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STATUTORY INSTRUMENTS

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**1978 No. 1045 (N.I. 15)**

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

- - - - - [25th July 1978]

**Modifications etc. (not altering text)**

- C1** Order: transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 17 para. 31](#) (with arts. 28-31)

**PART I**  
**INTRODUCTORY**

**Title and commencement**

- 1.—(1) This Order may be cited as the Matrimonial Causes (Northern Ireland) Order 1978.  
(2) *Commencement*

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

*Definition rep. by 1987 NI 22*

“child”, in relation to one or both of the parties of a marriage, includes<sup>[F1]</sup> a child whose father and mother were not married to <sup>[F2]</sup>, or civil partners of, each other at the time of his birth within the meaning of Article 155 of the Children (Northern Ireland) Order 1995];

“child of the family”, in relation to the parties to a marriage, means—

- (a) a child of both of those parties; and
- (b) any other child, not being a child who<sup>[F1]</sup> is placed with those parties as foster parents by an authority within the meaning of the Children (Northern Ireland) Order 1995] or a voluntary organisation, who has been treated by both of those parties as a child of their family;

“the court” shall be construed in accordance with Article 48;

*Definition rep. by 1995 NI 2*

“disposal”, in relation to any property, includes creating a charge on the property (including a charge subject to conditions as to the time when it is to become enforceable or otherwise);

F3 ...

“education” includes training;

F4[F5“maintenance assessment” means an assessment of maintenance made under the Child Support (Northern Ireland) Order 1991 and includes, except in circumstances prescribed for the purposes of the definition of that expression in Article 2(2) of that Order, an interim maintenance assessment within the meaning of that Order;]

F6 ...

“rules of court” means rules of court made under Article 54;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 .

(3) In this Order—

(a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with Article 23;

[F7(aa) references to pension sharing orders shall be construed in accordance with Article 23A; and]

(b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with Article 24 and Article 29(5).

(4) For the avoidance of doubt it is hereby declared that references in this Order to remarriage include references to a marriage which is by law void or voidable.

[F8(4A) References in this Order to the formation of a civil partnership by a person include references to a civil partnership which is by law void or voidable.]

**F1** 1995 NI 2

**F2** Words in art. 2(2) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **35(2)** (with regs. 6-9)

**F3** Words in art. 2(2) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), Sch. 1 para. 76(1), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F4** prosp. in pt. subst. by 2000 c. 4 (NI)

**F5** SR 1993/98

**F6** Words in art. 2 omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), **Sch. para. 8(2)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

**F7** 1999 NI 11

**F8** 2004 c. 33

## PART II

### DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

#### *Divorce*

##### **Divorce on breakdown of marriage**

3.—(1) Subject to Article 5, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—

- (a) that, since the date of the marriage, the respondent has committed adultery;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Order referred to as “two years’ separation”) and the respondent consents to a decree being granted;
- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Order referred to as “five years’ separation”).

(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, and, subject to paragraph (4), the court shall not grant a decree of divorce without considering the oral testimony of the petitioner.

(4) The provision of paragraph (3) requiring the court to consider the oral testimony of the petitioner shall not apply<sup>F9</sup> in any particular case where the court for special reasons orders that such testimony be dispensed with.

(5) If the court is satisfied on the evidence of any such fact as is mentioned in paragraph (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to<sup>F10</sup> Articles 4(2) and 7], grant a decree of divorce.

(6) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six weeks from its grant unless in any particular case the court by order fixes a shorter period.

<sup>F11</sup>(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this Article.]

**F9** prosp. subst. by 1993 NI 6

**F10** 1989 NI 4

**F11** Art. 3(7) inserted (13.1.2020) by *The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019* (S.I. 2019/1514), regs. 1(2), **35(3)** (with regs. 6-9)

### Supplemental provisions as to facts raising presumption of breakdown

4.—(1) One party to a marriage shall not be entitled to rely for the purposes of Article 3(2)(a) on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.

(2) Where in any proceedings for divorce the petitioner alleges that the respondent has committed adultery and the respondent proves that the adultery was committed with the connivance of the petitioner, the court may dismiss the petition notwithstanding that it is not satisfied (as mentioned in Article 3(5)) that the marriage has not broken down irretrievably.

(3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of Article 3(2)(b) whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(4) For the purposes of Article 3(2)(c) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(5) In considering for the purposes of Article 3(2) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(6) For the purposes of Article 3(2)(d) and (e) and this Article [<sup>F12</sup>the parties to a marriage] shall be treated as living apart unless they are living with each other in the same household, and references in this Article to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

(7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of Article 3(2)(d) the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

**F12** Words in art. 4(6) substituted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **35(4)** (with regs. 6-9)

### [<sup>F13</sup>Bar on petitions for divorce within two years of marriage

5.—(1) No petition for divorce shall be presented to the court before the expiration of the period of two years from the date of the marriage.

(2) Nothing in this Article shall prohibit the presentation of a petition based on matters which occurred before the expiration of that period.]

**F13** 1989 NI 4

### **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>F14</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>F14</sup> or (5)]) an order containing a provision exempting [<sup>F14</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>F15</sup> either or both of] the following periods—

<sup>F16</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>F15</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>F14</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

(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.]

**F14** 1980 NI 5

**F15** 1998 NI 6

**F16** 1980 NI 5

### **Refusal of decree in five year separation cases on grounds of grave hardship to respondent**

7.—(1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will

result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

- (2) Where the grant of a decree is opposed by virtue of this Article, then—
- (a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in Article 3(2), and
  - (b) if apart from this Article the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this Article hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

### **Encouragement of reconciliation of parties to marriage**

8.—(1) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

(2) If during any such adjournment the parties resume living with each other in the same household, no account shall be taken of that fact for the purposes of the proceedings.

(3) The power conferred by this Article is additional to any other power of the court to adjourn proceedings.

### **Consideration by the court of certain agreements or arrangements**

9. Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

### **Intervention by Crown Solicitor**

- 10.—(1) In the case of a petition for divorce—
- (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Crown Solicitor for Northern Ireland ( “the Crown Solicitor”), who shall, under the directions of the Attorney-General, instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;
  - (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Crown Solicitor on any matter material to the due decision of the case, and the Crown Solicitor may thereupon take such steps as the Attorney-General considers necessary or expedient.

(2) Where the Crown Solicitor intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.

### **Proceedings after decree nisi: general powers of court**

11.—(1) Where a decree of divorce has been granted but not made absolute, then, without prejudice to Article 10, any person (excluding a party to the proceedings other than the Crown Solicitor) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may—

- (a) notwithstanding anything in Article 3(6) (but subject to Articles 12(2) to (5) and 44) make the decree absolute; or
- (b) rescind the decree; or
- (c) require further inquiry; or
- (d) otherwise deal with the case as it thinks fit.

(2) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in sub-paragraphs (a) to (d) of paragraph (1).

### **Proceedings after decree nisi: special protection for respondent in separation cases**

12.—(1) Where in any case the court has granted a decree of divorce on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' separation coupled with the respondent's consent to a decree being granted and has made no such finding as to any other fact mentioned in Article 3(2), the court may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or not) about any matter which the respondent took into account in deciding to give his consent.

(2) The following provisions of this Article apply where—

- (a) the respondent to a petition for divorce in which the petitioner alleged two years' or five years' separation coupled, in the former case, with the respondent's consent to a decree being granted, has applied to the court for consideration under paragraph (3) of his financial position after the divorce; and
- (b) the court has granted a decree on the petition on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation (as the case may be) and has made no such finding as to any other fact mentioned in Article 3(2).

(3) The court hearing an application by the respondent under paragraph (2) shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and the court shall not make the decree absolute unless the court, by order, has declared that it is satisfied—

- (a) that the petitioner should not be required to make any financial provision for the respondent, or
- (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances, or
- (c) that there are circumstances making it desirable that the decree should be made absolute without delay.

(4) The court shall not make an order declaring that it is satisfied as mentioned in paragraph (3)(c) unless it has obtained a satisfactory undertaking from the petitioner that he will bring the question of the financial provision for the respondent before the court within a specified time.

(5) If, following an application under paragraph (2)( a) which has not been withdrawn, the court makes absolute a decree of divorce without having made an order under paragraph (3) the decree shall be voidable at the instance of the respondent or of the court; but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by paragraphs (3) and (4) were not fulfilled.

(6) If the court refuses to make an order under paragraph (3), it shall, on an application by the petitioner, make an order declaring that it is not satisfied as mentioned in that paragraph.

*Nullity*

**Grounds on which a marriage is void**

**13.**—(1) A marriage celebrated after the commencement of this Article shall be void on the following grounds only, that is to say—

- (a) that the parties are within the prohibited degrees of relationship;
- (b) that it is not a valid marriage under the provisions of the Age of Marriage Act (Northern Ireland) 1951 (persons under 16);
- (c) that it is not a valid marriage by reason of non-compliance with any statutory provision or rule of law governing the formation of marriage;
- (d) that at the time of the marriage either party was already lawfully married<sup>[F17]</sup> or a civil partner];
- <sup>F18</sup>(e) .....
- (f) in the case of a polygamous marriage entered into outside Northern Ireland, that either party was at the time of the marriage domiciled in Northern Ireland.

(2) For the purposes of paragraph (1)( f) a marriage<sup>[F19]</sup> is not polygamous if] at its inception neither party has any spouse additional to the other.

<sup>[F20]</sup>(3) Paragraph (4) applies in the case of a marriage which results from the conversion, or purported conversion, of a civil partnership into a marriage—

- (a) under Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020, or
- (b) under Part 3 or 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 where the civil partnership is a convertible Northern Ireland civil partnership as defined by regulation 2 of those Regulations.

(4) The marriage is void if (but only if) the civil partnership was void.]

<p><b>F17</b> 2004 c. 33</p> <p><b>F18</b> Art. 13(1)(e) omitted (13.1.2020) by virtue of <a href="#">The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514)</a>, regs. 1(2), <b>5(1)</b> (with regs. 6-9)</p> <p><b>F19</b> 1995 NI 20</p> <p><b>F20</b> Art. 13(3)(4) inserted (7.12.2020) by <a href="#">The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143)</a>, regs. 1(2), <b>37(2)</b></p>
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**Grounds on which a marriage is voidable**

**14.** A marriage celebrated after the commencement of this Article shall be voidable on the following grounds only, that is to say—



- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake or unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health<sup>F21</sup> (Northern Ireland) Order 1986] of such a kind or to such an extent as to be unfitted for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.
- [<sup>F22</sup>(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage;]
- [<sup>F22</sup>(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004][<sup>F23</sup>;

but paragraphs (a) and (b) do not apply to the marriage of a same-sex couple.]

