down, the numbers of such second relationships will increase and the numbers of children which result from such relationships will also increase.

The absence of any real legal protection for persons involved in second relationships has not deterred people from entering into them. On the contrary, attempts are often made by couples in such relationships to put some legal or official face on the relationship. Examples of this are:

1. Persons domiciled in Ireland obtaining foreign divorces, with one or both divorcees subsequently marrying another person and residing in Ireland with that other person, as if married, in circumstances where Irish law does not recognise the foreign decree of divorce or the second marriage, and still regards the divorced couple as married to each other.
2. The obtaining of Church decrees of annulment or dissolution with one or both parties marrying someone else in a Catholic Church, producing the result whereby the State does not recognise either the annulment, dissolution, or the second marriage and regards the annulled or dissolved marriage as still valid.
3. A married person residing with another person, one of whom changes his or her name by deed poll, so that both have the same surname and appear to be married.

In a submission to the Committee, Solicitors of the Incorporated Law Society of Ireland stated:

> "We are all aware of second unions being entered into and continued, with every appearance of stability and happiness, in which the partners beget and raise children. While possessing all the appearances of a regular family, the second union does not have State recognition or protection as a marriage. When it is recalled that at least one of the partners to such a union has a living spouse with whom at an earlier date marriage vows were exchanged, then if the number of such second unions taking place was small, the norm of marriage as a commitment for life, come what may, could still be seen as a norm accepted by society in general."

5.7 The absence of any legal status for the above-mentioned stable non-marital relationships may in itself create an element of insecurity between the

couple themselves and in the children, and this may have the effect of causing stress and tension which can lead to further breakdown and trauma for the couple and any children.

5.8 The Committee is aware of the economic consequences of marriage breakdown for the parties to the breakdown and for the State. For the parties themselves, breakdown will often involve expensive litigation, alteration of living arrangements and may often result in a decrease in the standard of living of all concerned, with the possibility of ongoing maintenance payments and unascertainable costs for health problems which marriage breakdown may cause.

The State may be obliged to bear some of the above costs if the parties are not financially capable of meeting them by providing legal aid, local authority housing, social welfare support and the cost of health care.

Financial considerations of the above kind may effectively prevent couples from having access to the available legal remedies, prevent them from separating and compel them to subsist in a marriage which is no longer socially or emotionally viable.

5.9 The Committee is of the opinion that the problems caused by marriage breakdown have not been adequately dealt with by the Oireachtas in the past. The present laws which purport to deal with marriage breakdown are not comprehensive, nor are they reactive to the current changes in society and in personal attitudes to the family and to marriage. In the following chapters the Committee considers the legal remedies and problems associated with them and makes observations as to changes which are felt necessary in order to improve this unsatisfactory situation.

Chapter 6

The Statistics

6.1 The Committee is acutely aware of the unavailability of comprehensive and detailed statistics on marriage breakdown in Ireland. The National Census in 1981 and the Labour Force Survey in 1983 contain limited data on this area, but the Committee has been unable to have access to any source which can delineate objectively the total number of persons whose marriages have broken down. Various submissions to the Committee contain statistics based on information available to the organisations concerned.

6.2 The statistics which are available relate to the numbers of persons who have recourse to the courts in order to seek access to one or other of the present legal remedies available in family law. In addition, information relating to those persons, in receipt of State benefits or allowances which are payable to victims of marriage breakdown in certain limited circumstances, is also available as well as those statistics provided by the Catholic Church relating to applications for the grants of church annulments.

6.3 The Committee has taken these into account, primarily as an indicator of the extent of the problem of marriage breakdown. The incomplete nature of these statistics indicates the immediate need to compile comprehensive statistics on marriage breakdown. Submissions received by the Committee criticise the unavailability of such statistics and in some instances question the accuracy of the available statistics.

6.4 The Committee is of the opinion that any future census should seek to ascertain precisely the incidence of marriage breakdown as manifested by separation or desertion. In this, the Committee accepts the difficulties which will be encountered in attempting to precisely ascertain the extent of marriage breakdown. The numbers of marriages which may, to all intents and purposes, have broken down, but where the spouses continue to reside together exacerbates this difficulty.

6.5 The statistics at present available to the Committee are attached at Appendix C.

Chapter 7

The Legal Remedies

7.1 Law of Nullity of Marriage

7.1.1 "The law of nullity of marriage is concerned with the circumstances in which a marriage will be invalid according to the law of the State; it is not concerned with such questions as divorce (which is the legal *termination* of an existing valid marriage) or legal separation (which is also concerned with a valid marriage).

Nullity of marriage focuses on the state of affairs prevailing at the time the marriage is entered into and thus cannot be an answer to all problems which bring about marital breakdown."[1]

This is a quotation from the Law Reform Commission on the law of nullity in the State and the Committee accepts this as a useful starting point in considering this area of law.

The effect of a decree of nullity is to declare that no marriage ever existed between the parties.

The Office of the Attorney General issued a paper entitled "The Law of Nullity in Ireland" in August, 1976. The Law Reform Commission have now published an extensive report on the law of nullity. The Committee has

[1]Report on Nullity of Marriage LRC 9/84, Law Reform Commission, page VII.

considered these publications, together with submissions made to the Committee on this subject, in formulating the opinions and observations which follow.

7.1.2 While the law of nullity in general developed from principles of Canon Law, the civil law of nullity in the State derives its jurisdiction from the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870. This Act transferred the jurisdiction, up to then exercised by the Ecclesiastical Courts of the Church of Ireland to a Civil Court for Matrimonial Causes and Matters. This followed the disestablishment of the Church of Ireland. This jurisdiction was subsequently transferred to the High Court, and is exercised by the High Court at present. Annulments of marriage granted by the Roman Catholic Church are a separate matter and do not have any effect on the validity of a marriage at law.

7.1.3 Under Section 13 of the above Act, the new court was required to act and rely on principles and rules which, in the opinion of the Court, were as nearly as may be conformable to the principles and rules on which Ecclesiastical Courts in Ireland had *up to then* acted upon and given relief. It has been suggested this Section of the Act has the effect of limiting the grounds for relief in nullity cases to those grounds which existed at the time the 1870 Act was passed. This has, in effect, been the view taken by the English courts. Up to 1975, the Irish courts had few opportunities to develop the Law of Nullity. Very few cases had come before the Courts and even fewer cases had resulted in a nullity decree being granted, for example, there were only 25 cases in the period from 1970 to 1980. Since 1975, there have been considerable developments in the Irish courts and the principles of law have been extended and developed as a result. There has, however, been no legislative intervention in this area since 1870.

7.1.4 Certain formalities are laid down by statutes which must be observed by parties wishing to enter into marriage in Ireland.[2] These formalities are laid down in a series of inter-connected statutes from 1844 to 1972. Apart from the Registration of Marriages (Ireland) Act, 1863 and the Marriages Act, 1972, none of the statutes apply to church marriages between two Roman Catholics. The 1863 Act provided for a system for registration of marriages between two Roman Catholics and the Act provided for a fine of £10.00 to be imposed on the husband if the provisions of the Act were not complied with. Failure to sign the register has no effect on the validity of such marriages. The 1972 Act sets out certain requirements in relation to a minimum age before

[2]For more detailed discussion see Family Law in Ireland (Chapter 4) by Alan Shatter and Report of the Law Reform Commission on Nullity of Marriage (LRC 9 — 1984).

which a person cannot enter into a valid marriage, unless that person has obtained a prior exemption from the effect of the section from the President of the High Court.[3]

7.1.5 Except for those statutory provisions relating to the age of marriage, the validity of a marriage between two Roman Catholics is not covered by any statutory provision; such validity is determined under the Common Law. In Common Law the essential conditions of a valid marriage are that both parties, intending then and there to get married, interchange their mutual consent to be husband and wife in the presence of an episcopally ordained clergyman.

It can readily be seen that a marriage conducted in accordance with the normal rite of the Roman Catholic Church will fulfil these conditions and will therefore be recognised as a valid marriage in the civil courts.

It should be noted, however, that there are situations in which a marriage between two Roman Catholics will be considered valid by the civil courts under Common Law but invalid under Canon Law, eg a marriage between two Roman Catholics in a Registry Office. Equally it is possible to have marriages valid under the Canon Law but invalid under the Common Law, for instance, if two Roman Catholics marry, one of whom has obtained a church annulment or church dissolution of a previous marriage.

7.1.6 In the case of non-Roman Catholic marriages if the parties knowingly and wilfully disregard certain requirements set down by statute then their marriage will be void. Also, in the case of inter-faith marriages, knowing and wilful failure to comply with the formalities set out by statute will render the marriage void.

7.1.7 A marriage may be void or voidable, depending on the nature of the defect which exists at the date of the marriage. These grounds are set out in the following paragraph. Void marriages may be treated by any person as invalid without the necessity of a court decree of nullity (although in some cases of uncertainty it may be prudent to seek a decree of nullity). A voidable marriage is legally effective unless and until its validity is challenged by one of the parties to the marriage. The distinction between void and voidable marriages will be examined in detail below.

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[3]See paragraph 3.4.2.

7.1.8 **Grounds for obtaining a civil decree of nullity, which render a marriage void:**

(1) *Lack of Capacity*
Prior subsisting marriage
Marriages within the prohibited degrees of relationship
Marriages to which "an act to prevent marriages of lunatics" applies
Marriages between persons of the same sex
Lack of age.

(2) *Non-observance of formalities*
and

(3) *Absence of Consent*
Mental incapacity (insanity)
Mistake
Duress
Fraud.

Grounds for obtaining a decree of nullity which render a marriage voidable:

(1) Impotence
(2) Psychiatric or mental illness rendering a party unable to enter into or sustain a normal marital relationship.

7.1.9 **The consequences of a decree of Nullity being enacted:**

The parties to the marriage which is annulled are treated as if they were never married:

the parties are free to remarry;
any children born of the annulled marriage are illegitimate;
the mother will be the sole guardian of such children; and
parties will lose maintenance rights and succession rights vis-a-vis each other's estates.

7.1.10 **Recent Developments**

Since the publication by the Office of the Attorney General of a paper entitled the "Law of Nullity in Ireland" in August, 1976, a number of cases have come before the courts which have resulted in development in the law, broadening and extending the grounds on which a petition for a decree of nullity can be based.

7.1.11 The 1976 paper from the Attorney General's Office recommends the

repeal of Section 13 of the 1870 Act in the light of the changes which have occurred, since the passing of that Act.

7.1.12 Mr. Justice Kenny in the Supreme Court has stated that S 13 of the 1870 Act did not fossilise the law, that the law had been to some extent at least, Judge made, and that the Court should recognise that the great advances made in psychological medicine since 1870 made it necessary to frame new rules which reflect these.[4] This has been cited with approval in a number of High Court Cases.[5]

7.1.13 The developments which have occurred relate in the main to the requirements of full and free consent of both parties to the marriage at the time the marriage was celebrated and to the psychological capacity of the parties to contract a valid marriage, and can be summarised as follows:—

1. A psychological disability rendering a person unable to enter into or sustain a normal marital relationship is ground for a petition for a decree of nullity rendering the marriage voidable (St J v St J, 11th January, 1982, D v C, 19th May, 1983).

2. There is a trend in recent cases where certain judges take a broad view as to what amounts to duress; other judges have taken a narrower view. The Committee is of the opinion that this uncertainty which has arisen is unsatisfactory and requires clear legislative remedial action.

3. An intention by one party, unknown to the other at the date of marriage, not to have sexual intercourse amounts to a breach of a fundamental term of the marriage rendering it void for absence of consent (S v S, Supreme Court, 1st July, 1976). This was a minority opinion by Mr. Justice Kenny in this case. To date no decree of annulment has been granted on this ground.

7.1.14 **The Procedure**

An application for a decree of nullity can only be made to the High Court. The application is by way of petition which is grounded on an affidavit sworn by the petitioner. After the petition and affidavit have been drawn up they are stamped and are issued in the Central Office of the High Court. An ex-parte (without notice to the other side) application is then made to the Master

[4]S v S, Supreme Court, 1st July, 1976, Mr Justice Kenny.
[5]D v C 19th May, 1983 (unreported) page 16. W v P 7th June, 1984 (unreported) page 21.

of the High Court for leave to extract a document called a Citation, for service on the respondent.

If the Master is satisfied that there is a proper ground for nullity alleged in the petition and that the affidavit is properly sworn he will then give leave to extract the Citation. The Citation is lodged in the Central Office of the High Court and is duly signed by a Registrar of that Court. The Petition, grounding affidavit and Citation are then served on the respondent. An Appearance is then lodged by the solicitors for the respondent. This is followed by the solicitors for the respondent lodging a document setting out the reply of the respondent to the Petition and this document is called an Answer.

At this stage the petitioner's solicitor brings an application to the Master of the High Court by way of Notice of Motion to fix the time and mode of trial of the nullity action. The Master sets down the issues to be determined in the proceedings and whether the proceedings are to be heard with or without a jury. If the proceedings are brought on the grounds of impotence, an application can also be made at the same time that medical inspectors be appointed to examine the parties.

The proceedings are then set down in the Central Office of the High Court for hearing and appear in a list to fix dates in the High Court. On that day a date is fixed for the hearing of the proceedings. A typical nullity case can take at least six months from the date of the petition to the court hearing.

There is an obligation on the court to enquire into the facts of the case even if the petition is not defended.

It can readily be seen that the above procedure is somewhat long drawn out and the reasons for the use of this procedure lie more in history than in logic. Most other family proceedings in the High Court are heard by way of special summons and this procedure is simpler and more time saving than the petition procedure.

7.1.15 The cost of bringing a defended application for nullity, in which counsel is instructed, and which takes approximately one day to hear would be in the region of £2,000-£3,000. This figure does not include VAT at 23% or Stamp Duty[6] which arises in all cases. It would include the following elements of work:

(a) Solicitor taking clients's initial instructions/consultations with witnesses.

(b) Sending preliminary instructions to counsel.

(c) Initial consultation between solicitor, client and counsel.

(d) Draft of Petition, Citation, and grounding affidavit by counsel.

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[6]Stamp Duty in a Nullity Action would be in excess of £100.

(e) Application by counsel to the Master of the High Court for liberty to extract the Citation.

(f) The service of Petition, Citation and grounding affidavit.

(g) Receiving and considering the answer, if any, filed by the respondent.

(h) Drafting by counsel of Notice of Motion to set time and mode of trial and for the appointment of medical assessors.

(i) Application by counsel to Master of High Court to set time and mode of trial and for the appointment of medical assessors.

(j) Arrangement of appointments of medical assessors.

(k) Service of trial.

(l) Appearance by counsel in High Court to obtain date of trial.

(m) Drafting of advice on proofs for trial by counsel.

(n) Arrangement of attendance of medical witness at trial.

(o) Consultation(s) with client/witness and counsel.

(p) Appearance by solicitor and counsel at trial.

(q) Payment of medical witnesses,[7] normally an endrocrinologist and a gynaecologist where impotence is alleged. A psychiatrist may be necessary in some cases.

(r) taking up of final order.

Most of the above steps would be necessary in a straightforward action for nullity based on the grounds of non-consummation. As can be seen from this outline of a normal case much of the high cost involved is attributable to the long drawn out procedure involved. The Committee deals with the question of the simplification of procedure in the chapter dealing with Court Structure.

7.1.16 Opinions of the Committee

The Committee notes that judicial developments over the past ten years have sought to update and modernise the law, but that in so doing they have created uncertainty and made it impossible for lawyers to advise couples of the exact parameters of the law of nullity. This means that it is impossible for some couples to ascertain without court proceedings whether or not they are validly married. Judicial development has produced a degree of judicial subjectivity by which it appears that some judges are likely to interpret the law in this area more liberally than others, the effect being that a marriage may be regarded as valid or void depending on which member of the High Court hears the case.

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[7]Fees for a Consultant to draw up a Report and attend in court in such cases would normally be in the region of £200.

These comments are not made as any criticism of the judiciary who in this area have to apply outdated laws based on 19th century concepts of psychology and sociology. Modern legislation to update and state clearly the law of nullity is obviously necessary.

7.1.17 Lack of Capacity due to mental disorder

The committee is of the opinion that there is a need for legislative intervention in this area in order to provide a legal framework which reflects the advances in psychiatric medicine and sociology.

7.1.18 The Committee's attention has been drawn to the extent of the present uncertainty and need for change in a number of submissions made, extracts from which are reproduced below:—

> "Notwithstanding the invalidity of the concept of 'mental disorder' as proposed in the discussion paper[8] because of considerations already outlined and the proven unreliability of retrospective evidence to establish 'immaturity', 'arrested development' or 'irresponsibility' at the time of 'marriage', in many cases the court or expert witnesses are very likely to infer the existence of these conditions from observational data relating to conduct subsequent to marriage. It is necessary, therefore, to point out that 'the insights which advances in psychiatry and psychology have given into aspects of the human personality' are not yet of a kind to enable the expert witness to establish 'beyond doubt' or even 'on the balance of probabilities' that a particular individual's personality on his 'marriage' day many years ago was 'immature' or 'irresponsible'."[9]

> "There should be easily ascertainable grounds of annulment. One should be able to look at the law, which should be written down and codified, and one should be able to see how to get an annulment. The law should be clear and there should be some extension to take account of modern developments of psychiatry. Under no circumstances should annulment become a substitute for divorce".[10]

7.1.19 The Committee is aware of the recommendations which have been made in regard to the inter-relationship of mental disorder and the law of nullity, by the Office of the Attorney General and by the Law Reform Commission. The report of the Law Reform Commission suggests that "a marriage should be invalid on the ground of want of mental capacity where, at the time of the marriage, either spouse is unable to understand the nature of marriage and its obligations or where a spouse enters the marriage, when,

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[8]Paper by the Attorney General's Office "The Law of Nullity in Ireland.": 1976
[9]Submission from Dr. D. Walsh, The Medico-Social Research Board.
[10]Oral submission by Law Centre Solicitors.

at the time of the marriage, on account of his or her want of mental capacity, he or she is unable to discharge the essential obligations of marriage".[11] The report of the Attorney General's Office suggests that "mental disorder, which would render a marriage void, should be defined in such a way as to include arrested or incomplete development of personality of such a kind as to render the person suffering from it unfit for marriage".

7.1.20 The Committee is not satisfied that either of these recommendations would constitute a reasonable basis on which to organise the law of nullity in regard to mental capacity. The Committee is acutely aware of the need for greater certainty in this area of law, which governs the status of adults and children, and which has a very intimate and profound impact on those affected. The Committee has already noted that recent developments in this area of the law, have made it difficult for persons to be sure that a marriage is or is not invalid. This aura of uncertainty is unsatisfactory and the Committee feels that legislative intervention is now necessary to clarify the situation. Neither the approach of the Law Reform Commission or that contained in the report of the Attorney General, would remove, or sufficiently reduce, the present uncertainty.

7.1.21 It is obvious that the traditional ground of mental illness at the time of marriage which causes an inability to understand the nature of marriage and its obligations should continue to render a marriage void. The Committee accepts that there is need for the law to have regard to the fact that in certain cases a person is suffering from a mental disorder so serious in nature as to render him or her incapable of discharging the essential obligations of marriage. A guiding principle in this regard should be, in the words of a British judge, "it can only be those unfortunate people who suffer from a really serious mental disorder who can positively be stated in humane terms to be incapable of marriage".[12].

7.1.22 The Committee feels that the appropriate way forward is for legislation to be enacted, which accepts mental disorder as a ground which renders a marriage voidable, and which contains a definition of mental disorder in line with the principle which we have just outlined. Such a definition should not in our view, include the concepts of "arrested or incomplete development of personality".[13]

7.1.23 The Committee considered the grounds for obtaining a decree of nullity and agreed as follows:—

(i) *Lack of Capacity (other than on, the ground of mental disorder)*

[11]Report of Law Reform Commission Page 104.
[12]Bennett v. Bennett 1969 1 W.L.R. Page 430.
[13]See para. 7.1.19.

Lack of capacity to validly marry should ground a decree for nullity in the following circumstances:

(a) Where one or other partner is, at the date of the marriage, party to a prior existing marriage.

(b) When one or other parties are under age — in this context see Chapter 3.4 which deals with the age for marriage, and in particular paragraphs 3.4.5 et seq.

(c) Where the parties are within the prohibited degrees of relationship.[14]

(d) Where a person has been made a Ward of Court, and is unable to manage his or her own affairs due to mental illness.

(e) Where both parties are of the same sex.

The Committee also considered that the "Act to prevent marriages of lunatics" should be repealed.

7.1.24 (ii) *Formalities*

(a) The formalities for validly marrying, which are contained in a series of Acts stretching from 1844 to 1972 and in the Common Law should be simplified, uniformly applicable and given clear legislative force. The Committee agreed that this might properly be preceded by consultation with religious communities.

(b) Wilful non-observance of the simplified formalities should render a marriage null and void.

(c) The Committee considered situations where civil and religious marriage ceremonies take place at the same time and is of the opinion that this dual-purpose ceremony can give rise to difficulties in understanding. While the Committee feels that to require parties to undergo a separate civil ceremony in addition to the religious ceremony of their choice would create considerable administrative and financial difficulties for all concerned, it would be desirable that the nature of the contract and its legal consequences should be made clear to the parties at the time of the ceremony. This could be implemented by including a specific reference to the civil contract before the exchange of the marriage vows.

7.1.25 (iii) *Defective Consent*

Defective consent should render a marriage null and void in the following circumstances:—

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[14]See "The Law of Nullity in Ireland", Office of the Attorney General, August 1976. Appendix 1.

(a) Mental illness at the time of marriage which causes an inability to understand the nature of marriage should continue to be a ground of nullity which renders a marriage void. The Committee agreed that amending legislation should define the parameters of mental incapacity, but that this ground of nullity should fall under the category of lack of capacity and cease to fall under the category of defective consent.

(b) Mistake, duress, fraud or misrepresentation. All of these grounds should be retained under this category of nullity.

(iv) *Impotence*

(a) Impotence existing at the time of the marriage resulting in an inability to consummate the marriage should continue to render a marriage voidable;

(b) The court, in dealing with impotence, should have discretion to refuse to grant a decree of nullity where justice so requires e.g. where both parties marry knowing one is impotent.

(c) Wilful refusal to consummate should render a marriage voidable; and

(d) The courts should be empowered to grant a decree of nullity on grounds of impotence of the petitioner without the need for repudiation of the marriage by the other party.

(v) The Committee considers that mental disorder of such a nature as to render a person incapable of discharging the essential obligations of marriage should be a ground of nullity which renders a marriage voidable.

(vi) The Committee considers that the consequences of the granting of a decree of nullity should not result in children being declared illegitimate and urges the speedy introduction of legislation to remove the status of illegitimacy.

The Committee is of the opinion that the court should be empowered to make ancillary orders relating to children of the annulled marriage, as to guardianship, custody and maintenance and to vary them subsequently if necessary.

7.1.26 The Committee is conscious of the complexity of the present procedure necessary to petition for a decree of nullity and of the high legal costs involved. In the chapter of this report which deals with the structure of the courts, the Committee sets out its opinions on reform in this area, including reform in the procedure aimed at—

(i) reducing costs

(ii) simplifying procedures; and

(iii) increasing accessibility to the courts for all litigants regardless of their means.

7.2 Separation Agreements

7.2.1 An agreement between husband and wife to live apart, whether with or without cause, is not considered contrary to public policy, but is, in general, valid and enforceable, provided it is made in contemplation of, and is followed by, an immediate separation.

7.2.2 Such an agreement will have no effect if it is made in contemplation of a separation at some time in the future.

7.2.3 No particular formality is necessary for the validity of a separation agreement. It can be varied subsequently or discharged by the parties by agreement. It is legally valid and enforceable. Provisions in a separation agreement may be specifically enforced in the courts and damages may be obtained for breach of any terms of the agreement.

7.2.4 A separation agreement will be in writing and will usually be executed by deed. The agreement to live apart is sufficient valuable consideration to render the contract legally enforceable. For an example of a typical separation agreement see Appendix D.

7.2.5 The terms included in a typical deed of separation can include:

(i) an agreement to live apart;

(ii) a non-molestation clause;

(iii) provision for custody of children;

(iv) maintenance provisions;

(v) an agreement not to pledge each others credit and to indemnify each other against debts;

(vi) clauses relating to property, including consents required under the Family Home Protection Act, 1976.

(vii) the mutual renouncing of succession rights under the Succession Act, 1965, by both spouses may be a term of an agreement. Section 113 of this Act provides for and recognises such renunciation provided always that the renunciation is in writing; and

(viii) a clause that, should parties be reconciled for a certain period the agreement will be discharged.

7.2.6 Any provision in a written separation agreement which purports to restrict any dependent spouse's right to apply to the court for a Maintenance

Order for support or for the support of dependent children is void. A husband may fail to pay a "proper sum of maintenance" to his wife and children and may be ordered by the court, under the provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976, to make payments to her, even though he has entered into an agreement with her providing for her maintenance and has faithfully observed the agreement, if, in fact, the maintenance provided for in the agreement is inadequate at the time of the application to the court. A spouse may find himself or herself contractually bound to pay maintenance in a certain sum under a separation agreement, even though he or she can no longer afford to do so, due to a change in circumstances, if the separation agreement does not contain a proper variation clause.[15]

7.2.7 In like manner, the court has power under the Guardianship of Infants Act, 1964, to entertain an application to the court for its direction to any question affecting the welfare of infants and the court may, notwithstanding the agreed terms of any deed or agreement of separation, make such Order as it thinks proper regarding custody, access and/or maintenance of the infant or infants in question.

7.2.8 **Opinions of the Committee**

The Committee recognises the role of separation agreements following marriage breakdown, which can be revoked if both parties decide to resume their former marital relationship. A separation agreement has the advantage of being inexpensive to arrange. Spouses whose marriages have broken down thus can have the opportunity of agreeing with legal advice and assistance to arrange their affairs, without having to go into court.

7.2.9 Such agreements, while they are legally enforceable between the parties, do not in any way affect the validity of the marriage and the parties to the separation agreement are not free to remarry.

7.2.10 The Committee is of the opinion that parties to a marriage which has broken down, or is in a stage of breakdown should be advised to avail of counselling or mediation. In the event of such advice not being taken by the parties, or in the event of the parties not effecting a reconciliation as a result of counselling, the parties should, before being advised to institute legal proceedings for one or other of the available legislative remedies, be apprised of the possibility of negotiating and entering into a separation agreement unless the circumstances are such that legal proceedings must be initiated as a matter of urgency.

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[15]See O'S v O'S (unreported) 18 November 1983 and D v D (unreported) 6 September 1984.

7.3 Judicial Separation — Divorce *a Mensa et Thoro*

7.3.1 The Law

Under Section 7 of the Matrimonial Causes (Ireland) Act, 1870 the High Court has power to grant a decree of Judicial Separation (otherwise called a divorce *a mensa et thoro*). The Courts Act, 1981 extended the jurisdiction to grant judicial separations to the Circuit Court.

7.3.2 The Grounds

The remedy of judicial separation is fault-based; to obtain a decree a plaintiff must prove that the defendant has been guilty of one of the following:—

(1) Adultery.

(2) Cruelty.

(3) Unnatural practices.

To prove adultery a plaintiff must show that the defendant has engaged in a voluntary act of sexual intercourse during the marriage with some person other than their spouse. A decree can be granted on the grounds of both physical and mental cruelty. The third ground, unnatural practices, has not been relied on in many cases, although there have been one or two recent applications based on this ground.

7.3.3 The Defences

There are four technical defences which, if proved, constitute a complete defence to an action for a judicial separation. The first of these is a plea of *recrimination* which is proved if the defendant shows that the plaintiff is himself or herself guilty of the conduct alleged against the defendant. The second defence is that the plaintiff has *condoned* the conduct of the defendant by returning to their previous relationship in the marriage. For instance, a husband would normally be held to have condoned his wife's adultery if he has sexual intercourse with her after the incidence of adultery and with knowledge of it. The third defence is *connivance* which a defendant can show by proving that the plaintiff by his or her own conduct brought about, or was instrumental in bringing about, the injury of which he or she complains. The fourth defence is *collusion* which is established when it is shown that there is an agreement between the parties that one or other of them will commit a matrimonial offence, in order that they may obtain a decree of Judicial Separation.

7.3.4 The Effects

The effect of a decree of Judicial Separation is that it will leave the plaintiff free from the obligation to live with his or her spouse. It should be stressed, however, that it does not dissolve the marriage and it does not give a right to

re-marry. The spouse against whom such an order is made is precluded from taking any share in the estate of the deceased spouse as a legal right or on intestacy. While it would appear that the legal effects just mentioned are, strictly speaking, the only effects that result from the grant of a Judicial Separation it should be noted that it is the practice of the President of the Circuit Court in dealing with judicial separations in many cases, to make a further supplementary order directing that the spouse against whom the order is given, should no longer continue to reside in the family home. In a recent case the then President of the High Court confirmed the making of such an ancillary order prohibiting the husband from living in the family home.[16]

When a court makes an order for Judicial Separation it also has power to make an order providing for alimony against the husband and in favour of a wife. It would appear at the moment that there is no provision for alimony to be awarded against a wife in favour of a husband. There is also provision for an order to be made directing that the alimony be paid *pendente lite* that is to cover the period of time from the issue of the proceedings until the determination of the proceedings. Again this relief is only available to a wife looking for an order against her husband.

7.3.5 **The Procedure**

The procedure for obtaining a judicial separation in the High Court is by way of petition and the various steps to be taken are similar to those involved in bringing a nullity application (see note on the procedure for applying for a decree of nullity).[17] As in the case of applications for nullity, there seems to be no particular logical reason why a person should be obliged to apply for a judicial separation by means of the time consuming and expensive petition procedure; instead such proceedings could be brought by way of a summons. The procedure in the Circuit Court is that the plaintiff lodges a matrimonial civil bill which contains details of the plaintiff's claim; the defendant then lodges a defence to this. The case can then be set down for trial by either party and a date is given for the case to be heard. This procedure is obviously cheaper and far less time consuming than the procedure at present used in the High Court. There has been a considerable increase in the number of applications for judicial separation since the Circuit Court obtained jurisdiction to grant such decrees and obviously the simplified and cheaper procedure available in the Circuit Court could explain that increase.[18] Also, it would appear that the practice of the President of the Circuit Court in making ancillary orders excluding a spouse from living in the family home could mean

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[16]W v W. (Unreported) 26th January, 1984.
[17]See chapter 7.1.14.
[18]See Appendix C, re statistics.

that the obtaining of a judicial separation has a more practical and useful effect.

7.3.6 Proposals of the Law Reform Commission

In their recent Report on Judicial Separation, the Law Reform Commission[19] proposes that the grounds on which a judicial separation may be granted should be extended so that a decree can be granted on one of the following grounds:—

(1) Cruelty.
(2) Adultery.
(3) Unreasonable behaviour.
(4) Desertion.
(5) Breakdown of marriage.
(6) Separation for a set period of time.

