



**AN BILLE UM PÁIRTNEIREACHT SHIBHIALTA 2009
CIVIL PARTNERSHIP BILL 2009**

EXPLANATORY MEMORANDUM

Introduction

The Bill is a key step in implementing the Government's commitment in the Agreed Programme for Government to "legislate for civil partnership at the earliest possible date in the lifetime of the Government". It will provide an extensive package of rights, obligations and protections for same-sex couples who register as civil partners.

The Civil Partnership Bill 2009 addresses recommendations of the Law Reform Commission to provide for a redress scheme for cohabitants and recognition of cohabitant agreements.

Purpose of the Bill

The purpose of the Bill is to establish a statutory civil partnership registration scheme for same-sex couples together with a range of rights, obligations and protections consequent on registration, and to set out the manner in which civil partnerships may be dissolved and with what conditions.

The Bill also establishes a redress scheme for opposite-sex and same-sex cohabiting couples who are not married or registered in a civil partnership as the case may be. The redress scheme may be activated at the end of a relationship, whether by break-up or death, and allows a financially dependent cohabitant to apply to court for certain remedies, including maintenance, property or pension adjustment orders, or provision from the estate of a deceased cohabitant. The Bill also makes express provision for the recognition of cohabitant agreements which regulate the shared financial affairs of cohabiting couples and enable couples to opt out of the application to them of the redress scheme.

Context

The All-Party Oireachtas Committee on the Constitution, in its *Tenth Report: The Family* [January 2006] recommended legislation to provide for cohabiting heterosexual couples and that civil partnership be provided for same-sex couples. The *Options Paper* presented by the Working Group on Domestic Partnership identified a range of legislative options for cohabitants [November 2006]. The Law Reform Commission in its report *The Rights and Duties of*

Cohabitants [December 2006] recommended a statutory scheme recognising the validity of cohabitant agreements in respect of a couple's joint financial affairs and establishing a redress scheme for cohabiting couples to be available to a financially dependent cohabitant at the end of a relationship.

Part 1 — Preliminary and General

Section 1 sets out the short title and citation, and provides for the commencement of various provisions of the Act by the Ministers for Justice, Equality and Law Reform and Social and Family Affairs.

Section 2 is a standard interpretation section defining the primary terms referred to throughout the Bill.

Section 3 defines “civil partner” for the purposes of the Bill.

Part 2 — Status of Civil Partnership

Section 4 confers power on the court to make declarations as to the status of a civil partnership in order to ensure that any question as to the validity of a civil partnership or the validity of a dissolution or a decree of nullity may be examined and ruled on by the court. Either of the parties to the civil partnership in question may make an application under this section. Any other person may do so only if the court is of the opinion that they have a sufficient interest in the matter. The section includes requirements as to domicile, and technical provisions concerning joinder of parties and notice of proceedings. Where a party to the proceedings alleges that the civil partnership is void and should be annulled the court may treat the application as an application for a decree of nullity. Rules of court may make provision as to the information required for an application under the section.

Section 5 confers powers on the Minister for Justice, Equality and Law Reform by order to recognise classes of legal relationships registered outside the State as civil partnerships, and sets out criteria that such classes of foreign legal relationship must meet in order to be recognised. All such orders must be laid before the Houses of the Oireachtas.

Part 3 — Registration of Civil Partnership

Section 6 defines “Act of 2004” as the Civil Registration Act 2004 for the purposes of Part 3.

Section 7 amends section 2 of the Act of 2004, and provides additional definitions relating to civil partnership registration for the purposes of that Act (*subsection (1)*), including a definition of “civil status” which replaces “marital status”. This definition is used for technical reasons to ensure that the data entered in registers is complete and accurate. An amendment is made to the impediments to marriage to ensure that a person cannot marry if he or she is already registered in a civil partnership that has not been dissolved (*subsection (2)*). The impediments to civil partnership are also prescribed (*subsection (3)*).

Section 8 amends section 8 of the Act of 2004 to extend the functions of the Civil Registration Service to registration of civil partnerships, registration of decrees of dissolution of civil partnerships and decrees of nullity of civil partnerships.

Section 9 amends section 13 of the Act of 2004 to extend the range of registers to be maintained by an tArd-Chláraitheoir to include a register of civil partnership, a register of decrees of dissolution and a register of nullity of civil partnership.

Section 10 amends section 17 of the Act of 2004 to provide that “civil partnerships” shall be included in the list of registration responsibilities of a registrar.

Section 11 amends section 22 of the Act of 2004 to change the reference to “nullity” to “nullity of marriage”. This is necessary because provision is made in the Bill for nullity of civil partnership and the reference in section 22 of the Act of 2004 must be unambiguously to nullity of marriage as the section refers to registration of a child’s biological parents.

Section 12 amends section 23 of the Act of 2004 to change the reference to “nullity” to “nullity of marriage”. This is necessary because provision is made in the Bill for nullity of civil partnership and the reference in section 23 of the Act of 2004 must be unambiguously to nullity of marriage as the section refers to re-registration of a child’s birth to include the name of the biological father.

Section 13 amends section 37 of the Act of 2004 to ensure that where a deceased person was in a civil partnership the primary responsibility for notifying the death to an tArd-Chláraitheoir is given to the surviving civil partner.

Section 14 amends section 46 of the Act of 2004 to replace “marital status” in subsection (7) with “civil status”.

Section 15 amends section 59 of the Act of 2004, and changes the references to “nullity” in subsection (2) to “nullity of marriage”. This is required because provision is made in the Bill for nullity of civil partnership and the reference in section 59 of the Act of 2004 must be unambiguously to nullity of marriage, as separate provision is made for registration of decrees of nullity of civil partnership.

Section 16 inserts a new Part 7A into the Act of 2004. Part 7A sets out the formalities for registration of a civil partnership:

Effect of inserted sections

Section 59A provides definitions for the purposes of *Part 7A*.

Section 59B sets out the notification requirements for the registration of a civil partnership, and the information that must be provided to a registrar. It provides for an exemption from the minimum notification period, on application to the Circuit Court or the High Court, and the Court may provide such an exemption if satisfied that this is in the interests of the parties (for example, urgency due to serious illness of either party).

Section 59C provides for completion of a civil partnership registration form, which is a prerequisite for registration of a civil partnership. The Minister for Social and Family Affairs may prescribe the civil partnership registration form.

Section 59D requires, in subsection (1), that the declarations to be made by civil partners shall be made by the civil partners in the presence of each other, the registrar and witnesses in a place open to the public unless one or both parties is too ill to attend at such a place and the registrar gives her or his approval to the registration taking place at another venue. The

declarations to be made are set out at subsection (3) and must be made and understood in order for the civil partnership registration to be valid. These formalities may be completed either by the witnessed signing of the registration form in accordance with subsection (1), or after taking part in a ceremony in a form approved by an tArd-Chláraitheoir in accordance with subsection (5).

Section 59E sets out where a civil partnership may be registered, the fees and expenses chargeable for a registration at a place other than the office of a registrar, and provides the legal basis for recovery of fees if they are not paid.

Section 59F provides the basis for objecting to a civil partnership registration, establishes the procedures to be followed by a registrar where an objection is received, the action to be taken by an tArd-Chláraitheoir where a registration proceeds notwithstanding the receipt of a valid objection, and allows the party or parties to appeal a decision to the Circuit Court.

Section 59G sets out the requirements for translation or interpretation where necessary to ensure that a party to a civil partnership or a witness who is not proficient in the language of registration can understand the registration documents or declarations.

Section 59H provides that after making the declarations set down in *section 59D* the parties shall be civil partners and entitled to all the duties and benefits that accrue under the Bill or any other law.

Section 59I provides that the Part shall have effect in the event of any conflict of laws.

Section 17 inserts a new Part 7B in the Act of 2004 (*section 59J*), to provide for the registration by an officer of the Courts Service of decrees of dissolution of civil partnership or decrees of nullity of civil partnership.

Section 18 amends section 60(1) of the Act of 2004 to ensure that where a registrar fails or refuses to register a civil partnership the parties to the civil partnership are informed by an tArd-Chláraitheoir of the fact and the reasons for it.

Section 19 amends section 64 of the Act of 2004 to ensure that where a civil partnership is registered but the formalities were not completed in accordance with the requirements of section 59B of the Act of 2004 (as inserted by *section 16*), or there was an impediment to the civil partnership within the meaning of section 2(2A) of the Act of 2004 (as inserted by *section 7(3)*), the entry shall be cancelled on the direction of an tArd-Chláraitheoir and the parties to the putative civil partnership notified of the cancellation.