**F21** 1986 NI 4

**F22** 2004 c. 7

**F23** Words in art. 14 inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **35(5)** (with regs. 6-9)

#### [<sup>F24</sup>**Marriage converted from a civil partnership: when voidable**

**14A.**—(1) Paragraphs (2) and (3) apply in the case of a marriage which results from the conversion of a civil partnership into a marriage—

- (a) under Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020, or
  - (b) under Part 3 or 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 where the civil partnership is a convertible Northern Ireland civil partnership as defined by regulation 2 of those Regulations.
- (2) Article 14 applies in relation to the marriage, but does so as if—
- (a) paragraphs (a) and (b) were omitted,
  - (b) the reference in paragraph (c) to either party not validly consenting to the marriage were a reference to either party not validly consenting to the formation of the civil partnership, and
  - (c) a reference in paragraphs (d) to (h) to the time of the marriage were a reference to the time the civil partnership was formed.
- (3) Article 16 applies in relation to the marriage as if—
- (a) the reference in paragraph (1)(a) to having the marriage avoided were a reference to having the marriage avoided or (at times before the conversion) to obtaining a nullity order in respect of the civil partnership,

- (b) a reference in paragraph (2), (4) or (5) to the date of the marriage were a reference to the date the civil partnership was formed, and
- (c) the reference in paragraph (3) to the time of the marriage were a reference to the time the civil partnership was formed.]

**F24** Art. 14A inserted (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), 37(3)

### **Jurisdiction of court, and form of order, etc., in nullity proceedings**

**15.**—(1) The court has jurisdiction to grant a decree of nullity—

- (a) of a marriage which is void; or
- (b) on the petition of a party to the marriage, of a marriage which is voidable.

(2) Articles 3(6), 10 and 11 shall apply in relation to proceedings for nullity of marriage as if for any reference in those provisions to divorce there were substituted a reference to nullity of marriage.

### **Bars to relief where marriage is voidable**

**16.**—(1) The court shall not, in proceedings instituted after the commencement of this Article, grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the court—

- (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
- (b) that it would be unjust to the respondent to grant the decree.

[<sup>F25</sup>(2) Without prejudice to paragraph (1), the court shall not grant a decree of nullity by virtue of Article 14 on the grounds mentioned in paragraph (c), (d), (e)[<sup>F26</sup>(f) or (h)] of that Article unless—

- (a) it is satisfied that proceedings were instituted within the period of three years from the date of the marriage, or
- (b) leave for the institution of proceedings after the expiration of that period has been granted under paragraph (4).]

[<sup>F26</sup>(2A) Without prejudice to paragraph (1), the court shall not grant a decree of nullity by virtue of article 14 on the ground mentioned in paragraph (g) of that Article unless it is satisfied that proceedings were instituted within the period of six months from the date of issue of the interim gender recognition certificate.]

(3) Without prejudice to paragraphs (1) and (2), the court shall not grant a decree of nullity by virtue of Article 14 on the grounds mentioned in paragraph ( e)[<sup>F26</sup>(f) or (h)] of that Article unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

[<sup>F25</sup>(4) In the case of proceedings for the grant of a decree of nullity by virtue of Article 14 on the grounds mentioned in paragraph (c), (d), (e)[<sup>F26</sup>(f) or (h)] of that Article, a judge of the court may, on an application made to him, grant leave for the institution of proceedings after the expiration of the period of three years from the date of the marriage if—

- (a) he is satisfied that the petitioner has at some time during that period suffered from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986; and
- (b) he considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.

(5) An application for leave under paragraph (4) may be made after the expiration of the period of three years from the date of the marriage.]

F25 1989 NI 4  
F26 2004 c. 7

### **Marriages governed by foreign law or celebrated abroad under certain enactments or under common law**

17.—(1) [<sup>F27</sup>Subject to paragraph (3)] where, apart from this Order, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country other than Northern Ireland, nothing in Article 13, 14 or 16(1) shall—

- (a) preclude the determination of that matter as aforesaid; or
- (b) require the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.

(2) In the case of a marriage which purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 or has taken place outside Northern Ireland and purports to be a marriage under common law, Article 13 is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside Northern Ireland under common law.

[<sup>F27</sup>(3) No marriage is to be treated as valid by virtue of paragraph (1) if, at the time when it purports to have been celebrated, either party was already a civil partner.]

F27 2004 c. 33

### **Effect of decree of nullity in case of voidable marriage**

18. A decree of nullity granted after the commencement of this Article in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the decree has been made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

### *Other matrimonial suits*

### **Judicial separation**

19.—(1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in Article 3(2) exists, and the provisions of Article 4 shall apply accordingly for the purposes of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging that fact.

(2) On a petition for judicial separation it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, but the court shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in Article 3(2) it shall, subject to Article 44, grant a decree of judicial separation.

(3) Articles 8 and 9 shall apply for the purpose of encouraging the reconciliation of parties to proceedings for judicial separation and of enabling the parties to a marriage to refer to the court

for its opinion of an agreement or arrangement relevant to actual or contemplated proceedings for judicial separation, as they apply in relation to proceedings for divorce.

**Effects of judicial separation**

**20.**—(1) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(2) <sup>F28</sup> If while a decree of judicial separation is in force and the separation is continuing either of the parties to the marriage dies intestate as respects all or any of his or her real or personal property, the property as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.

*Para.(3) rep. with saving by 1980 NI 5*

**F28** 1955 c.24 (NI)

**Presumption of death and dissolution of marriage**

**21.** <sup>F29</sup> .....

**F29** Art. 21 repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009](#) (c. 6), ss. 14(1)(a), 19(2), 20(2), [Sch. 3](#) (with s. 14(2)); S.R. 2009/356, [art. 2](#)

*General*

**Relief for respondent in proceedings for divorce, judicial separation or nullity**

**22.** If in any proceedings for divorce, judicial separation or nullity of marriage the respondent alleges and proves any such fact as is mentioned in paragraph (2) of Article 3 or in Article 13(1) or Article 14 (treating the respondent as the petitioner and the petitioner as the respondent for the purposes of the said paragraph (2), and treating the petitioner as the respondent for the purposes of paragraph ( b), ( e) or ( f) of Article 14), the court may give to the respondent the relief to which he would have been entitled if he had presented a petition seeking that relief.

**PART III**

**FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY**

*Financial provision and property adjustment orders*

**Financial provision and property adjustment orders**

**23.**—(1) The financial provision orders for the purposes of this Order are the orders for periodical or lump sum provision available (subject to the provisions of this Order) under Article 25 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under Article 29(6) on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say—

- (a) any order for periodical payments in favour of a party to a marriage under Article 25(1) (a) or 29(6)(a) or in favour of a child of the family under Article 25(1)(d), (2) or (4) or 29(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under Article 25(1)(b) or 29(6)(b) or in favour of a child of the family under Article 25(1)(e), (2) or (4) or 29(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under Article 25(1)(c) or 29(6)(c) or in favour of a child of the family under Article 25(1)(f), (2) or (4) or 29(6)(f);

and references in this Order to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Order are the orders dealing with property rights available (subject to the provisions of this Order) under Article 26 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say—

- (a) any order under paragraph (1)(a) of that Article for a transfer of property;
- (b) any order under paragraph (1)(b) of that Article for a settlement of property; and
- (c) any order under paragraph (1)(c) or (d) of that Article for a variation of settlement.

### [<sup>F30</sup>Pension sharing orders

**23A.**—(1) For the purposes of this Order, a pension sharing order is an order which—

- (a) provides that one party's—
  - (i) shareable rights under a specified pension arrangement, or
  - (ii) shareable state scheme rights,be subject to pension sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.

(2) In paragraph (1)—

- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, and
- (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999, or under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, and
- (c) “party” means a party to a marriage.]

**F30** 1999 NI 11

#### **Modifications etc. (not altering text)**

**C2** Art. 23A modified (14.8.2006) by Divorce etc. (Pension Protection Fund) Regulations (Northern Ireland) 2006 (S.R. 2006/310), reg. 4(2)

### [<sup>F31</sup>Pension compensation sharing orders

**23B.**—(1) For the purposes of this Order, a pension compensation sharing order is an order which—

- (a) provides that one party's shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
  - (b) specifies the percentage value to be transferred.
- (2) In paragraph (1)—
- (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 or under Chapter 1 of Part 3 of the Pensions Act 2008;
  - (b) “party” means a party to a marriage;
  - (c) “specified” means specified in the order.

**F31** Arts. 23B, 23C inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 2](#) (with s. 73); S.R. 2011/108, art. 2(2), [Sch.](#)

### Pension compensation: interpretation

**23C** In this Part—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 3 of the Pensions (Northern Ireland) Order 2005 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation on divorce etc.) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Great Britain.]

**F31** Arts. 23B, 23C inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 2](#) (with s. 73); S.R. 2011/108, art. 2(2), [Sch.](#)

*Ancillary relief in connection with divorce proceedings, etc.*

### Maintenance pending suit

**24.** On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

### Financial provision orders in connection with divorce proceedings, etc.

**25.**—(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of

marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under sub-paragraph ( *d* ), ( *e* ) or ( *f* ), to the restrictions imposed by Article 31(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

(2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in paragraph (1)( *d* ), ( *e* ) and ( *f* )—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(3) Without prejudice to the generality of paragraph (1)( *c* ) or ( *f* )—

- (a) an order under this Article that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this Article in his or her favour;
- (b) an order under this Article for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this Article in his favour to be met; and
- (c) an order under this Article for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The power of the court under paragraph (1) or (2)( *a* ) to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under paragraph (2)( *b* ), it may from time to time, subject to the restrictions mentioned in paragraph (1), make a further order in his favour of any of the kinds mentioned in paragraph (1) ( *d* ), ( *e* ) or ( *f* ).

(5) Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under paragraph (1)( *a* ), ( *b* ) or ( *c* ) on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

(6) Where the court makes an order under any provision of paragraph (1), (2) or (4) it may give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the disposal of any property).

[<sup>F32</sup>(7) Where the court

- (a) makes an order under this Article for the payment of a lump sum; and
- (b) directs—
  - (i) that payment of that sum or any part of it shall be deferred, or
  - (ii) that that sum or any part of it shall be paid by instalments,

the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified until the date when payment of it is due.]

**F32** 1989 NI 4

### **Property adjustment orders in connection with divorce proceedings, etc.**

**26.**—(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage [<sup>F33</sup>, other than one in the form of a pension arrangement (within the meaning of Article 27D)];
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement [<sup>F33</sup>, other than one in the form of a pension arrangement (within the meaning of Article 27D)];

subject, however, in the case of an order under sub-paragraph (a) to the restrictions imposed by Article 31(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of 18.

(2) The court may make an order under paragraph (1)(c) notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under this Article on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

(4) Where the court makes an order under any provision of paragraph (1) it may give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).



F33 1999 NI 11

**[<sup>F34</sup>Pension sharing orders in connection with divorce proceedings, etc.**

**26A.**—(1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this Article, make one or more pension sharing orders in relation to the marriage.

(2) A pension sharing order under this Article is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension sharing order under this Article may not be made in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(4) A pension sharing order under this Article may not be made in relation to shareable state scheme rights if—

- (a) such rights are the subject of a pension sharing order in relation to the marriage, or
- (b) such rights have been the subject of pension sharing between the parties to the marriage.

(5) A pension sharing order under this Article may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of Article 27B or 27C which relates to benefits or future benefits to which he is entitled under the pension arrangement.]

F34 1999 NI 11

**Pension sharing orders: duty to stay**

**26B.**—(1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.

(2) Regulations under this Article shall be subject to [<sup>F35</sup>negative resolution].