They suggest that there should be a power whereby the court can convert a separation agreement into a decree for Judicial Separation. The Commission also recommends that the defences of recrimination and collusion should be abolished, but that the defence of connivance should remain. They also recommend that the defence of condonation should not be an absolute bar to an order, but should only be a discretionary bar. Further, it suggests that if a spouse has by his or her neglect conduced to the adultery of their spouse, that this is a factor the court should be entitled to take into account. As regards alimony, the Commission recommends that husbands as well as wives should be able to apply for alimony. There should be provision to allow the court to provide orders for the maintenance of the children and the operation of the law in relation to alimony should be brought into line with the law in regard to maintenance. The Commission considers it desirable that the court be entitled to make orders for the payment of *lump sums* and for the *transfer of property*, with the *consent of the parties*.

In relation to the effects of a decree of Judicial Separation, the Commission feels that such a decree should continue to end the obligation on spouses to co-habit with one another. Specific provision should be made for the revision by the court of decrees of judicial separation and for the automatic discharge of any such decree when the parties resume co-habitation. The Commission feels that if a decree for Judicial Separation is granted each spouse should be precluded from taking any share in the other spouse's estate on the death of the other spouse.

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[19](LRC 8-1983)

7.3.7 In its deliberations on this area the Committee had regard to the Report published by the Law Reform Commission mentioned above and to the many submissions received by the Committee which dealt with judicial separation. The following are excerpts from submissions received by the Committee as regards this area of law:

> "Grounds for judicial separation should be geared to show that a marriage has broken down, rather than to find which spouse is guilty".[20]

> "Remedies for marital breakdown should be based on irretrievable breakdown of the marriage rather than on fault".[21]

> "A matrimonial breakdown is the failure of a relationship between spouses. Both spouses are responsible to various degrees. The law should reflect this and not try to assign fault and make orders as rewards for good behaviour. It should be possible for spouses to obtain judicial separation in the courts when a marriage has irretrievably broken down. The grounds for obtaining a divorce *a mensa et thoro* should be changed to those covering irretrievable breakdown of marriage e.g. unreasonable behaviour, desertion or separation, rather than those based on the fault principle, namely adultery, cruelty and unnatural practices. The law, by insisting on one party proving fault, encourages conflict between the spouses. It actively discourages reconciliations between a couple".[22]

> "We would prefer to see only one ground for judicial separation, namely, the breakdown of the marriage, but that this ground could be proved by *inter alia* but not exclusively, the proving of any other grounds mentioned in the Law Reform Commission Report on Divorce *a mensa et thoro* (LRC 8/1983)[23]

7.3.8 **Opinions of Committee**

1. The Court should grant a decree of Judicial Separation if it is satisfied that the marriage of the person to his or her spouse has irretrievably broken down. Irretrievable breakdown should be the one overall ground for the grant of a decree of Judicial Separation.

2. In considering whether or not a marriage has irretrievably broken down, the court should be satisfied that such a breakdown has occurred if an applicant proves one of the following:—

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[20]AIM —Group for Family Law Reform.
[21]The William Sampson Society of Radical Lawyers.
[22]Law Centre Solicitors.
[23]Incorporated Law Society members.

(a) That his or her spouse has behaved in such a way that the Applicant cannot reasonably be expected to co-habit with that other spouse.

(b) That his or her spouse has been guilty of adultery.

(c) That his or her spouse is in desertion or in constructive desertion of the Applicant.

(d) That the Applicant has been living separate and apart from the other spouse for a continuous period of not less than one year and the other spouse consents to the making of the decree.

(e) That the Applicant has been living separate and apart from the other spouse for a continuous period of three years.

(f) That such other facts and/or reasons exist or existed which in all circumstances make it reasonable for the Applicant to live separate from, and not co-habit with, the other spouse.

3. The Court should have an ancillary power to decide who shall have the right to live in the family home as and from the date of the making of a decree of Judicial Separation. In exercising this power, the court should be obliged to base its decisions on what is in the best interests of the family as a whole and, in the event of a conflict as to the best interests of the various members of the family, the interests of the children should be paramount during their minority.

4. The Court should have an ancillary power to divide the various property or properties of the spouses, between the spouses, upon making a decree of Judicial Separation, and the Court should have the power to transfer the title of any relevant property as it deems just and equitable. Again, the Court should be obliged to exercise this power on the basis of the best interests of the family as a whole, but in the event of a conflict arising as to the best interests of the various members of the family, the interests of the children should be paramount.

5. Rights of succession are dealt with in the Succession Act, 1965. A spouse has a legal right under Section 111 of this Act, to one-half of the deceased spouse's estate, if there are no children and to one-third of the estate if there are children.

Provision for children is covered in Section 117 of the Act, and in summary, the courts are empowered to order such provision for children out of the estate

as they think just, if a testator has failed in his or her moral duty to make proper provision for a child.

The Committee feels that the courts should be empowered to vary or discharge a spouse's rights of succession following the grant of a decree of Judicial Separation having regard to the circumstances of the parties, in the context of determining what orders, if any, should be made for the division or transfer of property between spouses. The Committee agreed that the rights of children in relation to succession should not be affected by any such court orders.

The Committee agreed that the courts should, in determining these issues, take into account the manner in which property was acquired by the spouses and the relevant contributions of both parties to the property in the course of the marriage.

7.3.9 The Court should have such ancillary powers as are necessary pursuant to the Guardianship of Infants Act, 1964 to ensure that the best interests of the children are protected if a decree of Judicial Separation is to be made and, in particular, should have power to decide questions of custody and access.

7.3.10 The Court should have an ancillary power to award maintenance pursuant to the Family Law (Maintenance of Spouses and Children) Act, 1976 if a decree of Judicial Separation is made and any award of maintenance should be based on the principles set out in that Act.

7.3.11 The technical defences of recrimination, condonation, connivance and collusion should be abolished.

7.3.12 The Court should have a power on the application of both parties to convert a legal separation agreement into an order of Judicial Separation and any decree of Judicial Separation so made by the Court should incorporate the terms of the separation agreement into the decree. In doing so, the Court should not be entitled to incorporate or impose any terms on the parties not in the original agreement. The Court should only convert a separation agreement into a decree of Judicial Separation if it is satisfied that the terms as set out in the separation agreement are just and reasonable and in the best interests of the family, and in particular the dependent spouse and children, if any.

7.3.13 The Court should have power to discharge a decree of Judicial Separation if both spouses apply to have the decree so discharged.

7.4 Maintenance

7.4.1 The Law in regard to maintenance of spouses and children is contained in the Family Law (Maintenance of Spouses and Children) Act, 1976. To obtain a Maintenance Order under the 1976 Act a spouse must show that the other spouse has failed to provide proper maintenance for him or her and/or for the dependent children of the marriage. Dependent children are defined as children under the age of sixteen, or children between the ages of sixteen and twenty-one who are still in fulltime education, or someone above the age of sixteen who is suffering from mental or physical disability to such an extent that it is not reasonably possible for him or her to maintain themselves fully.

While it is normal for one spouse to apply for a Maintenace Order against the other spouse there is provision under the Act to allow third parties to apply for Maintenance Orders in respect of dependent children in certain circumstances.

7.4.2 In deciding whether to make a Maintenance Order and in deciding the amount of any such Order the court is obliged to take into account the following matters—

(a) The income, earning capacity (if any), property and other financial resources of the spouses and of any dependent children of the family, including income or benefit to which either spouse or any such children are entitled by or under statute; 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 any such dependent children, including the need for care and attention.

If a spouse against whom an application is made can show that he or she has provided proper maintenance for the applicant spouse and/or the dependent children then the Court should not make any Maintenance Order. Desertion by the applicant spouse which includes constructive desertion defeats the application in respect of the spouse's maintenance, but this would not be relevant to any application in respect of the dependent children.

Proof of adultery on the part of the applicant gives the court a discretion in deciding to make a Maintenance Order in favour of the applicant spouse; again the adultery of the applicant spouse does not affect the obligation on the defendant spouse to provide proper maintenance for dependent children. An applicant spouse can defeat a defence of adultery by showing that the defendant spouse condoned or connived in the adultery or, by wilful neglect or misconduct conduced to the adultery of the applicant spouse.

7.4.3 The court has power to discharge a Maintenance Order at any time after a period of one year from its making, if it decides that such discharge is reasonable in the context of the defendant's record of payments.

The court may discharge or vary a Maintenance Order at any time on the application of either party if it thinks proper to do so having regard to any circumstances not existing when the Order was made or to any evidence not available to that party when the Order was made.

There is provision in the Act that a court must discharge the part of a Maintenance Order in respect of the husband or wife if that husband or wife is shown to be in desertion. As regards adultery, the court has a discretion to to vary or discharge the Maintenance Order unless one of the elements vitiating the adultery is shown.

7.4.4 If the court makes a Maintenance Order or a Variation Order, the court is obliged to direct that any payments due under the Order shall be made to the District Court Clerk for transmission to the applicant, unless the applicant expressly requested it not to do so. Even if the court does not direct that payments be made through the District Court Clerk the applicant can apply at any time at a later stage and the court is then obliged to order that the payments from then on will be to the District Court Office.

7.4.5 If a person fails to comply with the terms of a Maintenance Order then the correct procedure for the other spouse is to apply to the court for what is called an Attachment of Earnings Order. This is an Order directed to the employer of the person obliged to pay the maintenance under the original Maintenance Order, directing that employer to deduct a certain sum of money from the employee's wages and to forward that sum of money to the District Court Office.

To obtain an Attachment of Earnings Order a person has to show

(i) that an original Maintenance Order was made in their favour; and

(ii) that the defendant in the Attachment proceedings has without reasonable excuse defaulted in the making of the payments under that original Order.

A court will refuse to make an Attachment of Earnings Order if there are reasonable circumstances justifying the failure to meet the payment, for instance if a person is on strike and is not being paid.

An Attachment of Earnings Order will specify the "normal deduction rate" i.e. the rate at which the court considers it reasonable to pay the sum due under the original Maintenance Order, to include any arrears that may have built up. The Order will specify the "protected earnings rate" i.e. the rate below which having regard to the resources and the needs of the maintenance

debtor, the court considers that the earnings of the defendant should not be reduced.

The court has power to order the defendant in Attachment proceedings to give to the court the name of his or her employer and details of his or her earnings. The court can also order the employer to furnish details of the defendant's earnings. The court also has power to vary or discharge an Attachment of Earnings Order. If an employer fails to comply with the terms of an Attachment of Earnings Order or gives false or misleading information in relation to the earnings of the defendant and the applicant as a result fails to obtain a sum of money due under the Attachment of Earnings Order, the employer can be sued by the applicant for the sum lost.

It should be noted that if payments are through the District Court Office then the District Court Clerk has power to take Attachment proceedings on behalf of the applicant.

7.4.6 In the case of a self-employed person, enforcement of a Maintenance Order in the District Court is pursuant to the Enforcement of Court Orders Act, 1940, where the applicant seeks

(i) a warrant for the distress of the defendant's goods in the sum then due; or

(ii) an Order committing the defendant to jail for non-payment.

In the Circuit and High Court in such cases the applicant applies to court to have the defendant committed for contempt of court in failing to comply with the Order.

7.4.7 Under the Enforcement of Court Orders Act, 1940, a defendant can show that the failure to make payments was reasonable and equally it would be very unlikely that a Judge would commit someone for contempt if they can show that there was a reasonable explanation for non-payment.

7.4.8 The maximum sum that can be awarded by a District Court in respect of maintenance of an applicant is the sum of £100 per week and a further £30 per week in respect of each dependent child. The Circuit Court has unlimited jurisdiction to award maintenance in any sum.

7.4.9 The procedure for obtaining maintenance and an Attachment or Variation Order in the District Court Office is to ask the District Court Clerk to issue a simple summons directing the defendant to come to court on a particular day for the hearing of the applicant's case. In practice there may be a delay of three or four weeks between the date of issue of the summons and the date of hearing.

7.4.10 In the Circuit Court the procedure is somewhat different. The applicant commences his or her proceedings by way of a document called an *Application* which sets out the grounds upon which the applicant intends to rely. The defendant is then entitled to file a document called an *Answer* which sets out the grounds upon which he or she intends to defend the proceedings. The case then comes up for hearing on the date set out in the Application. To draft an Application and Answer a person would normally need a solicitor. The delay in the Circuit Court depends to a great extent on the Circuit in which the Application is made and the amount of business which at that time is on hand in the local Circuit Court.

7.4.11 There is an appeal from a District Court Order to the Circuit Court and where the case is commenced in the Circuit Court from that Court to the High Court.

It should also be noted that the High Court still has power to make original Orders under the Family Law (Maintenance of Spouses and Children) Act, 1976 and the procedure in that Court is by way of the applicant issuing a Special Summons and Grounding Affidavit to which the defendant puts in a Replying Affidavit. The case is sent forward at that stage by the Master of the High Court to a Judges' list where the case is given a date for hearing. If the case is commenced in the High Court, there is an appeal to the Supreme Court.

Opinions of the Committee

7.4.12 The Committee accepts that the Family Law (Maintenance of Spouses and Children) Act, 1976, has operated reasonably well and its introduction represented a major step forward in the area of family law. The Committee considers that the law relating to maintenance is not without its faults and wishes to make the following observations as to possible areas for change.

7.4.13 The Committee notes from submissions received instances of persons who default on payments of maintenance. The Committee recognises the relative difficulty which can be experienced in enforcing maintenance awards particularly against self-employed maintenance defaulters and is of the opinion that legislation should be introduced to afford these persons who suffer as a result of the default an effective means of enforcing such orders. In particular, the Committee is of the opinion that the State should be empowered to make payments of maintenance to victims of such default and to recoup monies owed by defaulters, with an appropriate system of sanction in the case of continued default.

7.4.14 In the above matter, the Committee is conscious of the considerable

time and expense involved for litigants in pursuing maintenance defaulters and the need to balance this against the constitutional responsibility placed on the State to protect marriage and the family.

7.4.15 The Committee is of the view that access to the remedy of maintenance should be via the proposed Family Tribunal, dealt with at Chapter 9, as a means of overcoming the present procedure where maintenance is dealt with in the District, Circuit and High Courts.

7.4.16 The Committee feels that the court should, at the commencement of any application for maintenance, be in a position to assess the relative financial position of the spouses. In this regard the Committee is of the opinion that the parties should be under a statutory obligation to provide the court with a statement of their income and assets, to assist the court in determining the level of maintenance to be awarded, if any.

7.4.17 The Committee agreed that the court should have power to waive the need to prove a failure to maintain, if the exceptional circumstances of a case require it. This would cover situations which can arise where there has been no failure to maintain, but where the courts are satisfied that there is good reason to believe that such a failure will happen. For instance such a situation can arise where the applicant applies for a Barring Order, perhaps on grounds of violence, but there has been no failure by the defendant to maintain adequately. It may very well be the case that the applicant has good reason to believe that the defendant will cease to maintain him or her if the Barring Order is made but, as the legislation presently stands, the applicant would have to wait until such failure took place before an Order could be obtained, which could involve a considerable delay during which time no maintenance would be payable.

7.4.18 Desertion or adultery should be a discretionary bar to maintenance for the applicant spouse, unless the conduct of the defendant is or was such as to make it inappropriate and unfair that he or she should be entitled to rely on the applicant's desertion or adultery.

7.4.19 The factors to be taken into account by the court in deciding whether to make a Maintenance Order and in deciding the amount of any such Order should be extended to include the following:—

(i) The extent of any property transfer orders between the spouses that have been made by that or any other Court.

(ii) The making by that Court of an Order granting the sole right to reside in the family home to either the applicant or the defendant

and the need of the spouse who does not have the right to reside in the family home to provide adequate and suitable accommodation for himself or herself together with any persons with whom they may be living.

7.4.20 The Committee considered situations where the courts might be empowered to make once-off lump sum payments in the light of circumstances where dependent spouses are effectively denied the right of maintenance. This can occur where the person against whom maintenance is awarded can defeat the effect of the order by disposing of his assets, leaving the jurisdiction or, if self-employed, by simply refusing to obey the order of the court and requiring the dependent spouse to have endless recourse to the courts with little hope of success.

The Committee also considered situations when both spouses consent to the making of lump sum payments or where the dependent spouse and/or children are in need of a capital sum for, say, school fees or the provision of alternative living accommodation as a matter of urgency.

The Committee feels that in providing for a jurisdiction to award lump sum payments there is a need to examine this matter in greater depth, having particular regard to the need to protect the interests of all parties concerned.

7.4.21 The Committee expresses concern at evidence contained in submissions to the Committee of judicial inconsistency in administering the law in the area of maintenance. The Committee emphasises the importance of uniform judicial interpretation as to the levels of maintenance awards, having regard to the incidence of hardship imposed by awards of maintenance that are either too high, from the point of view of the spouse against whom the award is made, or too low, from the point of view of the spouse and/or dependent children in favour of whom the award is made.

7.4.22 The Committee considered the situation of maintenance defaulters who attempted to defeat Court Orders by removing themselves to a jurisdiction where the Order(s) of the Irish courts are not recognised or enforceable. The Committee agree that the existence of such a loophole is unsatisfactory and is of the opinion that the 1968 EEC Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, which was signed by Ireland in 1978, should be implemented as soon as practicable, as a means of making evasion of payments of maintenance more difficult.

7.4.23 The Convention covers proceedings for maintenance and provides that a maintenance debtor may be sued in either:

(a) the courts of the Contracting State where he is domiciled, or

(b) the courts where the maintenance creditor is domiciled or habitually resident, as the maintenance creditor may choose.

7.4.24 The Committee has been informed that enabling legislation is presently being prepared in the Department of Justice and looks forward to the early presentation of this to the Houses of the Oireachtas.

7.5 Guardianship and Custody

7.5.1 Under Irish law both the father and mother of a child born to a married couple are held to be joint guardians of that infant. Guardians of a child have both rights and duties in respect of the upbringing of that child and the authority and obligation to exercise and perform those rights and duties can be described as the right to guardianship of the child.

7.5.2 Custody of a child means the right to physical care and control of that child.

7.5.3 By reason of the provisions of Articles 41 and 42 of the Constitution and the Guardianship of Infants Act, 1964, each parent has an equal right to guardianship of the child and, as such, an equal right to custody and to make decisions in relation to the child's upbringing.

7.5.4 Section 11 of the 1964 Act provides a mechanism whereby any person being a guardian of an infant may apply to the court for directions on any question affecting the welfare of the infant, such as the child's religious upbringing or education and the court can make such Order as it thinks proper in the circumstances. This is the procedure which is usually used to resolve a dispute between two parents as to which of them should have custody of a child or children.

7.5.5 Applications under Section 11 can be made even if both parents are then living together but any Order made is not enforceable (except an Order made under Section 11 as to maintenance of the child) so long as they continue to live together. The Order ceases to have effect if they continue to live together for a period of three months after it is made.

7.5.6 A statutory right to apply under Section 11 is specifically given to the natural father of an illegitimate child, although the father has no constitutional rights in relation to the child.

7.5.7 All applications in regard to custody and access are interlocutory in nature and at any time either guardian has the right to apply to court to have

a previous Order varied or to seek directions in relation to any matter affecting the welfare of a child.

7.5.8 By virtue of Section 3 of the 1964 Act the court, in deciding any question regarding the custody, guardianship and upbringing of an infant, must have regard to the welfare of the infant as the primary and paramount consideration. The Act defines the concept of welfare in relation to an infant as comprising "the religious, moral, intellectual, physical and social welfare of the infant".

7.5.9 In deciding disputes as to custody and access in regard to children the courts have consistently stated that an award of custody is not, and should not be, a reward for one party's good behaviour in the marriage, but that the function of the court is to decide whether the welfare of a particular child would best be served by being left in the custody of one parent rather than the other. This principle has been applied not only in theory but in practice and in a number of cases the "innocent" party has been unsuccessful in an application for custody of the children. The Committee noted that applications in relation to custody and access are among the few areas of family law in which the legal principles applied by the courts are such as to generally make it unnecessary for one party to make allegations against the other in an effort to win the case. This is consistent with the approach which the Committee has considered appropriate in dealing with family law remedies generally.

Opinions of the Committee

7.5.10 The High Court places considerable weight on professional independent evidence as to the welfare of the child, such as that given by child psychiatrists or social workers. The Committee feels that this type of evidence is vital in that it gives the court the benefit of an experienced and independent opinion as to what is or is not in the best interests of the child, as well as taking account of the wishes of the particular child without the necessity of directly involving the child in the legal proceedings.

7.5.11 A large number of custody and access disputes continue to be determined, particularly in the lower courts, without the benefit of any such professional evidence. Such is the importance of evidence of this nature that the Committee suggests that there should, other than in emergency situations, be a statutory obligation on a Judge, in deciding a custody or access matter, to hear suitable evidence from appropriate professional witnesses as to the welfare of the child before deciding the issue. The normal result in a custody application is that one parent is awarded custody of the children while the other parent is given periodic access to them. Typically custody may be awarded to a mother while the father would be given access for a number of

hours, usually at the weekends. While both parents continue as joint guardians of the children and continue to be entitled to exercise their rights and duties as parents, the Committee sees that often the parent who is awarded access can feel cut off from the children, having only a very limited right to see them. This can lead to a feeling of alienation on the part of that parent.

7.5.12 A considerable body of evidence has been produced to this Committee as to how important it is for both spouses to continue to play a full and proper role as parents of the children, despite the breakdown of their relationship as husband and wife. The Committee believes that the normal type of custody or access arrangement can sometimes appear to hinder the establishment of a good parenting relationship between the parties whose marriage has broken down.

7.5.13 A Custody Order made in favour of one parent is often perceived by the other parent as cutting him or her off from an involvement in making decisions about a child's upbringing, giving rise to a feeling of alienation that is not alleviated by the making of Access Orders conferring visitation rights on the non-custodial parent. It has been suggested to the Committee that Orders of Joint Custody would be preferable and help us to resolve this difficulty.[24]

The Committee has considered this issue and in doing so is mindful that a Custody Order determines which parent a child is to reside with and that both the custodial and non-custodial parent remain joint guardians. Custody determines which parent is to have physical control of an everyday nature and no more. Joint Custody Orders would be meaningless unless they were to mean a child would have to live a part of each week with one parent and a part with the other. The Committee is conscious of the need to ensure that children who are the unfortunate victims of broken marriages have the right to establish roots and stability in their own lives and of submissions received to this effect. The Committee does not feel that Joint Custody Orders as described here would normally be in the interests of a child's welfare but appreciate that such an Order may be desirable in exceptional circumstances. The Committee notes that the courts already possess the power to make such Orders under existing legislation. The Committee recognises that it is essential that a court when making a Custody Order should ensure that both parents understand that they remain joint guardians of their children with all that that implies, and that the parent to whom custody is granted understands the need to ensure that children maintain a continuous relationship with the non-custodial parent, and that this relationship with the non-custodial parent is fostered and encouraged.

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[24]Dads against Discrimination.

7.5.14 When disputes as to custody arise in the courts, the Committee believes that the emphasis should be to attempt to assess the parenting capacity of each parent and the relationship between the parents and the children, while at the same time to take cognisance of the need for continuity in the lives of children, particularly young children and to decide ultimately on the basis of what is in the best interests of such children. Decisions made by the courts should also take into account how important it is for children to have a good and continuing relationship with both parents. Each case presents its own particular set of facts and the best solution for each family will vary accordingly.

7.6 Matrimonial Property

7.6.1 At present disputes involving matrimonial property are dealt with pursuant to Section 12 of the Married Womens Status Act, 1957, which provides a mechanism whereby a spouse can apply to a court to have his or her interest determined in any property held by the other spouse or held jointly. The Family Home Protection Act, 1976, also deals with aspects of matrimonial property and this is dealt with later in this section

7.6.2 It is important to note that Section 12 of the 1957 Act is purely declaratory in nature, i.e. it gives no power to change the title to the item or property in question, but simply declares in what shares it is held by the spouses.

7.6.3 The Circuit Court has jurisdiction to deal with chattels of an unlimited value and property of which the rateable valuation is less than £200, while the High Court has unlimited jurisdiction under the Section. The District Court has limited jurisdiction to deal with the disposal of household chattels under the Family Home Protection Act, 1976.

7.6.4 Applications in the Circuit Court are by way of the lodgement of an application by the applicant and the lodgement of an answer by the respondent. In the High Court the procedure is for the plaintiff to commence the proceedings by way of Special Summons and Grounding Affidavit while the defendant files a Replying Affidavit.

7.6.5 For any party to establish an interest in a chattel or a piece of property under the Act it is necessary for the applicant to show that he or she has contributed either directly or indirectly to the purchase of the item. This can be done in a number of ways: for example, by showing that the applicant made a direct contribution in money to the purchase price or to mortgage repayments, or by showing that the applicant made an indirect contribution

by way of payment into a joint family fund out of which the purchase was financed.

An example of the second situation would be where a spouse makes contribution to the joint family income out of which mortgage payments to finance the purchase of the house are made. In the case of such indirect contribution some Judges require evidence of an agreement between the spouses before they will grant any interest in the property to the spouse making the indirect contribution. Other Judges take the view that such an agreement can be inferred from the conduct of the parties.

7.6.6 There is a presumption that property which is held in joint names is owned in 50 per cent shares by each spouse. An applicant in certain circumstances can establish an interest in property by showing that he or she has contributed to its purchase by way of actual work done, for example, by assisting in the actual building of a home or by helping to renovate, such as would enhance the value of the property in question. It is, however, decided law that a woman working in the home does not become entitled to any interest in the family home simply by reason of the work which she carries out therein as a wife, looking after the home and the family.

7.6.7 There is a rebuttable presumption that a husband who purchases a property from his own resources but puts it into his wife's name is making a gift of that property to her; this is known as the presumption of advancement. There is no similar presumption as regards the transfer of property to a husband by a wife.

7.6.8 The Family Home Protection Act, 1976, was the first piece of legislation introduced in this country which was designed to give some element of protection to a spouse who had no proprietary rights in the property in which he or she lived. Until the passing of that Act, it was possible for a husband or a wife who solely owned the property in which the spouses ordinarily resided with the children, to sell or mortgage that property without the consent of the other spouse. In practice this meant that wives, in particular, could find themselves in a situation where their husband could come home at any stage, announce that he had sold the family home and that the family would have to move out, even though he might not have provided any adequate alternative accommodation for them. The Family Home Protection Act, 1976, was designed to prevent such abuses and had as its object the protection of the family home. In retrospect it is clear that while the 1976 Act has introduced some element of protection, that protection is by no means complete.

7.6.9 The Family Home Protection Act, 1976, provides that where a spouse, without the prior consent in writing of the other spouse purports to

convey any interest in the family home to any person except the other spouse, the purported conveyance shall be void. "Conveyance" within the meaning of the Act includes any disposition of property otherwise than by will and includes a mortgage, lease, assent, transfer, disclaimer and release subject to certain exceptions which are set out in the Act.

Under the Act the obligation is put on the purchaser to ensure that the terms of the Act are complied with. This required changes in the system of conveyancing of property up to that time. The present position under the Act is one of the matters dealt with in the form of standard requisitions used by solicitors in regard to the selling and the buying of property and the requirement for consent to the sale of property which is a family home within the meaning of the Act is now a standard portion which must be completed before a valid sale can be closed.

7.6.10 If a spouse unreasonably withholds his or her consent to a conveyance of the family home the other spouse can apply to the court to dispense with the required consent. The court is obliged not to dispense with the consent unless the court considers that it is unreasonable for the spouse to withhold consent taking into account all the circumstances of the case including:

(a) the respective needs and resources of the spouses and of the dependent children (if any) of the family; and

(b) in a case where the spouse whose consent is required is offered alternative accommodation, the suitability of that accommodation having regard to the respective degrees of security of tenure in the family home and in the alternative accommodation.

7.6.11 The court must dispense with the consent of a spouse whom the court finds has deserted and continues to desert the other spouse.

7.6.12 Under the 1976 Act, if proceedings for possession of a family home are brought by a mortgagee or a lessor due to the failure of a spouse to make payments, the other spouse can apply for an adjournment of the proceedings if that other spouse is capable of paying the arrears due. There are also provisions in the Act which provide a means whereby a spouse can apply for an Order to prevent the other spouse from selling or otherwise disposing of the chattels in the family home and whereby a spouse can apply for compensation if the other spouse has wrongly sold or disposed of the chattels. The Act further provides a mechanism whereby a spouse can register a notice stating that he or she is married to any person having an interest in land or property.

Opinions of the Committee

7.6.13 The present system of dealing with matrimonial property is extremely unsatisfactory. It decides spouses interests in property on the basis of chance decisions made by them over the years, such as whether a house is put in the sole name of one partner or in joint names. At the time the parties may have placed no significance on these decisions and sometimes many years later the courts imply a conscious element of intention which simply did not exist at the time. In many cases the court is obliged to attempt to review many years of married life and to try to imply what was, or was not, in the parties' minds many years before the court hearing. The court is also obliged to try to act on detailed evidence of financial contributions made by each spouse during the marriage. This sometimes involves the court in comparing the respective incomes of the spouses over, perhaps, twenty years of their marriage. Given that it would be extremely unusual for spouses to keep detailed records of their financial dealings as a family, the court has to act on many occasions on half-remembered, inaccurate, and often conflicting accounts of what occurred.

7.6.14 Another major disadvantage of the present system is that it effectively discriminates against women since in most marriages the wife is obliged to give up work outside the home for at least some time, and in many cases permanently, to look after the family. This suggests that, because she is not earning, she is unable to make contributions which would entitle her to an interest in property acquired in her husband's name. It is particularly inequitable that this should be the case when the Constitution in Article 41.2 recognises the special importance of women within the home.

7.6.15 Further, the present means of determining interests in matrimonial property has led to large differences in the way that the law involved is interpreted, to the extent that one's chance of success can be determined by which particular Judge is hearing the case. This variation in treatment arises from the fact that the principles of law involved are extremely unclear and are very difficult to apply to the situation of a marriage.

7.6.16 As regards the operation of the Family Home Protection Act, 1976, it was the intention of the legislature in passing this Act to give comprehensive protection to family homes.

7.6.17 Two recent decisions of the High Court have shown that such protection is inadequate in at least one major respect. In those cases[25] it was decided that the Family Home Protection Act had no relevance and did not

[25]Murray v. Diamond, 7th December 1981 (unreported) and Containercare (IRE) Ltd. v W, 25th December, 1981 (unreported).

apply to a situation where a creditor applied to sell a family home on foot of a judgment for the amount of a debt that is obtained against him or her. That judgment is then registered by the creditor as a judgment mortgage against the family home.