Section 20 amends section 65 of the Act of 2004 to ensure that an tArd-Chláraitheoir may conduct an enquiry into the registration of a civil partnership to ascertain whether it has been correctly registered and to make any correction required.

Section 21 amends section 66 of the Act of 2004 to enable an tArd-Chláraitheoir to give other specified persons information concerning civil partnership registrations, decrees of nullity of civil partnership and decrees of dissolution for a range of specified purposes.

Section 22 amends section 69 of the Act of 2004, concerning offences. It shall be an offence for a registrar to fail or refuse to register a civil partnership without reasonable cause; for a registrar to fail or refuse without reasonable cause to issue a civil partnership registration form where correct notification has been provided; for a registrar to register or to be a party to a civil partnership in which the correct formalities under section 59B (as inserted by *section 16*) are not complied with; for a person to lodge an objection to a civil partnership which that person knows to be without foundation; or for a person who is not a registrar to delete or alter information about the parties to a civil partnership on a civil partnership registration form.

Section 23 amends section 70 of the Act of 2004 to provide that a registrar who fails or refuses to issue a civil partnership form without reasonable cause shall be, on summary conviction, liable to a fine of up to €2,000 or imprisonment for up to six months, or both.

Section 24 amends section 73 of the Act of 2004 to enable the collection of data on registered civil partnerships for the purposes of compiling vital statistics.

Section 25 amends the First Schedule to the Act of 2004 by the replacement of “marital status” with “civil status”, and by inserting a new Part 5A in the schedule, specifying the details which must be entered in the register of civil partnerships; a new Part 6A specifying the details which must be entered in the register of dissolutions, and a new Part 7A specifying the details which must be entered in the register of decrees of nullity of civil partnership.

Section 26 inserts a new Third Schedule in the Act of 2004, which specifies the prohibited degrees of relationship for the purposes of registering in a civil partnership.

Part 4 — Shared Home Protection

Section 27 provides definitions for the purposes of the Part, including that a “shared home” is the dwelling in which civil partners ordinarily reside.

Section 28 establishes that the conveyance of a shared home by one civil partner is not valid if the written consent of the other civil partner has not been obtained in advance (*subsection (1)*), but that does not apply if a contractual agreement had been made prior to the civil partnership registration (*subsection (2)*). A conveyance is not necessarily void if it is for market value, if it is made by a person other than the civil partner to a purchaser, or if its validity depends on a prior conveyance (*subsection (3)*). Where the validity of a conveyance is queried, the burden of proof is on the person alleging that the conveyance is not valid (*subsection (4)*). *Subsections (5)* and *(6)* provide definitions for the purposes of the section. *Subsection (7)* makes a minor technical amendment to Section 3 of the Conveyancing Act 1882. *Subsection (8)* provides that proceedings may not normally be taken to have a conveyance declared void more than 6 years after the date of that conveyance. *Subsection (9)* gives an exception to the general rule of *subsection (8)* where the civil partner has stayed in occupation of the shared home during the whole period from the contested conveyance up to the time when proceedings are commenced. *Subsection (10)* provides that the general rule of *subsection (8)* is without prejudice to any other remedies at law a civil partner may pursue if the disputed conveyance has taken place more than six years ago. *Subsection (11)* provides that a conveyance is deemed to be valid unless the court has declared

it otherwise after proceedings instituted under *subsection (8)*, or the parties to the conveyance state in writing that it is void within six years of the date of conveyance. *Subsection (12)* requires that where the parties to the conveyance state in writing that the conveyance was void, a copy of the statement must be provided to the Property Registration Authority for appropriate registration within that six year time limit.

Subsection (13) provides for the manner in which details must be provided to the court where proceedings are initiated to have a conveyance declared void. *Subsection (14)* provides that a general consent by a civil partner to any future disposal of a shared home shall be a sufficient prior consent to a conveyance if the consent pre-dates any deed of conveyance.

Section 29 enables the court to dispense with the consent of a civil partner for the conveyance of a shared home where a civil partner omits or refuses to consent (*subsection (1)*). The court may do so only where it finds that withholding consent is unreasonable in all the circumstances (*subsection (2)*). The court shall dispense with the consent if a civil partner cannot be found and it believes it reasonable to do so (*subsection (3)*). If a civil partner does not have the mental capacity to consent and the court considers it reasonable to do so, it may give consent on that person's behalf (*subsection (4)*).

Section 30 allows a civil partner to apply to court for orders restraining the other civil partner from conduct which could reduce the interest in the shared home or making it unsuitable for the applicant civil partner to live in (*subsection (1)*). Where conduct by one civil partner has caused a loss in interest in the shared home or it has been made unsuitable for the applicant civil partner to live in, the court may order the other civil partner to pay the applicant compensation for the loss or make any other order it sees fit.

Section 31 provides that payments made by either civil partner for shared home outgoings satisfy the liability of the other (*subsection (1)*), but that this does not affect any claim that may be made by one civil partner against the other to an interest in the shared home (*subsection (2)*).

Section 32 allows the court to adjourn proceedings brought by a mortgagee or lessor against a civil partner for non-payment and seeking possession or sale of the shared home, where the other civil partner is capable of and willing to make those payments and the court considers that it is in the interests of all the parties (*subsection (1)*). One of the factors which the court must consider in deciding whether or not to adjourn the proceedings is whether the other civil partner has previously been informed of the non-payment (*subsection (2)*).

Section 33 allows the court to nullify certain provisions of a mortgage or lease agreement under which money would be due if that money is other than the normal periodical payment under the lease or mortgage agreement. This is only where proceedings have been adjourned under *section 32* and all arrears of the normal periodical payments have been paid off and the court considers it likely that future payments are likely to be made.

Section 34 allows the court to prohibit a civil partner from disposing of or removing household chattels such as household goods, furniture, fixtures, etc., from the shared home if it believes that their removal would make it difficult for the applicant civil partner to continue to live there (*subsection (1)*). Where dissolution proceedings are under way, neither civil partner may remove

household chattels without the consent of the other unless the court allows one of them to do so (*subsection (2)*). If either civil partner removes household chattels without the permission of the other or of the court, it is an offence and he or she may be liable to a fine of up to €127 or imprisonment for up to six months or both (*subsection (3)*). On application by the other civil partner, the court may require a civil partner who has removed household chattels either to replace those items or to pay a sum of money to the other civil partner in order to put her or him as nearly as possible in the position she or he was before removal of the items (*subsection (4)*). The court may make orders directed at a third person to whom a civil partner proposes to dispose or sell household chattels where that person has been informed in advance of proceedings and in writing by the applicant civil partner (*subsection (5)*). “Household chattels” is defined for the purposes of the section (*subsection (6)*).

Section 35 provides that each of the civil partners and any third person who may have an interest in the proceedings may be joined in proceedings either by service of a third-party notice by an existing party to proceedings or by direction of the court.

Section 36 provides that a civil partner may by notice inform the Property Registration Authority that he or she is the civil partner of a property owner, and that the notice shall be registered in the appropriate registry with no fee or stamp duty. However, it may not be assumed from the lack of such a notice that a property owner is not a civil partner.

Section 37 is a technical provision to the effect that this Part does not have to be noted on the register as restricting dealings in land.

Section 38 provides for offences. It is an offence for a person who has an interest in premises to knowingly give false or misleading information to a prospective buyer or a person acting on her or his behalf as to whether a civil partner’s consent is or was required to be given for a conveyance. A person who commits such an offence may be liable on summary conviction to a fine of €254, or imprisonment for up to twelve months, or both, or, on conviction on indictment to imprisonment for up to five years.

Section 39 amends the Residential Tenancies Act 2004 to extend to civil partners the provisions relating to spouses, and in particular to allow a person to take over a tenancy on the death of his or her civil partner on the same terms and conditions which previously applied.

Section 40 amends the Housing (Private Rented Dwellings) Act 1982 to allow the civil partner of a person holding a tenancy under that Act to inherit the tenancy on the tenant’s death.

Section 41 amends the Civil Legal Aid Act 1995 to provide that, subject to the other provisions generally in that Act, legal aid may be granted in relation to legal disputes between civil partners concerning property under this Part or generally.

Part 5 — Maintenance of Civil Partner

Section 42 provides definitions for the purposes of this Part.

Section 43 provides that periodical payments under an order may only commence from a date not earlier than the date of the application for the order.