F35 Words in art. 26B(2) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 18 para. 114(2)** (with arts. 28-31)

**Pension sharing orders: apportionment of charges**

**26C.** If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under Article 38 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (charges in respect of pension sharing costs), or under section 41 of the Welfare Reform and Pensions Act 1999.

**[<sup>F36</sup>Pension compensation sharing orders in connection with divorce proceedings**

**26D.**—(1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this Article, make a pension compensation sharing order in relation to the marriage.

(2) A pension compensation sharing order under this Article is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension compensation sharing order under this Article may not be made in relation to rights to PPF compensation that—

- (a) are the subject of pension attachment,
- (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
- (c) are the subject of pension compensation attachment, or
- (d) are or have been the subject of pension compensation sharing between the parties to the marriage.

(4) For the purposes of paragraph (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.

(5) The first condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(4), and
- (b) that order, as modified under Article 27E(3), remains in force.

(6) The second condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(7), and
- (b) that order—
  - (i) has been complied with, or
  - (ii) has not been complied with and, as modified under Article 27E(5), remains in force.

(7) The third condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27C, and
- (b) that order remains in force.

(8) For the purposes of paragraph (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties.

(9) For the purposes of paragraph (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Article 27F relating to them.

(10) For the purposes of paragraph (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

**F36** Arts. 26D-26F inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 3](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 173](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **Pension compensation sharing orders: duty to stay**

**26E.**—(1) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Department of Justice.

(2) Regulations under this Article shall be subject to negative resolution.

**F36** Arts. 26D-26F inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 3](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 173](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **Pension compensation sharing orders: apportionment of charges**

**26F** The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 95 of the Pensions (No. 2) Act (Northern Ireland) 2008 (charges in respect of pension compensation sharing costs), or under section 117 of the Pensions Act 2008.]

**F36** Arts. 26D-26F inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 3](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 173](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **[<sup>F37</sup>Matters to which court is to have regard in deciding how to exercise its powers under Articles 25 [<sup>F38</sup>, 26, 26A and 26D]**

**27.**—(1) It shall be the duty of the court in deciding whether to exercise its powers under [<sup>F39</sup>Article 25, or 26 [<sup>F40</sup>, 26A or 26D]] and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(2) As regards the exercise of the powers of the court under Article 25(1)(a), (b) or (c) [<sup>F39</sup>, 26 [<sup>F41</sup>, 26A or 26D]] in relation to a party to the marriage, the court shall in particular have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) in the case of proceedings for divorce of nullity of marriage, the value to each of the parties to the marriage of any benefit <sup>F42</sup>. . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 in relation to a child of the family, the court shall in particular have regard to the following matters—

- (a) the financial needs of the child;
  - (b) the income, earning capacity (if any), property and other financial resources of the child;
  - (c) any physical or mental disability of the child;
  - (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
  - (e) the considerations mentioned in relation to the parties to the marriage in sub#paragraphs (a), (b), (c) and (e) of paragraph (2).
- (4) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard—
- (a) to whether that party assumed any responsibility for the child's maintenance, and , if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
  - (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
  - (c) to the liability of any other person to maintain the child.]

**F37** 1989 NI 4

**F38** Words in art. 27 heading heading substituted (6.4.2011) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, s. 118(1), **Sch. 5 para. 4(2)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F39** 1999 NI 11

**F40** Words in art. 27(1) substituted (6.4.2011) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, s. 118(1), **Sch. 5 para. 4(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F41** Words in art. 27(2) substituted (6.4.2011) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, s. 118(1), **Sch. 5 para. 4(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F42** 1995 NI 22

### **Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage**

**27A.**—(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under Article 25(1)(a), (b) or (c)]<sup>F43</sup>, 26 [<sup>F44</sup>, 26A or 26D]] in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under Article 25(1)(a) or (b).

**F43** 1999 NI 11

**F44** Words in art. 27A(1) substituted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 5** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

## <sup>F45</sup>Pensions

**27B.**—(1) The matters to which the court is to have regard under Article 27(2) include—

- (a) in the case of sub-paragraph (a), any benefits under a pension<sup>F46</sup> arrangement] which a party to the marriage has or is likely to have; and
- (b) in the case of sub-paragraph (h), any benefits under a pension<sup>F46</sup> arrangement] which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,

and, accordingly, in relation to benefits under a pension<sup>F46</sup> arrangement], Article 27(2)(a) shall have effect as if "in the foreseeable future" were omitted.

*Para. (2) rep. by 1999 NI 11*

(3) The following provisions apply where, having regard to any benefits under a pension<sup>F46</sup> arrangement], the court determines to make an order under Article 25.

(4) To the extent to which the order is made having regard to any benefits under a pension<sup>F46</sup> arrangement], the order may require the<sup>F46</sup> person responsible for] the pension<sup>F46</sup> arrangement] in question, if at any time any payment in respect of any benefits under the<sup>F46</sup> arrangement] becomes due to the party with pension rights, to make a payment for the benefit of the other party.

[<sup>F46</sup>(5) The order must express the amount of any payment required to be made by virtue of paragraph (4) as a percentage of the payment which becomes due to the party with pension rights.]

- (6) Any such payment by the<sup>F46</sup> person responsible for the arrangement]
  - (a) shall discharge so much of<sup>F46</sup> his] liability to the party with pension rights as corresponds to the amount of the payment; and
  - (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.

(7) Where the party with pension rights<sup>F46</sup> has a right of commutation under the arrangement, the order may require him to exercise it to any extent]; and this Article applies to<sup>F46</sup> any payment due in consequence of commutation] in pursuance of the order as it applies to other payments in respect of benefits under the<sup>F46</sup> arrangement].

[<sup>F46</sup>(8) The power conferred by paragraph (7) may not be exercised for the purpose of commuting a benefit payable to the party with pension rights to a benefit payable to the other party.

(9) The power conferred by paragraph (4) or (7) may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(10) In paragraph (1), references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.]]

**F45** 1995 NI 22

**F46** 1999 NI 11

**Modifications etc. (not altering text)**

- C3 [Art. 27B\(6\)](#) modified (14.8.2006) by [Divorce etc. \(Pension Protection Fund\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/310\)](#), [reg. 2](#)

**Pensions: lump sums**

**27C.**—(1) The power of the court under Article 25 to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension<sup>[F47]</sup> arrangement] include any lump sum payable in respect of his death, power to make any of the following provision by the order.

(2) The court may—

- (a) if the<sup>[F47]</sup> person responsible for the pension arrangement in question has] power to determine the person to whom the sum, or any part of it, is to be paid, require<sup>[F47]</sup> him] to pay the whole or part of that sum, when it becomes due, to the other party;
- (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum;
- (c) in any other case, require the<sup>[F47]</sup> person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.

(3) Any payment by the<sup>[F47]</sup> person responsible for the arrangement] under an order made under Article 25 by virtue of this Article shall discharge so much of<sup>[F47]</sup> his] liability in respect of the party with pension rights as corresponds to the amount of the payment.

<sup>[F47]</sup>(4) The powers conferred by this Article may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.]

**F47** [1999 NI 11](#)

**Pensions: supplementary**

**27D.**—<sup>[F48]</sup>(1) Where—

- (a) an order made under Article 25 by virtue of Article 27B or 27C imposes any requirement on the person responsible for a pension arrangement ( “the first arrangement”) and the party with pension rights acquires rights under another pension arrangement ( “the new arrangement”) which are derived (directly or indirectly) from the whole of his rights under the first arrangement, and
- (b) the person responsible for the new arrangement has been given notice in accordance with regulations made by the Lord Chancellor,

the order shall have effect as if it had been made instead in respect of the person responsible for the new arrangement.]

(2) <sup>[F48]</sup>The Lord Chancellor may by regulations]

- (a) in relation to any provision of Article 27B or 27C which authorises the court making an order under Article 25 to require the<sup>[F48]</sup> person responsible for a pension arrangement]

to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made;

[<sup>F48</sup>(aa) make, in relation to payment under a mistaken belief as to the continuation in operation of a provision included by virtue of Article 27B or 27C in an order under Article 25, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due;]

(b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of Articles 27B and 27C;

[<sup>F48</sup>(ba) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27B or 27C;]

*Sub#paras. (c), (d) rep. by 1999 NI II*

[<sup>F48</sup>(e) make provision about calculation and verification in relation to the valuation of—

(i) benefits under a pension arrangement, or

(ii) shareable state scheme rights,

for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.]

<sup>F48</sup> . . .

[<sup>F48</sup>(2A) Regulations under paragraph (2)(e) may include—

(a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person, and

(b) provision by reference to regulations under Article 27 or 46(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(2B) Regulations under this Article shall be subject to [<sup>F49</sup>negative resolution].]

[<sup>F48</sup>(3) In this Article and Articles 27B and 27C—

“occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension arrangement and “the other party” means the other party to the marriage;

“pension arrangement” means—

(a) an occupational pension scheme,

(b) a personal pension scheme,

(c) a retirement annuity contract,

(d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and

(e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“personal pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“prescribed” means prescribed by regulations;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“shareable state scheme rights” has the same meaning as in Article 23A(1); and  
 “trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(4) In this Article and Articles 27B and 27C, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement”, the provider of the annuity, and
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.]

**F48** 1999 NI 11

**F49** Words in art. 27D(2B) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 18 para. 114(3)** (with arts. 28-31)

#### [<sup>F50</sup>The Pension Protection Fund

**27E.**—(1) The matters to which the court is to have regard under Article 27(2) include—

- (a) in the case of sub-paragraph (a), any PPF compensation to which a party to the marriage is or is likely to be entitled, and
- (b) in the case of sub-paragraph (h), any PPF compensation which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring entitlement to,

and, accordingly, in relation to PPF compensation, Article 27(2)(a) shall have effect as if “in the foreseeable future” were omitted.

(2) Paragraph (3) applies in relation to an order under Article 25 so far as it includes provision made by virtue of Article 27B(4) which—

- (a) imposed requirements on the trustees or managers of an occupational pension scheme for which the Board has assumed responsibility in accordance with Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection) or any provision in force in Great Britain corresponding to that Chapter, and
- (b) was made before the trustees or managers of the scheme received the transfer notice in relation to the scheme.