The rationale of these decisions was that the Family Home Protection Act only applied to conveyances by one or other of the spouses and not by a third party and that the judgment mortgage was not a conveyance within the meaning of the Act, but an operation of law. This has brought about a result whereby even though a spouse is prevented from using the family home as security without the other spouse's consent he or she can obtain an unsecured loan which, if not paid, can be registered against the family home and finally lead to its sale.

7.6.18 The only protection available under the Act for a spouse who wishes to try to protect the family home is for him or her to apply under Section 5 of the Act which gives the court power to make any order for the protection of the family home which the court feels necessary, if it is satisfied that the other spouse is intentionally engaging in conduct which will lead to the loss of the family home. The difficulty about this approach, however, is that in many cases it is very hard, or indeed, impossible to prove the necessary intention. In cases where a spouse is simply spendthrift by nature or where he or she has an alcohol, drug or gambling problem, the necessary intention would not be proved.

7.6.19 Section 5 of the 1976 Act also allows a spouse to apply for compensation if a family home is lost by reason of the conduct of the other spouse. In such an application for compensation it is not necessary to prove that the loss of the family home was intentionally brought about. This leaves persons in the anomalous position where they can obtain compensation from the court for the loss of a family home but they are unable to obtain any orders from the court to try to prevent the loss before it occurs.

7.6.20 As regards marital property generally, two approaches are possible in the future, either to attempt to reform the present principles or to introduce a totally new concept.

7.6.21 The Committee briefly examined systems of community property which exist in some other jurisdictions whereby one spouse would automatically have equal rights in regard to property in the name of the other spouse. The Committee noted the operation of such systems, and recognising the complexity of this subject is of the view that this issue is so complex that the subject would warrant a separate study in far greater depth than the present Committee could possibly attempt.

7.6.22 The Committee recommends to the Oireachtas that a study of this nature should be commenced at the earliest possible opportunity and the Committee notes that the Commission on the Status of Women so recommended in 1972.[26]

7.6.23 The Committee is of the view that a dependent spouse should not be prejudiced in any determination of property rights by the fact that he or she gave up employment in the course of a marriage to attend the duties in the home.

7.6.24 As regards the operation of the Family Home Protection Act, 1976, the Committee is of the view that legislative action should be taken immediately in order to prevent the spirit of the Act from being defeated whereby judgment mortgages can be used to enforce the sale of the family home without the consent of either or both spouses. In this regard Section 5 should be interpreted in such a way that a spouse is presumed to intend the natural consequences of his or her actions. Where there has been a loss of the family home in these circumstances and the offending spouse has other assets, the courts should have power to order compensation.

7.6.25 Finally, the Committee wishes to comment on the lack of uniformity in judicial interpretation of the law relating to family property and to stress the desirability of uniformity in such interpretation. The Committee refers to its views on the establishment of a unified Family Tribunal, staffed by specialist Judges, as set out in Chapter 9. In addition, the Committee's views regarding the introduction of legislation to provide for property transfer orders should be noted.[27]

7.7 Barring Orders

7.7.1 The Barring Order, which has the effect of excluding one spouse from the family home at the instance of the other, was first introduced by Section 22 of the Family Law (Maintenance of Spouses and Children) Act, 1976. The basis for granting such a Barring Order under that section was that there must be reasonable grounds for believing the safety or welfare of the applicant spouse or any of the dependent children of the family required the making of such an Order.

7.7.2 Section 17 of the Family Law (Protection of Spouses and Children) Act, 1981, repeals Section 22 of the Family Law (Maintenance of Spouses and

[26]Report of the Commission on the Status of Women, December 1972.
[27]See Chapter 7.38

Children) Act, 1976. The 1981 Act is a completely new statutory regime in that, while the basic test — the existence of reasonable grounds for believing that the safety and welfare of the applicant spouse or any of the dependent children of the family require the making of an Order — remains unchanged, substantial changes were made in relation to the means of enforcing a Barring Order. The 1976 Act failed to give to the Garda Síochána a power of arrest for breach of a Barring Order. The 1981 Act for the first time specifically gave to members of the Garda Síochána the right to arrest a person whom they believed was guilty of a breach of a Barring Order. This was of great practical significance because up to then even if a person breached a Barring Order, the Gardaí were often powerless to remove that person from the family home.

7.7.3 The 1981 Act also created a new form of order called a Protection Order. A Protection Order covers the period of time from the taking out of an application for a Barring Order until the date of the hearing of that application. It has the effect of restraining the alleged offending spouse from threatening, molesting or otherwise putting in fear the applicant and/or dependent children. It does not bar a spouse from the family home.

A Protection Order can be obtained by the applicant without notifying the other spouse in advance and it is now a normal procedure for an applicant for a Barring Order to apply to the court for a Protection Order on the same day that he or she takes out a summons or application for a Barring Order. The grounds for obtaining a Protection Order must be made out before the court will grant it.

7.7.4 Breach of a Barring Order is a criminal offence which leaves a person in breach open to a sentence of imprisonment up to a maximum of six months and/or a fine. Breach of a Protection Order is also a criminal offence which can lead to a term of imprisonment for a period of up to six months and/or a fine and again the Gardaí have a power of arrest when they have reasonable grounds to believe that a breach of a Protection Order has taken place.

7.7.5 Under the 1981 Act the power to grant Barring Orders was specifically given to the District Court and to the Circuit Court. The District Court has power to make a Barring Order up to a maximum period of 12 months. The Barring Order can be renewed after the 12 month period, but will not be renewed by the court without continuing evidence that the safety or welfare of the spouse or children require such renewal. There is no maximum limit on the duration of a Barring Order made by the Circuit Court.

7.7.6 A recent decision of the High Court decided that the High Court

retains the power to make Barring Orders even though such power is not specifically given to that court under the 1981Act.[28]

7.7.7 As mentioned in paragraph 7.7.4 breach of a Barring Order is a criminal offence. It should be noted that breach of a Barring Order granted by the Circuit or High Court would, in addition, constitute a contempt of court. Such a breach could therefore be dealt with in the alternative by either of those courts under its general power to deal with contempt. The usual method of enforcement in cases of contempt is imprisonment.

7.7.8 Section 11 of the 1981 Act gives the right to a person who has been barred to apply at any time to have the Barring Order discharged on the grounds that its continuance is no longer necessary.

7.7.9 For some years after the introduction of Section 22 of the 1976 Act there was no direct judicial authority as to what constituted the exact grounds on which a Barring Order should be granted. This position was rectified by the Supreme Court[29] in June 1983. This judgment was a landmark and has profoundly affected the pattern and frequency of the grant of Barring Orders. The court in that case took the view that for the proper grant of a Barring Order under the 1981 Act the following factors should be present:

(a) There must be something in the conduct of the spouse against whom the Order is sought which endangers the safety or welfare of the other members of the family;

(b) Ordinarily the conduct complained of must be of serious nature and must be wilful and avoidable, and which causes or is likely to cause hurt or harm not as a single occurrence but something which is continuing or repetitive in its nature;

(c) The conduct complained of should be changeable and remedial by the act of the parties or one or other of them.[30]

It is also clear from the judgments that the court felt that a Barring Order was not an appropriate remedy to deal with a situation of irretrievable breakdown in a marriage.

Opinions of the Committee

7.7.10 The Committee observed that prior to the O'B judgment, Barring Orders had been granted in some cases as a form of enforced separation and

[28]R v R, High Court (unreported) 16th February 1984.
[29]O'B v O'B (unreported) 17th.June 1983.
[30]Judgment of Chief Justice Page 10.

in situations where the marriage had broken down. Following the O'B decision, the Committee notes that judicial interpretation has moved towards refusing the making of an Order unless physical violence is occurring. The Committee is of the opinion that this rigid interpretation of the Act may have the effect of denying some persons a remedy under the Act where it can be strongly argued that the conduct of the offending spouse, though not physically violent, is such as to place the safety and welfare of the other spouse and/or children at serious risk.

7.7.11 The Committee is concerned that this uncertainty which is a consequence of judicial inconsistency should be replaced by a clear re-statement of the law relating to Barring Orders, if necessary by amending legislation.

7.7.12 The view was expressed in some submissions received by the Committee that the legislation providing for Barring Orders should be repealed as such Orders are ineffectual and inhuman. It is undoubtedly the case that the use of Barring Orders, particularly the manner in which they were used prior to the decision in the O'B case, left a large body of dissatisfied persons, practically all male, who found themselves restrained by court Order from entering or having the use or enjoyment of the family home which, in some cases, may well have been their sole property. In some cases a person was barred from the family home with immediate effect from the hearing of the court case, with the result that the lifestyle of the person was totally altered by the Order, to the extent of having to seek alternative accommodation. In many cases the granting of a Barring Order was accompanied by the making of a Maintenance Order which meant that the persons barred found themselves trying to find alternative accommodation and to live on a very restricted income. The effect of a Barring Order with these consequences in some cases left men embittered, humiliated and in dire financial straits.

7.7.13 The Committee also considered the effects of a Barring Order from the perspective of the person seeking the making of the Order. There are undoubtedly cases in which the actions of one spouse are such as to make life impossible for the other spouse and the children of the marriage, and cases in which the behaviour of one spouse poses a serious threat to the health, safety and welfare of the other spouse or children. The Committee accepts that some legal assistance must be available to persons affected by such behaviour and recognises that the Barring Order is a necessary legal remedy. If Barring Orders were to be abolished, as some groups have suggested, the only help available to a spouse in need of legal protection would be an injunction or a prosecution under the criminal law.

Relief by way of injunction, in order to prevent a spouse from entering the family home, would have the same effect as a Barring Order but would be

somewhat less effective in terms of enforcement. Injunctions in this area have been granted by the courts on the same basis as Barring Orders and for that reason injunctions can be Barring Orders by another name.

The use of the criminal law is a very blunt instrument in dealing with family disputes and the imposition of a jail sentence would deprive the applicant spouse and children in many cases of their financial support. Some applicants would certainly be dissuaded from taking any action if they thought that the imposition of a prison sentence might be the ultimate result. Also the thought of the details of their family difficulties being openly discussed in court might make many applicants slow to proceed with the case even though ample grounds for a criminal prosecution might exist.

In addition the use of the criminal law should by its very nature, be restricted to physical assaults and would give no relief in cases which did not involve physical violence, or threats of immediate violence.

7.7.14 The Committee feels that cases of irretrievable breakdown are more appropriately dealt with by way of another remedy, such as judicial or legal separation. The Committee sees the sole role of the Barring Order as affording protection and not by any means as the principal legal process in cases of irretrievable breakdown. The Committee suggests that the definition of conduct such as gives rise to the granting of a Barring Order should ensure that Barring Orders can continue to be obtained where the health, safety and welfare of the spouse or children are at risk and not only in situations involving physical violence.

7.7.15 A most unsatisfactory aspect of the present structure in relation to the making of Barring Orders is that, in practically all cases, no help is available to a person whose conduct has led to him or her being barred.

That person is simply removed from the family home for a period of months or years during which time they are given no professional help to form an insight as to why their conduct was unacceptable, or to ensure that similar conduct will not recur. This is yet another example of the complete lack of any adequate welfare or counselling service being available to those whose family difficulties are dealt with through the courts. The Committee deals in Chapter 8 with the type of mediation service which would have a significant influence in this area. The Committee believes that the introduction of such a mediation service would also have the effect of reducing the volume of cases coming before the courts.

7.7.16 The Committee deals in Chapter 9 of this Report with the type of family tribunal which should be introduced to deal with all family cases.

7.8 Divorce

7.8.1 In this Chapter the Committee will deal solely with the question of divorce. Elsewhere in this report other solutions and remedies for the problems caused by marital breakdown are discussed in full. Here the Committee will examine what are considered to be the substantive arguments for and against divorce, condensed from the 700 written submissions and oral evidence heard from 24 different groups. The object of the Committee in this regard is to put before the Oireachtas as clearly and succinctly as possible the options which are open and to express the views of the Committee on those options.

7.8.2 In using the expression "divorce" we take it to be synonomous with the expression "dissolution of marriage" as used in Article 41 of the Constitution. We feel that the former expression is more widely used by the majority of people and for this reason we feel that its use in this Chapter will bring about greater clarity.

7.8.3 In discussing divorce as a remedy for marital breakdown it is perhaps as well at the beginning to identify the difference between divorce and other remedies available in connection with the breakdown of a marriage. At the moment there is in existence legislation which deals with disputes as to the custody and upbringing of children, the maintenance of dependent spouses and children, and the protection of spouses and children at risk of violence and neglect. Further, there is provision for deciding ownership of assets of the parties to a marriage and for the grant of a decree of judicial separation or nullity in certain circumstances. The Committee has in other Chapters of this report suggested changes, which will improve the effectiveness of these remedies as a response to the problems of marital breakdown. Should divorce be introduced following the carrying of a referendum the present response to marital breakdown would be altered in one very important way. It would give the courts the power to dissolve a valid marriage and thus the parties to that marriage would thereafter be free to remarry. The granting of the right to remarry would appear to the Committee to be the essence of a divorce jurisdiction as it is the main difference between divorce as a method of solving the problems caused by the breakdown of a marriage and other less far-reaching legal remedies.

7.8.4 Statement of Current Legal Position

At present divorce, with the right to remarry, is not possible under the Civil Law of the State due to the provision contained in Article 41.3.2° of the Constitution which states:

"No law shall be enacted providing for the grant of a dissolution of marriage".

Under the terms of this provision the Oireachtas cannot enact legislation which permits divorce and, as a result, persons who contract valid marriages under the Civil Law remain married until the death of one or other party.

7.8.5 When a valid marriage irretrievably breaks down the spouses cannot obtain any final legal recognition that their marriage is at an end and they cannot remarry. As has been pointed out above they can avail of limited legal remedies such as judicial separation, the conclusion of a deed of separation, or one or other spouse may obtain a Barring Order. Sometimes a spouse may simply desert the other spouse but, in any event, no matter which of these courses they pursue neither spouse would be free to enter into a new and valid marriage until the death of the other spouse.

7.8.6 Freedom to remarry can arise if the parties obtain a foreign decree of divorce provided this decree is recognised in this State. The law regarding recognition of foreign divorces is complex and it is not appropriate to enter into a lengthy discussion on this area of law. Suffice it to say that the State will only recognise a divorce obtained in a foreign jurisdiction if both parties to the marriage were domiciled in that foreign jurisdiction at the time of the divorce. Married couples living permanently in Ireland whose marriages have irretrievably broken down cannot obtain any divorce decree outside Ireland that will validly terminate their marriage under Irish law.

7.8.7 The prohibition on the enactment of legislation to permit divorce contained in the Constitution must remain part of the law until such time as a referendum is held and the majority of those voting at that time decide in favour of removing the ban on divorce contained in the Constitution. In the event of such a decision being made by the electorate the result of such a referendum would not, by itself, provide for divorce. It would then become necessary for the Oireachtas to enact divorce legislation if divorce were to be made available. In this context it can be noted that the 1922 Constitution did not prohibit the Oireachtas from enacting divorce legislation and that no such legislation was enacted in the period from 1922 to the coming into force of the present Constitution in 1937.[31]

7.8.8 **Informal Committee on the Constitution, 1967**

On only one other occasion[32] since the enactment of the 1937 Constitution

[31]In 1925 rules were introduced for the Dáil and Seanad, which prohibited the introduction of Private Bills allowing for the dissolution of a marriage.

[32]Report of the Informal Committee on the Constitution, December, 1967. (Pr. 9817)

have the provisions of Article 41.3.2° been examined by an Oireachtas committee. We feel that it is useful to set out the views of that Committee in regard to this particular provision of the Constitution.

Paragraph 123: Article 41.3.2° provides that:

> "no law shall be enacted providing for the grant of a dissolution of mariage".

The universal prohibition has been criticised mainly on the ground that it takes no heed of the wishes of a certain minority of the population who would wish to have divorce facilities and who are not prevented from securing divorce by the tenets of the religious denominations to which they belong. It is argued that the Constitution was intended for the whole of Ireland and that the percentage of the population of the entire island made up of persons who are Roman Catholics, though large, is not overwhelming. The prohibition is a source of embarrassment to those seeking to bring about better relations between North and South since the majority of the Northern population have divorce rights under the law applicable to that area. It has been pointed out that there are other predominantly Catholic countries which do not in their Constitutions absolutely prohibit the enactment of laws relating to the dissolution of marriage. Finally, attention is sometimes drawn in discussing this subject to the more liberal attitude now prevailing in Catholic circles in regard to the rights and practices of other religious denominations, particularly since the Second Vatican Council.

Paragraph 124
It would appear to us that the object underlying this prohibition could be better achieved by using alternative wording which would not give offence to any of the religions professed by the inhabitants of this country. An example of such an alternative would be a provision somewhat on the following lines:—

> "in the case of a person who was married in accordance with rites of a religion, no law shall be enacted providing for the grant of a dissolution of that marriage on grounds other than those acceptable to that religion."

It would probably be necessary to add a clause to the effect that this was not to be regarded as contravening any other provision of the Constitution prohibiting religious discrimination. This wording would, we feel, meet the wishes of Catholics and non-Catholics alike. It would permit the

enactment of marrige laws acceptable to all religions. It would not provide any scope for changing from one religion to another with a view of availing of a more liberal divorce regime. While it would not deal specifically with marriages not carried out in accordance with the rites of religion, it would not preclude the making of rules relating to such cases.

Paragraph 125
In coming to this conclusion we have examined a great deal of published material on the subject and, in particular, the decisions reached by the recent Vatican Council. It is important to note in this connection that the existing prohibition of dissolution of marriage deprives Catholics also of certain rights to which they would be entitled under their religious tenets. There are several circumstances in which the Catholic church will grant dissolutions of valid marriages or will issue declarations of nullity. We understand that many thousands of cases are dealt with under these provisions every year either at Rome or by dioceses and metropolitan courts throughout the world. The absolute prohibition in our Constitution has, therefore, the effect of imposing on Catholics regulations more rigid than those required by the law of the Church. This conflict is referred to in a number of publications by Catholic authors.

Paragraph 126
It can be argued, therefore, that the existing constitutional provision is coercive in relation to all persons, Catholics and non-Catholics, whose religious rules do not absolutely prohibit divorce in all circumstances. It is unnecessarily harsh and rigid and could, in our view, be regarded as being at variance with the accepted principles of religious liberty as declared at the Vatican Council and elsewhere. It would seem, therefore, that there could be no objection from any quarter to an amendment of the Constitution on the lines which we have indicated in paragraph 124 above and we unanimously recommend that such an amendment be made.

7.8.9 The Committee has noted with interest the work of the 1967 Committee in regard to Article 41.3.2° of the Constitution and obviously the unanimous view of that Committee must be taken into account in any discussion of the topic of divorce. Almost twenty years have passed, however, since the deliberations of that Committee and those years have seen many changes in Irish society. Further, since the deliberations of that Committee the provisions in the Constitution which deal with fundamental rights have

been interpreted by our courts in a manner which could hardly have been predicted in 1967.[33]

7.8.10 **Submissions received**

Many of the written and oral submissions received by the Committee make reference to the constitutional prohibition on divorce. Some argue in favour of a referendum on the issue, others argue against it. In addition, arguments for and against the provision of divorce legislation were discussed in detail by many of the churches, groups and individuals who expressed their views to the Committee. It is not possible in this report to refer in detail to all the many excellent submissions presented to us. The best that can be achieved in a report such as this is to summarise as fairly as possible the substantive arguments both for and against the holding of a referendum and the introduction of divorce legislation. A selection of quotations from a fair cross-section of the submissions received are included in this Chapter so that an insight into the many and varied views expressed can be obtained.

7.8.11 **Arguments in favour of divorce**

From the numerous written and oral submissions, including personal submissions, made to this Committee, the following is a synopsis of the main arguments in favour of the introduction of divorce in this country:

(a) that the prohibition on divorce is an injustice to those persons whose marriages have irretrievably broken down and who have become involved in other relationships or wish to become involved in other relationships. They feel it to be such an injustice because:

  (1) they cannot achieve any recognition of their new relationship or any adequate legal definition of their status;

  (2) there is no legislation in force to provide protection for parties to and the children of such a relationship, for instance, in the areas of maintenance, succession and in respect of violence and neglect;

  (3) the children of such a relationship are illegitimate; and

  (4) the parties suffer substantial disadvantages in such areas as taxation and the right to social welfare benefits.

It is argued that this injustice not only has adverse effects on the immediate parties to the relationship and any children that they may have but that the existence of unregulated second relationships after the

[33]The case of Ryan v Attorney General 1965 IR heralded the beginning of an era in which the courts held that the fundamental rights provisions of the Constitution conferred rights which were not specifically enumerated in those provisions.

breakdown of a marriage also has adverse effects on the community at large.

> "We find people changing their names by deed polls to their boyfriends' names. They are coming in wanting to know why their children are regarded as illegitimate in the law. They are losing respect for the law. These are people who are basically law abiding citizens and who have very strong religious views, but who find they have got themselves into second relationships. They feel that they want to marry. They want the commitment of marriage and they do not have that right at the moment. It is from the viewpoint of practitioners of family law that we have seen the problems that these second relationships caused — the fact that there is no legal protection for them and particularly for the children who are left and the women are left in a most vulnerable position. We feel that if divorce was to be brought in they would have the option of remarriage which would in fact help the parties to have a greater commitment to each other and it would mean that the law would apply to and protect these relationships as well".[34]

> "Marriages should be supported through all their stages as active social relationships, but only as long as they are capable of being so. Failure to accept that the parties to a marriage which has broken down irretrievably have the right to divorce and remarry can cause hardship. Inter alia, this failure confers an uncertain status on new relationships arising after marriage breakdown; it also leaves unprotected the interests of couples and their children with regard to maintenance, security and continued parenting".[35]

> "This Article (41.3.2°) enshrines Roman Catholic teaching (in common with Article 41.3 regarding the definition of what constitutes a family) and taken together we believe that they constitute a threat to family life by forbidding the possibility of divorce and remarriage. This threat arises by the pressures exerted by the growing number of stable relationships not recognised as family units under the present Constitution".[36]

(b) All the minority churches and religions (with the exception of the church of the Latter-day Saints) do not favour the retention of the blanket prohibition on divorce in the Constitution and consider the availability of divorce legislation as a basic right notwithstanding

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[34]Ms Paula Scully — oral submission by Law Centre Solicitors.
[35]Irish Association of Social Workers.
[36]Submission by the Divorce Action Group.

that certain of those churches as a matter of internal discipline disapprove of divorce. It is argued that Civil Law in this area should not reflect only the views expressed by the church of which the majority of the population are members, and that by so doing at present it discriminates against members of other churches and religions and those who profess no religious faith.

> "We recognise that too easy recourse to divorce may lead to widespread abuse and that the utmost care is required in legislation on these matters. Nevertheless, we hold that blanket prohibition of divorce is also the cause of serious abuse, much personal suffering, and grave social injustice. Attempts to supress recognition of this situation does nothing to promote well-ordered marriage and family life."[37]

> "The nature of marriage is to be lifelong and ideally this should always be so, but we recognise that human nature is frail and that some marriages fail to develop and break down irretrievably.
>
> We believe that legal provision should be made for divorce as a civil right for those whose marriages have broken down irretrievably and who wish to avail of it. The period of marriage before which a divorce is not allowed should be five years. Knowledge of this fact may prevent many rash and unsatisfactory marriages taking place. There should be an interval of 6 months after application for a divorce before proceedings can start, during which time counselling should be available."[38]

> "We do recognise that circumstances can occur where relationships deteriorate to such an extent that it may be right to end a marriage, and for this reason we would welcome a change in the constitutional position on divorce. The demand for divorce to be legal may come only from a minority of the Christian people of this country. However, we see no reason why the Constitution or legislation should deny the minority their wish in this matter, bearing in mind that provision is made for divorce by other nations within the Council of Europe. We do feel strongly however that divorce must always be seen as the last resort."[39]

> "The existing machinery suffers from the defect that it deals only with matters which, important, and even vital though they may be, are only ancillary to the root problem, that of status. Persons whose marriages have broken down and who have strug-

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[37]Submission by the Presbyterian Church in Ireland.
[38]Submission by The Mothers' Union Social Concern Committee of the Anglican Church.
[39]Submission by Dublin Monthly Meeting of the Religious Society of Friends.

gled through the complex legal machinery find themselves substantially poorer but without the one remedy which they really want, namely the freedom to marry."[40]

(c) That the constitutional ban on divorce and the absence of divorce legislation in this country since the foundation of the State has not prevented marital breakdown from occurring and that in the past decade the level of marital breakdown has increased.

"I do not believe that the absence of divorce law in any way stops marriages breaking down. Marriages go on breaking down by persons pursuing their own personal causes quite independently of what the law says or does not say."[41]

(d) That the breakdown of a marriage is due to the collapse of the relationship between the parties and that divorce does not cause that collapse, but merely affords a facility to give legal recognition to the fact that a marriage has ended, while leaving the parties thereto free to remarry. It is suggested that confirmation of this assertion can be obtained from an examination of the statistics in regard to marital breakdown in the Republic of Ireland and Northern Ireland. Despite the fact that divorce has been available in the North of Ireland since 1937, it has been suggested that the level of marital breakdown in the Republic of Ireland appears to be similar to the proportional level of marital breakdown in Northern Ireland.

"Our views on that (divorce) are that there clearly are cases where divorce is the only solution to the problem of irretrievable breakdown. We feel that conciliation should be part of that divorce procedure. Our family system differs from other European countries in that families here are larger and only 10 per cent of the married women work outside the home, so there would be financial considerations involved."[42]

"Gingerbread, through our members, recognises that marital breakdown occurs and that marriages do end. Irretrievable breakdown should be accepted as a basis for separation. If this is done, people in this situation have a right to finally choose to completely end their legal contract of marriage. We believe that this is a basic human right."[43]

(e) To deny the right to remarry to a battered wife or husband has no

[40]Submission of the Church of Ireland.
[41]Dr Jack Dominian — oral submission.
[42]Mrs Anne Williams — oral submission of AIM Group for Family Law Reform.
[43]Submission by Gingerbread.

social advantage to the State and is in fact detrimental to society in general and lacking in compassion.

(f) That the absolute prohibition on the introduction of divorce legislation in the Constitution has the effect of imposing on Catholics regulations more rigid than those required by the law of the Church. The relevant Canons in the Code of Canon Law state as follows:

Article 1: The Dissolution of the Bond

Can. 1141 A marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death.

Can. 1142 A non-consummated marriage between baptised persons or between a baptised party and an unbaptised party can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or of either party, even if the other is unwilling.

Can. 1143 S1 In virtue of the Pauline privilege, a marriage entered into by two unbaptised persons is dissolved in favour of the faith of the party who received baptism, by the very fact that a new marriage is contracted by that same party, provided the unbaptised party departs.

S2 The unbaptised party is considered to depart if he or she is unwilling to live with the baptised party, or to live peacefully without offence to the Creator, unless the baptised party has, after the reception of baptism, given the other just cause to depart.

Can. 1149 An unbaptised person who, having received baptism in the Catholic Church, cannot re-establish cohabitation with his or her unbaptised spouse by reason of captivity or persecution, can contract another marriage, even if the other party has in the meantime received baptism, without prejudice to the provisions of Can. 1141.

The facility of dissolution of the bond of marriage in the above circumstances, which is allowed under Canon Law, is ineffective at Civil Law.

(g) That it is the factual breakdown of a marriage and not the availability of divorce that has an adverse effect on children. It is suggested that in certain circumstances the integration of a child into a new loving family unit can reduce the trauma resulting from the breakdown of his or her parent's marriage.

"What is clear is that it is the effects of separation in marital conflict rather than divorce which constitutes a crisis for the child. Therefore, whether or not divorce is introduced, we urgently need

to consider how we might respond to the many Irish families for whom separation may become a reality."[44]

(h) That divorce is not the source of financial hardship to parties whose marriage has broken down. Such financial hardship results from the need to finance two separate homes, which in turn results from the need to live separate and apart. The forming of a relationship with a third party can either ease or exacerbate such financial difficulties.

7.8.12 **Arguments Against Divorce**

The following, in our view, is a synopsis of the main arguments presented to us against the introduction of divorce and against the holding of a referendum to facilitate such introduction. It is argued:

(a) That the introduction of a divorce jurisdication would as it were open the flood gates and that the rate of divorce and the incidence of marital breakdown would be greatly increased. In other words, the introduction of divorce, rather than contributing towards a solution of the problem of marital breakdown, would merely cause multiplication of it.

In support of this argument it was suggested that it was the experience of practically every modern state in the western world which has introduced divorce on the grounds of irretrievable breakdown that the rate of divorce has multiplied, in some cases several times over.

> "I think our view would be — we know very often from certain experience — that there are many incidents of marital breakdown but what concerns us basically is, in the light of evidence we have of experience in other countries, would the price we would pay in society be too high if we institute divorce legislation? In trying to solve the problem of a vulnerable society would we be opening the door to a further deterioration in the State, in the family and in our society? That is the point that concerns us."[45]

(b) That the introduction of divorce would fundamentally change the nature and perception of marriage by making it into a temporary as opposed to a permanent union between a husband and wife. The effect of this is to undermine the institution of marriage and the family and since the family is the fundamental unit of society, it is said that society itself is undermined and destabilised.

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[44]Submission by Royal College of Psychiatrists Irish Division Child Psychiatry Specialist Section.

[45]Mr Seán Byrne — oral submission of the Order of the Knights of St Columbanus.

> "Marriage in Canon Law is seen as a covenant by which a man and a woman establish a partnership of their whole life which by its own nature is ordered towards the wellbeing of the spouses and towards the procreation and upbringing of children. Its essential properties are unity and indissolubility (cf. Cans. 1055 and 1056)."[46]

(c) That the introduction of divorce would reduce the protection at present given to the institution of marriage and the family under Article 41 of the Constitution.

(d) That the introduction of divorce would cause persons who were having difficulties in their marriage to work less hard at achieving a solution to those difficulties. In this respect it is pointed out that only a minority of marriages collapse and that to extend the facility of divorce and remarriage might undermine the stability of successful marriages.

> "Divorce, once introduced, cannot be withdrawn. And it is to be feared that, once it was available as a solution (as a safety valve, so to speak), there would be little real urgency and little real energy devoted to the effective support of marriages through proper education, material support measures and adequate remedial help."[47]

(e) That the introduction of divorce would have a detrimental effect on child development and would increase the number of children whose upbringing is damaged by the fact that they come from a broken home. In this respect it is pointed out that the process of the disintegration of a marriage is a traumatic experience for children of all ages and that they suffer because of it. However, if one of the parents remarries it is argued that the situation is exacerbated in that the children have to cope with the problem of forming new relationships with step-parents and step-brothers and step-sisters. Sometimes this can result in conflicts of loyalty and emotional tension between children and new and former parents.

