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STATUTORY INSTRUMENTS

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**1978 No. 1045**

**Matrimonial Causes (Northern Ireland) Order 1978**

**PART II**

**DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS**

*Divorce*

**Divorce not precluded by previous judicial separation**

6.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 [<sup>F1</sup> or the Domestic Proceedings (Northern Ireland) Order 1980 ] or any corresponding enactments in force in any part of Great Britain, the Isle of Man or any of the Channel Islands.

(2) On a petition for divorce in such a case as is mentioned in paragraph (1), the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) Where a petition for divorce in such a case follows a decree of judicial separation or (without prejudice to paragraph (4) [<sup>F1</sup> or (5)]) an order containing a provision exempting [<sup>F1</sup> or having the effect of exempting] one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

(4) For the purposes of Article 3(2)(c) the court may treat as included in a period during which the respondent has deserted the petitioner [<sup>F2</sup> either or both of] the following periods—

<sup>F3</sup>(a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home;

[<sup>F2</sup>(b) any period during which there is an order made under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (or any statutory provision repealed by that Order) which—

(i) excludes the respondent from a dwelling-house which is, or was at any time, the matrimonial home, or

(ii) prohibits the exercise by the respondent of the right to occupy such a home]

<sup>F1</sup>(5) Where—

(a) a petition for divorce is presented after the date on which the repeal by the Domestic Proceedings (Northern Ireland) Order 1980 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 comes into operation, and

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**Changes to legislation:** There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Section 6. (See end of Document for details)

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(b) an order made under that Act of 1945 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on or after that date by virtue of paragraph 1 or 2 of Schedule 2 to that Order of 1980,

then, for the purposes of Article 3(2)(c), the court may treat a period during which such a provision was included in that order (whether before or after that date) as included in a period during which the respondent has deserted the petitioner.]

**F1** 1980 NI 5

**F2** 1998 NI 6

**F3** 1980 NI 5

**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Section 6.