Section 44 allows the court on application by a civil partner to order the other civil partner to make maintenance payments to support the applicant at a level and for the duration the court deems appropriate where the other civil partner has failed to provide proper maintenance (*subsection (1)*). Such payments may not be ordered where the applicant has deserted the other civil partner unless the court has reason to believe that in all the circumstances of the case it would be seriously unjust not to make the order (*subsection (2)*). Factors which a court must consider in deciding whether to make a maintenance order, and for how much, include the income; and assets of each partner; their responsibilities to each other, to any dependent children of either and to any former spouse or former civil partner; and the conduct of each of them if it would be unjust not to take that into account (*subsection (3)*).

Section 45 confers power on the court to discharge a maintenance order not less than a year after it is made, on the application of the maintenance debtor, if it this will not prejudice the civil partner to whom the payments have been made, having regard to the debtor's payment record and to the other circumstances of the case (*subsection (1)*). The court may discharge or vary a maintenance order at any time, on the application of either party, if circumstances change or the information available in relation to the parties changes (*subsection (2)*). The court must discharge a maintenance order, on application, where the civil partner receiving the payments deserts the other civil partner, unless having regard to all the circumstances of the case the court is of the opinion that it would be unjust to do so (*subsection (3)*).

Section 46 allows the court to make an interim maintenance order for the benefit of one civil partner, pending the adjudication of the case.

Section 47 allows the court to make orders which make a provision in a written agreement between civil partners a rule of court, so that any agreement in relation to maintenance payments is enforceable as a maintenance order under the Bill.

Section 48 enables the court on application by either civil partner, where the civil partners have made an enforceable written agreement as referred to in *section 47*, to direct the trustees of a pension scheme to disregard the fact that two civil partners are living apart for the purposes of any pension or benefit where it would normally be required that they be cohabiting in order to qualify for the relevant benefit (*subsection (1)*). An applicant must give notice to the pension scheme's trustees and in considering the application the court must consider both any other orders it has made or intends to make under *section 47* and any representations made by the trustees (*subsection (2)*). The court may make orders for costs in relation to the trustees' expenses in complying with an order (*subsection (3)*).

Section 49 allows the court to require that maintenance payments be made to the District Court clerk either when it first makes the order or at a subsequent time (*subsection (1)*) and the payments must be forwarded by the clerk to the maintenance creditor (*subsection (4)*). Where payments due are not made, the clerk may take steps to recover the debt including by seeking an attachment of earnings order (*subsection (2)*), but this does not affect the maintenance

creditor's right to take proceedings (*subsection (5)*). Where a maintenance debtor is making payments through the District Court clerk on direction of the court, and applies to have the direction discharged, the court may do so if it deems it appropriate in the circumstances, including the record of payments made (*subsection (3)*).

Part 6 — Attachment of earnings

Section 50 provides definitions for the purposes of the Part (*subsection (1)*), and empowers the court on application to make an attachment of earnings order for the purpose of securing payments under a maintenance order (*subsection (2)*). A court that makes or varies a maintenance order may make an attachment of earnings order in the same proceedings (*subsection (3)*). Payments under an attachment of earnings order are to be paid to the District Court clerk for transmission to the maintenance creditor or directly to the creditor, as specified in the order (*subsection (4)*). Before deciding whether to make an attachment of earnings order the court must afford the debtor an opportunity to make representations (*subsection (5)*), and the order must be sufficiently detailed to allow the employer identify the debtor (*subsection (6)*). Payments under an attachment of earnings order are in lieu of unpaid amounts that would be payable under an antecedent order (*subsection (7)*).

Section 51 provides that an attachment of earnings order must be served on the relevant employer (*subsection (1)*) at the employer's home or place of business (*subsection (2)*). An employer must comply with the order but is not liable for non-compliance before ten days have elapsed since service of the order (*subsection (3)*). If the employer is not, or ceases to be, the employer of the maintenance debtor, he or she must so inform the court within ten days (*subsection (4)*). The employer must give the maintenance debtor written statements of the payments deducted from his or her pay in order to comply with the order (*subsection (5)*).

Section 52 provides that payments under an attachment of earnings order shall discharge the maintenance debtor's liability in respect of a relevant order, and her or his liability in respect of costs of any related proceedings, in that order.

Section 53 obliges the maintenance debtor to supply to the court if it so orders a signed written statement detailing his or her employers, expected earnings, resources and needs, and sufficient particulars to allow his or her employer(s) to identify him or her, and requires an employer, on the order of the court, to give the court a signed statement of the maintenance debtor's earnings and expected earnings (*subsection (1)*). Notice of an application for an attachment of earnings order served on the maintenance debtor may require him or her to provide details of his or her employers, expected earnings, resources and needs, and sufficient particulars to allow his or her employer(s) to identify him or her, and any other matters relevant to the calculation of the normal deduction rate and the protected earnings rate to be specified (*subsection (2)*). A statement given under this section is admissible as evidence of fact in proceedings in relation to an attachment of earnings order unless proven otherwise (*subsection (3)*).

Section 54 Where an attachment of earnings order is in force a maintenance debtor must notify the court within ten days of every change in employer or employment status, and an employer must notify the court that he is the debtor's employer within ten days of the later of becoming the debtor's employer and the date of

becoming aware that an attachment of earnings order is in force. Such notices must include particulars of the debtor's earnings and expected earnings.

Section 55 empowers the court, on application by any of the maintenance debtor, or her or his employer or the maintenance creditor, to rule on whether certain types of payments are earnings for the purposes of an attachment of earnings order in force (*subsection (1)*). The employer is not liable for non-compliance in relation to such payments until an application by the employer or any appeal has been determined by the court (*subsection (2)*). The exemption from liability for non-compliance does not apply if the employer withdraws an application or abandons an appeal (*subsection (3)*).

Section 56 specifies that for employees of the State or of certain state bodies (*subsection (1)*), specified persons are to be regarded, for the purposes of making an attachment of earnings order, as the relevant employer (*subsection (2)*). A question as to who should be regarded as the employer may be referred to the Minister for Finance for determination but the Minister is not obliged to respond unless the matter is referred to him or her by the court (*subsection (3)*). A document represented as an accurate statement of a determination by the Minister is admissible as such in evidence unless proven otherwise (*subsection (4)*).

Section 57 allows the court to discharge or vary an attachment of earnings order on the application of the maintenance creditor, the maintenance debtor, or the District Court clerk through whom payments are transmitted (*subsection (1)*). Where an attachment of earnings order is varied, an employer must comply with the varied order but is not liable for non-compliance before ten days have elapsed since service of the order (*subsection (2)*). If an employer ceases to be the employer of the maintenance debtor, the order lapses in relation to that employer except in relation to any earnings paid to the maintenance debtor after her or his employment with that employer ceases (*subsection (3)*). Where an attachment of earnings order lapses in relation to a specified employer, it may remain in force in relation to any other employer of the maintenance debtor (*subsection (4)*).

Section 58 provides that where a maintenance order is discharged, an attachment of earnings order is also discharged except in relation to any payments due but not made before the date of discharge of the maintenance order (*subsection (1)*). The clerk or registrar of the court that made the attachment of earnings order shall inform the employer that it no longer has effect (*subsection (2)*).

Section 59 provides that the making of an attachment of earnings order causes proceedings commenced or an order made or warrant issued under the Enforcement of Court Orders Act 1940 for recovery of sums due to lapse (*subsection (1)*). When an order is made under the Enforcement of Court Orders Act 1940 for recovery of sums due, any attachment of earnings order in force no longer has effect (*subsection (2)*).

Section 60 allows a maintenance creditor to seek to recover unpaid sums under an attachment of earnings order as a simple contract debt, if the sums remain unpaid because a maintenance debtor or employer failed to give the appropriate notice of a change in employment or correct statements in relation to earnings, or gave a false or misleading statement as to earnings or employment by a specified employer (*subsection (1)*). It is an offence punishable on

summary conviction by a fine of up to €254 or imprisonment for up to six months, or both, for a maintenance debtor or employer to deliberately deceive the court in relation to the maintenance debtor's earnings or employment (*subsection (2)*). It is an offence punishable on summary conviction by a fine of up to €63 for an employer not to give proper written statement of deductions from earnings to a maintenance debtor (*subsection (3)*).

Part 7 — Miscellaneous Provisions relating to Parts 5 and 6

Section 61 provides that payments made by a maintenance debtor under a maintenance order (including any variation), an interim order, an enforceable maintenance agreement or an attachment of earnings order shall be made without deduction of tax.