> "Apart from objections of principle and religious belief, it is our view that the hard evidence internationally indicates that divorce is not an acceptable solution to the question of marriage breakdown or disharmonies. The problems caused by the initial divorce

[46]Submission by members of the Dublin Regional Marriage Tribunal.
[47]Submission by the Commission for the Laity.

and the subsequent legal interpretations and implications for wives and children make it clear that divorce far from being a remedy nearly always exacerbates the difficulties."[48]

(f) That women and children suffer financial hardship as a result of the introduction of divorce. This argument is based on the proposition that in general it costs more to look after two homes and two families than it costs to look after the original home and family. An inevitable reduction in the standards of living of the parties involved must take place. As the wife often obtains custody of the children she is financially in a particularly vulnerable position, being unable to take up full-time employment. It is suggested that the reality of divorce would be that the wife and children of the broken marriage would lose out financially and have to suffer the consequences of a reduced lifestyle.

> "To introduce divorce into the Republic where divorce has been unknown since the establishment of the Free State in 1922, would be an interference with the existing constitutional rights of spouses and their children to the protection and security of indissoluble marriage, rights of inheritance etc. A withdrawal of these valuable rights, which were guaranteed to the partners and children of existing marriages, would be unjust and intolerable."[49]

(g) That the introduction of divorce would be contrary to the religious views of the vast majority of the people residing in the Republic of Ireland and contrary to the teachings of the Church of which the overwhelming majority of the population of the Republic of Ireland are members.

> "Divorce would have a disastrously destabilising effect on Irish society. We suspect that this would happen here faster than in neighbouring countries."[50]

The Committee is of the view that the best way to discuss the strengths and weaknesses of these various arguments is in the context of an analysis of the possible effects of firstly the retention of the current constitutional position and secondly the removal of the present constitutional ban on divorce.

7.8.13 **Effects of retaining the current constitutional position:**
If the changes which the Committee believes to be necessary in other Chapters of this report are implemented it can be anticipated that persons entering into marriage in the future and some of those who are now married may be afforded

[48]Submission of the Christian Family Movement.
[49]Submission by Irish Family League.
[50]Submission from the Familia Group.

a greater hope of stable and harmonious marriages. Changes such as the provision of improved education for relationships, an increase in the age for marriage, community based support for marriage and the provision of more extensive marriage counselling can be expected to, at the very minimum, slow down the rate of increase of marriage breakdown and, hopefully, will substantially reduce that rate.

7.8.14 It is, however, recognised by the Committee that the implementation of its proposals in this area will have little, if any, impact in effecting a reconciliation between couples whose marriages have already irretrievably broken down. One of the difficulties in dealing with this whole area is that there is no accurate computation of the numbers of marriages which have actually broken down.

The highest estimate which has been put to this Committee is that 36,000 marriages have broken down in Ireland[51] to date. This estimate would represent approximately 6% of the total number of marriages if it is correct. Figures available from the Central Statistics Office suggest that the figure could be considerably lower than this.

Figures obtained from the 1981 Census of Population conducted by the Central Statistics Office show a return of 14,117 persons who categorised themselves as neither married nor single. This category would include persons who obtained divorces in other countries but also included a number of persons whose legal status appeared to be married, but were separated.

The 1983 Labour Force Survey, also conducted by the Central Statistics Office, provided an estimated figure for separated persons as 8,300 males and 12,800 females. A further 5,500 males and 10,900 females were estimated to be married but not usually resident with the other spouse. In 1984 approximately 8,100 women were receiving deserted wives' benefit or allowance.[52]

Even if a marriage failure of 6% were accepted it should be noted that this would still leave Ireland with the lowest figure for marriage breakdown in Europe. While some comfort can be taken from this fact, nonetheless it must be recognised that there are a significant number of people who find themselves in a situation of marriage breakdown. Further even with the improvements which we hope will take place it is inevitable that some marriages will continue to break down.

7.8.15 It would also appear to be inevitable that some of the persons whose marriages have irretrievably broken down will form relationships with third parties. At the moment the parties to such a relationship, and any children of the relationship, are afforded little or no legal protection. In order to remedy

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[51]Estimated by the Divorce Action Group in their submission to the Committee.
[52]See Appendix C.

the problems which they encounter, and to put their relationships on a footing which gives to the parties involved and the children the type of legal protection which the law provides by way of statute in the case of married couples, the parties are in effect thrown back on drawing up contracts between themselves which set out their mutual rights and obligations. Such contracts can be of some assistance in the area of maintenance but the parties still find themselves in a considerably inferior position to that of a married couple who have all the enforcement procedures contained in the Family Law (Maintenance of Spouses and Children) Act, 1976. There must be some question whether such contracts would be contrary to the constitutional protection afforded to the family and for this reason contrary to public policy. This view would call into question the enforceability of such agreements.

In relation to protection from violence or abuse the parties must rely on the law in regard to injunctions rather than the more effective and comprehensive legislation in regard to Barring Orders.

7.8.16 The making of mutual wills can give parties to such a second relationship some succession rights but such rights are subject to the rights of their spouse or children under the Succession Act, 1965. In normal circumstances the maximum benefit that can be obtained by a surviving member of a second relationship upon the death of the other party to that relationship is one-half of the estate of the deceased, where the deceased had no children by his marriage, or two-thirds where there were children of the marriage. Even this two-thirds, however, will be shadowed by any claim made by the children of the marriage for part of their parents' estate pursuant to the provisions of Section 117 of the Succession Act, 1965.

7.8.17 The Committee recognises that if the current law remains unchanged there will be a significant number of persons, whose marriages have broken down, who are obliged to resort to alternative forms and mechanisms[53] in second relationships, in order to extend the appearance of a "marriage" to their relationship. In the context of the present legal situation these efforts are doomed to be at best partially successful. However, it has been suggested that most of the problems experienced by persons in such second relationships can be relieved by the enactment of appropriate legislation. For example, it was pointed out that the abolition of the concept of illegitimacy would be a substantial step forward. It was also suggested that legislation could be enacted to provide appropriate rights to maintenance and protection by way

[53]Such alternative forms or mechanisms can take the form of (a) The making of mutual wills (b) The signing of a deed poll (c) Obtaining a foreign decree of divorce (d) Obtaining a Catholic Church annulment and subsequent "remarriage" in Church.

of a Barring Order in respect of the members and the children of such relationships.

7.8.18 The problem with such an approach, in the view of the Committee, is that it would appear that there would be great difficulty in defining what type of relationship, and which persons involved in a relationship, should be covered and protected by the suggested legislation. For example, should the protection of such legislation be extended to a person who has formed a relationship for a short period of time, perhaps a number of weeks, with a party whose marriage has broken down? A question must arise whether it would be necessary to give evidence of a stable relationship, extending over a certain period of time, before such legislation could be invoked and if such a condition is to be necessary how such a stable relationship is to be defined. Also such legislation would have to deal with the difficult question of the relative priority which is to apply, between the spouses and children of the marriage of a party, and the partner and children of any subsequent relationship of that party. The nature of such a priority could make the protection in regard to matters of finance and succession more illusory than real. In any event such legislation could only extend legislative protection, as opposed to constitutional protection, which covers the members of a family based on marriage. For these reasons it is the view of the Committee that simple legislative reforms cannot adequately solve the problems at present experienced by parties to a relationship, one or both of whom is still legally married to another person.

7.8.19 The Committee feels that it is inevitable in the context of the retention of the current constitutional position in relation to divorce that many adults, whose marriages have irretrievably broken down, will form stable permanent relationships with other men and women and, that the parties to such relationships and the children of such relationships, will continue to lack any adequate legal status and protection. The parties to such relationships will be unable to remarry even though they may wish to do so and this fact, at least in their eyes, will in all probability appear to be harsh, unnecessary and unjust. It is also recognised by the Committee that representatives of most of the minority religions in this country, who made submissions to the Committee, sincerely believe that the current constitutional position discriminates against members of their churches and religions and presumably they will continue to hold this belief as long as the present position continues.

7.8.20 **The effect of removing the current constitutional ban on divorce legislation**

The Committee is satisfied that it is impossible to say with any degree of certainty exactly how many people would apply for decrees of divorce if

divorce legislation were enacted. One of the difficulties in this regard is the lack of any definite statistics as to the exact extent of marital breakdown in this country. There are a number of factors from which it is argued that there would not be a flood of divorce applications. Since the vast majority of people in the country are members of religions that actively disapprove of divorce, it can be expected that a certain proportion of persons who have experienced marital breakdown would not be anxious to avail of the remedy of divorce on account of their religious beliefs. Also, even on the highest figures presented to the Committee it would appear that the rate of marital breakdown in this country is lower than that of any other country in western Europe. Experience in other countries, where the majority of citizens are Catholics, and in which divorce has been introduced, for example, Portugal, has been, that following an initial large number of applications for divorce, the numbers of applications have not continued at the same high level. This would seem to indicate that the large number of applications immediately following the introduction of divorce reflects applicants whose marriages had broken down, perhaps for many years, and who were, up to then, unable to avail of the remedy of divorce. It should be borne in mind, however, that it is very dangerous to predict what might occur in this country from the experience of other countries.

7.8.21 Further, it is argued that regard must be had to the fact that legislation can have a profound effect upon human behaviour and that changes in legislation in this area could produce a significant change in patterns of behaviour that have been applicable up to this time. It is the view both of the Committee and of a great majority of those who made submissions to it, that divorce rates of the kind that prevail in other countries would not be desirable in this country. Marital breakdown figures in this country have not as yet reached the level of those in other countries in the western world and, it is to be hoped that, given the type of positive support and active help for marriages which this Committee suggests in other Chapters, such levels would not be reached.

7.8.22 It has been suggested to the Committee that one of the consequences of the deletion of the prohibition on divorce from the Constitution would be that the protections and safeguards for the institutions of marriage and the family would be weakened. In the Committee's view, such protections and safeguards can take a number of distinct and yet interlinked forms. The first means by which the State can safeguard marriage is by upholding the protection of marriage and the family which is enshrined in our Constitution. Secondly, such protection can be given in a practical way, by the introduction of measures to provide better preparation for marriage, and by the provision of proper back-up services with suitable facilities, to help married couples

who are experiencing difficulties. The Committee has already expressed the hope that such increased practical help will be made available. Finally, the State can safeguard marriage by the introduction of suitable legislation aimed at preventing the causes of marital breakdown. A clear example of such legislation would, in the Committee's view, be the introduction of an Act to raise the minimum age for marriage.

7.8.23 At present clear constitutional protection for the institution of marriage and the family based on marriage is provided in Article 41 of the Constitution. It is worthwhile at this stage to quote in its entirety the text of Article 41:

> Article 41.1.1°: The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptable rights, antecedent and superior to all positive law.
>
> Article 41.1.2°: The State, therefore, guarantees to protect the Family in its Constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
>
> Article 41.2.1°: In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
>
> Article 41.2.2°: The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.
>
> Article 41.3.1°: The State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack.
>
> Article 41.3.2°: No law shall be enacted providing for the grant of a dissolution of marriage.
>
> Article 41.3.3°: No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage dissolved.

7.8.24 This Article is the fundamental basis of the various legal protections enjoyed by the family. It has been the bulwark which has from time to time been relied upon to prevent discrimination against the family as an institution. It has been urged on this Committee that any amendment of the Constitution which might be proposed to allow the introduction of divorce legislation should ensure that the rights of the family as set out in Article 41 are not diminished. The Committee accepts this view and is of the opinion that any such amendment should be drafted in such a way as to ensure that the basic emphasis of Article 41 is not altered; it should continue to place a duty on the State to protect the family and the institution of marriage, and to recognise the family as the natural primary fundamental unit of society.

7.8.25 If divorce were to be introduced, the Committee believes that it would not be sufficient merely to remove the negative prohibition on divorce contained in Article 41.3.2° of the Constitution because it would be still possible for the remainder of Article 41 to be relied upon, to have any such divorce legislation struck down as being unconstitutional. If a referendum were to take place the Committee believes that the proposed amendment to the Constitution should not simply ask whether the Constitutional prohibition on divorce contained in Article 41.3.2° of the Constitution should be removed or should be retained. To ensure that no constitutional ambiguity results from any such referendum, the Committee is of the view that any amendment to be voted upon should be in a positive format, replacing the present Article 41.3.2° with a provision, specifically authorising the Oireachtas to legislate for the dissolution of marriage.

7.8.26 **Opinions of the Committee**

The current constitutional position cannot be changed without a referendum being held. For such a referendum to be held enabling legislation would need to be enacted by the Oireachtas. Having regard to the many submissions and arguments heard by the Committee the question arises as to whether a referendum should be held.

7.8.27 The Committee feels that it is important to state clearly that support for the holding of a referendum does not necessarily imply support for divorce. It is perfectly logical and reasonable for a person to hold a view that a referendum on the question of whether or not the Oireachtas should have the power to introduce legislation for divorce, should take place, whilst at the same time holding the view that any such legislation would be unnecessary or undesirable at this time. For example, a person may for personal or religious reasons dislike the concept of divorce yet feel that it is the democratic right of the people to decide on the issue. Equally the Committee feels that it is open to a person to believe that divorce legislation is necessary or desirable

in this country but that a referendum would not be appropriate at this time, perhaps on the ground that such a referendum would have divisive effects in the community or from a belief that such a referendum would be doomed to defeat at this time.

7.8.28 Most of the submissions made to us when dealing with the question of divorce have concentrated on the arguments for and against divorce legislation but in many cases they do not deal separately with the arguments for and against the holding of a referendum. A number of facts can be identified in relation to the holding of such a referendum. It is almost 48 years since the present Constitution came into force. Since then the Irish people have never been afforded a democratic opportunity to express their views as to whether they wish the current constitutional prohibition on divorce to be retained. Many people in this country are affected by the problem of marital breakdown. Strong arguments can be made both for and against the introduction of a divorce jurisdiction and a national debate is currently in progress about this question. It is likely that this debate will continue regardless of whether or not it is in the context of an actual referendum to reform the Constitution. Since Article 41.3.2° constitutes an absolute bar on the enactment of any divorce legislation, any move towards the introduction of divorce requires constitutional change which in turn requires the holding of a referendum. It is necessary, however, to balance against these considerations the fact that the holding of a referendum on the question of divorce is likely to be socially divisive, in that deep divisions of opinion exist in the community in respect of this issue. Such divisions are already apparent to some extent with certain groups taking up a pro and anti divorce stance.

7.8.29 Having considered submissions and bearing in mind the factors set out above, the Committee is of the view that a referendum should be held; this was a decision of the majority of the Committee. A minority of the Committee believes that this matter should be decided by the Oireachtas as a whole without a recommendation from the Committee.

So as to ensure that no constitutional ambiguity results from any such referendum, the Committee feels that any amendment to be voted upon should be in a positive format.

7.8.30 The Committee is also of the view that any amendment should be drafted in such a way as to ensure that the basic emphasis of Article 41 is not altered, in that the Article should continue to place a duty on the State to protect the family and the institution of marriage and to recognise the family as the natural primary and fundamental unit group of society.

7.8.31 The outcome of a referendum is a matter for the people. By that

outcome they will decide whether the Oireachtas should be free to introduce divorce legislation in this country.

7.8.32 The Committee has decided that it will not express any views on the wider question of whether divorce legislation is either necessary or desirable in the State at present. Some members of the Committee are of the belief that a view should be expressed as to whether divorce legislation is either necessary or desirable. From the internal discussions of the Committee it is clear that it would not be possible to reach a consensus on this question. The Committee believes, however, that by setting out the arguments for and against divorce and by analysing those arguments in the context of the effects of the introduction or non-introduction of divorce we have made a useful contribution to this debate, so as to assist members of the Oireachtas and the general public in reaching an informed view in regard to this important question. The Committee feels that it can also further this process by analysing the nature of any possible divorce legislation.

7.8.33 **The nature of possible divorce legislation**
The Committee believes that it would not be appropriate or feasible for it to recommend the details of any divorce legislation which might be provided in the event of a change in the Constitution. However, having heard and received detailed submissions from a wide variety of groups, organisations and individuals, the Committee feels that it should indicate its view as to what should be the main feature of any such legislation. The Committee is of the opinion that the situation of divorce on demand would not be appropriate in this country and would not be acceptable to the people. Adequate safeguards must be built into any legislation to take account of the State interest in fostering and protecting marriage and the family. Also the Committee feels that there is an obvious need to ensure in any such legislation that proper provision is made for the protection of dependent spouses and the welfare of dependent children who might be affected by the grant of a decree of divorce. The Committee sees these factors as essential in considering any divorce legislation.

7.8.34 The constant theme in the opinions and observations of this Committee has been the need as far as possible to reduce the adversarial element in marriage breakdown. The Committee consequently feels that any divorce law should be based on the concept of marital breakdown. The Committee believes that this approach would reduce the acrimony and bitterness and would assist separated parents in the continuing relationship between themselves and their children.

7.8.35 The Committee has already discussed the concept of irretrievable

breakdown in the context of judicial separation. If judicial separation and the dissolution of marriage are both to be granted on the basis of irretrievable breakdown, then it would appear logical that there should be some link between the two reliefs. The Committee believes that the grant of a decree of judicial separation should be a first step, whereby a person could apply after a fixed period of time, from the granting of a judicial separation, for a decree of divorce.

This approach would have a number of advantages. To see the remedy of judicial separation as a first step, which spouses would be required to negotiate as a prerequisite to petitioning for a decree of divorce, would have the effect of giving time to the parties to consider their respective positions and the implications for any children of the marriage. Further there would be a period of time after the judicial separation had been obtained, for all the parties affected to become accustomed to the new situation in which the family finds itself, before either spouse could obtain a divorce or remarry. Also the basis upon which the parties are to live separate and apart would be decided at the date of the judicial separation. This would ensure that the interests of the dependent members of the family and particularly the children would be protected from an early stage.

Chapter 8

Mediation

8.1 A recurrent theme in many of the submissions made by various groups to the Committee is the need for some form of mediation service to be available to parties involved in marital disputes. This positive attitude to mediation would seem to reflect a shared feeling held by many groups and organisations involved in different aspects of marital breakdown that an alternative approach should be available to husbands and wives who wish to resolve matters on the basis of consent rather than conflict.

8.2 The Committee is aware that confusion can be caused by using terms which sound the same, but which have different meanings. "Reconciliation" and "Conciliation" exemplify this and, for this reason, the Committee has adopted the term "mediation" — which has the same meaning as conciliation.

8.3 The Purposes of Mediation

Conciliation — which as has been stated above, has the same meaning as mediation — is defined in the Finer Report[1] on one-parent families as "the process of engendering common sense, reasonableness and agreement in

[1]Report of the Committee on One-parent Families CMND. 5629 (1974) P. 183.

dealing with the consequences of estrangement" and "assisting parties to deal with the consequences of the established breakdown of their marriage". A more practical definition of what is involved in mediation is contained in the report of the Inter-Departmental Committee on Conciliation[2] when it says "conciliation means some kind of structure, scheme, or facility for promoting a settlement between parties". It is clear from these definitions that mediation is about promoting agreement and reducing disagreement. A number of points should, however, be noted about these definitions:

(1) Mediation accepts that the parties' marriage has broken down: therefore it is a completely different concept to reconciliation which involves helping couples to overcome their difficulty whereby they reach an understanding which allows their marriage to continue.

(2) These definitions convey the idea that the parties should be responsible for resolving their disputes themselves, as opposed to decisions being made for them by a third party. Mediation represents a desire to move control over the management of disputes from outside agencies, to the parties immediately involved, while minimising the intervention of outside professionals such as lawyers.

(3) The aim of mediation is to deal with specific problems caused by breakdown. It does not attempt to improve the relationship between the parties or to effect a reconciliation, but seeks to minimise the stress and bitterness resulting from a broken marriage and to assist couples to deal with the consequences of breakdown. It may also provide the basis for continued interaction and co-operation between the spouses particularly where conflict between a couple will remain ongoing.

8.4 In a recent article dealing with mediation in family disputes four theoretical models for the resolution of family disputes have been identified.[3] These are:

(a) Simple bilateral negotiations — this occurs when the parties to the dispute attempt to reach a resolution through simple bilateral discussion without the intervention of third parties.

(b) Supported negotiations — this is similar to bilateral negotiation except that the parties have the assistance of outsiders in the negotiation. Such outsiders can be informal, such as a relative or friend, or more formal, such as a legal adviser. Sometimes the outsider can

[2]Report on Inter-Departmental Committee on Conciliation HMSO 1983 P. 2.

[3]Mr. Simon Roberts, Reader in Law, London School of Economics. Mediation in Family Disputes Vol. 46, Modern Law Review, Sept. 1983 P. 543.

take over the negotiation and act as a "champion" on behalf of one of the parties. In such cases the outcome of negotiations may be determined by the strength and quality of the assistance which each party is getting.

(c) Mediation — in this case the structure of the dispute is changed by the introduction of a third party who intervenes to act from a position of neutrality, to help the parties towards an agreed outcome. The third party provides a forum and ground rules for negotiation. He or she may further assist the parties by helping them to formulate their position, identify options and outline the consequences of those options and the possible consequences of their failing to reach agreement.

(d) Umpiring — the essential departure in terms of structure is that the power to decide the resolution of the dispute is given to a third party. The Umpire can be a judge or an arbitrator privately agreed between the parties. Procedures can be formal or informal and can be inquisitorial or adversarial in nature. In some cases the decision reached by the Umpire can be imposed by force as in the case of court decisions.

8.5 The Committee is of the opinion that model (c), a mediation structure, has advantages for dealing with situations of marital breakdown for the following reasons:

(1) It enables the parties to retain greater control over the conduct and the outcome of their case. The reaching of decisions is a mutual responsibility, and decisions made on such a basis are likely to be of a higher quality and have a greater chance of being satisfactorily implemented.

(2) It allows the parties' individual interpretation of their differences to be taken into account.

(3) It provides a degree of support which can result in the parties modifying their view of the dispute and what they see as fair. It can lead to a situation of more "give and take" between husband and wife.

(4) It encourages the husband and wife to focus on the interests of the family as a whole. Mediation can alert parents to the fears and needs of their children in a situation of breakdown. Appropriate action and reassurance by the parents can greatly reduce the trauma of breakdown for children.

(5) It establishes a pattern of communication between the husband and wife which will help in regard to future negotiations.

(6) It avoids the bitterness which is often engendered by legal proceedings; and

(7) It can reduce the expense, delay and costs involved for persons whose marriages have broken down. It can also help reduce the cost to the State brought about by marital breakdown by a reduction in the number of court cases, with a concurrent saving in administrative expenses and legal aid costs.

8.6 It is worth focusing in somewhat more depth on how the process of mediation can further the welfare of children who are affected by the breakdown of a marriage. The sudden unexplained departure of one parent can have a traumatic affect on children.[4] Trust in their parents and in adults in general can be greatly affected. Often parents are so taken up with their own dispute that they fail to give the necessary care and reassurance to the children. Mediation can ensure that the parents are alerted to these dangers at an early stage. Also in some cases parents choose to fight out their marital battles through their children. Mediation offers an opportunity to discuss the future of the children directly without involving the children in the dispute. In certain circumstances the views of the children can be taken into account by the mediator meeting them informally. It is obviously easier to have a greater element of flexibility in a custody or access arrangement worked out by agreement rather than under a court order. Such flexibility is in the interest of all the parties. Finally, custody and access arrangements worked out through mediation are more likely to reassure both parents that they will each continue to have a role in the upbringing of the children.

8.7 The Structure of a Mediation Service

There are a number of elements that should be incorporated into any mediation structure:

- (1) It should be designed in such a way as to allow the parties to reach their own resolution of their difficulties. This will require a considerable amount of time, skill and patience. For this reason it will be necessary that sufficient time be available to allow what may often be a slow process of agreement to emerge;

(2) The Mediation Service should attempt to ensure that the parties have recourse to it as early as possible in the dispute. It is easier to

[4]See remarks of Lisa Parkinson, "Concilation, Pros and Cons" 1983 Family Law Page 24.

establish contact between the parties before entrenched positions are taken up; and

(3) Access to the service should be quick and simple; a breakdown of a marriage presents immediate problems which cannot be left to fester while the husband and wife wait for an appointment to visit a mediator.

8.8 Having regard to the experience of conciliation schemes in England, there are three basic means by which mediation can be offered:

(1) An independent mediation service.
(2) Mediation through the Court Welfare Service.
(3) Mediation by a Judge or someone in a quasi-judicial capacity.

An Independent Mediation Service

8.9 The Committee is of the view that such a mediation service should be used at an early stage, and preferably before any question of court proceedings has arisen. It should be staffed by specialists whose sole function would be to attempt mediation and to provide a resolution by agreement. In England, such independent service exists in different areas, sometimes on foot of local initiative, which can lead to difficulties as regards consistency of approach, levels of staffing and organisation. Since no such service[5] is available in this country, the Committee sees no reason why one independent agency to cover the country could not be established. People should have direct access to the service, without a need to be referred by any other person, organisation or agency.

Mediation through the Court Welfare Service

8.10 This type of mediation is classified as "in court" mediation, inasmuch as access to the service takes place after the initiation of court proceedings. A very practical difficulty in relation to such an approach in this country is the limited nature of the Welfare Service attached to the courts. Even if a proper Welfare Service attached to the Family Court is organised, it is very likely that such a Welfare Service will have as one of its chief functions to prepare independent reports for the courts on family circumstances. It is unlikely that persons will enter into mediation, if they have a suspicion, however unwarranted, that what they say or do will be reported in any court proceedings. Also persons may have an irrational fear of disclosing matters to a statutory agency, for fear that an agency may take punitive action against them, for example by the taking of children into care.

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[5]The Marriage and Family Institute, North Fredrick Street, Dublin provides a limited mediation service.

Mediation by a Judge or someone in a Quasi-Judicial Capacity

8.11 This type of service would again be another aspect of "in court" mediation. It involves a judge or someone with judicial authority trying to mediate between the parties on specific legal issues. One of the difficulties with this type of mediation is that the parties may be intimidated by the status of the mediator and the surroundings in which the mediation takes place. Most people see judges as persons who make decisions. This, in itself, could make it difficult for persons who attend a mediation meeting with a judge, to understand that it is up to them to reach a solution. It is very easy, particularly in the case of a judge, who is not skilled or suited to the task, for such mediation to become a form of adjudication. It must be very doubtful whether it would be possible for sufficient time to be set aside in a court system for effective mediation to take place. As one commentator has noted—

> "A strong case can be made for keeping mediatory forms of intervention quite separate from the places and personnel of the law".[6]

This is particularly the case in this country where many who have been involved in situations of marital breakdown, see the courts, for better or for worse, as hopelessly adversarial in nature and have little confidence in their ability to deal in any reasonable manner with marital breakdown.

Opinions of the Committee

8.12 From an examination of these three possible structures, the Committee is of the view that an independent mediation service is the most attractive. The Committee sees no reason why such a service could not interact with other organisations and services, both statutory and voluntary. This approach would have practical advantages. Persons attending marriage counselling who come to a conclusion that they wish to separate could be immediately referred to the mediation service before relations between them deteriorate further; equally if during mediation meetings a prospect of reconciliation emerges, referral to the marriage counselling service could then take place. It would be necessary, however, for each service to be autonomous and have due regard to the differing functions and goals of each of the other services.

Scope of a Mediation Service

8.13 In its code of practice for conciliation services, the National Family Conciliation Council, the umbrella organisation for independent conciliation services in England, makes it clear that mediation is a process which is most appropriate for dealing with custody and access disputes.[7] The code of practice

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[6]Simon Roberts "Mediation in Family Disputes" 46 Modern Law Review Sept. 1983 Page 557
[7]Published Law Society Gazette.

provides that mediation may include only outline discussion on issues of finance and property where these are inextricably linked with issues concerning the children. The reason for this limitation in the scope of the service would appear to be that questions of finance and property sometimes raise difficult legal issues and also involve disclosure of information by spouses in relation to resources which may not be accurate. While there are obviously difficulties in regard to mediation in relation to financial and property matters, on balance it would appear that these difficulties are not insurmountable.[8] It is inevitable that the mediator will have to have a good working knowledge of the law in regard to marriage breakdown. Also the parties to the mediation will continue to receive independent legal advice from their solicitors and obviously each party would discuss the implications of any financial or property arrangements that were being proposed, with their legal adviser. It would appear to be going too far to rule out issues of finance and property from the functions of a mediation scheme. Practical difficulties in regard to access to reliable information about the resources of each party may mean that mediation in these areas will not be as fruitful as in the areas of custody and access.

Staffing

8.14 While the Committee observes that no formal mediation service exists in the State, the principle of mediation as a means of resolving disputes is well established and probably universal at an informal level. In this country it has been normal for certain categories of people to mediate between persons in dispute. When one recognises this fact it becomes apparent that one does not have to be a professional or an expert to have the capacity to mediate.

8.15 The following elements have been identified in a recent article as being necessary in persons carrying on mediation:[9]

(1) Never to give emotional support to one party to a dispute at the expense of the other.

(2) To encourage both sides to express their true feelings while ensuring that the points made by each are listened to and understood.

(3) To ensure that the discussions remain focused on the issue.

(4) To control and limit heated exchange so that, whilst anger and distress are acknowledged they are not allowed to overwhelm the proceedings.

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[8]See the comments of William Duncan, Lecturer in Family Law, Trinity College, in his Paper "Conciliation and the Legal Process in Ireland."

[9]Gwynn Davis, Research Fellow in the Department of Social Administration in the University of Bristol. "Conciliation and the Professions" — 1983 Vol 13 Family Law P.6

(5) To adhere to the parties' understanding of their differences rather than imposing an interpretation upon them.

(6) To be willing to offer clarification and restatement in respect of positions.

To these the Committee wishes to add two further attributes:

(1) A mediator should adopt a non-judgmental view of the parties and their conduct.

(2) The manner in which the mediation is carried out should be non-directive, allowing the parties scope to find their own solutions.

8.16 To establish a mediation service in this country the Committee believes that it will be necessary to recruit a core group of full-time workers to establish the service and to train others in the skills of mediation. A combination of full-time professionals and part-time volunteers would appear to give the best hope of intermingling learnt skills with practical experience. Such an approach, which would continue the tradition of voluntary involvement in regard to support services for marriage in this country, would reduce the cost of setting up and running a mediation service.

It is vital, however, that proper training should be available to those willing to act as mediators as it would be highly undesirable if well-meaning but unskilled volunteers were allowed to take on the delicate role of mediator. Training should be provided with a view to bringing out and cultivating the qualities necessary in a mediator, which we have attempted to list above.