(3) The order is to have effect from the time when the trustees or managers of the scheme receive the transfer notice—

- (a) as if, except in prescribed descriptions of case—
  - (i) references in the order to the trustees or managers of the scheme were references to the Board, and
  - (ii) references in the order to any pension or lump sum to which the party with pension rights is or may become entitled under the scheme were references to any PPF compensation to which that person is or may become entitled in respect of the pension or lump sum, and



- (b) subject to such other modifications as may be prescribed.
- (4) Paragraph (5) applies to an order under Article 25 if—
- (a) it includes provision made by virtue of Article 27B(7) which requires the party with pension rights to exercise his right of commutation under an occupational pension scheme to any extent, and
- (b) before the requirement is complied with the Board has assumed responsibility for the scheme as mentioned in paragraph (2)(a).
- (5) From the time the trustees or managers of the scheme receive the transfer notice, the order is to have effect with such modifications as may be prescribed.
- (6) Regulations may modify Article 27C as it applies in relation to an occupational pension scheme at any time when there is an assessment period in relation to the scheme.
- (7) Where the court makes a pension sharing order in respect of a person's shareable rights under an occupational pension scheme, or an order which includes provision made by virtue of Article 27B(4) or (7) in relation to such a scheme, the Board subsequently assuming responsibility for the scheme as mentioned in paragraph (2)(a) does not affect—
- (a) the powers of the court under Article 33 to vary or discharge the order or to suspend or revive any provision of it, or
- (b) on an appeal, the powers of the appeal court to affirm, reinstate, set aside or vary the order.
- (8) Regulations may make such consequential modifications of any provision of, or made by virtue of, this Part as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of this Article.
- (9) In this Article—
- “assessment period” means an assessment period within the meaning of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection) (see Articles 116 and 143 of that Order) or an equivalent period under any provision in force in Great Britain corresponding to that Part;
- “the Board” means the Board of the Pension Protection Fund;
- “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;
- “prescribed” means prescribed by regulations;
- <sup>F51</sup> ...
- “regulations” means regulations made by the Lord Chancellor;
- “shareable rights” are rights in relation to which pension sharing is available under Chapter 1 of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or any provision in force in Great Britain corresponding to that Chapter;
- “transfer notice” has the same meaning as in Article 144 of the Pensions (Northern Ireland) Order 2005 or any corresponding provision in force in Great Britain.
- (10) Regulations under this Article shall be subject to [<sup>F52</sup>negative resolution].]

**F50** 2005 NI 1

**F51** Words in art. 27E(9) repealed (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 6](#), [Sch. 10 Pt. 4](#) (with s. 73); S.R. 2011/108, art. 2(2), [Sch.](#)

**F52** Words in art. 27E(10) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 18 para. 114\(4\)](#) (with arts. 28-31)

### [<sup>F53</sup> Attachment of pension compensation

**27F.**—(1) This Article applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under Article 25.

(2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.

(3) The order must express the amount of any payment required to be made by virtue of paragraph (2) as a percentage of the payment which becomes due to the party with compensation rights.

(4) Any such payment by the Board of the Pension Protection Fund—

- (a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and
- (b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party's liability under the order.

(5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this Article applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.

(6) The power conferred by paragraph (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.

(7) The power conferred by paragraph (2) or (5) may not be exercised in relation to rights to PPF compensation that—

- (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or
- (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

**F53** Arts. 27F, 27G inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 7](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 174](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **Pension compensation: supplementary**

**27G.**—(1) The Department of Justice may by regulations—

- (a) make provision, in relation to any provision of Article 27F which authorises the court making an order under Article 25 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
- (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of Article 27F in an order under Article 25, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
- (c) require notices to be given in respect of changes of circumstances relevant to orders under Article 25 which include provision made by virtue of Article 27F;

- (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27F;
  - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.
- (2) Regulations under paragraph (1)(e) may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
  - (b) provision by reference to regulations under section 90 of the Pensions (No. 2) Act (Northern Ireland) 2008.
- (3) Regulations under this Article shall be subject to negative resolution.
- (4) In this Article and Article 27F—
- “the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and “the other party” means the other party to the marriage;
- “prescribed” means prescribed by regulations.]

**F53** Arts. 27F, 27G inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 7](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 174](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **Commencement of proceedings for ancillary relief, etc.**

**28.**—(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to paragraph (2), proceedings for maintenance pending suit under Article 24, for a financial provision order under Article 25, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.

- (2) Rules of court may provide, in such cases as may be prescribed by the rules,—
- (a) that applications for any such relief as is mentioned in paragraph (1) shall be made in the petition or answer; and
  - (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

### *Financial provision in case of neglect to maintain*

### **Financial provision orders in case of neglect by party to marriage to maintain other party or child of the family**

**29.**—(1) Either party to a marriage may apply to the court for an order under this Article on the ground that the other party to the marriage (“the respondent”)—

- (a) has failed to provide reasonable maintenance for the applicant, or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.

[<sup>F54</sup>(2) Where an application under this Article is made on the ground mentioned in paragraph (1) (a), then, in deciding—

- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and

(b) what order, if any, to make under this Article in favour of the applicant,

it shall be the duty of the court to have regard to all the circumstances of the case (including the matters mentioned in Article 27(2)(a) to (g)), first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(3) Where an application under this Article is made on the ground mentioned in paragraph (1) (b), then, in deciding—

(a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and

(b) what order, if any, to make under this Article in favour of the child,

it shall be the duty of the court to have regard to all the circumstances of the case (including the matters specified in paragraph (3A)), first consideration being given to the welfare while a minor of the child.

(3A) The matters referred to in paragraph (3) are—

(a) where the child of the family to whom the application relates is not the child of the respondent, the matters mentioned in Article 27(3)(a) to (e) and those mentioned in Article 27(4)(a) to (c);

(b) in any other case, the matters mentioned in Article 27(3)(a) to (e).]

(4) In relation to an application under this Article on the ground mentioned in paragraph (1) (a),<sup>[F54</sup> Article 27(2)(c)] shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and, in relation to an application under this Article on the ground mentioned in paragraph (1)(b),<sup>[F54</sup> Article 27(2)(c) (as it applies by virtue of Article 27(3)(e))] shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.

(5) Where on an application under this Article it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this Article the applicant satisfies the court of any ground mentioned in paragraph (1), the court may make any one or more of the following orders, that is to say—

(a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;

(b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;

(c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;

(d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;

(e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;

(f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified; subject, however, in the case of an order under sub-paragraph ( d), ( e) or ( f), to the restrictions imposed by Article 31(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

(7) An application for the variation under Article 33 of a periodical payments order or secured periodical payments order made under this Article in favour of a child may, if the child has attained the age of 16, be made by the child himself.

[<sup>F55</sup>(8) Where a periodical payments order made under this Article in favour of a child ceases to have effect on the date on which the child attains the age of 16, or at any time after that date but before or on the date on which he attains the age of 18, then if, on an application made to the court for an order under this paragraph, it appears to the court that—

- (a) the child is, or will be, or if an order were made under this paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is, will be or would be, also in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this paragraph, the court shall have power by order to revive the first-mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its powers under Article 33 in relation to any order so revived.]

(9) Without prejudice to the generality of paragraph (6)( c) or ( f), an order under this Article for the payment of a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

F54 1989 NI 4

F55 1995 NI 2

*Additional provisions with respect to financial provision and property adjustment orders*

**Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage<sup>F56</sup> or formation of civil partnership]**

30.—(1) [<sup>F57</sup>Subject in the case of an order made on or after the grant of a decree of divorce or nullity of marriage to the provisions of Articles 27A(2) and 33(7), the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits], that is to say—

- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of<sup>F56</sup>, or formation of a civil partnership by,] the party in whose favour the order is made; and

- (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the grant of such a decree, the remarriage of<sup>F56</sup>, or formation of a civil partnership by,] the party in whose favour the order is made.

<sup>F57</sup>(1A) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the grant of a decree of divorce or nullity of marriage, the court may direct that that party shall not be entitled to apply under Article 33 for the extension of the term specified in the order]

(2) Where a periodical payments or secured payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage, and the marriage in question is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of<sup>F56</sup>, or formation of a civil partnership by,] that party, except in relation to any arrears due under it on the date of the remarriage<sup>F56</sup> or formation of the civil partnership].

(3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries<sup>F57</sup> whether at any time before or after the commencement of this Article]]<sup>F56</sup> or forms a civil partnership], that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

**F56** 2004 c. 33

**F57** 1989 NI 4

### **Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour**

**31.**—(1) Subject to paragraph (3), no financial provision order and no order for a transfer of property under Article 26(1)(a) shall be made in favour of a child who has attained the age of 18.

(2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date<sup>F58</sup> or a date ascertained in accordance with paragraphs (5) or (7)] but—

(a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of Article 36 of the Education and Libraries (Northern Ireland) Order 1972 )]<sup>F59</sup> unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and

(b) shall not in any event, subject to paragraph (3), extend beyond the date of the child's eighteenth birthday.

(3) Paragraph (1), and sub-paragraph (b) of paragraph (2), shall not apply in the case of a child, if it appears to the court that—

(a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

(4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

[<sup>F58</sup>(5) Where—

- (a) <sup>F60</sup> maintenance assessment ( “the <sup>F60</sup> current assessment”) is in force with respect to a child; and
- (b) before the end of the period of 6 months beginning with the date on which the current assessment was made, an application is made under this Part for a periodical payments or secured periodical payments order in favour of that child;

the term to be specified in any such order made on that application may be expressed to begin on or at any time after the earliest permitted date.

(6) For the purposes of paragraph (5), ( “the earliest permitted date” is the later of—

- (a) the date six months before the application for the order was made; or
- (b) the date on which the <sup>F60</sup> current assessment took effect or, where successive <sup>F60</sup> maintenance assessments have been continuously in force with respect to that child, the first of <sup>F60</sup> those assessments took effect.

(7) Where—

- (a) a <sup>F60</sup> maintenance assessment ceases to have effect<sup>F61</sup> or is cancelled by or under any provision of the Child Support (Northern Ireland) Order 1991; and
- (b) before the end of the period of 6 months beginning with the relevant date an application is made for a periodical payments or secured periodical payments order in favour of a child with respect to whom that <sup>F60</sup> maintenance assessment was in force immediately before it ceased to have effect<sup>F61</sup> or was cancelled,

the term to be specified in any such order made on that application may begin with the relevant date or any later date.

(8) In paragraph (7) “the relevant date” means—

- (a) where the <sup>F60</sup> maintenance assessment ceased to have effect, the date on which it so ceased,<sup>F61</sup> and

<sup>F61</sup>(b) where the <sup>F60</sup> maintenance assessment was cancelled, the later of—

- (i) the date on which the person who cancelled it did so; or
- (ii) the date from which the cancellation first had effect.]

**F58** SR 1993/98

**F59** 1989 NI 4

**F60** prosp. in pt. subst. by 2000 c. 4 (NI)

**F61** prosp. in pt. rep. by 2000 c. 4 (NI)

### **Direction for settlement of instrument for securing payments or effecting property adjustment**

**32.** Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order, or where it gives directions for the disposal of any property,—

- (a) it may direct that the matter be referred to a conveyancing counsel appointed by the court for him to settle a proper instrument to be executed by all necessary parties; and

- (b) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

*Variation, discharge and enforcement of certain orders, etc.*

**Variation, discharge, etc., of certain orders for financial relief**

**33.**—(1) Where the court has made an order to which this Article applies, then, subject to the provisions of this Article [<sup>F62</sup>and of Article 30(1A)], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This Article applies to the following orders, that is to say—

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order;
- (c) any secured periodical payments order;
- (d) any order made by virtue of Article 25(3)(c) or 29(9)(b) (provision for payment of a lump sum by instalments);
- [<sup>F63</sup>(dd) any deferred order made by virtue of Article 25(1)(c) (lump sums) which includes provision made by virtue of—
  - (i) Article 27B(4), <sup>F64</sup>...
  - (ii) Article 27C, [<sup>F65</sup>or]
    - [ Article 27F(2),]
  - <sup>F66</sup>(iii)
    - (provision in respect of pension rights [<sup>F67</sup>or pension compensation rights]);]
- (e) any order for a settlement of property under Article 26(1)(b) or for a variation of settlement under Article 26(1)(c) or (d), being an order made on or after the grant of a decree of judicial separation.
- [<sup>F68</sup>(f) a pension sharing order under Article 26A [<sup>F69</sup>, or a pension compensation sharing order under Article 26D,] which is made at a time before the decree has been made absolute.]