Section 62 extends the provisions of section 8 of the Enforcement of Court Orders Act 1940, which provides remedies for non-payment of certain forms of maintenance, to sums falling due under maintenance orders within the meaning of the Civil Partnership Bill.

Section 63 provides that any property or interest in property acquired by one civil partner from a household allowance made by one civil partner to the other will belong equally to both civil partners unless they agree otherwise.

Section 64 prevents an agreement between civil partners from being enforceable if that agreement excludes or limits the operation of any provisions in Part 5 or Part 6.

Part 8 — Succession

Section 65 provides that “Act of 1965” means the Succession Act 1965 in this Part.

Section 66 inserts a definition of “civil partner” into the Act of 1965, and substitutes the definition of “legal right” so as to provide for the legal right of a spouse and the legal right of a civil partner.

Section 67 amends section 56 of the Act of 1965 to provide that where a civil partner dies, the surviving civil partner may, if residing there at the time of the deceased's death, claim his or her home and household effects, if the home was owned by the deceased civil partner, in satisfaction or partial satisfaction of the legal right share of the surviving civil partner in the estate and subject to the general provisions and limitations imposed by that section.

Section 68 amends section 58(6) of the Act of 1965 to provide that a civil partner who is the trustee of an infant's property, having appropriated it as a legal right, may pay or apply the capital of any share in the estate for the infant's benefit.

Section 69 amends section 67 of the Act of 1965, consequent on section 70 of the Bill.

Section 70 inserts new sections 67A and 67B in the Act of 1965. Section 67A provides for the distribution on intestacy in relation to a deceased civil partner. This operates so as to provide that where a person dies leaving a civil partner and no issue, the surviving civil partner takes the whole estate (*subsection (1)*); where a person dies leaving a civil partner and issue the surviving civil partner takes two-thirds of the estate and the remainder is distributed among the issue in accordance with section 67B(2). *Subsection (3)* allows a right of application to the courts by a child of the deceased for provision from the estate of the deceased which would vary the distribution, if

the court is of the opinion that it would be unjust not to make such provision after consideration of all the circumstances; however, the shares of other children of the deceased may not be reduced by an order made in favour of one of them, and the amount which the applicant child may be awarded may not exceed the amount to which he or she would have been entitled had the deceased died leaving no spouse and no civil partner (*subsection (4)*). Rules of court will provide for conduct of proceedings in a summary manner (*subsection (5)*); costs are at the discretion of the court (*subsection (6)*); and any application must be made within six months of the extraction of a grant of representation (*subsection (7)*). Section 67B provides for the shares of issue where an intestate dies leaving no spouse and no civil partner.

Sections 71 to 73 amend sections 68 to 70 of the Act of 1965 to insert additional rules of distribution on intestacy.

Section 74 amends section 82(1) of the Act of 1965 to ensure that the rule that any bequest under a will is void if it is made to a witness of the will or his or her spouse will also apply in relation to a bequest made to a witness's civil partner under the will.

Section 75 amends section 83 of the Act of 1965 to ensure that the rule that where a witness to a will is a creditor of the testator, or the spouse of a creditor, the creditor is still a valid witness to the execution of the will, shall also apply in relation to a civil partner of a creditor.

Section 76 amends section 85(1) of the Act of 1965 to ensure that where a will is made prior to registration in a civil partnership it is revoked by the registration unless it is expressly made in contemplation of that registration.

Section 77 amends section 109(1) of the Act of 1965 and applies the provisions of Part IX of that Act, concerning the legal right of certain persons, to the surviving civil partner of a deceased person.

Section 78 inserts a new section 111A in the Act of 1965 defining the legal right of a surviving civil partner, which shall be to half of the estate if the testator dies leaving a civil partner and no children (*subsection (1)*), or to a third of the estate if the testator dies leaving a civil partner and children (*subsection (2)*).

Section 79 amends section 112 of the Act of 1965 to ensure that the legal right of a civil partner has priority over devises and bequests or over shares on intestacy.

Section 80 inserts a new section 113A in the Act of 1965, to provide that a civil partner may renounce his or her legal right in a written agreement made between the parties before registration or in writing after registration and during the lifetime of the testator.

Section 81 amends section 114 of the Act of 1965 on interpretation of devises or bequests and in particular whether they constitute a part of or are in addition to the legal right of the spouse, and the effect of the amendment is to apply the same rules to civil partners as apply for spouses.

Section 82 amends section 115 of the Act of 1965 to apply the same rules to civil partners as apply to spouses in relation to election between legal rights and rights under a will on partial testacy.

Section 83 inserts a new subsection 3A in section 117 of the Act of 1965 to protect the legal right of a surviving civil partner from any claim made against the estate of a deceased civil partner by a child of the deceased on the basis that proper provision was not made for the child, unless the court is of the opinion that it would be unjust not to make an order in favour of the child.

Section 84 amends section 120 of the Act of 1965 which excludes certain persons from succession. The amendment excludes a civil partner who has deserted the other civil partner for two or more years up to the date of that other civil partner's death from inheriting from the deceased either through the will or through the intestacy rules. Desertion in this case includes conduct on the part of the surviving civil partner which had caused the other civil partner to separate from him or her.

Section 85 amends section 121 of the Act of 1965, which provides legal remedies where dispositions of property are made in order to disinherit a spouse or children, to ensure that a civil partner has access to the remedies.

Section 86 amends section 45 of the Statute of Limitations 1957, under which no claim on the estate of a deceased person under a will, on intestacy or under section 111 of the Act of 1965, may be made more than six years after the alleged right accrued. The effect of the amendment is to ensure this limitation also applies to any action relating to the legal right of a civil partner under section 111A of the Act of 1965 as inserted by *section 78*.

Part 9 — Domestic Violence

Section 87 defines “Act of 1996” as the Domestic Violence Act 1996 for the purposes of Part 9, and *section 88* inserts definitions into the Act.

Section 89 amends section 2 of the Act of 1996 to include a civil partner or former civil partner as persons who may apply for a safety order.

Section 90 amends section 3 of the Act of 1996 to include a civil partner or former civil partner as persons who may apply for a barring order.

Section 91 inserts a new section 8A in the Act of 1996 to restrict the right of either civil partner to remove household chattels without the consent of the other civil partner while an application for a safety order or a barring order is pending or an order is in force (*subsection (1)*). The court that has jurisdiction over the application for the safety order or barring order also has jurisdiction to permit either of the civil partners to dispose of household chattels (*subsection (2)*).

Section 92 amends section 9 of the Act of 1996, to give the court power to make additional orders when an application is made for a safety order or a barring order. These are orders to protect the applicant's interest in a shared home, orders restricting the disposal of household chattels or a maintenance order.

Section 93 amends section 13(2) of the Act of 1996, to allow the court to discharge any safety order, barring order, interim barring order, or protection order when it determines dissolution or annulment proceedings between the civil partners.

Part 10 — Miscellaneous Consequences of Civil Partnership Registration

Section 94 provides that under any rule of law or enactment a civil partner must be treated as a “connected person” or “connected relative” in determining matters concerning ethics and conflicts of interest, and that a declaration of interest in relation to a spouse must likewise be made in relation to a civil partner. Detailed amendments to specific Acts are provided for in *Part 1* of the *Schedule*.

Section 95 amends the Mental Health Act 2001 to extend to civil partners the provisions relating to spouses for involuntary admission to approved centres and treatment.

Section 96 provides that a pension scheme which provides a benefit for a spouse is deemed equally to provide a benefit for a civil partner. Detailed amendments to specific Acts are provided for in *Part 2* of the *Schedule*.

Section 97 provides that specified sections of the Pensions Act 1990, as amended, be construed as applying to pension adjustment orders in respect of civil partners made under *sections 119 to 124* of this Bill.

Section 98 further amends the Pensions Act 1990 to assign the function to the Pensions Board to issue guidelines in relation to pension adjustment orders and to replace the definition of “marital status” with “civil status”.

Section 99 amends the Criminal Damage Act 1991 to provide that damage by a person to the shared or formerly shared home in which the person lives or lived with a civil partner or former civil partner is an offence. It also makes it an offence to damage the shared home from which the person is excluded by a barring order or interim barring order.

Section 100 amends the Employment Equality Act 1998 by substituting the term “civil status” for “marital status” throughout so that the statutory obligation not to discriminate against a person in employment matters on the ground that the person is single, married, separated, divorced or widowed is extended to prohibit discrimination against a person based on the person being in a registered civil partnership, or formerly in a registered civil partnership which has been dissolved.