The role of mediator is a difficult but rewarding one and every effort must be made to ensure that not only adequate training but also adequate facilities are available to those willing and able to carry out the task. This may well involve the allocation of considerable resources to the new service as it will be necessary to provide suitable comfortable accommodation in which mediation meetings can take place.

It must also be a truly national service providing skilled help and assistance to those whose marriages have broken down, at a local level without the necessity of travelling long distances, which might militate against the chances of a successful conclusion.

8.17 Finance

The setting up and organisation of a national mediation scheme will obviously entail a considerable expenditure by the State. Such expenditure must be considered in the light of reduced State expenditure in other related spheres. Such saving is most likely to occur in regard to reduced legal aid costs brought about by fewer applications to the court. The Committee believes that access

to the service should not be governed by the financial resources of those who need help. The Committee is, accordingly, of the view that this service should be provided free of charge to participants.

Cumbersome means-tests or entry requirements would not be acceptable and the Committee believes that the effect of this service would, by reducing the number of the couples who need to go to court at present to resolve their marital difficulties, realise a saving to the State in terms of legal and administrative costs.

8.18 Methods of Referral

In a recent paper entitled "Conciliation and the Legal Process in Ireland" it has been noted that

> "One of the problems with voluntary out-of-court conciliation is the relatively low referral rate. Such a scheme is likely to be by-passed by many couples whose disputes may nevertheless be amenable to conciliation".[10]

The author cites the example of a Custody Mediation Project in Denver in the United States where it was found that at least one-half of those eligible did not accept mediation. It is obviously highly desirable that if a mediation service is introduced, it should be used as widely as possible. An obvious method of ensuring such widespread use is to make participation in a mediation scheme a compulsory preliminary step before a person could apply to have a family dispute resolved in court. Coercion would appear to be contrary to the concept of mediation. As one commentator has noted:

> "The first requirement for effective conciliation is the voluntary participation of both parties."[11]

To force persons to go through a meaningless charade would be likely to undermine the whole basis and effectiveness of a mediation service. The Committee is of the opinion, nevertheless, that active steps should be taken to inform parties of the existence and the nature of the mediation scheme and to positively encourage them to avail of it.

8.19 The mediation service should be publicised and promoted as the obvious avenue for those who are dealing with the consequences of their broken marriage. To achieve this end it will be necessary that the existence and the nature of the service should be widely publicised and that it should be perceived by those with such problems as an attractive and satisfactory

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[10]William Duncan, a lecturer on Family Law, in Trinity College. "Conciliation and the Legal Process".
[11]Lisa Parkinson, "Bristol Courts Family Conciliation Service" — 1982 Vol 12 Family Law. P. 13.

option. Extensive publicity in regard to the scheme should also be aimed at those who regularly deal with different aspects of marital breakdown. It is to be hoped that persons such as lawyers, social workers, doctors, counsellors and staff in Community Information Centres will refer persons to the mediation service. Every effort should be made to ensure that people first have contact with the service which can help them to reach a solution by agreement, before they become involved in seeking a legal remedy. Even at this stage when persons have become involved in the legal system, either by seeing a solicitor or by instituting proceedings, every possible step should be taken to divert them into a mediation service.

8.20 The attention of the Committee has been drawn to services of a similar nature which exist in England and, in particular, the Bristol Family Court Conciliation Service. One of the main contributing factors to the acknowledged success of the Bristol Scheme has been the active support and encouragement given to it by members of the legal profession in the area. It is to be hoped that a similar degree of co-operation will be forthcoming in this State. Many of the solicitors in the Bristol area refer cases to that scheme and they have found that this has a beneficial effect for all concerned. In a recent article concerning the Bristol Scheme it has been noted that

> "... the triangular relationship between clients, solicitors and conciliators can enable all concerned to work more productively and economically on what might otherwise be intractable problems".[12]

Such active co-operation could be furthered by the introduction of a statutory obligation on solicitors when first instructed by a client in regard to a situation of marital breakdown. This obligation would be to inform the client of the existence of a mediation service and of the possible advantage to him or her of using such a service rather than going to court.

8.21 The Committee believes that another source of referral for a mediation service should be the courts themselves. The originating document in family proceedings should contain a paragraph informing the parties about the mediation service, what it is and why it could assist them by reducing bitterness and saving costs. Adjournments of cases should be readily available if both parties wish to attend mediation and judges should have a discretion to adjourn cases at their own volition to give the parties who wish to do so, the chance to make use of the mediation service.

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[12]Lisa Parkinson, Training Officer for the National Family Conciliation Council. Bristol Courts Family Conciliation Service — 1982 Vol 12 Family Law Page 13.

8.22 The Interaction between the Mediation Service and a Family Court

"When a husband and wife negotiate about custody of and access to children and about maintenance and property rights, they do so, not in a vacuum but in the shadow of the law."[13] That shadow must be reduced to a minimum, so that it does not prevent that process of negotiation from reaching a fruitful conclusion. If the parties to mediation are afraid that what they say, or what they offer to do, at a mediation meeting, will be brought up at a later stage in court, it is very unlikely that they will approach the mediation process in an open manner, likely to lead to a resolution. The parties must be sure that what takes place during mediation is a private matter between them and the mediator. To this end it will be necessary that all communications between spouses in the context of the mediation process must be privileged. This will mean that evidence of what has taken place at a mediation meeting cannot be given in court without the consent of both of the parties. Also the mediator should not be a competent or compellable witness in any family proceedings between the parties; this will ensure that the mediator cannot give evidence in such proceedings.

The basic concept of mediation is that the parties to a broken marriage should be allowed to find their own solution to their difficulties, with the help of a trained mediator. However a question arises how far this freedom to make their own arrangements should go and where and when the law should step in to modify or alter those arrangements. The answer to this question would appear to lie in the principle that, in general, the law should intervene in this area as little as possible.

A simple and inexpensive procedure should exist to allow parties who have reached an agreement through mediation to have this agreement noted and accepted by the Family Tribunal. In carrying out this function the Family Tribunal should act on a principle of minimal judicial intervention. As has been pointed out by Mr. William Duncan in his article on Conciliation and the Legal Process in Ireland[14]

> "It would seldom help the child for the court to impose a solution which the parents do not want. Is it not at any rate a proper function of parents, rather than the State to take responsibility for decisions about their children? One view is that the State only has a right to interfere with the parents' wishes in cases where the child is at risk".

This would appear to be a sensible approach which would ensure that the legal process would not undermine the whole concept of mediation. At any

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[13]William Duncan "Conciliation and the Legal Process in Ireland".
[14]Delivered by William Duncan in Trinity College, Conference on Conciliation.

rate, decisions reached through a process of mediation would by their nature be liable to change at a later date, either through further mediation or, if necessary, through proceedings in court. The parties who engage in mediation should see the agreement that results from that mediation as binding upon them, not because of any legal obligation, but because that agreement reflects a solution come to by both of them.

8.23 The Success of Mediation

Recent surveys show that the level of success in the independent mediation scheme in Bristol is quite high.[15] In custody disputes agreement on all contested issues was reached in 58% of cases while the figure was 54% in disputes over the dissolution of marriage. Taking an overall view of all referred disputes agreement on all contested issues was reached in 35% to 40% of cases. When considering these statistics however one must remember that almost any approach will work most of the time, when dealing with marriage disputes. At the moment the vast majority of cases are "settled" without the requirement of a court hearing. What is really important, as was pointed out by Mr. Gwynn Davis in his article[16] on "Conciliation and the Professions" is the timing and quality of the settlement. In many respects this is a private assessment which can only be made by the parties involved. The important factor in this situation is that the parties themselves should be satisfied with the negotiated settlement. A distinction must be drawn between a settlement and a real resolution of a dispute. The Committee is of the view that it is more likely that such a real resolution will result from a negotiated agreement through mediation.

8.24 An efficient national mediation service working in the type of environment outlined by the Committee can provide a constructive method for those who are coping with the consequences of a broken marriage to find a real solution with the minimum possible distress and upset. The Committee believes that the introduction of such a service, in liaison with counselling services, would be a major step in dealing with the problems which are caused by marriage breakdown.

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[15]Gwynn Davis "Conciliation of Litigation" L.A.G. Bulletin April 1982 Page 11.
[16]Gwynn Davis "Conciliation and the Professions" — 1983 Vol 13 Family Law Page 6.

Chapter 9

Towards a New Family Court Structure

9.1 In the previous chapter the introduction and format of a mediation service was discussed. No matter how successful and attractive such a mediation service may be, it is unfortunately inevitable that a certain proportion of cases will still require an adjudication. The primary emphasis in dealing with marriage problems should be to assist the parties to reach a resolution of their difficulties by agreement. Given this approach, every case in which it becomes necessary to have an imposed decision made by a court or other outside agencies, must be seen to be a failure. The approach of a court in family cases must be designed to limit the detrimental and damaging effects of such failure for the husband and the wife but most importantly for the children of the marriage. This will require the introduction of structures and procedures which keep bitterness and dispute to a minimum, while still, even at this late stage, attempting to foster agreement. The Committee is of the view that a unified Family Court is necessary.

9.2 The Objectives of a Family Court

The main objectives of a Family Court should be as follows:—

(1) To provide a sympathetic means for the taking of decisions in regard to family disputes, which causes the minimum disruption and upset for the members of the family.

(2) To safeguard the welfare of children affected by marriage breakdown or family difficulties.

(3) To reduce the adversarial element inherent in the resolution of family disputes.

(4) To provide a uniform approach in the adjudication of family disputes.

(5) To minimise the costs involved in family proceedings.

9.3 The Structure of a Family Court

At the moment the District Court, the Circuit Court and the High Court all have different types of originating jurisdiction in regard to family matters while the Circuit Court, the High Court and the Supreme Court also have an appellate jurisdiction in such cases. The practical effect of this multiplicity of court jurisdiction is that a large number of judges and justices hear and determine family cases in the course of their work. This leads to a great disparity in the manner in which the cases are heard, and the decisions that are reached. Different aspects of a family dispute are sometimes being dealt with at the same time in different courts. The type of court documentation required varies from court to court and from application to application. It would appear that the manner in which family cases are dealt with has little foundation in logic, but rather has developed in a haphazard way over the years.

9.4 It is the opinion of the Committee that a new court system must be established with full and exclusive power to deal with all types of family cases.

The objectives, procedure and atmosphere of this body should be different from that of any ordinary court. It should sit at different locations throughout the country to hear family matters. Under the present constitutional structure, the Committee has been advised that, to set up such a body with full and exclusive powers, it is necessary that it should form part of the High Court. Whilst it would for legal and constitutional purposes form part of the High Court, it should not operate as just another court, but have a completely separate and unique structure, suited to the purposes for which it is established. If the status of a High Court should prove an insurmountable bar to the new body carrying out its objectives in a suitable manner and at a reasonable cost, then special constitutional provision must be made for such a body to allow it to perform its functions in the best possible manner. In particular the status of a High Court must not be allowed to stop those with marital problems from having easy and inexpensive access to a remedy. Since the concept of a court is off-putting to many, this new structure should be referred to other than as a court, perhaps with a title such as "The Family Tribunal".

9.5 Staffing

The new body must be staffed with a sufficient number of judges to ensure that family cases are heard fully and speedily and at locations which are reasonably convenient to the parties. The number of judges needed will, to a large extent, be governed by the demands upon the service. Judges should be appointed solely to hear family cases and different criteria should be applied in selecting judges for this purpose. Consideration should be given to the capacity of a potential judge to carry out the objectives of a new tribunal, to have a real understanding of the types of difficulties with which he or she is dealing and in particular to hear such cases in a compassionate and sympathetic way. Broadening of the present statutory requirements to become a judge may be necessary to allow for the appointment of suitable candidates and considering the onerous duty they will perform, consideration should be given to limiting such appointment to a fixed period of years.

9.6 The Committee feels that suitable training should be provided to give both judges and lawyers who regularly deal with family law matters a proper insight into the social and psychological aspects of the type of cases that occur. The skills and experience of experts such as child psychiatrists, social workers and marriage counsellors must be harnessed and made available to those who take on the obligation to act and make decisions in such cases, so that they are better able to appreciate the problems which occur and the appropriate remedies.

9.7 A Welfare Service

One of the most disturbing aspects of the present court structure for dealing with family cases is the total lack of any proper in-court welfare service. The majority of family cases are heard without the benefit of any professional evidence and without any investigation of family circumstances by an independent agency. Decisions made in such a vacuum are much more likely to be unsatisfactory; the subjective evidence of both spouses is a very unreliable basis on which to decide the future of a family. Full social work reports, together with, where necessary, supplemental psychiatric evidence, should be a normal feature in family cases.

9.8 The Committee is of the opinion that a comprehensive welfare service should be attached to the new Family Tribunal. This welfare service should be staffed by social workers, preferably with experience in dealing with marital difficulties. The service should, *inter alia*,

(a) carry out investigations into family circumstances on behalf of the court,

(b) report to the court on family circumstances,

(c) arrange for the provision of further professional advice, such as the assessment of children by a child psychiatrist or psychologist,

(d) help the parties with the practical difficulties resulting from their marital problems such as child care and finance,

(e) provide referrals to other agencies, such as mediation and suitable counselling, and

(f) provide support and assistance for the members of the family, especially children, during and after the determination of the proceedings.

9.9 It is to be expected that a representative of the welfare service should be present during the hearing of all family cases.

9.10 **Accommodation**

At the moment many family cases are heard in inadequate and unsuitable accommodation. Hearings take place in the same buildings as ordinary cases, the difference being that the court is cleared of members of the general public. Some judges and justices hear family cases in their chambers, an indication in itself of the unsuitable nature of the accommodation available. Often there are no suitable consultation facilities and parties end up seeing their solicitor in the street or in the foyer of the court. In the Dublin area there is a purpose-built District Court for the hearing of family cases, but no such facility exists in the rest of the country. A specially-designed building provided for the hearing of High Court family law cases in Dublin is not fully used due to problems with the ventilation of the building. A court-room which was intended for the hearing of family cases in the Circuit Court in Dublin is again no longer used due to difficulties of design, in particular that the walls are so thin that evidence could be overheard. Urgent attention should be given to the provision of more suitable facilities.

9.11 The actual environment in which family cases are heard is very important to those involved in such cases. For this reason, the Family Tribunal, which the Committee envisages, must operate in proper accommodation. The Committee feels such accommodation should have a number of features:

(a) It should be private.

(b) It should seek to reduce the hostile and intimidating atmosphere of a normal court-room. This could be done by having all parties sitting around the table rather than having the judge in an elevated position, with the opposing parties seated behind their respective legal teams.

(c) There should be adequate facilities for parties to see their advisors and in which they await the hearing of their case. It is often upsetting for people to have to wait around outside the court, within sight of

their spouse, and in such a manner that it is obvious to others, that they are there in relation to a family law matter; and

(d) Ancillary facilities to see social workers attached to the court should be available.

9.12 It will obviously be necessary for the Family Tribunal to sit at various locations throughout the country and this will require the use of existing facilities. In some cases it may be found that court-house accommodation can be used successfully for this purpose; other types of accommodation, however, may be more easily adapted, for instance, conference rooms or meeting rooms in suitable community facilities. It will be essential that the Tribunal sits in as many centres of population as possible to ensure easy access to the service. In the more densely populated areas, specialised facilities should be made available on a permanent basis, providing a suitable atmosphere for such hearings.

9.13 **Procedure**

At present commencing a family case can be a difficult and expensive matter. The type of documentation involved differs from court to court and in relation to the remedy sought. The Committee has inspected a cross-section of the documents normally used in family cases and it is apparent that they are generally complex and intimidating in nature and use a type of language and format which is off-putting and unintelligible to most people. The degree of difficulty and complexity of the paperwork would appear to increase from District Court to High Court. While District Court forms in family cases are usually short and easy to understand, they are open to criticism in that little or no information is given as to the nature of the case that a person will have to meet.

9.14 Given that all remedies in family matters will be available in the new Tribunal, the Committee sees no reason why the one type of form should not be used when seeking any such remedy. This will reduce the amount of paperwork which occurs at present. The purpose of the standard application form should be to:

(a) state the remedy sought,

(b) give the grounds on which the application is based, and

(c) indicate to the recipient of the form the steps that he or she should take.

The format and wording should be as simple and straightforward as possible. Rather than discussing parts of such a document, we have included a possible draft in Appendix F.

9.15 The manner in which family cases are heard must also be modified, with the aim of reducing the formal adversarial nature of such proceedings. An obvious step in this direction would be the abolition of the wearing of wigs and gowns by judges and counsel. Cases will continue to follow the same basic format as at present — one side presenting their case and the other side attempting to meet and rebut it. To this end, witnesses for each side will give evidence and will be open to cross-examination. It would appear to be advisable that this manner of hearing where each side is responsible for presenting its own case should continue. However, the damaging effects of this means of progress should be lessened, if possible. This could be achieved by giving general discretion to the judge to waive the normal rules of evidence if this is desirable in the interest of justice. This should allow for a greater degree of informality and flexibility in the hearing of such cases. A further step in this direction would be achieved by allowing the judge to play a more inquisitorial role; for instance, the judge could have the power to direct that further evidence, other than that produced by the parties, should be heard by the court.

9.16 Family cases are an exception to the general rule that court proceedings in this country are heard in public; this general principle is given constitutional expression in Article 34.1 of the Constitution. The reasons why family proceedings are dealt with in private, sometimes referred to as *in camera*, is that frequently evidence in the cases refers to personal and intimate aspects of the parties' lifestyle. If such matters were dealt with in open court, many who have a just cause of action might be deterred from proceeding further. One of the fears often expressed to lawyers at an initial consultation is that the marital difficulties will become public knowledge. *In camera* hearings do, however, have a detrimental side-effect. Public scrutiny is the natural enemy of arbitrariness and injustice in a legal system. Our courts, while hearing family cases, have operated without this salutary check. When decisions are made in private, members of the general public can often misunderstand what takes place in the court. This can diminish confidence in the fairness of the administration of justice in this particular field.

9.17 As we have previously stated, the Committee sees the establishment of a Family Tribunal as a new beginning. It is vital that this new system of dealing with marriage problems has the confidence of all. This system must not only operate in a fair and effective manner but must be seen to do so. The Committee agreed that written court judgements in such cases should be available publicly, should be designed to ensure anonymity of the parties and should exclude the reporting of names or any other details which might cause the parties to be identified.

9.18 **Costs**

There is little doubt that the costs of resolving marital disputes through the legal process constitute a major burden on persons obliged to have recourse to the system. The Committee has been informed that the legal costs involved in taking an average family case through the various steps to a one-day full hearing in either the Circuit or the High Court could be in the region of £1,000 to £2,500. This level of legal costs is a major disincentive and in many cases effectively prevents people obtaining the remedy they require. The Committee is of the view that the emphasis in marital disputes will shift from outside adjudication to the parties seeking a settlement through mediation and negotiation. This, in itself, should lower the cost of finding a solution for many. The simplification of the procedure in the new Tribunal should lead to a reduction in legal costs and allow more persons to represent themselves if they wish. Every effort must be made to reduce the cost of resolving marital disputes. The Committee sees no point in having an efficient and sympathetic Tribunal if many of those in need cannot afford to avail of it.

9.19 No matter how much legal costs are reduced people will still exist who cannot afford to pay from their own resources for legal help. Access to justice must be available to all irrespective of their means. For this reason there must be a comprehensive system of civil legal aid in respect of family matters. The present system of Government Law Centres is quite inadequate to meet existing needs. The deficiencies in the legal aid scheme are particularly noticeable in country areas. A fundamental reassessment of the legal aid scheme and its means of operation is now urgently required. The experience of its operation since its establishment suggests that the present structure is grossly inadequate, in that it certainly does not assure equality of treatment for all. The committee is also of the view that there should be no stamp duty on court documents in family cases and that VAT should not be payable in respect of legal fees incurred in family law cases.

9.20 Until now family cases have been relegated to an inferior position in a legal process totally unsuited to their resolution. In the future they must be treated as a special area which requires a fundamentally different approach and structure for their determination. The changes which are outlined will greatly reduce the trauma and distress for those trying to resolve marital difficulties and will constitute a better, more sympathetic and less expensive method of handling such problems. In our view such changes would be of immense benefit to those experiencing family problems and would be a concrete step towards protecting the welfare of such families.

Chapter 10

Summary of Opinions of Committee

Chapter 3

The Protection of Marriage and Family Life

Education

The Committee is of the opinion that:

The State should ensure that a cohesive and comprehensive educational programme designed to prepare people for marriage is provided within the present educational system. (*Paragraph 3.1.4*)

Anyone wishing to marry should have access to a premarriage guidance service, and they should be encouraged to avail of such a service. (*Paragraph 3.1.7*)

Counselling

The Committee is of the opinion that an easily accessible and effective counselling service should be available to married persons, and in particular to persons who are experiencing marital difficulties. (*Paragraph 3.2.3*)

The Age for Marriage

The Committee is of the opinion that:

Consideration should be given to the introduction of a 3 month "waiting period" in Civil Law between the time a couple decide to marry and the date of marriage. (*Paragraph 3.4.8*)

That the minimum age for marriage should be raised from 16 years to 18 years. Marriage of persons between 16 years and 18 years should be permitted if the prior consent of any guardian or guardians and the prior consent of the court is obtained. Any marriage of a person under 18 years, without the necessary consent, should be considered null and void. (*Paragraph 3.4.7*)

Chapter 4

Marriage Breakdown

Environmental Factors

The Committee is of the opinion that there is a need for a campaign of awareness to be launched by the State in regard to the question of the abuse of alcohol and drug abuse, including the excessive use of some proprietary anti-depressant and other prescribed drugs. (*Paragraph 4.3.11*)

Chapter 6

Statistics

The Committee criticises the unavailability of comprehensive statistics relating to marriage breakdown in the State and is of the opinion that any future census should seek to ascertain precisely the extent of marital breakdown in the State, as manifested by separation or desertion. (*Paragraph 6.4*)

Chapter 7

The Legal Remedies

Nullity

The Committee is of the opinion:

That legislation should be introduced to up-date the law of nullity in the following ways:—

> Mental illness at the time of marriage which causes an inability to understand the nature of marriage and its obligations should continue to be a ground of nullity which renders a marriage void.
>
> Mental disorder of such a nature as to render a person incapable of discharging the essential obligations of marriage, should be a ground of nullity which renders a marriage voidable. A definition of mental disorder

should be set out in such legislation in accordance with the principle discussed by the Committee in paragraph 7.1.21.

That the following grounds should continue to render a marriage void under the general heading of lack of capacity in addition to mental illness:

(a) Where one or other party is, at the date of the marriage, a party to a prior existing marriage.

(b) Where one or both parties are under age.

(c) Where the parties are within the prohibited degrees of a relationship.

(d) Where the parties are of the same sex.

That the Act to prevent the marriage of lunatics should be repealed.

That the formalities for validly marrying should be simplified, uniformly applicable, and given clear legislative force. Wilful non-observance of the simplified formalities should render a marriage null and void.

That a separate part of the church ceremony of marriage should be set aside, in which the civil aspect of marriage is clearly set out.

That defective consent should render a marriage void in circumstances of mistake, duress, fraud, or misrepresentation, as are at present accepted under the law of nullity.

That impotence existing at the time of marriage, resulting in an inability to consummate the marriage, should continue to render a marriage voidable.

That the court should have a discretion to refuse to grant a decree of nullity where justice requires, on the grounds of impotence.

That wilful refusal to consummate should render a marriage voidable.

That the court should be empowered to grant a decree of nullity on the grounds of the impotence of the petitioner, without the need for repudiation of the marriage by the other party.

That a grant of a decree of nullity should not render the children of the parties declared illegitimate.

That the court should be empowered to grant ancilliary orders relating to guardianship, custody and maintenance, when granting a decree of nullity. (*Paragraphs 7.1.16, 7.1.21-7.1.26*)

Separation Agreements

The Committee is of the opinion that persons in a situation of marital breakdown should firstly be informed of the availability of a counselling and/or

mediation service. In the event of such advice not being acted upon, or in the event of such counselling and/or mediation not being successful, they should before being advised to institute legal proceedings be apprised of the possibility of entering into a separation agreement unless the circumstances are such that legal proceedings must be instituted as a matter of urgency. (*Paragraph 7.2.10*)

Judicial Separation

The Committee is of the opinion that:

Irretrievable breakdown should be the one overall ground for the grant of a decree of Judicial Separation. (*Paragraph 7.3.8*)

The court should be satisfied that such irretrievable breakdown has taken place if the applicant proves any one of the following:

(a) That his or her spouse has behaved in such a way that the applicant cannot reasonably be expected to co-habit with that spouse.

(b) That his or her spouse is guilty of adultery.

(c) That his or her spouse is in desertion or is in constructive desertion of the applicant.

(d) That the applicant has been living separate and apart from the other spouse for a continuous period of not less than one year and the other spouse consents to the making of a decree.

(e) That the applicant has been living separate and apart from the other spouse for a continuous period of three years.

(f) That such other facts and/or reasons exist or existed which in all circumstances make it reasonable for the applicant to live separate from and not co-habit with the other spouse. (*Paragraph 7.3.8*)

The court should have an ancillary power to decide who should have the right to live in the family home, as and from the date of the making of a decree of Judicial Separation. In exercising this power the court should be obliged to base its decision on what is in the best interests of the family as a whole, and in the event of a conflict as to the best interests of the various members of the family, the interests of the children should be paramount during their minority. (*Paragraph 7.3.8*)

The court should have an ancillary power to divide the various property or properties of the spouses, between the spouses, upon it making a decree of Judicial Separation and the court should have power to transfer the title of any relevant property as it deems just and equitable. Again the court should be obliged to exercise this power on the basis of the best interests of the family. (*Paragraph 7.3.8*)

The court should be empowered to vary or discharge a spouse's right to succession following the grant of a decree of Judicial Separation, having regard to all the circumstances of the parties, in the context of determining what orders, if any, should be made for the division or transfer of property between the spouses. (*Paragraph 7.3.8*)

The court should have ancillary powers, as are necessary pursuant to the Guardianship of Infants Act, 1964, to ensure that the best interests of the children are protected if a decree of Judicial Separation is made by the court. In particular the court should have the power to decide questions of custody and access. (*Paragraph 7.3.9*)

The court should have an ancillary power to award maintenance pursuant to the provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976, if a decree of Judicial Separation is made by the court. (*Paragraph 7.3.10*)

The defences of recrimination, condonation, connivance and collusion should be abolished. (*Paragraph 7.3.11*)

The court should have power, on the application of both parties, to convert a legal separation agreement into an order of Judicial Separation and any order so made by the court should incorporate the terms of the separation agreement into the decree. In doing so the court should not be entitled to incorporate or impose any terms on the parties not in the original agreement. The court should only convert a separation agreement into a decree of Judicial Separation, if it is satisfied that the terms set out in the separation agreement are just and reasonable and in the best interests of the family and in particular the dependant spouse and children, if any. (*Paragraph 7.3.12*)

The court should have power to discharge a decree of Judicial Separation if both spouses apply to have the decree so discharged. (*Paragraph 7.3.13*)

Maintenance

The Committee is of the opinion that:

Legislation should be introduced to afford persons who are affected by the difficulty of enforcing maintenance awards, an effective means of enforcing such awards. In particular, the State should be empowered to make payments of maintenance to victims of such default and to recoup monies owed by defaulters, with an appropriate system of sanction in the case of continued default. (*Paragraph 7.4.13*)

The parties to a maintenance application should be under an obligation to provide the court with a statement of their income and assets, to assist the

court in determining the level of maintenance to be awarded, if any. (*Paragraph 7.4.16*)

The court should have power to waive the need to prove a failure to maintain, if the exceptional circumstances of the case require it. (*Paragraph 7.4.17*)

Desertion or adultery should be a discretionary bar to maintenance for the applicant spouse, unless the conduct of the defendant is or was such as to make it inappropriate and unfair that he or she should be entitled to rely on the applicant's desertion or adultery. (*Paragraph 7.4.18*)

The factors to be taken into account by the court, under the Family Law (Maintenance of Spouses and Children) Act, 1976, in deciding whether to make a maintenance order, and in deciding the amount of any such order, should be extended to include the following:

(a) The extent of any property transfer orders between the spouses that have been made by this or any other court.

(b) The making by this court or any other court of an order granting the sole right to reside in the family home to either the applicant or the defendant and the need of the spouse who does not have the right to reside in the family home, to provide adequate and suitable accommodation, for himself or herself together with any person with whom they may be living. (*Paragraph 7.4.19*)

Provision should be made to allow the court to award lump sum payments. In making such provision, there is a need to examine this matter in greater depth having particular regard to the need to protect the interests of all parties concerned in determining whether a lump sum maintenance award is appropriate. (*Paragraph 7.4.20*)

It is important that there be as high as possible a degree of judicial uniformity in regard to the level of maintenance awards. (*Paragraph 7.4.21*)

The EEC Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters should be implemented as soon as practicable, as a means of making evasion of payment of maintenance more difficult. (*Paragraph 7.4.22*)

Guardianship and Custody

The Committee is of the opinion that:

Other than in emergency situations, where for reasons of time such reports are not available there should be a statutory obligation on a Judge, in deciding a custody or access matter, to hear suitable evidence from appropriate professional witnesses as to the welfare of the child before deciding the issue. (*Paragraph 7.5.11*)

It is essential that a court when making a custody order should ensure that both parents understand that they remain joint guardians of their children with all that implies and that the parent granted custody understands the necessity of ensuring that children maintain a continuous relationship with the non-custodial parent. (*Paragraph 7.5.13*)

The emphasis in deciding custody disputes, should be on assessing the parenting capacity of each parent and the relationship between a parent and the children while at the same time recognising the need for continuity in the lives of children, particularly young children. (*Paragraph 7.5.14*)

Matrimonial Property

The Committee is of the view that:

A study into the question of the operation of a system of community property should be commenced at the earliest possible opportunity. (*Paragraph 7.6.22*)

A dependant spouse should not be prejudiced in any determination of property rights by the fact that he/she gave up employment in the course of a marriage to attend to duties in the home. (*Paragraph 7.6.23*)

Legislative action should be taken immediately in order to prevent the spirit of the Family Home Protection Act, 1976, from being defeated whereby judgment mortgages can be used to enforce the sale of the family home without the consent of either or both spouses. (*Paragraph 7.6.24*)

Section 5 of the Family Home Protection Act, 1976, should be interpreted in such a manner that a spouse is presumed to intend the natural consequences of his/her action. (*Paragraph 7.6.24*)

It is desirable that there be greater uniformity in judicial decisions in regard to family property. (*Paragraph 7.6.25*)

Barring Orders

The Committee is of the opinion that:

Cases of an irretrievable breakdown of a marriage are more appropriately dealt with by way of another remedy such as judicial or legal separation, rather than the use of a Barring Order. The sole role of a Barring Order should be to afford protection and it should not be seen as the principal legal process in cases of irretrievable breakdown. (*Paragraph 7.7.14*)

In any legislation dealing with Barring Orders the definition of conduct such as gives rise to the granting of a Barring Order, should ensure that Barring Orders can continue to be obtained, where the health, safety and welfare of

the spouse or children is at risk and not only in situations involving physical violence. (*Paragraph 7.7.14*)

A most unsatisfactory aspect of the present structure in regard to the making of Barring Orders is that in practically all cases no help is available through the court structure to resolve the difficulties that have arisen between the spouses. A spouse who is barred from the family home should have access to professional assistance to help him/her form an insight as to why their conduct was unacceptable, and to ensure that similar conduct will not recur. (*Paragraph 7.7.15*)

Divorce

The Committee is of the opinion that:

A referendum should be held in relation to the question whether the Oireachtas should be empowered to introduce divorce legislation. (*Paragraph 7.8.29*)

Any such referendum should be in a positive format, replacing the present Article 41.3.2° of the Constitution with a provision, specifically authorising the Oireachtas to legislate for the dissolution of marriage. (*Paragraph 7.8.29*)

Any such amendment should be drafted in such a way as to ensure that the basic emphasis of Article 41 is not altered, in that the Article should continue to place a duty on the State to protect the family and the institution of marriage and to recognise the family as the natural, primary and fundamental unit group of society. (*Paragraph 7.8.30*)

If any such referendum should be held and should be passed:

(a) A situation of divorce on demand would not be appropriate in this country and would not be acceptable to the people.