[<sup>F62</sup>(2A) Where the court has made an order referred to in paragraph (2)(a), (b) or (c), then, subject to the provisions of this Article, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]

[<sup>F63</sup>(2B) Where the court has made an order referred to in paragraph (2)(dd)(ii), this Article shall cease to apply to the order on the death of either of the parties to the marriage.]

(3) The powers exercisable by the court under this Article in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this Article in relation to an order for a settlement under Article 26(1)(b) or for a variation of settlement under Article 26(1)(c) or (d) except on an application made in proceedings—

- (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
- (b) for the dissolution of the marriage in question.

[<sup>F68</sup>(4A) In relation to an order which falls within sub-paragraph (f) of paragraph (2) (“the paragraph (2) order”)—



- (a) the powers conferred by this Article may be exercised—
  - (i) only on an application made before the paragraph (2) order has or, but for sub# paragraph (b), would have taken effect; and
  - (ii) only if, at the time when the application is made, the decree has not been made absolute; and
- (b) an application made in accordance with sub-paragraph (a) prevents the paragraph (2) order from taking effect before the application has been dealt with.

(4B) No variation of a pension sharing order [<sup>F70</sup>, or a pension compensation sharing order,] shall be made so as to take effect before the decree is made absolute.

(4C) The variation of a pension sharing order [<sup>F71</sup>, or a pension compensation sharing order,] prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.

(4D) Regulations under paragraph (4C) shall be subject to [<sup>F72</sup>negative resolution].]

(5) No property adjustment order [<sup>F68</sup>or pension sharing order][<sup>F73</sup>or pension compensation sharing order] shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under Article 25, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under Article 25 or under Article 29).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application under this Article relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

[<sup>F62</sup>(7) In exercising the powers conferred by this Article the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—

- (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce of nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]

(8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in paragraph (6) on the ground that they ought to have taken into account the possibility that the court might permit an application under this Article to be made after that period by the person entitled to payments under the order; but this paragraph shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this Article.

(9) In considering for the purposes of paragraph (6) the question when representation was first taken out, a grant limited to part of the estate of the deceased shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

[<sup>F62</sup>(10) Where the court, in exercise of its powers under this Article, decides to vary or decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to Article 30(1) and (2), the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]

[<sup>F74</sup>(11) Paragraph (12) applies where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a [<sup>F75</sup>maintenance calculation] ([<sup>F76</sup>“the calculation”]) is made with respect to one or more but not all of the children in whose favour the order is in force; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which [<sup>F76</sup>the calculation] was made, for the variation or discharge of the order.

(12) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which [<sup>F77</sup>the calculation] took effect or any later date.

(13) Paragraph (14) applies where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991 is affected by a [<sup>F78</sup>maintenance calculation];
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the [<sup>F78</sup>maintenance calculation] was made, for the spousal order to be varied or discharged.

(14) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.

(15) For the purposes of paragraphs (13) and (14), an order is affected if it ceases to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.

(16) Paragraphs (12) and (14) are without prejudice to any other power of the court to direct that the variation or discharge of an order under this Article shall take effect from a date earlier than that on which the order for variation or discharge was made.]

**F62** 1989 NI 4

**F63** 1995 NI 22

**F64** Word in art. 33(2)(dd)(i) repealed (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), Sch. 5 para. 8(2)(a), **Sch. 10 Pt. IV** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F65** Word in art. 33(2)(dd)(ii) added (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(b)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F66** Art. 33(2)(dd)(iii) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(c)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F67** Words in art. 33(2)(dd) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(d)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F68** 1999 NI 11

**F69** Words in art. 33(2)(f) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

- F70** Words in art. 33(4B) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(4)** (with s. 73); S.R. 2011/108, art. 2(2), **Sch.**
- F71** Words in art. 33(4C) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(5)** (with s. 73); S.R. 2011/108, art. 2(2), **Sch.**
- F72** Words in art. 33(4D) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 18 para. 114(5)** (with arts. 28-31)
- F73** Words in art. 33(5) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(6)** (with s. 73); S.R. 2011/108, art. 2(2), **Sch.**
- F74** SR 1993/98
- F75** Words in art. 33(11)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(a)**; S.R. 2003/53, art. 3(1), **Sch.**
- F76** Words in art. 33(11)(c)(d) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(b)**; S.R. 2003/53, art. 3(1), **Sch.**
- F77** Words in art. 33(12) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(b)**; S.R. 2003/53, art. 3(1), **Sch.**
- F78** Words in art. 33(13)(a)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(a)**; S.R. 2003/53, art. 3(1), **Sch.**

#### **Payment of certain arrears unenforceable without the leave of the court**

**34.**—(1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of the court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.

(2) The court, on an application for the grant of leave under this Article, may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may remit the payment of the arrears or of any part thereof.

#### **Orders for repayment in certain cases of sums paid under certain orders**

**35.**—(1) Where on an application made under this Article in relation to an order to which this Article applies it appears to the court that by reason of—

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) This Article applies to the following orders, that is to say—

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order; and

(c) any secured periodical payments order.

(3) An application under this Article may be made by the person liable to make payments under an order to which this Article applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this Article may be made in proceedings in the High Court for—

(a) the variation or discharge of the order to which this Article applies, or

(b) leave to enforce, or the enforcement of, the payment of arrears under that order;

but when not so made shall be made to a county court, <sup>F79</sup> ....

(5) The jurisdiction conferred on a county court by this Article shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this paragraph be exercisable by a county court.

(6) An order under this Article for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

**F79** Words in art. 35(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(2), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

### *[<sup>F80</sup> Consent orders*

**F80** 1989 NI 4

#### **Consent orders for financial provision or property adjustment**

**35A.**—(1) Notwithstanding anything in the preceding provisions of this Part, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

(2) Paragraph (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.

(3) In this Article—

“consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;

“order for financial relief” means an order under any of Articles 25, 26<sup>[F81]</sup>, 26A] or 29; and

“prescribed” means prescribed by rules of court.]

**F81** 1999 NI 11

### *Maintenance agreements*

#### **Validity of maintenance agreements**

**36.**—(1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—

(a) that provision shall be void; but

(b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to Articles 37 and 38), be binding on the parties to the agreement.

(2) In this Article and in Article 37—

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Article, between the parties to a marriage, being—

(a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

(b) a separation agreement which contains no financial arrangements in a case where no other agreements in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

**Alteration of agreements by the court, or by a court of summary jurisdiction, during lives of parties**

37.—(1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Northern Ireland, then, subject to [<sup>F82</sup>[<sup>F83</sup>paragraph] (3)], either party may apply to the court or to a court of summary jurisdiction for an order under this Article.

<sup>F84</sup>(1A) . . . . .

(2) If the court to which the application is made is satisfied either—

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or

(b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then subject to paragraphs (3), (4) and (5), that court may by order make such alterations in the agreement—

(i) by varying or revoking any financial arrangements contained in it, or

(ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in [<sup>F85</sup> Article 27(4)]; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A court of summary jurisdiction shall not entertain an application under paragraph (1) unless both the parties to the agreement are resident in Northern Ireland <sup>F86</sup> ..., and shall not have power to make any order on such an application except—

(a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;

- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this Article, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—

- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of<sup>F87</sup>, or formation of a civil partnership by,] the party to whom the payments are to be made;
- (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of<sup>F87</sup>, or formation of a civil partnership by,] that party.

(5) Where a court decides to alter, by order under this Article, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments or, as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of Article 31(2) and (3) as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(6) For the avoidance of doubt it is hereby declared that nothing in this Article or in Article 36 affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other statutory provision (including a provision of this Order) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

- F82** Words in art. 37(1) substituted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 18(3)(a)**
- F83** Word in art. 37(1) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), **Sch. para. 8(3)(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F84** Art. 37(1A) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), **Sch. para. 8(3)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F85** 1989 NI 4
- F86** Words in art. 37(3) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), Sch. 1 para. 76(3), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F87** 2004 c. 33

### **Alteration of agreements by the High Court, or by a county court, after death of one party**

**38.—**(1) Where a maintenance agreement within the meaning of Article 36 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in Northern Ireland, the surviving party or the personal representatives of the deceased party may, subject to paragraphs (2) and (3), apply to the High Court or a county court for an order under Article 37<sup>F88</sup>....

(2) An application under this Article shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) A county court shall have jurisdiction by virtue of this Article only where it is shown to the satisfaction of the court that, at the date of the death of the deceased, the property included in his net estate (that is to say, all property of which he had power to dispose by his will, otherwise than by virtue of a special power of appointment, less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any capital transfer tax payable out of his estate on his death) did not exceed [<sup>F89</sup> £15,000] in value.

(4) If a maintenance agreement is altered by a court on an application made in pursuance of paragraph (1), the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(5) The provisions of this Article shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in paragraph (2) on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this Article to be made by the surviving party after that period; but this paragraph shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this Article.

(6) Article 33(9) shall apply for the purposes of paragraph (2) as it applies for the purposes of paragraph (6) of Article 33.

**F88** Words in art. 38(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(4), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)  
**F89** 1979 NI 8

#### *Miscellaneous and supplemental*

### **Avoidance of transactions intended to prevent or reduce financial relief**

**39.**—(1) For the purposes of this Article “financial relief” means relief under any of the provisions of Articles 24, 25, 26, [<sup>F90</sup> 26A,] 29, 33 (except paragraph (6)) and 37, and any reference in this Article to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—

- (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;
- (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in paragraph (1) by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of sub-paragraph ( *b* ) shall be made in the proceedings for the financial relief in question.

(3) An order made by the court under paragraph (2)( *a* ), to the extent that it restrains the other party to the proceedings for financial relief from making a disposition of any land in Northern Ireland which is specified in the order,—

- (a) shall create on the land a statutory charge within the meaning of section 87 of the Land Registration Act (Northern Ireland) 1970 (matters registrable in the Statutory Charges Register); and
- (b) subject to section 88 of that Act (statutory charge to be void against purchaser in certain circumstances), shall render liable to be set aside by the court, at the instance of the applicant for financial relief, any disposition of the land in contravention of the order.

(4) Neither paragraph (3)( *b* ) nor section 88(1) of the said Act of 1970 shall prejudice any power of the court to set aside a disposition under paragraph (2)( *b* ) or ( *c* ).

(5) Without prejudice to any provision of section 91 of the said Act of 1970 (cancellation and modification of statutory charges), the registration of a statutory charge such as is mentioned in paragraph (3)( *a* ) [ <sup>F91</sup> shall be effective until—

- (a) the expiration of the period of one year from the date of its registration or of the last renewal of its registration, unless the registration is renewed or further renewed before the expiration of that period; or
- (b) the court orders that it is to cease to have effect;

and when the registration ceases to have effect the Registrar of Titles may cancel it.]