Section 101 amends the Equal Status Act 2000 by substituting the term “civil status” for “marital status” throughout so that the general statutory obligation not to discriminate against a person on the ground that the person is single, married, separated, divorced or widowed is extended to protect a person from discrimination based on the person being in a registered civil partnership, or formerly in a registered civil partnership which has been dissolved.

Section 102 amends the Powers of Attorney Act 1996 and in general provides that a person’s civil partner must be informed on the registration of an enduring power of attorney. It also provides that an enduring power of attorney in favour of a person’s civil partner is invalidated by the nullity or dissolution of the civil partnership (unless otherwise expressly provided), by the separation of the civil partners or by the making of a protection order, an interim barring order, a safety order or a barring order against one of the civil partners on the application of the other.

Section 103 amends the Civil Liability Act 1961 to add civil partner to the list of dependents in respect of whom a person may sue for damages for wrongful death.

Section 104 provides that a civil partner or civil partners may apply to court to resolve a property dispute between them, and provides that in certain circumstances the child of a deceased civil partner may apply for resolution of a property dispute between the child and the surviving civil partner.

Part 11 — Nullity of Civil Partnership

Section 105 confers power on the court to grant a decree of nullity of civil partnership, and sets out the grounds on which a civil partnership is rendered void.

Section 106 provides that the effect of a decree of nullity is that the civil partnership is declared not to have existed (*subsection (1)*), except that the rights of any person who relied on the existence of the civil partnership are not prejudiced by a subsequent decree of nullity (*subsection (2)*).

Part 12 — Dissolution of Civil Partnership

Section 107 provides definitions for the purposes of the Part.

Section 108 confers power on the court to grant a decree of dissolution of civil partnership, provided the civil partners have lived apart for a period of, or periods amounting to, at least two years during the previous three years, and that proper provision is made for each of them.

Section 109 provides that the court may adjourn dissolution proceedings to allow the civil partners to attempt to reconcile, or to agree the terms of dissolution (*subsection (1)*). The civil partners, or either of them, may request resumption of proceedings at any stage (*subsection (2)*). The court may advise the civil partners to seek the assistance of a mediator or other third person to reconcile or agree terms of dissolution (*subsection (4)*).

Section 110 provides that communications between either or both of the civil partners and a third person concerning possible reconciliation or agreed terms of dissolution are not admissible as evidence in court.

Section 111 provides that the effect of a decree of dissolution is to dissolve the civil partnership, and each of the civil partners is free to register in a new civil partnership or to marry.

Section 112 clarifies that references to “civil partner” in orders made under the Part include a person who was a civil partner until the civil partnership was dissolved.

Section 113 provides that before deciding to grant a decree of dissolution the court may, in the same proceedings and without the institution of proceedings under another Act, decide to grant a safety order, a barring order, an interim barring order or a protection order, or an order to protect the interest of either or both civil partners in the shared home, or an order restricting the disposal of household chattels.

Section 114 empowers the court to make an interim maintenance order for the benefit of one of the civil partners until dissolution proceedings are determined.

Section 115 gives the court, on granting a decree of dissolution or at any time afterwards, power to make orders that either of the civil partners make periodical payments, secured periodical payments or a lump sum payment to the other (*subsections (1) and (2)*), and that an order lapses where the civil partner in whose favour it was made registers in a new civil partnership or marries (*subsection (5)*). An order cannot be made in favour of a civil partner who has registered in a new civil partnership or married (*subsection (6)*). The court may also make an attachment of earnings order if it deems it necessary (*subsection (7)*).

Section 116 confers power on the court, on granting a decree of dissolution or at any time afterwards, to make a property adjustment order to transfer property or a share of property to one of the civil partners from the other (*subsection (1)*), but such an order may not be made for the benefit of a civil partner who has registered in a new civil partnership or married (*subsection (3)*). It provides for technicalities regarding property registration (*subsections (4) and (5)*), and powers for the court where a person does not comply with a property adjustment order (*subsections (6) and (7)*). Costs incurred in complying with an order under this section are at the discretion of the court (*subsection (8)*). A property adjustment order may not be made over a shared home in which one of the civil partners lives with a new civil partner or a family home in which one of the civil partners lives with a spouse (*subsection (9)*).

Section 117 provides that the court may make a variety of orders, at the time of granting a decree of dissolution or afterwards, including giving one of the civil partners the sole right of occupancy of the shared home for life or for a period the court may define, or directing the sale of the shared home and the division of the proceeds, orders to protect the interest of either or both civil partners in the shared home, altering terms of a mortgage, restricting rights to dispose of household chattels or determining any other property dispute between the civil partners, orders under the Domestic Violence Acts, or an order for partition of property (*subsection (1)*). Factors the court must consider in making such an order or orders are set out in *subsection (2)*, including that suitable accommodation must be provided for a dependent civil partner. An order conferring sole right of occupancy in the shared home or an order for sale of the shared or family home may not be made where the relevant property is a shared or family home in which one of the civil partners lives with a new civil partner or with a spouse (*subsection (3)*).

Section 118 provides that, at the time of granting a decree of dissolution or afterwards, the court may make one or more financial orders requiring a civil partner to put in place a life insurance policy and to assign all or a specified part of the benefit to the other civil partner (*subsection (1)*). This is to provide the other civil partner with financial security and takes into account that, because of dissolution of the civil partnership, that civil partner may not receive benefits such as pension benefits (*subsection (2)*). Such an order may be made in addition to or in substitution for orders for periodical payments or lump sum payments, property adjustment orders or other property related orders or pension adjustment orders (*subsection (3)*). An order lapses if the beneficiary registers in a new civil partnership, marries or dies, and an order may not be made for the benefit of a civil partner who has registered in a new civil partnership or married (*subsections (4) and (5)*).

Section 119 empowers the court, on application by a civil partner, at the time of granting a decree of dissolution or afterwards to make a pension adjustment order which reserves part of the pension of the

other civil partner for the benefit of the applicant (*subsection (2)*). An order made must specify the period of reckonable service and the percentage of the benefit accrued during that service that is to be reserved to the applicant civil partner (*subsection (3)*). Where the court makes a pension adjustment order, the applicant civil partner is entitled to a transfer amount from the other civil partner's pension fund (*subsection (4)*). The court may, on granting a decree of dissolution or within a year afterwards, make an order concerning a contingent benefit payable under a pension scheme (*subsection (5)*). A pension adjustment order may not be made in favour of a civil partner who has registered in a new civil partnership or married (*subsection (6)*). The court may make a pension adjustment order in addition to or in substitution for orders for periodical payments or lump sum payments, property adjustment orders or other property related orders or an order requiring a civil partner to put in place or maintain a life insurance policy for the benefit of the applicant (*subsection (7)*). The court may, in the pension adjustment order, restrict or exclude the variation of the order under *section 129* (*subsection (8)*).

Section 120 requires that the trustees of a pension scheme be given notice by the applicant civil partner of the application for a pension adjustment order or a variation of a pension adjustment order. When deciding whether to make the order the court must consider representations made by the trustees or by another person given notice (*subsection (1)*). A pension adjustment order lapses if the applicant civil partner registers in a new civil partnership, marries or dies (*subsection (2)*). The court may give directions to the trustees including a direction not to comply with the rules of the scheme or the Pensions Act 1990 (*subsection (3)*).

Section 121 makes detailed rules as to how payments under pension adjustment orders are to be applied by the trustees of pension schemes.

Section 122 provides that payments made under a pension adjustment order are payable from the scheme's resources and under its rules unless the order requires otherwise (*subsection (1)*). The member's retirement and contingent benefits under the scheme are reduced by the amount payable or assigned to the other civil partner (*subsection (2)*). The contingent benefit payable in respect of a civil partner who dies before payment of retirement benefit is reduced by the transfer amount paid to the other civil partner (*subsection (3)*). Once a payment or transfer amount has been correctly paid or applied, the scheme trustees have no further liabilities to the applicant civil partner (*subsection (4)*). Trustees are not liable for any loss or damage caused by their compliance with a court direction rather than the rules of the pension scheme or the Pensions Act 1990 (*subsection (5)*).

Section 123 empowers the court to determine how the trustees' costs in implementing a pension adjustment order are to be paid (*subsection (1)*). Where such costs are due from a civil partner and not paid, the court may authorise the trustees to deduct that amount from that civil partner's benefit under the order or under the scheme, as appropriate (*subsection (2)*).