(b) It is essential that adequate safeguards must be built into any divorce legislation to take account of the State interest in fostering and protecting marriage and the family.

(c) It is essential that any divorce legislation should make proper provision for the protection of the dependant spouses and the welfare of dependant children who might be affected by the grant of a decree of divorce.

(d) Any such divorce legislation should be based on the concept of marital breakdown.

(e) A decree of judicial separation should be a first step whereby a person could apply after a fixed period of time, from the granting of a Judicial Separation, for a decree of divorce. (*Paragraphs 7.8.33, 34, 35*)

Chapter 8

Mediation

The Committee is of the opinion that:

A mediation service should be established to help spouses resolve the problems caused by the breakdown of a marriage. (*Paragraph 8.5*)

The mediation service should be designed in such a way as to allow the parties to reach their own resolution of their difficulties. (*Paragraph 8.7*)

The mediation service should attempt to ensure that the parties have recourse to it as early as possible in the dispute. (*Paragraph 8.7*)

Access to the mediation service should be quick and simple. (*Paragraph 8.7*)

An independent mediation service is a more attractive option than mediation through the court welfare service or mediation by a Judge or someone in a quasi-judicial capacity. (*Paragraph 8.12*)

Issues of finance and property should come within the ambit of a mediation service as well as questions of custody and access. (*Paragraph 8.13*)

To establish a mediation service in this country, it will be necessary to recruit a core group of fulltime workers to establish the service and to train others in the skills of mediation. The service should be staffed by a combination of fulltime professionals and part-time volunteers. (*Paragraph 8.16*)

Any mediation service established should be a truly national service providing skilled help and assistance at a local level without the necessity of travelling long distances. (*Paragraph 8.16*)

The service should be provided free of charge to participants. (*Paragraph 8.17*)

Active steps should be taken to inform parties of the existence and nature of the mediation service, and to encourage them to avail of this. (*Paragraph 8.18*)

The mediation service should be publicised and promoted as the obvious and apparent avenue for those who are trying to deal with the consequences of a broken marriage. To achieve this end, extensive publicity in regard to this scheme should be made available to those who regularly deal with different aspects of marital breakdown. (*Paragraph 8.19*)

There should be a statutory obligation on solicitors, when first instructed by a client, in regard to a situation of marital breakdown to inform the client of the existence of a mediation service and about the possible advantage to him/her of using such a service rather than going to court. (*Paragraph 8.20*)

The originating document in family proceedings should contain a paragraph informing the parties about the mediation service. (*Paragraph 8.21*)

All communications between spouses in the context of the mediation process should be privileged and to this end a mediator should not be a competent or compellable witness in any family proceedings between the parties. (*Paragraph 8.22*)

A simple and inexpensive procedure should be established to allow parties who have reached an agreement by mediation to have this agreement noted and accepted by the Family Tribunal. (*Paragraph 8.22*)

Chapter 9

Towards a new Family Court Structure

The Committee is of the opinion that:

A new body must be established with full and exclusive powers to deal with all types of family cases. Such a body should form part of the High Court. (*Paragraph 9.4*)

This body should be referred to other than as a court, and should be known as the "Family Tribunal". (*Paragraph 9.4*)

The Family Tribunal should be staffed with a sufficient number of Judges to ensure that family cases are held fully and speedily at a location which is reasonably convenient to the parties. (*Paragraph 9.5*)

Judges should be appointed solely to hear family cases and different criteria should be applied in selecting Judges for this purpose. Broadening of the present statutory requirements to become a Judge may be necessary to allow for the appointment of suitable candidates. (*Paragraph 9.5*)

Consideration should be given to limiting the appointment of a Judge to the Family Tribunal to a fixed period of years. (*Paragraph 9.5*)

Suitable training should be provided to give both Judges and lawyers, who regularly deal with family law matters, a proper insight into the social and psychological aspects of the type of cases that occur. (*Paragraph 9.6*)

A comprehensive welfare service should be attached to the new Family Tribunal. This welfare service should be staffed by social workers preferably with experience in dealing with marital difficulties. (*Paragraph 9.8*)

A representative of the welfare service should be present during the hearing of all family cases. (*Paragraph 9.9*)

Proper accommodation in which to hear family cases should be provided for

the Family Tribunal. In some cases it may be possible to use present courthouse accommodation for the purpose. Suitable community facilities may also be available locally in which the Family Tribunal can sit. (*Paragraph 9.11*)

It will be essential that the Family Tribunal sits in as many centres of population as possible to ensure easy access to the service. In the more densely populated areas, specialised facilities should be made available on a permanent basis providing a suitable atmosphere for the hearing of family cases. (*Paragraph 9.12*)

One type of form should be used to initiate any type of family application. (*Paragraph 9.14*)

The manner in which family cases are at present heard should be modified with the aim of reducing the formal adversarial nature of such proceedings. An obvious step in this direction would be the abolition of the wearing of wigs and gowns by Judges and counsel. (*Paragraph 9.15*)

A Judge sitting in the Family Tribunal should have a general discretion to waive the normal rules of evidence if this is desirable in the interest of justice. Also a Judge sitting in the Family Tribunal should have the power to direct that further evidence other than that produced by the parties should be heard by the Tribunal. (*Paragraph 9.15*)

Written court judgments in family cases should be made available publicly in such a manner as to ensure the anonymity of the parties. (*Paragraph 9.17*)

Every effort should be made to reduce the costs of resolving marital disputes and a shift from outside adjudication to the parties seeking a settlement through mediation and negotiation should help to achieve this goal. This simplification of procedure in the Family Tribunal should lead to a reduction in legal costs and allow more people to represent themselves as they wish. (*Paragraph 9.18*)

A comprehensive system of civil legal aid in respect of family matters should be introduced. (*Paragraph 9.19*)

There should be no Stamp Duty payable on court documents in family cases and VAT should not be payable in respect of legal fees incurred in a family law matter. (*Paragraph 9.19*)

(*Signed*) Willie O'Brien, TD
Chairman of the Joint Committee

27*th March*, 1985

APPENDICES

Chapter 11

Appendices

List of Appendices

Appendix A

List of Witnesses

The following groups and individuals who gave oral evidence to the Committee are listed hereunder:

1. The Presbyterian Church in Ireland
2. AIM—Group for Family Law Reform
3. Order of the Knights of St. Columbanus
4. Dr. J. Dominian, Senior Clinical Psychiatrist, Central Middlesex Hospital
5. Divorce Action Group
6. Family Life Research Centre
7. Irish Commission for the Laity
8. Law Centre Solicitors
9. Barnardos
10. The Workers' Party
11. The Church of Ireland
12. The Royal College of Psychiatrists
13. Law Society Solicitors
14. The Irish Theological Commission
15. The Irish Congress of Trade Unions
16. The Catholic Marriage Advisory Council
17. Gingerbread
18. Family Law Reform Group-Dublin
19. Family Law Reform Group-Cork
20. The Irish Family League
21. The Council for the Status of Women
22. The Dublin Regional Marriage Tribunal
23. DADS against discrimination
24. The Irish Association of Social Workers

The Minutes of evidence of these hearings are published under separate cover.

Appendix B

List of Government Departments, State Bodies and other organisations consulted by the Committee.

Diplomatic Representations
The Embassy of Australia
The Embassy of Canada
The Embassy of New Zealand
The Embassy of the United Kingdom

European Community
The European Commission
The European Parliament

Civil Service
The Office of the Attorney General
The Central Statistics Office
The Department of Education
The Department of the Environment
The Department of Finance
The Department of Foreign Affairs
The Government Information Services
The Department of Health
The Department of Justice
The Department of Labour
The Department of Social Welfare
The Department of the Taoiseach

Local Authorities
Dublin Corporation
Dublin County Council
The Health Boards

State Sponsored Bodies
The Law Reform Commission
The Legal Aid Board
The Medical Research Council
The Medico-Social Research Board
Radio Telefís Éireann

Higher Education
The Royal College of Psychiatrists

University College, Dublin
University of Dublin, Trinity College

Professional Organisations
The General Council of the Bar of Ireland
The Honourable Society of Kings Inns
The Incorporated Law Society
The Irish Congress of Trade Unions
The Psychological Society of Ireland

Social Organisations
AIM—Group for Family Law Reform
The Council for the Status of Women
The Catholic Marriage Advisory Council
The Divorce Action Group
The Economic and Social Research Institute
The Marriage Counselling Service

Appendix C

Statistical Information

The following pages contain statistical data which has been considered by the Committee in its deliberations. The Committee has commented on these statistics at Chapter 6.

The Committee has utilised statistics from a number of sources — the Central Statistics Office, the Departments of Justice and Social Welfare and the Dublin Regional Marriage Tribunal of the Catholic Church. The Committee also reproduces in the following pages extracts from both the 1981 Census of Population and the 1983 Labour Force Survey which are relevant to the Committee's work and an extract from the Eurostat Review, 1972-81.

The Courts Act, 1981 came into force in regard to Family Law matters on the 12th May, 1982. This Act greatly increased the powers of the District Court and the Circuit Court in relation to the types of family law matter that could be heard by these courts. After the 12th May, 1982 the High Court Office refused to accept any summonses under the Guardianship of Infants Act, 1964, the Family Law (Maintenance of Spouses and Children Act) 1976 and the Family Law (Protection of Spouses and Children) Act, 1981 until it was established by a test case in January 1984 that the High Court continued to have jurisdiction to hear applications under these Acts.

The jurisdiction to grant Barring Orders under the Family Law (Protection of Spouses and Children) Act, 1981, which came into effect in or about the end of July, 1981 increased the jurisdiction of the District Court to grant Barring Orders for a period of twelve months and for the first time gave the Circuit Court an originating jurisdiction to grant Barring Orders.

It is common practice for one family case to involve a number of applications under different Acts. For this reason there may be a certain element of duplication in the above figures. Some cases may appear under a number of different categories. The best indicator may be the number of guardianship applications as most cases which go to court as a result of the breakdown of a marriage, involve an application for custody or access.

1. Marriage Rates

Year	'71	'72	'73	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83
Per 1000 population	7.4	7.4	7.4	7.3	6.7	6.4	6.1	6.4	6.2	6.4	6.0	5.9	5.5
Total Marriages	22014	22302	22816	22833	21280	20580	20016	21184	20806	21792	20612	20441	19181

Information supplied by Central Statistics Office

2. Nullity Petitions

Year	'73	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83
No. of Applications	3	8	8	3	11	11	10	16	21	21	33
No. of Decrees	2	4	—	3	1	5	3	10	8	12	—

3. Applications under the Married Women (Status) Act, 1957

Year	'78	'79	'80	'81	'82	'83
No.	114	151	238	269	148	11

4. Divorce *a mensa et thoro* (Judicial Separation) Petitions/ Applications in the High Court

Year	'73	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83
No.	26	51	43	37	29	39	34	27	25	20	8

5.1 Applications for Maintenance Orders in the High Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 (excluding applications to vary existing Orders)

Year	'76	'77	'78	'79	'80	'81	'82
No.	50	148	196	263	370	428	165

5.2 Applications for Maintenance Orders in the Circuit Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 (excluding applications to vary existing Orders).

Year ending	31/7/76	31/7/77	31/7/78	31/7/79	31/7/80	31/7/81	31/7/82	31/7/83
Maintenance Summonses Issued	Nil	Nil	Nil	Nil	1	4	39	297
Maintenance Orders made	3	9	20	28	31	38	18	133

5.3 Applications for Maintenance Orders in the District Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 (excluding applications to vary existing Orders).

Year ending	31/7/79	31/7/80	31/7/81	31/7/82	31/7/83
Maintenance Summonses issued	1,706	1,842	2,095	1,812	872
Maintenance Orders made	—	1,038	1,329	984	483

6.1 Applications for Barring Orders in the District Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 and the Family Law (Protection of Spouses and Children) Act, 1981.

Year	'79	'80	'81	'82	'83
No. of Applications	1,493	1,917	2,225	2,428	1,697
No. of Orders made	508	56	1,188	1,171	848

6.2 Applications for Barring Orders in the Circuit Court under the Family Law (Maintenance of Spouses and Children) Act, 1976 and the Family Law (Protection of Spouses and Children) Act, 1981.

Year Ended	31/7/79	31/7/80	31/7/81	31/7/82	31/7/83
No. of Applications	2	1	6	23	242
No. of Orders made	—	—	—	—	129

7. Applications under the Family Home Protection Act, 1976

Year	'78	'79	'80	'81	'82	'83
No.	83	121	242	341	139	17

8.1 Applications in the High Court under the Guardianship of Infants Act, 1964

Year	'76	'77	'78	'79	'80	'81	'82	'83
No. of Applications	86	182	211	285	379	478	335	1

8.2 Applications in the Circuit Court under the Guardianship of Infants Act, 1964

Year Ending	31/7/81	31/7/82	31/7/83
No. of Applications	8	54	370

(Separate statistics in relation to family law proceedings in the Circuit Court are available only from the year ending 31/7/81—Information supplied by the Department of Justice).

8.3 Applications in the District Court under Guardianship of Infants Act, 1964

Year Ending	31/7/82	31/7/83
No. of Applications	Nil	110

The District Court did not have jurisdiction under the above Act until the commencement of the Courts Act, 1981 on the 12th May, 1982.

9 Applications to the Regional Marriage Tribunals of the Catholic Church for Ecclesiastical Annulments

Year	'76	'77	'78	'79	'80	'81	'82	'83
No. of Applications	732	813	698	567	954	584	580	631
No. of Orders made	79	104	91	75	76	73	83	94

Figures supplied by the Dublin Regional Marriage Tribunal.

10.1 Deserted Wives' Allowance

Year	'76	'77	'78	'79	'80	'81	'82	'83	'84
No. of Wives in Receipt	3,110	3,176	3,022	2,856	2,920	3,063	3,232	3,478	3,653
No. of Dependent Children	3,819	4,140	4,231	3,937	4,174	4,431	4,748	5,220	5,759

10.2 Deserted Wives' Benefit

Year	'76	'77	'78	'79	'80	'81	'82	'83	'84
No. of Wives in Receipt	1,675	1,992	2,215	2,525	2,873	3,124	3,416	3,825	4,403
No. of Dependent Children	3,253	3,630	4,244	4,722	5,394	5,735	6,271	6,922	8,029

Figures supplied by the Department of Social Welfare.

Extracts from the 1981 Census of Population

Table G shows the percentage of the population who were single in different age groups for 1981 and for earlier Censuses, in so far as the figures are available, back to the year 1841:

TABLE G

Percentage Single in certain Age Groups—1841 to 1981

Year	Age group						
	15-19 years	20-24 years	25-34 years	35-44 years	45-54 years	55-64 years	65 years and over
Males							
1841	†	†	43.3*	15.4*	10.0*	†	†
1851	†	†	60.7	20.9	11.6	†	†
1861	99.8	91.9	56.8	23.9	14.3	11.1	11.7
1871	99.8	92.6	57.3	25.5	16.4	12.7	12.2
1881	99.9	94.1	62.0	27.1	16.4	13.4	12.0
1891	99.9	95.8	67.3	33.0	19.7	15.6	13.8
1901	99.9	96.3	71.8	38.3	23.8	18.2	15.5
1911	99.9	96.6	74.5	44.5	28.6	22.7	17.7
1926	99.9	96.0	71.7	45.0	31.4	26.2	20.5
1936	99.9	96.2	73.8	44.2	33.5	28.2	23.6
1946	99.8	95.0	70.4	43.0	32.1	30.0	25.4
1951	99.9	94.9	67.4	40.5	31.0	28.8	26.6
1961	99.8	92.5	58.0	36.2	29.7	28.1	26.7
1966	99.7	89.6	49.8	33.4	29.1	27.7	26.8
1971	99.5	84.6	41.3	28.9	28.1	27.1	26.8
1979	99.3	81.6	34.1	21.1	25.3	26.6	26.3
1981	99.4	82.4	34.2	19.4	23.9	26.3	26.0
Females							
1841	†	†	28.0*	14.7*	11.7*	†	†
1851	†	†	39.1	15.2	11.4	†	†
1861	97.8	76.2	39.1	18.5	13.5	13.3	13.5
1871	98.1	77.7	38.2	19.8	15.2	13.4	14.3
1881	98.8	82.5	41.2	19.2	15.5	13.7	13.7
1891	99.2	86.0	48.1	23.1	16.6	15.8	15.3
1901	99.4	88.0	52.9	27.8	20.0	17.3	17.4
1911	99.5	88.4	55.5	31.0	24.0	20.8	18.5
1926	99.3	87.0	52.6	29.5	23.9	23.6	19.8
1936	99.1	86.4	54.8	30.2	25.1	23.7	22.7
1946	98.4	82.5	48.3	30.0	25.6	24.4	23.3
1951	98.9	82.3	45.6	27.6	25.7	24.7	23.7
1961	98.9	78.2	37.1	22.7	23.1	25.0	24.3
1966	98.4	74.8	31.0	20.4	20.8	24.4	24.8
1971	97.9	68.9	25.7	17.5	18.8	22.0	25.1
1979	97.3	66.3	21.5	12.3	15.7	18.9	23.8
1981	97.7	67.7	21.9	11.4	14.6	18.2	23.2

**Age groupings for 1841 were 26.35, 36-45, 46-55 and 56 and over.*
†Particulars not available.

From about 1936 to 1979 there has been a continuing decrease in the proportion single in virtually all age groups for both males and females. Between 1979 and 1981, however, the proportion single have increased a little for age groups under 35 years, for both males and females. Whether this slight upward movement represents a change in the nuptiality patterns for the younger age groups or merely a temporary short-term pause remains to be seen however. For age groups over 35 years there was a continuing decrease in the proportion single for both males and females.

The trends between 1926 and 1981, in the percentage single in the various age groups in the Aggregate Town and Aggregate Rural Areas are shown in Table H.

Marital Status

In the 1981 Census of Population, returns on marital status were sought on the basis of "present legal status" with provision for four categories—"single", "married", "widowed" and "other status". This latter category was intended to relate only to "persons who had obtained a divorce in another country". However, 14,117 persons (5,116 males and 9,001 females) returned themselves as "Other Status", some of whom gave additional information from which in most instances it appears that the "present legal status" was "married". The 1981 figures contrast with the 1979 Census figure of 7,624 (2,379 males and 5,245 females) and suggests that the increased level of public interest in 1981 concerning this Census question affected the pattern of answering more than in 1979. It was therefore decided to include all persons returning themselves as "other status" with the "married" category in the tabulations but particulars of age distribution and geographic distribution are given in Appendix A for those 14,117 persons returned as "other status".

TABLE F

Population Aged 15 years and over classified by Marital Status 1961-81

Marital Status	Population (000)				Change in Population 1979-81		Percentage Change	
	1961	1971	1979	1981	Actual (000)	Per-centage %	1961-71 %	1971-81 %
				Males				
Single	468.4	465.9	508.4	516.8	+ 8.4	−1.7	− 0.5	+10.9
Married	453.6	514.9	619.9	639.8	+19.9	+3.2	+13.5	+24.3
Widowed	45.8	39.1	37.9	37.3	− 0.6	−1.6	−14.5	− 4.6
Total	967.8	1,020.0	1,166.2	1,193.9	+27.7	+2.4	+ 5.4	+17.1

Females

Single	378.6	374.3	404.8	415.2	+10.4	+2.6	− 1.2	+10.9
Married	468.2	523.1	626.7	648.3	+21.5	+3.4	+11.7	+23.9
Widowed	126.4	129.8	140.6	142.3	+ 1.7	+1.2	+ 2.7	+ 9.6
Total	973.3	1,027.1	1,172.1	1,205.7	+33.7	+2.9	+ 5.5	+17.4

Table F gives information on the total population aged 15 years and over, for the 1961 Census and for each Census since 1971, classified by marital status. It can be seen that between 1979 and 1981 there was an increase of almost 28,000 males and 34,000 females, with about 72 per cent and 64 per cent, respectively, of these increases arising in the married category. In the ten year period between 1961 and 1971 the number of males and females aged 15 years and over increased by 52,000 and 54,000 respectively, in both cases the increases occurred mainly in the numbers married. These increases represented only about 30 per cent of the corresponding increases of 174,000 males and 179,000 females occurring in the following ten year period 1971 to 1981. In the 1971-81 period the rate of increases in percentage terms in the numbers married was about twice that of the previous ten year period for both males and females. In the more recent period the number of single males and females increased by about 11 per cent compared to slight declines in the earlier period. The number of males who were widowed continued to decline during the 1971-81 period while the number of widowed females increased by 12,500 or just under 10 per cent.

TABLE A1

Persons who were returned in the Marital Status Category "Other Status" classified by sex and single year of age.

Age last Birthday	Persons	Males	Females	Age last Birthday	Persons	Males	Females
15 years	1	—	1	60 years	164	60	104
16 years	12	6	6	61 years	166	63	103
17 years	22	11	11	62 years	151	51	100
18 years	39	15	24	63 years	108	38	70
19 years	61	12	49	64 years	139	57	82
20 years	86	25	61	65 years	130	49	81
21 years	113	33	80	66 years	151	43	108
22 years	119	32	87	67 years	147	65	82
23 years	202	58	144	68 years	119	41	78
24 years	240	74	166	69 years	105	44	61
25 years	248	70	178	70 years	97	44	53
26 years	298	89	209	71 years	87	39	48
27 yeara	303	92	211	72 years	69	34	35
28 years	391	124	267	73 years	61	25	36
29 years	356	114	242	74 years	54	21	33
30 years	441	156	285	75 years	75	32	43
31 years	424	147	277	76 years	63	28	35
32 years	468	148	320	77 years	46	19	27
33 years	458	175	283	78 years	45	22	23
34 years	451	169	282	79 years	38	13	25
35 years	453	170	283	80 years	35	20	15
36 years	420	147	273	81 years	26	16	10
37 years	443	171	272	82 years	23	10	13
38 years	365	135	230	83 years	16	7	9
39 years	384	142	242	84 years	26	13	13
40 years	385	142	243	85 years	12	7	5
41 years	383	133	250	86 years	14	9	5
42 years	325	129	196	87 years	3	1	2
43 years	305	104	201	88 years	12	5	7
44 years	338	122	216	89 years	6	3	3
45 years	307	121	186	90 years	5	3	2
46 years	268	113	155	91 years	8	5	3
47 years	291	118	173	92 years	—	—	—
48 years	233	98	135	93 years	2	1	1
49 years	238	83	155	94 years	3	—	3
50 years	217	72	145	95 years	1	—	1
51 years	215	88	127	96 years	—	—	—
52 years	224	95	129	97 years	2	1	1
53 years	237	88	149	98 years	—	—	—
54 years	205	79	126	99 years	—	—	—
				100 and over	1	—	1
55 years	192	71	121				
56 years	186	67	119				
57 years	173	52	121				
58 years	186	70	116				
59 years	201	67	134				
				Total	14,117	5,116	9,001

TABLE A2

Persons who were returned in the Marital Status Category "Other Status" at or over each year of age classified by sex.

Age last Birthday	Persons	Males	Females	Age last Birthday	Persons	Males	Females
15 years and over	14,117	5,116	9,001	60 years and over	2,210	889	1,321
16 years and over	14,116	5,116	9,000	61 years and over	2,046	829	1,217
17 years and over	14,104	5,110	8,994	62 years and over	1,880	766	1,114
18 years and over	14,082	5,099	8,983	63 years and over	1,729	715	1,014
19 years and over	14,043	5,084	8,959	64 years and over	1,621	677	944
20 years and over	13,982	5,072	8,910	65 years and over	1,482	620	862
21 years and over	13,896	5,047	8,849	66 years and over	1,352	571	781
22 years and over	13,783	5,014	8,769	67 years and over	1,201	528	673
23 years and over	13,664	4,982	8,682	68 years and over	1,054	463	591
24 years and over	13,462	4,924	8,538	69 years and over	935	422	513
25 years and over	13,222	4,850	8,372	70 years and over	830	378	452
26 years and over	12,974	4,780	8,194	71 years and over	733	334	399
27 years and over	12,676	4,691	7,985	72 years and over	646	295	351
28 years and over	12,373	4,599	7,774	73 years and over	577	261	316
29 years and over	11,982	4,475	7,507	74 years and over	516	236	280
30 years and over	11,626	4,361	7,265	75 years and over	462	215	247
31 years and over	11,185	4,305	6,980	76 years and over	387	183	204
32 years and over	10,761	4,058	6,703	77 years and over	324	155	169
33 years and over	10,293	3,910	6,383	78 years and over	278	136	142
34 years and over	9,835	3,735	6,100	79 years and over	233	114	119
35 years and over	9,384	3,566	5,818	80 years and over	195	101	94
36 years and over	8,931	3,396	5,535	81 years and over	160	81	79
37 years and over	8,511	3,249	5,262	82 years and over	134	65	69
38 years and over	8,068	3,078	4,990	83 years and over	111	55	56
39 years and over	7,703	2,943	4,760	84 years and over	95	48	47
40 years and over	7,319	2,801	4,518	85 years an over	69	35	34
41 years and over	6,934	2,659	4,275	86 years and over	578	28	29
42 years and over	6,551	2,526	4,025	87 years and over	43	19	24
43 years and over	6,226	2,397	3,829	88 years and over	40	18	22
44 years and over	5,921	2,293	3,628	89 years and over	28	13	15
45 years and over	5,583	2,171	3,412	90 years and over	22	10	12
46 years and over	5,276	2,050	3,226	91 years and over	17	7	10
47 years and over	5,008	1,937	3,071	92 years and over	9	2	7
48 years and over	4,717	1,819	2,898	93 years and over	9	2	7
49 years and over	4,484	1,721	2,763	94 years and over	7	1	6
50 years and over	4,246	1,638	2,608	95 years and over	4	1	3
51 years and over	4,029	1,566	2,463	96 years and over	3	1	2
52 years and over	3,814	1,478	2,336	97 years and over	3	1	2
53 years and over	3,590	1,383	2,207	98 years and over	1	—	1
54 years and over	3,353	1,295	2,058	99 years and over	1	—	1
				100 years and over	1	—	1
55 years and over	3,148	1,216	1,932				
56 years and over	2,956	1,145	1,811				
57 years and over	2,770	1,078	1,692				
58 years and over	2,597	1,026	1,571				
59 years and over	2,411	956	1,455				

TABLE A3

Percentage of persons who were returned in the Marital Status Category "Other Status" at or over each year of age classified by sex.