(6) An application for the renewal, under paragraph (5)( *a* ), of the registration of a charge may be made in the same manner as the application for the original registration.

(7) Where the court makes an order under paragraph (2)( *b* ) or ( *c* ) or (3)( *b* ) setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(8) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of paragraph (2)( *b* ) and ( *c* ) unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(9) Where an application is made under this Article with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

- (a) in a case falling within paragraph (2)( *a* ) or ( *b* ), that the disposition or other dealing would (apart from this Article) have the consequence, or
- (b) in a case falling within paragraph (2)( *c* ), that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(10) In this Article “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(11) This Article does not apply to a disposition made more than three years before the commencement of this Article.



F90 1999 NI 11

F91 1980 NI 5

**Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage<sup>F92</sup> or formation of civil partnership]**

**40.—(1) Where—**

- (a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as “a payments order”) has ceased to have effect by reason of the remarriage of<sup>F92</sup>, or formation of a civil partnership by,] that party, and
- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage<sup>F92</sup> or formation of the civil partnership] in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraphs ( a ) and ( b ) against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this Article.

(2) On an application under this Article the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in paragraph (1) ( b ) or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this Article may be made in proceedings in the High Court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to a county court; <sup>F93</sup> ....

(4) The jurisdiction conferred on a county court by this Article shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this paragraph be exercisable by a county court.

(5) An order under this Article for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(6) The collecting officer of a court of summary jurisdiction to whom any payments under a payments order, or under an attachment of earnings order made to secure payments under a payments order, are required to be made shall not be liable—

- (a) for any act done by him in pursuance of the payments order after the date on which the order ceased to have effect by reason of the remarriage of<sup>F92</sup>, or formation of a civil partnership by,] the person entitled to payments under it; or
- (b) for any act done by him after that date in accordance with any statutory provision specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if (but only if) the act was one which he would have been under a duty to do had the payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried<sup>F92</sup> or formed a civil partnership] was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

(7) In this Article “collecting officer” means the officer mentioned in<sup>F94</sup> Article 85(2) of the Magistrates' Courts (Northern Ireland) Order 1981] or section 15(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 .

**F92** 2004 c. 33

**F93** Words in art. 40(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(5), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F94** 1981 NI 26

### **Settlement, etc., made in compliance with a property adjustment order may be avoided on bankruptcy of settlor**

**41.** The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being<sup>F95</sup> a transaction in respect of which an order may be made under Article 312 or 313 of the Insolvency (Northern Ireland) Order 1989].

**F95** 1989 NI 19

### **Payments, etc., under order made in favour of person suffering from mental disorder**

**42.** Where the court makes an order under this Part requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health<sup>F96</sup> (Northern Ireland) Order 1986], of managing and administering his or her property and affairs then, subject to any order, direction or authority made or given in relation to that person under<sup>F96</sup> Part VIII of the Mental Health (Northern Ireland) Order 1986], the court may order the payments to be made, or, as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

**F96** 1986 NI 4

### **<sup>F97</sup>Appeals relating to pension sharing orders which have taken effect**

**42A.—**(1) Paragraphs (2) and (3) apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

(2) If the pension sharing order relates to a person's rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.

(3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Department of Health and Social Services has acted to its detriment in reliance on the taking effect of the order.

(4) In determining for the purposes of paragraph (2) or (3) whether a person or the Department has acted to his or its detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.

(5) Where paragraph (2) or (3) applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit, for the purpose of putting the parties in the position it considers appropriate.

(6) Article 26B only applies to a pension sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.

(7) In paragraph (2), the reference to the person responsible for the pension arrangement is to be read in accordance with Article 27D(4).]

**F97** 1999 NI 11

**[<sup>F98</sup> Appeals relating to pension compensation sharing orders which have taken effect**

**42B.**—(1) This Article applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.

(2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—

- (a) may not set aside or vary the order;
- (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(3) In determining for the purposes of paragraph (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court's opinion is insignificant.

(4) Article 26E (duty to stay) only applies to a pension compensation sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.]

**F98** Art. 42B inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 9](#) (with s. 73); S.R. 2011/108, art. 2(2), Sch.

## PART IV

### PROTECTION, CUSTODY, ETC., OF CHILDREN

#### Reference for conciliation and report on children

**43.**—(1) Rules of court shall make provision for ensuring that where—

- (a) a petition for divorce, nullity of marriage or judicial separation has been presented to the court, and
- (b) there are children of the family to whom Article 44 (restrictions on decrees affecting children) applies,

a reference is made to a suitably qualified person—

(i) to consider the possibility of conciliating the parties to the marriage, and

*Head (ii) rep. by 1995 NI 2*

*Paras. (2), (3) rep. by 1995 NI 2*

#### **[<sup>F99</sup> Restrictions on decrees for dissolution, annulment or separation affecting children**

**44.**—(1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider—

- (a) whether there are any children of the family to whom this Article applies; and

- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children (Northern Ireland) Order 1995 with respect to any of them.

(2) Where, in any case to which this Article applies, it appears to the court that—

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Children (Northern Ireland) Order 1995 with respect to any such child;
- (b) it is not in a position to exercise that power or (as the case may be) those powers without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this Article,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This Article applies to—

- (a) any child of the family who has not attained the age of 16 at the date when the court considers the case in accordance with the requirements of this Article; and
- (b) any child of the family who has attained that age at that date and in relation to whom the court directs that this Article shall apply.]

**F99** 1995 NI 2

*Arts. 45#47 rep. by 1995 NI 2*

## PART V

### MISCELLANEOUS AND SUPPLEMENTAL

#### The court

**48.**—(1) Subject to the following provisions of this Article, any reference in this Order to “the court” (except where the context shows that it is a reference to some particular court) is a reference to—

- (a) the High Court; or

[<sup>F100</sup>(b) a county court.]

<sup>F101</sup> .....

<sup>F102</sup>(1A) .....

<sup>F102</sup>(1B) .....

<sup>F103</sup>(2) .....

(3) <sup>F104</sup> ... Rules of court—

- (a) shall provide for the transfer to the High Court—

- (i) of any matrimonial cause pending in a <sup>F105</sup>... county court which ceases to be undefended, and

- (ii) of any matrimonial cause so pending, where the transfer appears to the <sup>F105</sup>... county court to be desirable;

- (b) may provide for the transfer to the High Court of any matrimonial cause which remains undefended;
- (c) may provide for the transfer or retransfer from the High Court to a <sup>F106</sup>... county court of any matrimonial cause which is, or again becomes, undefended;
- (d) shall define the circumstances in which any matrimonial cause is to be treated for the purposes of this paragraph as undefended.
- (4) The jurisdiction of a <sup>F107</sup>... county court to exercise any power under Part III or IV (except a power under Article 29 or 37 or a power under Article 35, 38 or 40 <sup>F108</sup>...) shall, except to the extent that rules of court otherwise permit and, in particular, without prejudice to paragraphs (5) and (7), be exercisable only in connection with a petition, decree or order pending in or made by such a court.
- (5) <sup>F109</sup>... Rules of court may provide for the transfer or retransfer from a <sup>F110</sup>... county court to the High Court, or from the High Court to a <sup>F110</sup>... county court, of any proceedings for the exercise of a power under Part III or IV (except proceedings on an application under Article 35, 38 or 40).
- (6) The power conferred by paragraphs (3) and (5) includes power to provide for the removal of proceedings at the direction of the High Court; but nothing in this Article affects any other power of the High Court to remove proceedings to that court from a county court or any power to remit proceedings from that court to a county court.
- (7) A court shall have jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of paragraph (5).
- (8) Any jurisdiction conferred on a <sup>F111</sup>... county court by virtue of this Order shall be exercisable notwithstanding that by reason of any amount claimed the jurisdiction would not but for this paragraph be exercisable by a county court.
- (9) Without prejudice to [<sup>F112</sup> Article 61 of the County Courts (Northern Ireland) Order 1980 ] (cases stated), rules of court shall make provision for an appeal to the Court of Appeal from any decree or order made by [<sup>F113</sup> a judge of] a <sup>F114</sup>... county court in the exercise of the jurisdiction conferred by any provision of this Order (other than Article 34, 35, 38 or 40)[<sup>F115</sup> or of the Children (Northern Ireland) Order 1995], or from the dismissal [<sup>F113</sup> by such a judge] of any petition or application under such a provision (other than as aforesaid), upon a point of law, a question of fact or the admission or rejection of any evidence.
- (10) A person dissatisfied with an order made by any county court in the exercise of the jurisdiction conferred by Article 35, 38 or 40 or with the dismissal of any application instituted by him under that Article shall be entitled to appeal from the order or dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts [<sup>F112</sup> (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order shall apply accordingly].
- (11) In this Article “matrimonial cause” means any action for divorce, nullity of marriage or judicial separation<sup>F116</sup> . . .

**F100** Art. 48(1)(b) substituted (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), **Sch. 1 para. 76(6)(a)** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3)

**F101** Words in art. 48(1) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 41(2)(b), Sch. 18 Pt. 3; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(a), 29, 30(c)

**F102** Art. 48(1A)(1B) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F103** Art. 48(2) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

- F104** Words in art. 48(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(c), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F105** Word in art. 48(3)(a) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(d), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F106** Word in art. 48(3)(c) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(d), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F107** Word in art. 48(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(e), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F108** Words in art. 48(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(e), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F109** Words in art. 48(5) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(f), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F110** Word in art. 48(5) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(f), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F111** Word in art. 48(8) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(g), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F112** 1980 NI 3
- F113** 1980 NI 5
- F114** Word in art. 48(9) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(h), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F115** 1995 NI 2
- F116** 1989 NI 4

**Jurisdiction of court**

49.—(1) Paragraphs (2) to (6) shall have effect with respect to—

- (a) the jurisdiction of the court to entertain—
  - (i) proceedings for divorce, judicial separation or nullity of marriage; and
  - (ii) proceedings for financial provision under Article 29; and

<sup>F117</sup>(b) .....

<sup>F118</sup>(1A) Paragraphs (2) and (3) apply only in relation to a marriage of a man and a woman (but see Article 49A as regards jurisdiction in proceedings concerning a marriage of a same-sex couple).]

<sup>F119</sup>(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only <sup>F120</sup>if) on the date of the application—

- (a) both parties to the marriage are habitually resident in Northern Ireland;
- (b) both parties to the marriage were last habitually resident in Northern Ireland and one of them continues to reside there;
- (c) the respondent is habitually resident in Northern Ireland;
- (d) the applicant is habitually resident in Northern Ireland and has resided there for at least one year immediately before the application was made;
- (e) the applicant is domiciled and habitually resident in Northern Ireland and has resided there for at least six months immediately before the application was made;
- (f) both parties to the marriage are domiciled in Northern Ireland; or
- (g) either of the parties to the marriage is domiciled in Northern Ireland.]]