Section 124 provides for information concerning a pension scheme to be given to relevant persons in accordance with Section 54 of the Pensions Act 1990, including where dissolution proceedings have been instituted (*subsection (1)*). The court may direct that specified information be provided to it by the trustees and to either or both

of the civil partners concerning the benefits and contingent benefits payable under the scheme (*subsection (2)*).

Section 125 provides that the court may make orders to provide for a person from the net estate of his or her deceased civil partner. An application must be made within six months of the granting of representation under the Succession Act 1965 (*subsection (1)*). The court may, after considering the rights of any other person having an interest in the matter, make provision for the applicant if proper provision by other means, including any bequest in a will, was not made in the deceased civil partner's lifetime (*subsections (2) and (4)*). The court may not make an order for the benefit of a surviving civil partner who has registered in a new civil partnership or has married (*subsection (3)*). Where the court makes orders for provision for the applicant, the total value of provisions ordered may not exceed the share to which the applicant would have been entitled as a legal right or under the rules of distribution on intestacy had the couple not obtained a decree of dissolution (*subsection (5)*). Notice requirements are set out (*subsections (6) to (9)*). On application, the court may, if it considers it just to do so, order that either or both civil partners may not apply for an order under this section on the death of the other (*subsection (11)*).

Section 126 empowers the court to order the sale of property owned by one or both civil partners if a secured periodical payments order, a lump sum order, or a property adjustment order is made (*subsection (1)*). A sale of property order may not be made if it would frustrate an order of the court granting a right of residence in the shared home to one of the civil partners (*subsection (2)*). The court may make detailed orders regarding the sale (*subsection (3)*). An order for periodical payments from the proceeds of the sale to be made to one of the civil partners lapses if that civil partner registers in a new civil partnership, marries or dies (*subsection (4)*). The court must consider representations made by a person with a beneficial interest in the property (*subsections (5) and (6)*). This section does not apply to a property which is the shared or family home of one of the civil partners who, following dissolution, has registered in a new civil partnership or has married (*subsection (7)*).

Section 127 sets out the matters that the court must have regard to when making any of: an interim maintenance order, a periodical payments or secured periodical payments order or lump sum order, a property adjustment order, an order conferring a right of residence in the shared home to one of the civil partners or an order for sale of the shared home, an order requiring that a life insurance policy be put in place or maintained by one civil partner for the benefit of the other, a pension adjustment order, an order providing for a civil partner from the estate of a deceased civil partner or an order varying any of those orders (*subsection (1)*). Those matters include the income, earning capacity, resources and needs of each of the civil partners including on registration in a new civil partnership or on marriage, the contributions, financial and otherwise, of each of them, and the rights of others, including a dependent child of either of them (*subsection (2)*). The court is obliged to consider the terms of any separation agreement in existence (*subsection (3)*).

Section 128 empowers the court to make a periodical payments order which is retrospective to the date of institution of proceedings and to direct how any net sums due, which accrued between the date of application and the date of granting the order, be paid, and taking into account any payments made by one civil partner to the other in the intervening period.

Section 129 provides for the variation of a range of ancillary orders (*subsection (1)*), and prescribes who may apply for a variation order, including either of the civil partners, a person with an interest in the matter in the event of the death of one of them, or the new civil partner or the spouse of either civil partner (*subsection (2)*). The scope of the court's powers and related technical provisions are set out (*subsections (3) to (10)*).

Section 130 gives the court power to specify how payments under certain of its orders are to be made.

Section 131 provides that the operation of a maintenance or interim maintenance order, an interim periodical payments order or periodical payments order or relevant variation order shall not be stayed notwithstanding an appeal or further appeal against the order, unless the court expressly provides for a stay.

Section 132 makes provision for amounts due under a maintenance pending suit order, a periodical payments order or secured periodical payments order or one of those orders as varied to be paid and transmitted through the District Court clerk.

Section 133 is a technical provision to allow a sum due under a maintenance pending suit order, a periodical payments order or secured periodical payments order or one of those orders as varied to be deducted from the salary of a member of the Defence Forces.

Section 134 clarifies that the Enforcement of Court Orders Act 1940 applies so that a maintenance order, a variation order, a maintenance pending suit order or a periodical payments order are enforceable under that Act.

Section 135 gives the court powers to set aside a disposition of property where it considers that the disposition was effected in order to prevent a civil partner receiving financial or other benefits by a court order, or to limit the amount of those benefits.

Section 136 allows the court to make orders on costs of mediation or counselling services used by a civil partner or partners in relation to proceedings.

Part 13 — Jurisdiction and other related matters

Section 137 provides definitions for the purposes of Part 13.

Section 138 sets out the jurisdiction of the District, Circuit and High Courts in relation to a variety of civil partnership law proceedings. A civil partner may only bring civil partnership law proceedings if he or she is domiciled in the State or has been ordinarily resident in the State throughout the one-year period ending on the date of initiation of proceedings (*subsection (3)*).

Section 139 provides for notice of civil partnership law proceedings to be given to the other civil partner, and, if the court directs, to another person.

Section 140 requires that where orders for relief or ancillary relief are applied for, each of the civil partners must give the other details of her or his income or property.

Section 141 sets out that civil partnership law proceedings are to be heard by the Circuit Court separately from other Circuit Court proceedings.

Section 142 provides that civil partnership law proceedings shall be as informal as practicable, and that judges, barristers and solicitors may not wear wigs and gowns.

Section 143 provides that civil partnership law proceedings be heard in private.

Section 144 provides that costs in civil partnership law proceedings are at the court's discretion.

Section 145 provides for rules of court in respect of documentation required for the commencement of civil partnership law proceedings in a summary manner.

Part 14 — Other Consequences of Civil Partnership Registration

Section 146 applies the Pension Board's guidelines for making pension adjustment orders to pension adjustment orders under civil partnership law proceedings.

Section 147 defines the Family Law (Divorce) Act 1996 as the "Act of 1996" for the purposes of specified sections of the Bill.

Section 148 amends the Act of 1996 by inserting required definitions.

Section 149 amends section 13 of the Act of 1996 so that a periodical payments or secured periodical payments order for the benefit of a former spouse lapses if that spouse registers in a civil partnership, and to prevent the making of a periodical payments or secured periodical payments order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 150 amends section 14 of the Act of 1996 to prevent the making of a property adjustment order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 151 amends section 16 of the Act of 1996 so that a financial compensation order for the benefit of a former spouse lapses if that spouse registers in a civil partnership, and to prevent the making of a financial compensation order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 152 amends section 17 of the Act of 1996 so that a pension adjustment order for the benefit of a former spouse lapses if that spouse registers in a civil partnership, and to prevent the making of a pension adjustment order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 153 amends section 18 of the Act of 1996 to prevent the making of provision from the estate of a deceased spouse for the benefit of a former spouse who has since registered in a civil partnership. It also includes a person who registered in a civil partnership with a former spouse who subsequently dies as a person who is entitled to be notified of an application for provision from the estate of that deceased spouse.

Section 154 amends section 19 of the Act of 1996 so that an order for periodical payments from the proceeds of a property sale for the benefit of a former spouse lapses if that spouse registers in a civil partnership.

Section 155 amends section 20 of the Act of 1996 to include in the factors a court must have regard to in making orders for the benefit of a former spouse, the financial needs, obligations and responsibilities of each spouse, including on registration in a civil partnership subsequent to divorce.

Section 156 defines the Family Law Act 1995 as the “Act of 1995” for the purposes of the specified sections of the Bill.

Section 157 amends the Act of 1995 by inserting required definitions.

Section 158 amends section 8 of the Act of 1995 so that a periodical payments or secured periodical payments order for the benefit of a former spouse lapses if that spouse registers in a civil partnership, and to prevent the making of a periodical payments or secured periodical payments order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 159 amends section 9 of the Act of 1995 to prevent the making of a property adjustment order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 160 amends section 11 of the Act of 1995 so that a financial compensation order for the benefit of a former spouse lapses if that spouse registers in a civil partnership, and to prevent the making of a financial compensation order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 161 amends section 12 of the Act of 1995 so that a pension adjustment order for the benefit of a former spouse lapses if that spouse registers in a civil partnership, and to prevent the making of a pension adjustment order for the benefit of a former spouse if that spouse has registered in a civil partnership.