Age last Birthday	Persons	Males	Females	Age last Birthday	Persons	Males	Females
15 years and over	100.0	100.0	100.0	50 years and over	30.1	32.0	29.0
16 years and over	100.0	100.0	100.0	51 years and over	28.5	30.6	27.4
17 years and over	99.9	99.9	99.9	52 years and over	27.0	28.9	26.0
18 years and over	99.8	99.7	99.8	53 years and over	25.4	27.0	24.5
19 years and over	99.5	99.4	99.5	54 years and over	23.8	25.3	22.9
20 years and over	99.0	99.1	99.0	55 years and over	22.3	23.8	21.5
21 years and over	98.4	98.7	98.3	56 years and over	20.9	22.4	20.1
22 years and over	97.6	98.0	97.4	57 years and over	19.6	21.1	18.8
23 years and over	96.8	97.4	96.5	58 years and over	18.4	20.1	17.5
24 years and over	95.4	96.2	94.9	59 years and over	17.1	18.7	16.2
25 years and over	93.7	94.8	93.0	60 years and over	15.7	17.4	14.7
26 years and over	91.9	93.4	91.0	61 years and over	14.5	16.2	13.5
27 years and over	89.8	91.7	88.7	62 years and over	13.3	15.0	12.4
28 years and over	87.6	89.9	86.4	63 years and over	12.2	14.0	11.3
29 years and over	84.9	87.5	83.4	64 years and over	11.5	13.2	10.5
30 years and over	82.4	85.2	80.7	65 years and over	10.5	12.1	9.6
31 years and over	79.2	82.2	77.5	66 years and over	9.6	11.2	8.7
32 years and over	76.2	79.3	74.5	67 years and over	8.5	10.3	7.5
33 years and over	72.9	76.4	70.9	68 years and over	7.5	9.1	6.6
34 years and over	69.7	73.0	67.8	69 years and over	6.6	8.2	5.7
35 years and over	66.5	69.7	64.6	70 years and over	5.9	7.4	5.0
36 years and over	63.3	66.4	61.5	71 years and over	5.2	6.5	4.4
37 years and over	60.3	63.5	58.5	72 years and over	4.6	5.8	3.9
38 years and over	57.2	60.2	55.4	73 years and over	4.1	5.1	3.5
39 years and over	54.6	57.5	52.9	74 years and over	3.7	4.6	3.1
40 years and over	51.8	54.7	50.2	75 years and over	3.3	4.2	2.7
41 years and over	49.1	52.0	47.5	76 years and over	2.7	3.6	2.3
42 years and over	46.4	49.4	44.7	77 years and over	2.3	3.0	1.9
43 years and over	44.1	46.9	42.5	78 years and over	2.0	2.7	1.6
44 years and over	41.9	44.8	40.3	79 years and over	1.7	2.2	1.3
45 years and over	39.5	42.4	37.9	80 years and over	1.4	2.0	1.0
46 years and over	37.4	40.1	35.8	81 years and over	1.1	1.6	0.9
47 years and over	35.5	37.9	34.1	82 years and over	0.9	1.3	0.8
48 years and over	33.4	35.6	32.2	83 years and over	0.8	1.1	0.6
49 years and over	31.8	33.6	30.7	84 years and over	0.7	0.9	0.5
				85 years and over	0.5	0.7	0.4

TABLE A4

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	State			Leinster		
15-19 years	135	44	91	77	25	52
20-24 years	760	222	538	506	141	365
25-29 years	1,596	489	1,107	1,065	323	742
30-34 years	2,242	795	1,447	1,482	515	967
35-39 years	2,065	765	1,300	1,413	509	904
40-44 years	1,736	630	1,106	1,127	384	743
45-49 years	1,337	533	804	882	340	542
50-54 years	1,098	422	676	687	245	442
55-59 years	938	327	611	576	191	385
60-64 years	728	269	459	443	150	293
65-69 years	652	242	410	360	109	251
70-74 years	368	163	205	192	74	118
75-79 years	267	114	153	144	59	85
80-84 years	126	66	60	68	35	33
85 and over	69	35	34	23	10	13
TOTAL	14,117	5,116	9,001	9,045	3,110	5,935
	Carlow			Dublin Co. and Co. Borough		
15-19 years	1	—	1	58	20	38
20-24 years	11	5	6	367	103	264
25-29 years	14	5	9	801	235	566
30-34 years	5	2	3	1,123	398	725
35-39 years	12	4	8	1,018	355	663
40-44 years	9	4	5	806	262	544
45-49 years	15	5	10	645	245	400
50-54 years	10	3	7	479	161	318
55-59 years	11	5	6	397	124	273
60-64 years	13	3	10	282	89	193
65-69 years	3	2	1	242	67	175
70-74 years	5	1	4	113	46	67
75-79 years	—	—	—	80	26	54
80-84 years	1	1	—	40	15	25
85 and over	—	—	—	16	8	8
TOTAL	110	40	70	6,467	2,154	4,313
	Dublin Co. Borough			Dun Laoghaire Borough		
15-19 years	39	15	24	5	2	3
20-24 years	216	60	156	29	11	18
25-29 years	452	139	313	57	18	39
30-34 years	562	222	340	87	34	53
35-39 years	502	206	296	95	37	58
40-44 years	414	142	272	80	24	56
45-49 years	355	143	212	74	31	43
50-54 years	290	89	201	64	28	36
55-59 years	259	80	179	41	15	26
60-64 years	186	55	131	37	9	28
65-69 years	159	41	118	27	9	18
70-74 years	67	33	34	21	3	18
75-79 years	55	19	36	11	2	9
80-84 years	24	9	15	3	1	2
85 and over	10	6	4	1	—	1
TOTAL	3,590	1,259	2,331	632	224	408

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Dublin*			Kildare		
15-19 years	14	3	11	5	2	3
20-24 years	122	32	90	20	6	14
25-29 years	292	78	214	47	13	34
30-34 years	474	142	332	68	25	43
35-39 years	421	112	309	67	26	41
40-44 years	312	96	216	42	17	25
45-49 years	216	71	145	35	14	21
50-54 years	125	44	81	25	12	13
55-59 years	97	29	68	20	10	10
60-64 years	59	25	34	19	9	10
65-69 years	56	17	39	12	1	11
70-74 years	25	10	15	6	3	3
75-79 years	14	5	9	9	5	4
80-84 years	13	5	8	2	2	—
85 and over	5	2	3	—	—	—
TOTAL	2,245	671	1,574	377	145	232
	Kilkenny			Laoighis		
15-19 years	4	—	4	—	—	—
20-24 years	10	3	7	5	1	4
25-29 years	30	11	19	9	4	5
30-34 years	28	11	17	17	7	10
35-39 years	34	15	19	6	4	2
40-44 years	19	5	14	12	6	6
45-49 years	11	5	6	13	4	9
50-54 years	21	12	9	9	3	6
55-59 years	14	2	12	14	5	9
60-64 years	11	2	9	11	3	8
65-69 years	10	4	6	4	4	—
70-74 years	10	2	8	6	4	2
75-79 years	3	1	2	3	2	1
80-84 years	5	3	2	3	3	—
85 and over	2	2	—	—	—	—
TOTAL	212	78	134	112	50	62
	Longford			Louth		
15-19 years	—	—	—	2	—	2
20-24 years	3	1	2	19	4	15
25-29 years	7	4	3	33	11	22
30-34 years	11	3	8	63	16	47
35-39 years	9	5	4	67	31	36
40-44 years	10	4	6	47	13	34
45-49 years	6	5	1	19	3	16
50-54 years	4	1	3	25	6	19
55-59 years	5	5	—	21	5	16
60-64 years	6	3	3	19	10	9
65-69 years	2	1	1	19	5	14
70-74 years	3	2	1	8	6	2
75-79 years	3	1	2	4	2	2
80-84 years	2	2	—	—	—	—
85 and over	—	—	—	—	—	—
TOTAL	71	37	34	346	112	234

*Excluding Dun Laoghaire Borough.

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Meath			Offaly		
15-19 years	—	—	—	—	—	—
20-24 years	15	4	11	7	2	5
25-29 years	20	5	15	8	2	6
30-34 years	39	16	23	20	5	15
35-39 years	47	19	28	13	5	8
40-44 years	41	18	23	12	6	6
45-49 years	28	11	17	9	5	4
50-54 years	24	12	12	10	5	5
55-59 years	8	3	5	13	5	8
60-64 years	19	7	12	10	6	4
65-69 years	6	2	4	12	3	9
70-74 years	6	2	4	4	—	4
75-79 years	7	5	2	4	3	1
80-84 years	1	1	—	2	2	—
85 and over	1	—	1	—	—	—
TOTAL	262	105	157	124	49	75
	Westmeath			Wexford		
15-19 years	3	1	2	3	2	1
20-24 years	12	1	11	8	3	5
25-29 years	20	8	12	26	13	13
30-34 years	13	3	10	25	5	20
35-39 years	15	4	11	40	10	30
40-44 years	26	13	13	40	14	26
45-49 years	13	6	7	29	14	15
50-54 years	16	5	11	22	10	12
55-59 years	13	7	6	22	10	12
60-64 years	12	6	6	20	6	14
65-69 years	14	5	9	14	8	6
70-74 years	3	—	3	10	—	10
75-79 years	7	4	3	10	4	6
80-84 years	3	3	—	3	—	3
85 and over	1	—	1	2	—	2
TOTAL	171	66	105	274	99	175
	Wicklow			Munster		
15-19 years	1	—	1	42	12	30
20-24 years	29	8	21	180	58	122
25-29 years	50	12	38	405	120	285
30-34 years	70	24	46	547	205	342
35-39 years	85	31	54	443	167	276
40-44 years	63	22	41	422	171	251
45-49 years	59	23	36	304	118	186
50-54 years	42	15	27	273	117	156
55-59 years	38	10	28	252	88	164
60-64 years	21	6	15	180	67	113
65-69 years	22	7	15	182	75	107
70-74 years	18	8	10	108	52	56
75-79 years	14	6	8	62	26	36
80-84 years	6	3	3	29	14	15
85 and over	1	—	1	30	14	16
TOTAL	519	175	344	3,459	1,304	2,155

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Clare			Cork Co. and Co. Borough		
15-19 years	4	4	—	21	5	16
20-24 years	13	5	8	70	22	48
25-29 years	34	9	25	186	59	127
30-34 years	41	15	26	269	100	169
35-39 years	45	13	32	208	89	119
40-44 years	36	13	23	186	74	112
45-49 years	16	8	8	113	47	66
50-54 years	16	9	7	127	50	77
55-59 years	17	7	10	111	41	70
60-64 years	15	6	9	74	28	46
65-69 years	13	5	8	89	35	54
70-74 years	8	5	3	51	23	28
75-79 years	2	1	1	29	8	21
80-84 years	1	—	1	14	9	5
85 and over	2	2	—	12	3	9
TOTAL	263	102	161	1,560	593	967
	Cork Co. Borough			Cork		
15-19 years	11	3	8	10	2	8
20-24 years	38	9	29	32	13	19
25-29 years	93	29	64	93	30	63
30-34 years	127	47	80	142	53	89
35-39 years	82	28	54	126	61	65
40-44 years	90	36	54	96	38	58
45-49 years	55	19	36	58	28	30
50-54 years	54	22	32	73	28	45
55-59 years	47	13	34	64	28	36
60-64 years	25	7	18	49	21	28
65-69 years	32	11	21	57	24	33
70-74 years	16	6	10	35	17	18
75-79 years	7	3	4	22	5	17
80-84 years	2	2	—	12	7	5
85 and over	—	—	—	12	3	9
TOTAL	679	235	444	881	358	523
	Kerry			Limerick Co. and Co. Borough		
15-19 years	1	—	1	6	1	5
20-24 years	21	5	16	37	12	25
25-29 years	40	12	28	76	21	55
30-34 years	60	25	35	92	32	60
35-39 years	43	13	30	87	31	56
40-44 years	51	20	31	68	31	37
45-49 years	34	14	20	65	29	36
50-54 years	33	19	14	51	21	30
55-59 years	27	11	16	33	8	25
60-64 years	17	9	8	33	10	23
65-69 years	24	14	10	17	7	10
70-74 years	14	9	5	14	6	8
75-79 years	8	3	5	10	5	5
80-84 years	—	—	—	3	1	2
85 and over	3	1	2	5	2	3
TOTAL	376	155	221	597	217	380

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Limerick Co. Borough			Limerick		
15-19 years	4	1	3	2	—	2
20-24 years	27	8	19	10	4	6
25-29 years	53	15	38	23	6	17
30-34 years	55	17	38	37	15	22
35-39 years	52	17	35	35	14	21
40-44 years	45	20	25	23	11	12
45-49 years	38	11	27	27	18	9
50-54 years	34	14	20	17	7	10
55-59 years	16	2	14	17	6	11
60-64 years	15	6	9	18	4	14
65-69 years	6	2	4	11	5	6
70-74 years	7	3	4	7	3	4
75-79 years	5	2	3	5	3	2
80-84 years	1	—	1	2	1	1
85 and over	3	1	2	2	1	1
TOTAL	361	119	242	236	98	138
	Tipperary (N.R. & S.R.)			Tipperary N. R.		
15-19 years	6	—	6	1	—	1
20-24 years	20	10	10	9	4	5
25-29 years	35	7	28	13	3	10
30-34 years	42	15	27	17	7	10
35-39 years	26	10	16	11	4	7
40-44 years	40	20	20	14	8	6
45-49 years	40	8	32	21	3	18
50-54 years	21	9	12	7	2	5
55-59 years	34	11	23	12	2	10
60-64 years	24	7	17	9	4	5
65-69 years	21	7	14	11	4	7
70-74 years	10	4	6	4	1	3
75-79 years	10	8	2	5	4	1
80-84 years	7	2	5	4	1	3
85 and over	7	6	1	1	1	—
TOTAL	343	124	219	139	48	91
	Tipperary S.R.			Waterford Co. and Co. Borough		
15-19 years	5	—	5	4	2	2
20-24 years	11	6	5	19	4	15
25-29 years	22	4	18	34	12	22
30-34 years	25	8	17	43	18	25
35-39 years	15	6	9	34	11	23
40-44 years	26	12	14	41	13	28
45-49 years	19	5	14	36	12	24
50-54 years	14	7	7	25	9	16
55-59 years	22	9	13	30	10	20
60-64 years	15	3	12	17	7	10
65-69 years	10	3	7	18	7	11
70-74 years	6	3	3	11	5	6
75-79 years	5	4	1	3	1	2
80-84 years	3	1	2	4	2	2
85 and over	6	5	1	1	—	1
TOTAL	204	76	128	320	113	207

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Waterford Co. Borough			Waterford		
15-19 years	4	2	2	—	—	—
20-24 years	8	1	7	11	3	8
25-29 years	17	9	8	17	3	14
30-34 years	24	11	13	19	7	12
35-39 years	20	5	15	14	6	8
40-44 years	22	8	14	19	5	14
45-49 years	21	8	13	15	4	11
50-54 years	13	4	9	12	5	7
55-59 years	11	3	8	19	7	12
60-64 years	8	1	7	9	6	3
65-69 years	7	3	4	11	4	7
70-74 years	4	2	2	7	3	4
75-79 years	2	1	1	1	—	1
80-84 years	1	—	1	3	2	1
85 and over	—	—	—	1	—	1
TOTAL	162	58	104	158	55	103
	Connacht			Galway		
15-19 years	9	4	5	1	1	—
20-24 years	56	15	41	35	10	25
25-29 years	90	34	56	53	17	36
30-34 years	141	53	88	79	32	47
35-39 years	133	56	77	74	32	42
40-44 years	128	48	80	63	21	42
45-49 years	99	48	51	41	22	19
50-54 years	86	35	51	41	15	26
55-59 years	72	34	38	31	16	15
60-64 years	63	37	26	19	9	10
65-69 years	64	28	36	23	10	13
70-74 years	34	18	16	13	6	7
75-79 years	37	16	21	19	6	13
80-84 years	19	11	8	7	5	2
85 and over	9	6	3	4	3	1
TOTAL	1,040	443	597	503	205	298
	Leitrim			Mayo		
15-19 years	2	—	2	1	1	—
20-24 years	2	1	1	9	2	7
25-29 years	2	1	1	21	9	12
30-34 years	11	4	7	27	10	17
35-39 years	5	1	4	29	11	18
40-44 years	2	1	1	28	12	16
45-49 years	3	2	1	28	12	16
50-54 years	5	2	3	18	11	7
55-59 years	6	4	2	16	9	7
60-64 years	4	3	1	21	11	10
65-69 years	3	2	1	22	10	12
70-74 years	4	3	1	8	4	4
75-79 years	1	—	1	13	8	5
80-84 years	1	1	—	7	3	4
85 and over	1	—	1	2	1	1
TOTAL	52	25	27	250	114	136

TABLE A4 *(continued)*

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each province, county and county borough.

Age group	Persons	Males	Females	Persons	Males	Females
	Roscommon			Sligo		
15-19 years	4	2	2	1	—	1
20-24 years	3	—	3	7	2	5
25-29 years	3	1	2	11	6	5
30-34 years	6	3	3	18	4	14
35-39 years	9	5	4	16	7	9
40-44 years	8	2	6	27	12	15
45-49 years	6	2	4	21	10	11
50-54 years	9	5	4	13	2	11
55-59 years	7	3	4	12	2	10
60-64 years	10	10	—	9	4	5
65-69 years	9	4	5	7	2	5
70-74 years	4	3	1	5	2	3
75-79 years	1	—	1	3	2	1
80-84 years	1	1	—	3	1	2
85 and over	1	1	—	1	1	—
TOTAL	81	42	39	154	57	97
	Ulster			Cavan		
15-19 years	7	3	4	2	1	1
20-24 years	18	8	10	3	2	1
25-29 years	36	12	24	3	2	1
30-34 years	72	22	50	19	4	15
35-39 years	76	33	43	15	6	9
40-44 years	59	27	32	7	4	3
45-49 years	52	27	25	11	6	5
50-54 years	52	25	27	10	4	6
55-59 years	38	14	24	7	4	3
60-64 years	42	15	27	8	3	5
65-69 years	46	30	16	8	5	3
70-74 years	34	19	15	9	5	4
75-79 years	24	13	11	7	3	4
80-84 years	10	6	4	2	—	2
85 and over	7	5	2	—	—	—
TOTAL	573	259	314	111	49	62
	Donegal			Monaghan		
15-19 years	4	2	2	1	—	1
20-24 years	14	6	8	1	—	1
25-29 years	26	8	18	7	2	5
30-34 years	43	16	27	10	2	8
35-39 years	41	19	22	20	8	12
40-44 years	42	18	24	10	5	5
45-49 years	31	15	16	10	6	4
50-54 years	33	17	16	9	4	5
55-59 years	24	8	16	7	2	5
60-64 years	21	8	13	13	4	9
65-69 years	27	17	10	11	8	3
70-74 years	23	13	10	2	1	1
75-79 years	13	7	6	4	3	1
80-84 years	6	4	2	2	2	—
85 and over	7	5	2	—	—	—
Total	355	163	192	107	47	60

TABLE A5

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each planning region.

Age group	Persons	Males	Females	Persons	Males	Females
	East			South West		
15-19 years	64	22	42	22	5	17
20-24 years	431	121	310	91	27	64
25-29 years	918	265	653	226	71	155
30-34 years	1,300	463	837	329	125	204
35-39 years	1,217	431	786	251	102	149
40-44 years	952	319	633	237	94	143
45-49 years	767	293	474	147	61	86
50-54 years	570	200	370	160	69	91
55-59 years	463	147	316	138	52	86
60-64 years	341	111	230	91	37	54
65-69 years	282	77	205	113	49	64
70-74 years	143	59	84	65	32	33
75-79 years	110	42	68	37	11	26
80-84 years	49	21	28	14	9	5
85 and over	18	8	10	15	4	11
TOTAL	7,625	2,579	5,046	1,936	748	1,188
	South East			North East		
15-19 years	17	4	13	5	1	4
20-24 years	59	21	38	23	6	17
25-29 years	126	45	81	43	15	28
30-34 years	126	44	82	92	22	70
35-39 years	135	46	89	102	45	57
40-44 years	135	48	87	64	22	42
45-49 years	110	41	69	40	15	25
50-54 years	92	41	51	44	14	30
55-59 years	99	36	63	35	11	24
60-64 years	76	21	55	40	17	23
65-69 years	55	24	31	38	18	20
70-74 years	42	11	31	19	12	7
75-79 years	21	10	11	15	8	7
80-84 years	16	7	9	4	2	2
85 and over	11	7	4	—	—	—
TOTAL	1,120	406	714	564	208	356
	Mid West			Midlands		
15-19 years	11	5	6	7	3	4
20-24 years	59	21	38	30	5	25
25-29 years	123	33	90	47	19	28
30-34 years	150	54	96	67	21	46
35-39 years	143	48	95	52	23	29
40-44 years	118	52	66	68	31	37
45-49 years	102	40	62	47	22	25
50-54 years	74	32	42	48	19	29
55-59 years	62	17	45	52	25	27
60-64 years	57	20	37	49	28	21
65-69 years	41	16	25	41	17	24
70-74 years	26	12	14	20	9	11
75-79 years	17	10	7	18	10	8
80-84 years	8	2	6	11	11	—
85 and over	8	5	3	2	1	1
TOTAL	999	367	632	559	244	315

TABLE A5 (contd).

Persons who were returned in the Marital Status Category "Other Status" classified by sex and age group in each planning region.

Age group	Persons	Males	Females	Persons	Males	Females
	West			North West		
15-19 years	2	2	—	3	—	3
20-24 years	44	12	32	9	3	6
25-29 years	74	26	48	13	7	6
30-34 years	106	42	64	29	8	21
35-39 years	103	43	60	21	8	13
40-44 years	91	33	58	29	13	16
45-49 years	69	34	35	24	12	12
50-54 years	59	26	33	18	4	14
55-59 years	47	25	22	18	6	12
60-64 years	40	20	20	13	7	6
65-69 years	45	20	25	10	4	6
70-74 years	21	10	11	9	5	4
75-79 years	32	14	18	4	2	2
80-84 years	14	8	6	4	2	2
85 and over	6	4	2	2	1	1
TOTAL	753	319	434	206	82	124
	Donegal					
15-19 years	4	2	2			
20-24 years	14	6	8			
25-29 years	26	8	18			
30-34 years	43	16	27			
35-39 years	41	19	22			
40-44 years	42	18	24			
45-49 years	31	15	16			
50-54 years	33	17	16			
55-59 years	24	8	16			
60-64 years	21	8	13			
65-69 years	27	17	10			
70-74 years	23	13	10			
75-79 years	13	7	6			
80-84 years	6	4	2			
85 and over	7	5	2			
TOTAL	355	163	192			

Extracts from the First Results of the 1983 Labour Force Survey

1983 LABOUR FORCE SURVEY

Results

Introduction

This report contains first results from the Labour Force Survey carried out in April/May 1983. A second report will be released in the near future.

As with the 1975, 1977, and 1979 inquiries (1), the 1983 Survey was carried out as part of a simultaneous exercise in all EEC Member States (2), and as such, was partly financed from community funds. Labour force surveys are now carried out annually: interviewing for the 1984 survey took place in April/May of this year.

The Survey was conducted by personal interview with the residents of approximately 40,000 private households, and of 372 non-private households. The sample consisted of some 147,000 persons, or about 4% of the total population. The Central Statistics Office wishes to thank the participating households for their public-spirited co-operation, and the specially appointed field force for their efforts, without which the Survey field work could not have been brought to a successful conclusion.

In addition to basic demographic information such as age, sex, and marital status, a comprehensive range of questions on the subjects of employment, unemployment, and search for work was asked. The data in this report are presented as estimated totals, rather than sample counts or percentage distributions of respondents, and have been reweighted by sex and age group to ensure agreement with independent population estimates.

The Statistical Office of the European Communities also publishes reports on the surveys. These reports contain results derived from the surveys carried out in each of the member states, but there are a number of differences in the estimates published at Community level and those appearing in this report. Firstly, the EEC reports relate only to persons who are the usual residents of private households, and exclude the residents of non-private households. Secondly, in this report the classifications according to principal economic status are for persons aged 15 or over at the time of the Survey, whereas in the Community publication the data include 14 years olds.

Reservations

Although this report contains several tables showing demographic and labour force information of a type analogous to that obtained from Censuses of Population, there are important methodological differences which must be

(1) for the results of these surveys see "Labour Force Survey 1979 results (incorporating detailed revisions to the 1977 and 1975 Survey results), Pl. 113

(2) EEC Regulation No. 603/83

taken into consideration when comparing Labour Force Survey estimates with Census-based data. Census returns are largely self-completed, and the replies are therefore more subjective than those received in the Labour Force Survey, where the interview process allows an individual's situation regarding employment, unemployment, etc. to be ascertained more clearly.

In addition, when interpreting the results of the Labour Force Survey it must be borne in mind that the estimates are derived from a sample of about one in twenty households, and are therefore subject to sampling errors. In general, the magnitude of this error, in percentage terms, is lower for the larger and more widely spread estimates, such as the total at work, and is greater for smaller, more concentrated estimates, such as for instance, the number unemployed in a particular age-group is a given region.

In order to provide as much information as reasonably possible, the estimates have been shown in somewhat more detail than the sample size warrants. All estimates are shown to the nearest hundred but this should not be taken as implying a corresponding level of accuracy. In the reports of previous labour force surveys any estimates less than 1,000 were suppressed. The change of approach adopted in this report is purely one of presentation and should not be construed as representing any improvement in the underlying levels of accuracy.

Caution should also be exercised when comparing the results of this Survey with those of the 1981 Census of Population and of the previous Labour Force Surveys. Apart from the methodological differences referred to above, it must be remembered that the sampling error of the difference between two estimates derived from independent samples is greater than the sampling errors of the separate estimates, and may indeed exceed the measured difference between the estimates.

Marital Status

For the 1983 Survey information was sought for the first time on actual marital status—previous Surveys and Censuses sought information on legal status. Two questions were used: the first asked "Were you ever married?": those who answered yes were asked "What is your present marital status?", and shown a card from which they chose one of seven options, arranged as follows:

Widowed—1
Married—2
Married but separated:
    Deserted—3
    Marriage Annulled—4
    Legally Separated—5
    Other seperated—6
Divorced in another country—7

Table C gives estimates of the population aged 15 or over by marital status and sex.

TABLE C: Estimated Population Aged 15 or Over Classified by Sex and Marital Status and Sex.

Marital Status	Males	Females	Total
	000		
Single	523.6	428.3	951.9
Married	650.4	652.0	1,302.4
Married but separated			
Deserted	1.4	4.5	5.9
Marriage Annulled	0.2	0.3	0.5
Legally Separated	2.0 } 8.3	2.8 } 12.8	4.8 } 21.1
Other Separated	4.1	4.3	8.3
Divorced	0.6	0.9	1.5
Widowed	38.9	140.5	179.3
TOTAL	1,221.1	1,233.6	2,454.7

The overall estimates for ever-married persons returned as separated (including divorced) are 8,300 males and 12,800 females, giving a total of 21,100 persons. This group has been shown separately under the heading "Separated" in any tables containing a marital status classification. Estimates for each sub-group are available on request from the Central Statistics Office.

Although as mentioned above the format of the marital status question has been changed, it is possible that some replies relate to legal status. There is some further analysis of the Survey data which suggests, indirectly, that the total for "separated" may be somewhat higher than estimated above. For the first time in the Labour Force Survey an analysis is being carried out by household and family type, as distinct from individuals, and the results will form part of the second report. From this analysis an estimate has been made of the number of persons returned as "married" whose spouse was not recorded as usually resident in the household. The estimated numbers derived from this analysis were 5,500 males and 10,900 females, giving a total of 16,400.

The estimates include married persons whose spouse was usually away and did not return at least one night per week (see definition of "usually resident" in Appendix A); no estimate is available for this group. The totals also include married persons whose spouse was a long stay resident (over 6 months) in an institution; the Survey yielded an estimate of some 3,300 married persons (1,600 males, 1,700 females) in institutions. For other persons included, it is likely that "separated" would be a more accurate description.

TABLE 3: Estimated Population Aged 15 years and Over Classified by Sex, Marital Status and Region

Sex and Marital Status	Region										Total
	Dublin	Rest of East	East	South-West	South-East	North-East	Mid-West	Midlands	West	North-West and Donegal	
	000										
Male											
Single	149.3	36.8	186.2	85.4	56.1	28.6	42.0	40.4	48.9	36.0	523.6
Married	186.4	56.5	242.8	101.2	72.1	35.4	58.5	48.5	53.2	38.6	650.4
Separated*	3.5	.6	4.1	1.1	1.1	.2	.3	.4	.7	.3	8.3
Widowed	9.8	2.9	12.7	6.8	4.4	2.1	3.3	3.1	3.5	2.8	38.9
Total	349.0	96.9	445.8	194.5	133.7	66.3	104.1	92.5	106.3	77.7	1,221.1
Female											
Single	160.9	27.2	188.1	60.5	40.5	20.7	33.6	26.3	35.9	22.6	428.3
Married	186.7	56.6	243.4	101.5	72.1	35.8	58.5	49.0	53.2	38.6	652.0
Separated*	5.7	1.0	6.7	1.9	1.1	.5	.8	.6	.8	.5	12.8
Widowed	37.4	10.1	47.5	24.2	15.7	7.5	12.0	11.2	13.4	9.0	140.5
Total	390.7	94.9	485.6	188.1	129.3	64.5	104.9	87.1	103.3	70.8	1,233.6
Total											
Single	310.2	64.1	374.3	145.9	96.5	49.3	75.7	66.7	84.8	58.6	951.9
Married	373.1	113.1	486.2	202.7	144.2	71.2	117.0	97.5	106.4	77.2	1,302.4
Separated*	9.1	1.6	10.7	3.0	2.2	.6	1.1	1.1	1.5	.8	21.1
Widowed	47.2	13.0	60.2	31.0	20.1	9.7	15.3	14.3	16.9	11.8	179.3
Total	739.6	191.8	931.4	382.7	263.0	130.8	209.1	179.6	209.6	148.5	2,454.7

* including divorced

TABLE 4: Estimated Population Aged 15 years and Over Classified by Sex, Marital Status and Age Groups

Sex and Marital Status	Age Group											
	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65 or over	Total
	000											
Male												
Single	166.0	125.5	61.7	29.8	18.6	16.1	15.9	16.0	17.4	16.4	40.3	523.6
Married	.7	19.1	67.1	90.3	87.2	72.9	62.2	56.3	51.6	46.2	96.9	650.4
Separated*	—	.2	.7	1.1	.9	1.1	.9	1.2	.9	.5	.9	8.3
Widowed	.0	—	.1	.1	.4	.6	1.2	1.9	2.5	4.5	27.5	38.9
Total	166.7	144.9	129.5	121.3	107.0	90.8	80.1	75.3	72.4	67.5	165.7	1,221.1
Female												
Single	156.3	104.5	40.5	17.9	11.1	9.4	9.7	10.0	11.2	12.2	45.4	428.3
Married	2.7	34.4	84.1	97.1	88.6	73.1	60.5	55.3	49.8	41.3	65.1	652.0
Separated*	—	.6	1.4	2.1	1.6	1.5	1.6	1.1	1.1	.7	1.2	12.8
Widowed	—	.1	.3	.4	1.2	2.2	4.5	7.4	12.5	17.4	94.4	140.5
Total	159.0	139.6	126.4	117.5	102.5	86.2	76.3	73.7	74.6	71.7	206.3	1,233.6
Total												
Single	322.3	230.1	102.2	47.7	29.6	25.5	25.6	26.0	28.6	28.6	85.7	951.9
Married	3.4	53.5	151.2	187.3	175.8	146.1	122.7	111.5	101.4	87.5	162.0	1,302.4
Separated*	—	.8	2.1	3.2	2.4	2.6	2.4	2.3	2.0	1.1	2.2	21.1
Widowed	.0	.1	.4	.5	1.6	2.8	5.7	9.2	15.0	21.9	122.0	179.3
Total	325.8	284.4	255.9	238.7	209.5	177.0	156.4	149.0	147.0	139.2	371.9	2,454.7

* including divorced

Estimated Separated Population aged 15 years and over classified by Sex, Marital Status and Age Groups

Marital Status and Sex	Age Group											
	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65 or over	Total
	000											
Male												
Married but separated												
Deserted	—	.0	.1	.2	.0	.1	.2	.2	.2	.0	.2	1.4
Marriage annulled	—	—	—	.1	—	.0	.1	.0	—	.0	—	.2
Legally separated	—	.0	.2	.3	.3	.2	.2	.3	.2	.0	.2	2.0
Other separated	—	.1	.3	.4	.4	.7	.4	.5	.4	.3	.5	4.1
Divorced	—	—	.0	.1	.1	.1	.0	.1	.1	.1	.1	.6
Total	—	.2	.7	1.1	.9	1.1	.9	1.2	.9	.5	.9	8.3
Female												
Married and separated												
Deserted	—	.2	.6	.8	.4	.5	.5	.5	.5	.2	.4	4.5
Marriage annulled	—	.0	.0	—	.0	.1	.0	.0	—	.0	.0	.3
Legally separated	—	.1	.3	.5	.5	.3	.5	.2	.3	.1	.2	2.8
Other separated	—	.2	.5	.6	.4	.5	.5	.2	.3	.3	.6	4.3
Divorced	—	—	.1	.2	.2	.1	.1	.2	.0	.1	.0	.9
Total	—	.6	1.4	2.1	1.6	1.5	1.6	1.1	1.1	.7	1.2	12.8
TOTAL												
Married but separated												
Deserted	—	.3	.7	1.0	.5	.6	.6	.7	.7	.3	.5	5.9
Marriage annulled	—	0.0	0.0	0.1	0.0	0.1	0.1	0.1	—	0.1	0.0	0.5
Legally separated	—	.1	.4	.8	.8	.4	.7	.5	0.5	.1	.4	4.8
Other separated	—	.4	.8	1.1	.9	1.2	.9	.7	.7	.5	1.1	8.3
Divorced	—	—	.1	.2	.2	.2	.1	.3	.1	.2	.1	1.5
Total	—	.8	2.1	3.2	2.4	2.6	2.4	2.3	2.0	1.1	2.2	21.1

Source: Labour Force Survey, 1983.