<sup>F119</sup>(3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only <sup>F121</sup>if) on the date of the application—

- (a) both parties to the marriage are habitually resident in Northern Ireland;

- (b) both parties to the marriage were last habitually resident in Northern Ireland and one of them continues to reside there;
- (c) the respondent is habitually resident in Northern Ireland;
- (d) the applicant is habitually resident in Northern Ireland and has resided there for at least one year immediately before the application was made;
- (e) the applicant is domiciled and habitually resident in Northern Ireland and has resided there for at least six months immediately before the application was made;
- (f) both parties to the marriage are domiciled in Northern Ireland; or
- (g) either of the parties to the marriage—
  - (i) is domiciled in Northern Ireland; or
  - (ii) died before the application was made and either was at death domiciled in Northern Ireland or had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.]]

<sup>F122</sup>(3A) .....

<sup>F123</sup>(4) .....

[<sup>F124</sup>(5) The court has jurisdiction to entertain an application for financial provision under Article 29 if (and only if)—

- (a) the applicant or the respondent is domiciled in Northern Ireland on the date of the application;
- (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
- (c) the respondent is resident there on that date.

(5A) If the application or part of it relates to a matter in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain that application or part of it except where permitted by Article 18.]

(6) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of paragraph (2) or (3) (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under paragraph (2) or (3).

(7) <sup>F125</sup>... Schedule 1 shall have effect as to the cases in which matrimonial proceedings in Northern Ireland are to be, or may be, stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in the Schedule prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule.

[<sup>F126</sup>(8) In this Article “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.]

**F117** Art. 49(1)(b) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6\), ss. 19, 20\(2\), Sch. 2, Sch. 3; S.R. 2009/356, art. 2](#)

**F118** Art. 49(1A) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\), regs. 1\(2\), 35\(6\) \(with regs. 6-9\)](#)

**F119** S.I. 2001/660

- F120** Words in art. 49(2) substituted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 8(4)(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F121** Words in art. 49(3) substituted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 8(4)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F122** S.I. 2005/265
- F123** Art. 49(4) repealed (9.11.2009) by Presumption of Death Act (Northern Ireland) 2009 (c. 6), ss. 19, 20(2), Sch. 2, **Sch. 3**; S.R. 2009/356, **art. 2**
- F124** Art. 49(5)(5A) substituted (31.12.2020) for art. 49(5) by S.I. 2019/519, Sch. para. 8(4)(d) (as substituted by The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1574), regs. 1, **5(3)(c)**)
- F125** Words in art. 49(7) omitted (31.12.2020) by virtue of S.I. 2019/519, Sch. para. 8(4)(e) (as substituted by The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1574), regs. 1, **5(3)(c)**)
- F126** Art. 49(8) substituted (31.12.2020) by S.I. 2019/519, Sch. para. 8(4)(f) (as substituted by The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1574), regs. 1, **5(3)(c)**)

**[<sup>F127</sup>Jurisdiction of court: proceedings in relation to a marriage of a same-sex couple**

**49A.**—(1) Paragraphs (2) to (4) have effect with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a same-sex couple—

- (a) proceedings for divorce,
- (b) proceedings for judicial separation, and
- (c) proceedings for nullity of marriage.

(2) The court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) both parties to the marriage are habitually resident in Northern Ireland,
- (b) both parties to the marriage were last habitually resident in Northern Ireland and one of them continues to reside there,
- (c) the respondent is habitually resident in Northern Ireland,
- (d) the applicant is habitually resident in Northern Ireland and has resided there for at least one year immediately before the proceedings are begun,
- (e) either of the parties to the marriage is domiciled in Northern Ireland, or
- (f) the following conditions are met—
  - (i) the parties married each other under the law of Northern Ireland, and
  - (ii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

(3) The court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

- (a) both parties to the marriage are habitually resident in Northern Ireland,
- (b) both parties to the marriage were last habitually resident in Northern Ireland and one of them continues to reside there,
- (c) the respondent is habitually resident in Northern Ireland,
- (d) the applicant is habitually resident in Northern Ireland and has resided there for at least one year immediately before the proceedings are begun,



- (e) either of the parties to the marriage—
  - (i) is domiciled in Northern Ireland, or
  - (ii) died before the proceedings are begun and either was at death domiciled in Northern Ireland or had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death, or
- (f) the following conditions are met—
  - (i) the parties married each other under the law of Northern Ireland, and
  - (ii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

(4) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of paragraph (2) or (3) (or of this paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under paragraph (2) or (3).]

**F127** Art. 49A inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **35(7)** (with regs. 6-9)

### **Matrimonial relief in respect of polygamous marriages**

**50.**—(1) A court shall not be precluded from granting matrimonial relief by reason only that<sup>F128</sup> either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person].

(2) In this Article “matrimonial relief” means—

- (a) any decree under Part II;
- (b) a financial provision order under Article 29;
- (c) an order under Article 37 altering a maintenance agreement;
- (d) an order under any provision of this Order which confers a power exercisable in connection with, or in connection with proceedings for, any such decree or order as is mentioned in sub-paragraphs (a) to (c);

<sup>F129</sup>(dd) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;]

<sup>F130</sup>(e) an order under the Domestic Proceedings (Northern Ireland) Order 1980 .]

<sup>F128</sup>(3) Provision may be made by rules of court—

- (a) for requiring notice of proceedings brought by virtue of this Article to be served on any additional spouse of a party to the marriage in question; and
- (b) for conferring on any such additional spouse the right to be heard in the proceedings,

in such cases as may be specified in the rules.]

**F128** 1995 NI 20

**F129** 1989 NI 4

**F130** 1980 NI 5

**Collusion, etc.**

**51.**—(1) Without prejudice to any provision of this Order which empowers or requires the court to dismiss a petition for divorce or judicial separation or to dismiss an application for a decree nisi of divorce to be made absolute, nothing in any statutory provision relating to the general jurisdiction of the court or in any rule of law shall be taken as empowering or requiring the court to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree nisi or on the ground of any conduct on the part of the petitioner.

(2) Collusion shall not be a bar to the granting of a decree of nullity.

(3) <sup>F131</sup> .....

**F131** Art. 51(3) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6\), ss. 19, 20\(2\), Sch. 2, Sch. 3](#); S.R. 2009/356, [art. 2](#)

**Evidence**

**52.**—(1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

**Parties to proceedings under this Order**

**53.**—(1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.

(2) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of paragraph (1) where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.

(3) Where in pursuance of paragraph (1) a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.

(4) Rules of court may make provision, in cases not falling within paragraph (1), with respect to the joinder as parties to proceedings under this Order of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined.

(5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

*Art. 54 rep. by 1993 NI 6*

**Extension of section 17 of married Women's Property Act 1882**

**55.** In section 17 of the Married Women's Property Act 1882 (power of judge of High Court or county court to decide questions between husband and wife as to property) and in section 3 of the

Law Reform (Husband and Wife) Act (Northern Ireland) 1964 (which extends that section), any reference to a husband or a wife shall include a reference to—

- (a) either of the parties to a void marriage, whether or not it has been annulled;
- (b) either of the parties to a voidable marriage which has been annulled; and
- (c) either of the parties to a marriage which has been dissolved;

[<sup>F132</sup>but<sup>F133</sup> ... an application] under that section 17 (or that section as so extended) by a party to a marriage which has been dissolved or annulled shall not be made more than three years after the date of the dissolution or annulment and such an application by a party to a void marriage which has not been annulled shall not be made more than three years after the parties ceased to live with each other in the same household.

**F132** Words in art. 55 substituted (18.4.2011) by The Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1(1), **7(2)** (with reg. 1(2))

**F133** Words in art. 55 omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 6(2)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

#### **Extension of time limit: mediation**

<sup>F134</sup>**55A.** . . . . .

**F134** Art. 55A omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 6(3)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

*Art. 56 rep. with saving by 1980 NI 5*

#### **Abolition of right to claim damages for adultery**

**57.** After the commencement of this Article no person shall be entitled to petition the court for, or include in a petition a claim for, damages from any other person on the ground of adultery with the wife of the first-mentioned person.

#### **Abolition of actions for enticement and harbouring of a spouse**

**58.** No person shall be liable in tort—

- (a) to any other person on the ground only of his having induced the wife or husband of that other person to leave or remain apart from the other spouse;
- (b) to any other person for harbouring the wife of that other person,

except in the case of a cause of action accruing before the commencement of this Article if an action in respect thereof has been begun before that commencement.

#### **Abolition of right to claim restitution of conjugal rights**

**59.** After the commencement of this Article no person shall be entitled to petition the court for restitution of conjugal rights.

### **Abolition of wife's agency of necessity**

**60.** Any rule of law or equity conferring on a wife authority, as agent of necessity of her husband, to pledge his credit or borrow money on his credit is hereby abrogated.

*Art. 61 rep. by 1984 NI 14*

### **Transitional provisions and savings**

**62.** Schedule 3 shall have effect for the purpose of—

- (a) the transition to the provisions of this Order from the law in force before the commencement of this Order;
- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Order; and
- (c) the assimilation in certain respects to orders under this Order of orders made, or deemed to have been made, under the Matrimonial Causes Act (Northern Ireland) 1939 or the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 .

*Art.63(a), with Schedules 3, 4, effects amendments; para.(b), with Schedules 3, 5, effects repeals*

## SCHEDULES

### SCHEDULE 1

Article 49(7).

#### STAYING OF MATRIMONIAL PROCEEDINGS

##### Interpretation

1. Paragraphs 2 to 6 have effect for the interpretation of this Schedule.
2. “Matrimonial proceedings” means any proceedings so far as they are one or more of the five following kinds, namely, proceedings for—
  - divorce,
  - judicial separation,
  - nullity of marriage,
  - a declaration as to the validity of a marriage of the petitioner, and
  - a declaration as to the subsistence of such a marriage.
- 3.—(1) “Another jurisdiction” means any country other than Northern Ireland.  
(2) “Related jurisdiction” means any of the following countries, namely, England and Wales, Scotland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).
- 4.—(1) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.  
(2) For the purposes of this Schedule, proceedings in the court are continuing if they are pending and not stayed.
5. Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by rules of court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.
6. “Prescribed” means prescribed by rules of court.

##### Duty to furnish particulars of concurrent proceedings in another jurisdiction

7. While matrimonial proceedings are pending in the court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which—
  - (a) he knows to be continuing in another jurisdiction; and
  - (b) are in respect of that marriage or capable of affecting its validity or subsistence.

## Obligatory stays

**8.—**(1) Where before the beginning of the trial or first trial in any proceedings for divorce which are continuing in the court it appears to the court on the application of a party to the marriage—

- (a) that in respect of the same marriage proceedings for divorce or nullity of marriage are continuing in a related jurisdiction; and
- (b) that the parties to the marriage have resided together after its celebration; and
- (c) that the place where they resided together when the proceedings in the court were begun or, if they did not then reside together, where they last resided together before those proceedings were begun, is in that jurisdiction; and
- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the court were begun,

it shall be the duty of the court, subject to paragraph 10(2), to order that the proceedings in the court be stayed.

(2) References in sub-paragraph (1) to the proceedings in the court are, in the case of proceedings which are not only proceedings for divorce, to the proceedings so far as they are proceedings for divorce.