Section 162 amends section 15 of the Act of 1995 so that an order for periodical payments from the proceeds of a property sale for the benefit of a former spouse lapses if that spouse registers in a civil partnership.

Section 163 amends section 15A of the Act of 1995 (as inserted by the Family Law (Divorce) Act 1996) to prevent the making of provision from the estate of a deceased spouse for the benefit of a former spouse who has since registered in a civil partnership. It also includes a person who registered in a civil partnership with a former spouse who subsequently dies as a person who is entitled to be notified of an application for provision from the estate of that deceased spouse.

Section 164 amends section 23 of the Act of 1995 so that where a person has registered in a civil partnership after obtaining a divorce outside the jurisdiction, the court may not make a relief order for that person’s benefit in relation to the dissolved marriage. Likewise, a periodical payments or secured periodical payments order in favour of a former spouse who registers in a civil partnership subsequent to obtaining a divorce outside the State lapses on that registration, and a court may not make a property adjustment order in favour of a person who registers in a civil partnership subsequent to obtaining a divorce outside the State.

Section 165 amends section 25 of the Act of 1995 to prevent the making of provision from the estate of a deceased spouse for the benefit of a former spouse who has registered in a civil partnership

subsequent to obtaining a divorce outside the State. It also includes a person who had registered in a civil partnership with a former spouse who subsequently dies as a person who is entitled to be notified of an application for provision from the estate of that deceased spouse.

Section 166 and *Part 3* of the *Schedule* amend specified Acts to extend certain property rights to civil partners as a consequence of registration.

Section 167 and *Part 4* of the *Schedule* amend specified Acts to extend certain rights of redress to civil partners as a consequence of registration.

Section 168 and *Part 5* of the *Schedule* amend specified Acts to extend miscellaneous rights and responsibilities to civil partners as a consequence of registration.

Part 15 — Cohabitants

Section 169 provides definitions for the purposes of the Part.

Section 170 provides that a cohabitant is one of 2 adults, of the same or opposite sex, who live together in an intimate and committed relationship and who are not related within the prohibited degrees of relationship, or married or civil partners of each other (*subsection (1)*). Factors are set out for a court to consider in determining whether 2 adults are cohabitants (*subsection (2)*). *Subsection (3)* clarifies that a relationship does not cease to be an intimate relationship for the purposes of the section merely because it is no longer sexual in nature. The prohibited degrees of relationship are defined (*subsection (4)*). *Subsection (5)* defines a qualified cohabitant for the purposes of applications to court for redress as one of a couple who, at the end of the relationship through death or otherwise, have cohabited for at least three years, or two years where there is a child of the relationship. *Subsection (6)* makes particular provision in the case where one or both of the cohabitants is, or was, during the relationship concerned, married to another person.

Section 171 provides that a qualified cohabitant may apply to court for a range of orders, including a property adjustment order, a maintenance order, and a pension adjustment order (*subsection (1)*). The court may make such orders if it is satisfied that the applicant is financially dependent on the other cohabitant (*subsection (2)*). The court must consider a range of factors including the financial circumstances, needs and obligations of each cohabitant, the rights of others, the duration and nature of the relationship, and the contribution made by each, financial and otherwise (*subsection (3)*). An order may not affect the right of a spouse or former spouse (*subsection (5)*). The court may vary, suspend or discharge an order in the event of changed circumstances (*subsection (6)*).

Section 172 confers power on the court to make a property adjustment order in relation to property owned by a qualified cohabitant for the benefit of the other cohabitant or a dependent child of them, and allows the court to vary the terms of a cohabitant agreement or another settlement relating to ownership of property, for the benefit of either qualified cohabitant or a dependent child (*subsection (1)*). *Subsection (2)* provides that before making an order under this section the court should consider whether an order should be made under *sections 173* or *185*.

Section 173 provides that the court may make a periodical payments or secured periodical payments order or a lump sum order for the benefit of a qualified cohabitant (*subsection (1)*), subject to a range of conditions including the lapse of the order if the qualified cohabitant marries or registers in a civil partnership. The court may also make an attachment of earnings order (*subsection (7)*).

Section 174 provides definitions for the purposes of the *sections 174 to 184 (subsection (1))*, and empowers the court on application to make an attachment of earnings order for the purpose of securing payments under a maintenance order (*subsection (2)*). A court that makes or varies a maintenance order may make an attachment of earnings order in the same proceedings (*subsection (3)*). Payments under an attachment of earnings order are to be paid to the District Court clerk for transmission to the maintenance creditor or directly to the creditor, as specified in the order (*subsection (4)*). Before deciding whether to make an attachment of earnings order the court must afford the debtor an opportunity to make representations (*subsection (5)*), and the order must be sufficiently detailed to allow the employer identify the debtor (*subsection (6)*). Payments under an attachment of earnings order are in substitution for unpaid amounts that would have been payable under another order of the court (*subsection (7)*).

Section 175 provides that notice of an attachment of earnings order must be served on the relevant employer (*subsection (1)*) at the employer's home or place of business (*subsection (2)*). An employer must comply with the order but is not liable for non-compliance before ten days have elapsed since service of the order (*subsection (3)*). If the employer is not, or ceases to be, the employer of the maintenance debtor, he or she must so inform the court within ten days (*subsection (4)*). The employer must give the maintenance debtor written statements of the payments deducted from his or her pay in order to comply with the order (*subsection (5)*).

Section 176 provides that payments under an attachment of earnings order shall discharge the maintenance debtor's liability in respect of a relevant order, and her or his liability in respect of costs of any related proceedings, in that order.

Section 177 obliges the maintenance debtor to supply to the court if it so orders a signed written statement detailing his or her employers, expected earnings, resources and needs, and sufficient particulars to allow his or her employer(s) to identify him or her, and requires an employer, on the order of the court, to give the court a signed statement of the maintenance debtor's earnings and expected earnings (*subsection (1)*). Notice of an application for an attachment of earnings order served on the maintenance debtor may require him or her to provide details of his or her employers, expected earnings, resources and needs, and sufficient particulars to allow his or her employer(s) to identify him or her, and any other matters relevant to the calculation of the normal deduction rate and the protected earnings rate to be specified (*subsection (2)*). A statement given under this section is admissible as evidence of fact in proceedings in relation to an attachment of earnings order unless proven otherwise (*subsection (3)*).

Section 178 Where an attachment of earnings order is in force a maintenance debtor must notify the court within ten days of every change in employer or employment status, and an employer must notify the court that he is the debtor's employer within ten days of the later of becoming the debtor's employer or of becoming aware

that an attachment of earnings order is in force. Such notices must include particulars of the debtor's earnings and expected earnings.

Section 179 empowers the court, on application by any of the maintenance debtor, or her or his employer or the maintenance creditor, to rule on whether certain types of payments are earnings for the purposes of an attachment of earnings order in force (*subsection (1)*). The employer is not liable for non-compliance in relation to the payments until the application or any appeal has been determined by the court (*subsection (2)*). The exemption from liability for non-compliance does not apply if the employer withdraws an application or abandons an appeal (*subsection (3)*).

Section 180 specifies that for employees of the State or of certain state bodies (*subsection (1)*), specified persons are to be regarded, for the purposes of making an attachment of earnings order, as the relevant employer (*subsection (2)*). A question as to who should be regarded as the employer may be referred to the Minister for Finance for determination but the Minister is not obliged to respond unless the matter is referred to him or her by the court (*subsection (3)*). A document represented as an accurate statement of a determination by the Minister is admissible as such in evidence unless proven otherwise (*subsection (4)*).

Section 181 allows the court to discharge or vary an attachment of earnings order on the application of the maintenance creditor, the maintenance debtor, or the District Court clerk through whom payments are transmitted (*subsection (1)*). Where an attachment of earnings order is varied, an employer must comply with the varied order but is not liable for non-compliance before ten days after service of the order (*subsection (2)*). If an employer ceases to be the employer of the maintenance debtor, the order lapses in relation to that employer except in relation to any earnings paid to the maintenance debtor after her or his employment with that employer ceases (*subsection (3)*). Where an attachment of earnings order lapses in relation to a specified employer, it may remain in force in relation to any other employer of the maintenance debtor (*subsection (4)*).

Section 182 provides that where a maintenance order is discharged, an attachment of earnings order is also discharged except in relation to any payments due but not made before the date of discharge of the maintenance order (*subsection (1)*). The clerk or registrar of the court that made the attachment of earnings order shall inform the employer that it no longer has effect (*subsection (2)*).