Estimated Separated Population aged 15 years and over Classified by Marital Status , Sex and Region

Marital Status and Sex	Region										
	Dublin	Rest of East	East	South-West	South-East	North-East	Mid-West	Mid-lands	West	North-West and Donegal	Total
	000										
Male											
Married but separated											
Deserted	.4	.1	.5	.2	.2	.0	.1	.1	.1	.1	1.4
Marriage annulled	.1	—	.1	.0	—	—	—	—	.1	.0	.2
Legally separated	1.0	.2	1.1	.3	.3	.0	.1	.1	.0	.1	2.0
Other separated	1.9	.3	2.2	.5	.4	.1	.1	.2	.4	.2	4.1
Divorced	.1	.1	.2	.2	.2	—	—	.0	.1	—	.6
Total	3.5	.6	4.1	1.1	1.1	.2	.3	.4	.7	.3	8.3
Female											
Married but separated											
Deserted	1.7	.4	2.0	.7	.5	.2	.4	.2	.4	.2	4.5
Marriage annulled	.1	.0	.2	.0	.0	—	—	—	.1	.0	.3
Legally separated	1.3	.2	1.5	.3	.3	.1	.2	.1	.1	.1	2.8
Other separated	2.2	.3	2.5	.6	.3	.2	.1	.2	.2	.2	4.3
Divorced	.3	.1	.4	.3	.0	—	.1	—	.1	—	.9
Total	5.7	1.0	6.7	1.9	1.1	.5	.8	.6	.8	.5	12.8
Total											
Married and separated											
Deserted	2.0	0.5	2.5	0.9	0.7	0.2	0.5	0.4	0.5	0.2	5.9
Marriage annulled	.2	.0	.2	.1	.0	—	—	—	.1	.0	.5
Legally separated	2.3	.4	2.7	.5	.5	.1	.3	.4	.1	.2	4.8
Other separated	4.2	.6	4.8	1.1	.7	.3	.2	.3	.6	.3	8.3
Divorced	.4	.2	.6	.5	.2	—	.1	.0	.2	—	1.5
Total	9.1	1.6	10.7	3.0	2.2	.6	1.1	1.1	1.5	.8	21.1

Estimated Separated Population aged 15 years and over Classified by Principal Economic Status and Sex

Principal Economic Status and Sex	Marital Status					
	Deserted	Marriage annulled	Legally separated	Other separated	Divorced	Total
	000					
Male						
At work	0.6	0.2	1.2	2.3	0.4	4.7
Looking for first regular job	—	—	—	—	—	—
Unemployed, having lost of given up previous job	.5	.0	.3	1.0	.1	1.9
Students	—	—	—	—	—	—
On home duties	.1	—	.0	.0	—	.1
Retired	.2	.0	.3	.4	.1	1.0
Unable to work owing to permanent sickness or disability	.0	—	.1	.3	—	.5
Other	.0	—	—	—	—	.0
Total	1.4	.2	2.0	4.1	.6	8.3
Female						
At work	1.0	0.1	1.2	1.5	0.4	.2
Looking for first regular job	—	—	—	—	—	—
Unemployed, having lost of given up previous job	.3	.0	.2	.4	.1	1.0
Students	—	—	—	—	—	—
On home duties	3.0	.1	1.2	1.9	.3	6.5
Retired	.1	.0	.1	.3	.1	.6
Unable to work owing to permanent sickness or disability	.2	—	.1	.2	—	.4
Other	—	—	—	.0	.0	.0
Total	4.5	.3	2.8	4.3	.9	12.8
TOTAL						
At work	1.6	0.3	2.4	3.8	0.7	8.9
Looking for first regular job	—	—	—	—	—	—
Unemployed, having lost or given up previous job	.7	.1	.6	1.4	.2	2.9
Students	—	—	—	—	—	—
On home duties	3.0	.1	1.2	1.9	.3	6.6
Retired	.3	.1	.5	.7	.2	1.6
Unable to work owing to permanent sickness or disability	.2	—	.2	.5	—	.9
Other	.0	—	—	.0	.0	.0
Total	5.9	.5	4.8	8.3	1.5	21.1

Estimated Number of Separated Males in the Labour Force and not in the Labour force and Estimated participation rates by Age Group

Marital Status	Age Group								
	15-19	20-24	25-34	35-44	45-54	55-59	60-64	65 or over	Total
	000								
	Total								
In the Labour Force									
Married but separated									
Deserted	—	.0	.3	.2	.3	.2	—	.0	1.1
Marriage annulled	—	—	.1	.0	.1	—	—	—	.2
Legally separated	—	.0	.4	.4	.5	.1	.0	—	1.6
Other separated	—	.1	.7	1.0	.8	.4	.2	.1	3.3
Divorced	—	—	.1	.2	.1	.0	.1	—	.5
Total	—	.2	1.7	1.8	1.8	.7	.3	.1	6.6
Not in the Labour Force									
Married but separated									
Deserted	—	—	.0	.0	.0	.0	.0	.1	.3
Marriage annulled	—	—	—	—	—	—	.0	—	.0
Legally separated	—	—	—	.0	.1	.1	—	.2	.5
Other separated	—	—	.0	.1	.1	—	.1	.4	.8
Divorced	—	—	—	—	—	.0	.0	.1	.1
Total	—	—	.1	.2	.2	.1	.2	.8	1.7
	%								
Participation Rates									
Married but separated									
Deserted	—	100.0	85.6	92.7	91.9	92.7	—	17.2	87.8
Marriage annulled	—	—	100.0	100.0	100.0	—	—	—	90.8
Legally separated	—	100.0	100.0	91.1	85.1	52.0	100.0	—	77.4
Other separated	—	100.0	95.6	87.9	90.1	100.0	57.0	14.2	80.9
Divorced	—	—	100.0	100.0	100.0	56.7	77.9	—	81.4
Total	—	100.0	95.3	90.4	89.9	84.0	57.3	9.8	79.9

Source: Labour Force Survey, 1983

Estimated Number of Separated Females in the Labour Force and not in the Labour force and Estimated participation rates by Age Group

Marital Status	Age Group								
	15-19	20-24	25-34	35-44	45-54	55-59	60-64	65 or over	Total
	000								
	Total								
In the Labour Force									
Married but separated									
Deserted	—	.1	.4	.4	.3	.1	.0	.0	1.3
Marriage annulled	—	.0	.0	.0	.1	—	—	—	.2
Legally separated	—	.1	.4	.4	.4	.1	.0	—	1.4
Other separated	—	.1	.6	.6	.4	.1	.1	.0	1.9
Divorced	—	—	.2	.2	.1	.0	—	—	.5
Total	—	.2	1.6	1.6	1.2	.4	.1	.1	5.2
Not in the Labour Force									
Married but separated									
Deserted	—	.2	1.0	.0	.7	.3	.2	.3	3.2
Marriage annulled	—	—	—	.1	—	—	.0	.0	.1
Legally separated	—	.0	.4	.3	.2	.2	.1	.2	1.4
Other separated	—	.1	.5	.3	.4	.2	.2	.6	2.4
Divorced	—	—	.0	.1	.2	—	.1	.0	.4
Total	—	.3	1.9	1.5	1.5	.7	.5	1.2	7.6
	%								
Participation Rates									
Married but separated									
Deserted	—	28.4	28.1	59.0	29.8	31.5	7.3	8.6	28.6
Marriage annulled	—	100.0	100.0	32.7	100.0	—	—	—	54.2
Legally separated	—	70.4	49.9	57.1	65.8	40.5	14.1	—	50.4
Other separated	—	41.7	54.3	63.5	46.3	33.4	33.9	5.0	44.2
Divorced	—	—	88.6	53..3	40.1	100.0	—	—	53.3
Total	—	42.9	45.6	52.3	46.0	35.0	17.8	5.0	40.9

Source: Labour Force Survey, 1983

Source: Labour Force Survey, 1983

WORLD STATISTICS

Population
Marriage and divorce

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1972	1981
3.1.19	All marriages (1,000)										% population	
Belgique/Belgie	74	74	74	72	71	69	67	65	66	64	7.7	6.5
Danmark	31	31	33	32	31	32	29	28	26	25	6.2	4.9
BR Deutschland	415	395	377	387	366	358	328	345	362	360	6.7	5.8
Greece	60	74	68	76	64	76	73	79	62	71	6.8	7.3
France	417	401	395	387	374	368	354	340	334	315	8.1	5.8
Ireland	22	23	23	21	21	20	21	21	22	21	7.4	6.2
Italia	419	418	403	374	354	348	336	326	323	314	7.7	5.5
Luxembourg	2.3	2.1	2.2	2.4	2.2	2.2	2.1	2.1	2.1	2.0	6.6	5.0
Nederland	118	108	110	100	97	93	89	86	90	86	8.8	6.1
United Kingdom	480	454	437	431	406	404	416	415	418	400	8.6	7.1
EUR 10	2,038	1,978	1,921	1,882	1,786	1,771	1,716	1,706	1,705	1,658	7.7	6.1
España	262	269	267	271	261	262	258				7.6	
Portugal	77	84	82	103	102	92	81	78	73	84	8.6	8.5
Sverige	39	38	45	44	45	40	38	37	38	38	4.8	4.5
USA	2,282	2,284	2,226	2,127	2,133	2,190	2,246				10.9	
Nippon (Japan)	1,109	1,072	1,000	942	872	831					10.4	

Population
Marriage and divorce

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1972	1981
	Average age of women at first marriage Years										EUR=100	
Belgique/Belgie	22.2	22.0	22.0	22.0	22.0	22.0	22.1	22.1			96	
Danmark	23.1	23.3	23.5	23.7	23.9	24.0	24.4	24.5	24.8	25.1	100	
BR Deutschland	22.9	22.9	22.9	22.7	22.9	22.9	23.1	23.2	23.4	23.6	99	
Greece	22.8	22.7	22.6	22.8	22.4	22.4	22.3	23.3			99	
France	22.4	22.4	22.4	22.5	22.6	22.7	22.8	22.9	23.0		97	
Ireland	24.5	24.5	24.3	24.4	23.8	24.1	24.1	24.9	25.0	24.9	106	
Italia	24.5	24.2	24.1	24.0	24.2	23.9	24.2	23.7			106	
Luxembourg	23.0	22.7	22.8	23.3	23.1	23.6	23.9	24.0	24.5	24.5	100	
Nederland	22.9	22.7	22.7	22.7	22.7	22.8	23.0	23.1	23.2	23.3	99	
United Kingdom	22.9	22.7	22.7	22.8	22.8	22.9	22.9	22.9	22.9	23.0	99	
EUR 10	23.1	23.0	23.0	23.0	23.1	23.1					100	
España	24.4	24.3	24.3	23.4	23.2	23.1	23.0				106	
Portugal	24.2	24.4	24.1	23.7	23.6	23.7	23.7				105	
Sverige	24.4	24.6	24.8	25.1	25.3	25.5	25.8	26.2	26.4	26.6	106	
USA												
Nippon (Japan)												

Population
Marriage and divorce

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1972	1981
	Divorces (1,000)										% existing marriages	
Belgique/Belgie	8	8	10	11	13	13	14	14	15	16	3.2	6.3
Danmark	13	13	13	13	13	13	13	13	14	14	10.9	12.1
BR Deutschland	87	90	99	107	108	75	32	79	96	110	5.5	7.0
Greece	3	4	4	4	4	5	4	5	4			
France	50	50	59	61	65	74	82	89	92		4.0	7.2
Ireland	0	0	0	0	0	0	0	0	0	0	0	0
Italia	33	18	18	11	12	11	10	11	12	11	2.5	0.8
Luxembourg	0.3	0.3	0.3	0.2	0.4	0.4	0.5	0.4	0.6	0.5		
Nederland	15	18	19	20	21	21	22	24	25	29	4.6	8.3
United Kingdom	125	114	121	129	136	138	153	148	160	157	9.5	11.8
EUR 10	334	315	344	356	373	350	331	382	419			
España	0	0	0	0	0	0	0	0	0			
Portugal	1	1	1	2	5	8	7	6	6	7		
Sverige	15	16	27	25	22	20	20	20	20	20	7.9	11.4
USA	845	915	977	1,026	1,077							
Nippon (Japan)	110	112	114	119	125							

Eurostat Review, 1972-81—Official Publication of the European Communities.

Appendix D

An example of a typical legal separation agreement is set out hereunder:

SEPARATION AGREEMENT

THIS AGREEMENT made the day of BETWEEN , in the county of (hereinafter called "the Husband") of the first part and , in the county of (hereinafter called "the Wife") of the second part.

WHEREAS

(a) the husband and the wife were lawfully married on the day of at in the County of according to the rites of the Church. (Insert as appropriate).

(b) There are children of the said marriage namely born (hereinafter called "the children").

(c) Unhappy differences have arisen between the husband and wife and as they have lived separately and apart from each other since and they have mutually agreed as hereinafter more particularly appears to continue to live separately and apart from each other.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:—

1. The husband and the wife may at all times hereafter live separately and apart and free from the matrimonial control of the other and shall in all things live as if they were unmarried and each party shall be entitled to carry on any profession vocation or occupation without interference from the other party provided that each party shall be liable personally for all taxes payable on their respective earnings and further each party shall be liable personally for all tax whether of an income or capital nature payable on their respective earnings arising out of any personal investments made by either party.

2. Neither the husband nor the wife shall directly or indirectly molest, annoy, disturb, or interfere with the person of the other or with his or her relations, friends, or acquaintenances or interfere in any way with his or her profession, vocation or occupation in life.

3. The husband and the wife shall be joint guardians of the children. The wife shall have sole custody, care and control of the children during their minority and the husband shall in no way interfere with such custody subject to the provisions hereinafter mentioned.

4. The husband shall have access to the children every alternate Sunday or at such times as may be agreed between the parties. The said access is to continue until the day of and thereafter the husband is to have such access to the children as shall be agreed between the parties. In default of such agreement, times and modes of access shall be fixed by the Court.

5. The wife in consideration of the terms and conditions hereinafter contained shall transfer and convey to the husband or to his parents the entire of her interest in the family home at in the County of to the intent that the husband shall have sole ownership of the said family home. In consideration of the said transfer of the wife's interest in the family home by the wife to the husband the husband shall pay to the wife the sum of The said transfer is to be completed on or before the day of and payment of the said sum of is to be made on completion of the said transfer.

6. The wife agrees that the family home for all purposes of the Family Home Protection Act, 1976 is in the County of and the wife hereby consents to the sale or transfer of the said family home at in the County of aforesaid and further the wife consents to the sale or transfer of any such family home in which the husband may reside in the future should such consent be deemed necessary by virtue of the provisions of the Family Home Protection Act, 1976 or any Act of the Oireachtas amending or extending the provisions of the said Family Home Protection Act 1976.

7. The husband hereby consents to the sale or transfer by the wife of any house or property which she now owns or in the future may purchase or acquire by inheritance or otherwise obtain should such consent be deemed necessary by virtue of the provisions of the Family Home Protection Act, 1976 or any Act of the Oireachtas amending or extending the said Family Home Protection Act, 1976.

8. The husband and the wife hereby mutually surrender and renounce all rights under the Succession Act, 1965 (or any other Act of the Oireachtas which may in the future extend or amend the Succession Act, 1965) to the estate of the other and furthermore undertake not to interfere in any way with

the extraction of a Grant of Probate or Administration as the case may be to the estate of the other.

9. The husband in consideration of the terms and conditions contained herein shall upon the completion of the aforementioned transfer of the wife's interest in the family home at in the County of hand over to the wife the items of furniture from the said family home which are listed in the schedule annexed to this Agreement.

10. In consideration of the premises the husband hereby covenants with the wife that the husband shall pay to the wife in respect of the maintenance of the children such yearly sum as after deduction of income tax shall amount to the sum of per month, the first payment to be made on or before the day of and monthly payments to be made thereafter on or before the day of each month. The said payments are to be lodged to the wife's bank account at in the County of Account No. The said maintenance payment is to be reviewed annually on the day of the first review to take place on the 1st day of and in default of agreement concerning the said review either party has liberty to apply to the Court.

11. The wife shall at all times hereafter keep indemnified the husband from all debts and liabilities heretofore and hereafter contracted or to be contracted or incurred by the wife and from all actions, costs, proceedings, claims, demands, expenses or liabilities whatsoever in payment of such debts and liabilities or any of them for which the wife shall be liable and shall in no way pledge the husband's credit and the husband shall at all times hereafter keep indemnified the wife from all debts and liabilities heretofore and hereafter contracted or to be contracted or incurred by the husband and from all actions, costs, proceedings, claims, demands, expenses or liabilities whatsoever in payment of such debts and liabilities or any of them for which the husband shall be liable and shall in no way pledge the wife's credit.

12. If the husband and the wife shall be reconciled and return to co-habit with each other then in such event all covenants and conditions herein contained shall become void but without prejudice to any act previously made or done hereunder or any proceedings on the part of either of them in respect of any antecedent breach of any of the covenants and provisions herein contained.

13. Each of them the husband and the wife and their respective heirs, executors, administrators and assigns shall at any time hereafter execute and

do all such assurances and things as the other of them or his or her executors, administrators, executors and assigns shall reasonably require for the purpose of giving effect to these convenants and provisions herein contained.

14. The husband shall pay the stamp duty on this Agreement.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

SIGNED SEALED AND DELIVERED
by the said
in the presence of:—

SIGNED SEALED AND DELIVERED
by the said
in the presence of:—

Appendix E

Divorce laws in other Jurisdictions

This appendix contains a summary of the types of divorce legislation which exists in the following Jurisdictions:

1. Australia
2. California
3. Colorado
4. England & Wales
5. Germany
6. Italy
7. New York
8. New Zealand
9. Northern Ireland
10. Spain
11. Sweden

Divorce laws in other jurisdictions

Australia

The principal statute is the Family Law Act 1975.

Divorce is granted if the marriage has broken down irretrievably. This is established by 12 months separation.

The court shall not make a decree if satisfied that there is a reasonable likelihood of cohabitation being resumed.

Where the parties have been married less than two years the court shall not hear the proceedings unless satisfied that the parties have considered reconciliation with the aid of a marriage counsellor.

Where there are minor children a decree nisi will not become absolute unless the court is satisfied that proper arrangements have been made for their welfare.

Special Family Courts were set up by the principal Statute. There are provisions to reduce formalities and humanise proceedings as far as is compatible with the inherently judicial and in the last analysis adversarial nature of the proceedings. Provisions include closed courts, no undue formality (including the abolition of robes and wigs) or protracted proceedings. There are also provisions setting up a court-based reconciliation and conciliation service. Officers who are defined as both marriage counsellors and welfare officers are attached to the court. There is also provision for a pre-trial mediation conference before a registrar.

California

The principal statute is the Act of January 1, 1970, Public Law No. 1608.

The only grounds for divorce are irreconcilable differences leading to irremedial breakdown of marriage and incurable insanity. Irreconcilable differences are those grounds which are determined by the courts to be substantial reasons for not continuing marriage and which make it appear marriage should be dissolved.

There is a court-linked counselling and mediation service.

A summary dissolution procedure is available where both parties consent, there are no children, they are married less than five years, do not have debts of more than a certain amount, do not have community or separate property of more than a certain amount, have waived any rights to spousal support and have executed an agreement concerning their rights and liabilities.

Colorado

The principal statute is the Act of June 2 1971, Public Law No. 130, as amended. This is a somewhat modified adoption of the Uniform Marriage and Divorce Act (1970-1973).

The sole ground is the irretrievable breakdown of the marriage. This is established either

(a) By the parties living separate and apart for at least 180 days

(b) By establishing that there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage and there is no reasonable prospect of reconciliation.

Where the respondent denies that the marriage is irretrievably broken the court may adjourn the matter for further hearing. This adjournment to be at least thirty and no more than sixty days. Furthermore the court may, or if so requested by one of the parties must, order a conciliation conference.

The court may bifurcate the issues, rendering an interlocutory judgement of dissolution of marriage, whilst expressly reserving jurisdiction as to all ancillary issues.

A marriage may be dissolved summarily, by affidavit, where:

> There are no minor children and the wife is not pregnant or where the spouses, both with legal advice, have entered into a separation agreement setting out the amount of child support and granting custody to one or both parties. Furthermore there must be no material fact in issue and there must be either a division of property by agreement or no property to be divided.

England and Wales

The principal statute is the Matrimonial Causes Act, 1973, as amended.

The sole ground on which a petition for divorce may be based is that the marriage has broken down irretrievably. To establish this the petitioner must satisfy one or more of the following facts:

(a) That the respondent has committed adultery and that the petitioner finds it intolerable to live with them. The use of this fact is barred however if the petitioner, after learning of the respondents adultery, lives with them for an aggregate period exceeding six months.

(b) That one respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with them.

(c) That the respondent has deserted the petitioner for a continuous period of at least two years. The use of this fact is barred by condonation.

(d) That the parties have been separated for at least two years and that the respondent consents to the grant of a decree.

(e) That the parties have been separated for at least five years. If however the respondent opposes the petition on the basis that it would cause them grave financial or other hardship, the court, if it accepts this, may dismiss the petition.

There is an absolute bar on divorce for one year after marriage.

Where there are minor children the court will not, in the absence of special circumstances, make absolute a decree of divorce unless satisfied that arrangements for their welfare are satisfactory or the best that can be devised.

The court may adjourn divorce proceedings for such period as it thinks fit if it believes there to be a reasonable possibility of reconciliation, to enable attempts to be made to effect such. Furthermore the petitioner's solicitor must supply the court with a certificate certifying that he has mentioned the possibility of reconciliation to the petitioner.

Divorce is dealt with by the Family Division of the High Court and by such County Councils as are designated Divorce County Courts. If the petition is undefended there is a procedure called the Special Procedures List. The petitioner lodges an affidavit to the Registrar of the divorce Registry. If this proves that the contents are to the Registrar's satisfaction he will so certify. Where there are minor children the Registrar must arrange an appointment with a judge in the chambers who will consider the arrangements for the children. All other ancillary matters being settled, this will lead to the court granting the decree without a hearing.

Decrees will be nisi, in the first instance. They will usually be made absolute in six weeks.

Germany

The principal statute is the Law of Marriage of 14 June 1976.

Breakdown of marriage is the only ground for divorce. This is taken to have occurred if the spouses are no longer on living terms and it is not to be expected that they can re-establish the society that they have lost.

There is an irrebuttable presumption that the marriage has broken down if the spouses have lived apart

(a) For one year, where both consent to divorce

(b) For three years, otherwise.

Spouses who have lived apart for less than one year can only be divorced if it would be an unbearable hardship on the complainant, in view of some personal characteristic of the respondent, to have the marriage continue.

Even where the marriage has broken down a divorce will not be granted if

(a) The divorce would be a severe hardship to the respondent by virtue of some unusual circumstances.

(b) If, for some special reason, the marriage must be kept afloat in the interests of the children.

Neither of the above apply when the parties have lived apart for more than five years.

The Law of 1976 set up a system of family courts with jurisdiction over all family and matrimonial issues.

Italy

The principal statutes are the Laws of December 1, 1970 and September 25, 1975.

Divorce may be granted where:

(1) The respondent is convicted of certain offences or sentenced to certain periods of imprisonment or acquitted of certain offences on the grounds of total unsoundness of mind or other specified reasons.

(2) There is non-consummation of the marriage.

(3) The respondent being a foreign national has obtained an annulment or dissolution abroad, and has subsequently remarried.

(4) Where there has been a judicial separation or a consensual separation ratified by the court. The petition for divorce may be made after five years if there is mutual consent, six years if the respondent objects but the initial separation was by consent, or seven years where the respondent objects and the initial separation was on foot of a judicial separation caused by a fault of the petitioner.

The court may refuse to ratify a separation agreement if not satisfied with the arrangements made for childrens material or moral welfare. This obliges the parties to come up with an arrangement which will satisfy the court.

The court must attempt to achieve a reconciliation of the parties. They will be heard first separately and then together. If the court forms the opinion that there is a possibility of reconciliation it can delay the trial for up to a year; if the reconciliation is refused however the court must, finally, accept this.

New York

The principal statute is the Domestic Relations Law.

The following can be grounds for divorce:

(a) Cruel and inhuman treatment such that the respondent's conduct so endangers the petitioner's physical and mental well-being as to render cohabitation unsafe or improper.

(b) Abandonment by one respondent for one year.

(c) Imprisonment, after marriage, of the respondent for three consecutive years.

(d) Adultery or sexually deviate intercourse by the respondent. Adultery is barred however where there is procurement or connivance by the petitioner, or the petitioner affirmatively forgives the adultery, or cohabits voluntarily with the respondent knowing of the adultery, or the action is not commenced within five years of the adultery, or where the petitioner is guilty of adultery in circumstances such that the respondent would have been entitled, if innocent, to divorce.

There are provisions for conciliation proceedings by reference to the Family Court.

Default judgements can be entered in uncontested divorces without any court appearance.

New Zealand

The principal statute is the Family Proceedings Act 1980.

Marriages may be dissolved if the marriage has broken down irreconcilably. The unique fact which establishes this is two years separation.

The court may adjourn dissolution proceedings and refer the spouses to a counsellor for the purposes of reconciliation or conciliation, where it is of the opinion that there is a reasonable possibility of such. Furthermore the petitioner's legal advisers must certify that they have made their clients aware of the facilities available for promoting reconciliation and conciliation and that they have taken any further steps such as might assist in the promotion thereof. To this end the parties may request the Registrar of the Family Court to arrange for such counselling.

Where there are minor children the court will postpone final dissolution until it is satisfied with the arrangements made for their welfare.

The Family Courts Act 1980 set up a system of Family Courts. Special features of these courts include:

> The fact that the court may receive any evidence it thinks fit, whether otherwise admissible in a court of law or not. The court may call as a witness any person whose evidence they believe may be of assistance to the court.
>
> In undefended, including joint, proceedings the order dissolving the marriage takes effect on being made. In defended proceedings it automatically takes effect after a month, in the absence of an appeal to the High Court.
>
> There is also provision for a mediation conference before a judge prior to the trial.

Northern Ireland

The principal statute is the Matrimonial Causes (N.I.) Order 1978. This is based on and substantially similar to the English Matrimonial Causes Act 1973.

Note however:—

(1) That there is no absolute bar in the first year of marriage. There is instead a three year bar on bringing a petition in the absence of exceptional hardship suffered by the petitioner or exceptional depravity on the part of the respondent.

(2) There is no need for the petitioner's solicitor to certify that he has mentioned the possibility of reconciliation to the petitioner.

(3) The Special Procedures List does not exist as in England and Wales.

Spain

Divorce was introduced by Law No. 30/1981 of July 7, 1981.

Marriage may be dissolved where:

(1) There has been one year's separation from the date of bringing a petition for judicial separation jointly or by consent.

(2) One year's separation from the bringing of a petition (or counterpetition) for judicial separation. The grounds for judicial separation include

(a) Desertion, adultery (not if spouses separated by mutual consent or by the act of spouse alleging adultery), injurious or vexatious conduct and any other serious or repeated breach of matrimonial duties.

(b) Any serious or repeated breach of duties towards children of the marriage or those of either spouse living in the family home.

(c) Conviction followed by imprisonment exceeding six years.

(d) Alcoholism, use of narcotics or mental derangement whenever the interest of the other spouse or of the family demands the suspension of cohabitation.

(e) There are also several distinct separation grounds.

(3) Two years separation since:

(a) The freely agreed actual separation of the spouses.

(b) One of the spouses has been declared missing, on the petition of the other spouse.

(c) The actual separation of the spouses when the petitioner alleges that the other spouse had given him cause sufficient for judicial separation.

(4) Five years separation on the petition of either spouse.

(5) Conviction for an attempt on the life of the petitioner, his ancestors or descendants.

Sweden

The principal statute is the Law of June 5, 1973.

The unique ground for divorce is that one or both of the spouses has no wish to continue the marriage. The court has no discretion.

Where there are minor children or where one of the spouses opposes the divorce there must be a six month reflection and reconsideration period before divorce can be decreed. This is not necessary however, where the parties have lived apart for at least two years.

There is a statutory counselling service and this will be adverted to but mediation is now voluntary.

Appendix E

Specimen Family Summons

Part 1

Record No.

To Mr Maurice Smith of Gasworks Lane, Dublin 2.

This Summons requires you to attend before the High Court sitting at on the day of at 10.30 a.m. where proceedings are to take place in which your Wife, Jacqueline Smith of Gasworks Lane, Dublin 2 is seeking the remedies set out in Part 2 of this Summons. This case may be heard on that date or on such other date as the Court may specify. You should attend in Court and/or be represented by a solicitor as orders may be made which will seriously affect you. Please read the rest of this Summons carefully.

Part 2 sets out the remedies sought by your Wife.

Part 3 lays out the grounds on which she seeks the remedies set out in Part 2.

Part 4: If you wish to be heard in Court in relation to these proceedings you, or your solicitor should lodge this part of the Summons duly completed in the Court Office at the address given in Part 4, within ten days of the service of this Summons upon you. Please note:

(a) There is a mediation service available should you and your wife wish to attempt to resolve the matters in dispute between you by agreement. Details of this service can be obtained by contacting the following address:

(b) It is in your interest to have legal advice in regard to these proceedings. If you cannot afford a private solicitor, you may be entitled to legal aid provided by the State at a minimum cost to you. Details of this legal aid service are available at the following address:

The date of issue of this Summons is . The Summons must be served not less than ten days before the date on which the case is to be heard in Court.

Part 2.
The following are the remedies sought in these proceedings:

Part 3.
The following are the grounds upon which the applicant will reply:

Part 4.
Record No.

To Jacqueline Smith of Gasworks Lane, Dublin 2 I intend to oppose all/the following remedies sought by the applicant

The grounds upon which I intend to oppose the granting of these remedies are as follows:—

This day of 19 .

Signed respondant/solicitor for respondant. . . . . .

Note: If you intend to defend all/or part of the applicants claims you should fill in this part of the document and lodge it with the Court Office at at least seven days before the date for the hearing of this case. You should also send a copy of this section of the document to the applicant and/or his or her solicitor.

Wt. 151410. 2,000. 4/85. Cahill. (3537). G.Spl.