Section 183 provides that the making of an attachment of earnings order causes proceedings commenced or an order made or warrant issued under the Enforcement of Court Orders Acts 1940 for recovery of sums due (*subsection (1)*) to lapse. When an order is made under the Enforcement of Court Orders Acts 1940 for recovery of sums due, any attachment of earnings order in force no longer has effect (*subsection (2)*).

Section 184 allows a maintenance creditor to seek to recover unpaid sums under an attachment of earnings order as a simple contract debt, if the sums remain unpaid because a maintenance debtor or employer failed to give the appropriate notice of a change in employment or correct statements in relation to earnings, or gave a false or misleading statement as to earnings or employment by a specified employer (*subsection (1)*). It is an offence punishable on summary conviction by a fine of up to €254 or imprisonment for up to six months, or both, for a maintenance debtor or employer to

deliberately deceive the court in relation to the maintenance debtor's earnings or employment (*subsection (2)*). It is an offence punishable on summary conviction by a fine of up to €63 for an employer not to give proper written statement of deductions from earnings to a maintenance debtor (*subsection (3)*).

Section 185 empowers the court, on application by a qualified cohabitant, to make a pension adjustment order which reserves part of the pension of the other qualified cohabitant for the benefit of the applicant (*subsection (2)*). An order must specify the period of reckonable service and the percentage of the benefit accrued during that service that is to be reserved to the applicant qualified cohabitant (*subsection (3)*). Where the court makes a pension adjustment order, the applicant qualified cohabitant is entitled to a transfer amount from the other qualified cohabitant's pension fund (*subsection (4)*). The court may make an order concerning a contingent benefit payable under a pension scheme (*subsection (5)*). The court may make a pension adjustment order in addition to or in substitution for a compensatory maintenance order or property adjustment order (*subsection (6)*).

Section 186 requires that the trustees of a pension scheme be given notice by the applicant qualified cohabitant of the application for a pension adjustment order or a variation of a pension adjustment order. When deciding whether to make the order the court must consider representations made by the trustees or by another person given notice (*subsection (1)*). A pension adjustment order lapses if the applicant qualified cohabitant registers in a civil partnership, marries or dies (*subsection (2)*). The court may give directions to the trustees including a direction not to comply with the rules of the scheme or the Pensions Act 1990 (*subsection (3)*). An order over a contingent benefit may only be made if contingent benefits are provided for cohabitants under the scheme in question (*subsection (4)*).

Section 187 makes detailed rules as to how payments under pension adjustment orders are to be applied by the trustees of pension schemes.

Section 188 provides that payments made under a pension adjustment order are payable from the scheme's resources and under its rules unless the order requires otherwise (*subsection (1)*). The member's retirement and contingent benefits under the scheme are reduced by the amount payable or assigned to the other qualified cohabitant (*subsection (2)*). The contingent benefit payable in respect of a qualified cohabitant who dies before payment of retirement benefit is reduced by the transfer amount paid to the other qualified cohabitant (*subsection (3)*). Once a payment or transfer amount has been correctly paid or applied, the scheme trustees have no further liabilities to the applicant qualified cohabitant (*subsection (4)*). Trustees are not liable for any loss or damage caused by their compliance with a court direction rather than the rules of the pension scheme or the Pension Act 1990 (*subsection (5)*).

Section 189 empowers the court to determine how the trustees' costs in implementing a pension adjustment order are to be paid (*subsection (1)*). Where such costs are due from a qualified cohabitant and not paid, the court may authorise the trustees to deduct that amount from that qualified cohabitant's benefit under the order or under the scheme, as appropriate (*subsection (2)*).

Section 190 provides for information concerning a pension scheme to be given to relevant persons in accordance with Section 54 of the

Pensions Act 1990 (*subsection (1)*). The court may direct that specified information be provided to it by the trustees and to either or both of the qualified cohabitants concerning the benefits and contingent benefits payable under the scheme (*subsection (2)*).

Section 191 provides that the court may adjourn proceedings to allow the qualified cohabitants to attempt to reconcile, or to agree the terms of separation (*subsection (1)*). The qualified cohabitants, or either of them, may request resumption of proceedings at any stage (*subsection (2)*). The court may advise the qualified cohabitants to seek the assistance of a mediator or other third person to reconcile or agree terms of separation (*subsection (4)*).

Section 192 gives the court power to provide for a qualified cohabitant from the estate of a deceased cohabitant. An application must be made within six months of a grant of probate or grant of administration under the Succession Act 1965 (*subsection (1)*). The court may, after considering the rights of any other person who may be affected by the order and the conduct of the applicant if that is relevant, grant a share of the net estate to the person if proper provision by other means, including by way of an order under sections 172, 173 or 185 or under any bequest in a will, was not made for the applicant in the deceased cohabitant's lifetime (*subsections (2) and (3)*). Where the court orders provision for the applicant, the total value of the provision ordered may not exceed the share to which the applicant would have been entitled as a legal right or under the rules of distribution on intestacy had the couple been married or been civil partners of each other (*subsection (5)*). The technical requirements for application and notification are set out (*subsections (4) and (6)*). An order must not affect the legal right of any spouse of the deceased (*subsection (8)*). Provision can be made only from the "net estate", meaning the estate after settlement of priority rights, and the legal rights and prior rights if any of the deceased's spouse or civil partner, if any (*subsection (9)*).

Section 193 requires that, except for the shorter time period prescribed in *section 192*, proceedings under this Part must be commenced within two years of the end of the relationship between the cohabitants.

Section 194 requires each qualified cohabitant to give the other details of income and property for the purposes of proceedings under this Part.

Section 195 provides that proceedings be as informal as practicable, and that judges, barristers and solicitors may not wear wigs and gowns.

Section 196 provides that proceedings under the Part be heard in private.

Section 197 provides that costs in proceedings under the Part are at the court's discretion.

Section 198 provides for rules of court to be made on documentation required for the purposes of commencement of proceedings, and for other matters including adjournment of proceedings.

Section 199 provides that cohabitants' agreements concerning financial matters are valid only if the cohabitants have each received independent legal advice or have received legal advice together and have waived the right to independent legal advice, have signed the

agreement, and it complies with the generality of contract law (*subsection (2)*). A cohabitants' agreement may provide that the redress scheme does not apply to them (*subsection (3)*). A court may set aside or vary a cohabitants' agreement in exceptional circumstances if its enforcement would cause serious injustice (*subsection (4)*).

Section 200 amends the Residential Tenancies Act 2004 to provide that a same-sex cohabitant of a deceased tenant has the same entitlement an opposite-sex cohabitant of a deceased tenant currently has to inherit a Part 4 tenancy under that Act.

Section 201 amends the Civil Liability Act 1961 to provide that a same-sex cohabitant of a deceased person has the same entitlement an opposite-sex cohabitant of a deceased person currently has to sue for damages in the event of his or her cohabitant's wrongful death.

Section 202 amends the Powers of Attorney Act 1996 to provide that the donor's qualified cohabitant is entitled to be informed on the registration of an enduring power of attorney.

Section 203 amends the Domestic Violence Act 1996 to provide that a same-sex cohabitant of a person has the same entitlement as an opposite-sex cohabitant of a person to apply for a safety order or a barring order, and, in the case of a safety order, to allow a cohabitant apply for an order with no requirement as to duration of cohabitation.

Section 204 provides that the redress scheme applies only to cohabitants whose relationship ends after the commencement of the scheme, but that any period of cohabitation before commencement may be taken into account for the purposes of determining whether the couple are qualified cohabitants.

Section 205 provides that a cohabitants' agreement made before the commencement of Part 15 is enforceable.

Part 16 — Miscellaneous

Section 206 provides that in making any orders under the Act, the court shall consider the rights of any other person with an interest in the matter, including a spouse or former spouse or a civil partner or former civil partner.

Schedule

The Schedule makes consequential amendments to other Acts where it is appropriate to provide for civil partners.

Financial Implications

The introduction of a statutory scheme for registration of same-sex partnerships will entail certain establishment and operational costs on the part of the General Register Office. Given that the General Register Office already has a substantial operational network, the marginal operational costs in the provision of services locally are not likely to be significant. One-off capital costs would also be involved in establishing a register, but these are unlikely to be significant.

The establishment of court-based jurisdiction in civil partnership and cohabitant redress proceedings will entail some additional workload for the courts.

Overall it is expected that the Bill will not involve significant additional Exchequer spending.

*Department of Justice, Equality and Law Reform,
June, 2009.*