## Discretionary stays

**9.—**(1) Where before the beginning of the trial or first trial in any matrimonial proceedings<sup>F135</sup>... which are continuing in the court it appears to the court—

- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
- (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1) (b), the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(3) In the case of any proceedings so far as they are proceedings for divorce, the court shall not exercise the power conferred on it by sub-paragraph (1) while an application under paragraph 8 in respect of the proceedings is pending.

(4) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the court, the court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 7, sub-paragraph (1) shall have effect in relation to those proceedings, and to the other proceedings by reference to which the declaration is made, as if the words “before the beginning of the trial or first trial” were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

**F135** Words in Sch. 1 para. 9(1) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/519), reg. 1(1), [Sch. para. 8\(5\)](#) (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

## Supplementary

**10.**—(1) Where an order staying any proceedings is in force in pursuance of paragraph 8 or 9, the court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

(2) If the court discharges an order staying any proceedings and made in pursuance of paragraph 8, the court shall not again stay those proceedings in pursuance of that paragraph.

**11.**—(1) The provisions of sub-paragraphs (2) and (3) shall apply (subject to sub-paragraph (4)) where proceedings for divorce, judicial separation or nullity of marriage are stayed by reference to proceedings in a related jurisdiction for divorce, judicial separation or nullity of marriage; and in this paragraph—

*Definitions rep. by 1995 NI 2*

“lump sum order” means such an order as is mentioned in paragraph (f) of Article 25(1) (lump sum payment for children), being an order made under Article 25(1) or (2)(a)<sup>F136</sup> or an order made in equivalent circumstances under Schedule 1 to the Children (Northern Ireland) Order 1995 and of a kind mentioned in paragraph 2(2)(c) of that Schedule];

“the other proceedings”, in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed;

“relevant order” means—

- (a) an order under Article 24 (maintenance for spouse pending suit),
- (b) such an order as is mentioned in paragraph (d) or (e) of Article 25(1) (periodical payments for children) being an order made under Article 25(1) or (2)(a)<sup>F136</sup> or an order made in equivalent circumstances under Schedule 1 to the Children (Northern Ireland) Order 1995 and of a kind mentioned in paragraph 2(2)(a) or (b) of that Schedule],
- (c) an order under Article 45(1)(a) (orders for the custody and education of children)<sup>F136</sup> or an Article 8 order under the Children (Northern Ireland) Order 1995], and
- (d) except for the purposes of sub-paragraph (3), any order restraining a person from removing a child out of Northern Ireland or out of the<sup>F136</sup> care] of another person; and

“stayed” means stayed in pursuance of this Schedule.

(2) Where any proceedings are stayed, then, without prejudice to the effect of the stay apart from this paragraph—

- (a) the court shall not have power to make a relevant order or a lump sum order in connection with the stayed proceedings except in pursuance of paragraph (c); and
- (b) subject to paragraph (c), any relevant order made in connection with the stayed proceedings shall, unless the stay is previously removed or the order previously discharged, cease to have effect on the expiration of the period of three months beginning with the date on which the stay was imposed; but
- (c) if the court considers that, for the purpose of dealing with circumstances needing to be dealt with urgently, it is necessary during or after that period to make a relevant order or a lump sum order in connection with the stayed proceedings or to extend or further extend the duration of a relevant order made in connection with the stayed proceedings, the court may do so and the order shall not cease to have effect by virtue of paragraph (b).

(3) Where any proceedings are stayed and at the time when the stay is imposed an order is in force, or at a subsequent time an order comes into force, which was made in connection with the other proceedings and provides for any of the<sup>F136</sup> . . . following matters, namely, periodical payments

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

for a spouse of the marriage in question, periodical payments for a child,<sup>[F136]</sup> or any provision which could be made by an Article 8 order under the Children (Northern Ireland) Order 1995] then, on the imposition of the stay in a case where the order is in force when the stay is imposed and on the coming into force of the order in any other case—

- (a) any relevant order made in connection with the stayed proceedings shall cease to have effect in so far as it makes for a spouse or child any provision for any of those matters as respects which the same or different provision for that spouse or child is made by the other order;
- (b) the court shall not have power in connection with the stayed proceedings to make a relevant order containing for a spouse or child provision for any of those matters as respects which any provision for that spouse or child is made by the other order; and
- (c) if the other order contains provision for periodical payments for a child, the court shall not have power in connection with the stayed proceedings to make a lump sum order for that child.

(4) If any proceedings are stayed so far as they consist of matrimonial proceedings of a particular kind but are not stayed so far as they consist of matrimonial proceedings of a different kind, sub-paragraphs (2) and (3) shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the court shall not have power to make a relevant order or a lump sum order in connection with the proceedings so far as they are stayed; and in this sub-paragraph references to matrimonial proceedings do not include proceedings for a declaration.

- (5) Nothing in this paragraph affects any power of the court—
  - (a) to vary or discharge a relevant order so far as the order is for the time being in force; or
  - (b) to enforce a relevant order as respects any period when it is or was in force; or
  - (c) to make a relevant order or a lump sum order in connection with proceedings which were but are no longer stayed.

**F136** 1995 NI 2

*Schedule 2 rep. by 1993 NI 6*

## SCHEDULE 3

Article 62.

### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

#### MISCELLANEOUS AND GENERAL

##### *Interpretation*

1.—(1) In this Schedule—



“the Act of 1939” means the Matrimonial Causes Act (Northern Ireland) 1939 ;

“the Act of 1951” means the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 .

(2) If different days are appointed under Article 1(2) for the commencement of different provisions of this Order, any reference in this Schedule to the commencement of this Order shall, in relation to any such provision, be construed as a reference to the commencement of that provision.

#### *General transitional provisions and savings*

2. Subject to paragraph 3, any application made or proceeding begun under any statutory provision repealed by this Order, being an application or proceeding which is pending at the commencement of this Order, shall be deemed to have been made or begun under any provision of this Order which corresponds to that statutory provision.

3. Nothing in Part II of this Order shall apply in relation to any petition for divorce or judicial separation presented before the commencement of this Order, and notwithstanding any repeal or amendment made by this Order the Act of 1939 and any rules of court made for the purposes of that Act shall continue to have effect in relation to proceedings on any such petition which are pending at the commencement of this Order as they had effect immediately before the commencement of this Order.

4. Notwithstanding any repeal or amendment made by this Order, the Act of 1939 and any rules of court made for the purposes of that Act shall continue to have effect in relation to—

- (a) any proceedings on a petition for damages for adultery or for restitution of conjugal rights presented before the commencement of this Order which are pending at the commencement of this Order, and
- (b) any proceedings for relief under section 17(2) or (3), 19(4), 20(2) or 22(2) of the Act of 1939 (as extended, in the case of section 22, by section 7 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 ) brought in connection with proceedings on a petition for restitution of conjugal rights so presented, being proceedings for relief which are themselves pending at the commencement of this Order,

as they had effect immediately before the commencement of this Order, and nothing in Schedule 4 shall affect the operation of any other statutory provision in relation to any such proceedings.

5. Subject to the provisions of this Order (and, in particular, to Articles 16 and 51(2)) and to rules of court, in exercising its jurisdiction in relation to nullity of marriage the court may act and may give relief on principles and rules which, in the opinion of the court, are as nearly as may be conformable to those on which the ecclesiastical courts of Ireland acted and gave relief before 1st January 1871.

#### *Specific transitional provisions and savings*

6. In Article 6 any reference to a decree of judicial separation includes a reference to a decree of divorce a mensa et thoro granted before 1st October 1939.

7. Article 16(1) replaces, in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.

8. In the application of Article 25(1)( d), ( e) or ( f) to any proceedings begun between 14th November 1966 and the commencement of this Order, Article 25 shall have effect as if, in paragraph ( b) in the definition of “child of the family” in Article 2(2), for the reference to any other child such as is there mentioned there were substituted a reference to a child of one party such as is mentioned in section 7(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 ; and in the

corresponding application to any proceedings begun before 15th November 1966, Article 25 shall have effect as if the said paragraph ( *b* ) were omitted.

**9.** Where the party chargeable under a maintenance agreement within the meaning of Article 36 died before the date of the commencement of this Order, then—

- (a) paragraph (1) of that Article shall not apply to the agreement unless there remained undistributed on that date assets of that party's estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of his funeral, testamentary and administrative expenses, debts and liabilities, including any capital transfer tax or estate duty payable out of his estate on his death, but not including any liability arising by virtue of that paragraph; and
- (b) nothing in that paragraph shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party's estate which had been distributed before that date.

**10.** No right or liability shall attach by virtue of Article 36(1) in respect of any sum payable under a maintenance agreement within the meaning of that Article in respect of a period before the commencement of this Order.

**11.** In relation to such proceedings as are mentioned in Article 45(1) which were begun between 14th November 1966 and the commencement of this Order or begun before 15th November 1966, Article 45(1) shall have effect as if, respectively, in paragraph ( *b* ) in the definition of “child of the family” in Article 2(2) for the reference to any other child such as is there mentioned there were substituted a reference to a child of one party such as is mentioned in section 7(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966, or the said paragraph ( *b* ) were omitted.

**12.** Article 45(2) shall not apply in relation to an order made under section 4 of the Act of 1951 before the commencement of this Order and deemed by virtue of section 29 of the Interpretation Act (Northern Ireland) 1954 to be made under Article 29.

**13.—**(1) No proceedings for divorce shall be entertained by the court by virtue of Article 49(2) or (6) while proceedings for divorce or nullity of marriage begun before 1st January 1974 are pending (in respect of the same marriage) in England and Wales, Scotland, the Channel Islands or the Isle of Man; and provision may be made by rules of court as to when for the purposes of this paragraph proceedings are to be treated as begun or pending in any of those places.

(2) Nothing in Article 49 affects the court's jurisdiction to entertain any proceedings begun before 1st January 1974.

**14.—**(1) Article 51(1) shall not apply in relation to any petition for divorce or judicial separation presented before the commencement of this Order.

(2) Article 51(2) applies whether the marriage took place, or the proceedings were instituted, before or after the commencement of this Order.

**15.** In Article 54(3) any reference to rules of court as defined by section 21(4) of the Interpretation Act (Northern Ireland) 1954 includes a reference to such rules as so defined by any amendment of that Act for which provision is made by any Act of the Session in which this Order is made (whether or not that amendment is yet in force).

**16.** In paragraph 2 of Schedule 2 in sub-paragraph ( *d* ) the reference to the Master (Probate and Matrimonial) or a Registrar (Probate and Matrimonial) includes a reference to, respectively, the Chief Probate Registrar or an Assistant Probate Registrar, and in sub-paragraph ( *e* ) the reference to a circuit registrar includes a reference to a clerk of the Crown and peace.

17. The amendment made by Schedule 4 in section 1(1) of the Matrimonial Causes (Reports) Act (Northern Ireland) 1966 shall not prevent that Act having the same application in relation to any proceedings for restitution of conjugal rights which are continued by paragraph 4 as it would have had if the amendment had not been made.

## PART II

### PRESERVATION FOR LIMITED PURPOSES OF CERTAIN STATUTORY PROVISIONS

#### *Nullity*

18.—(1) Subject to sub-paragraphs (2) to (5), a marriage celebrated after 30th September 1939 and before the commencement of this Order shall (without prejudice to any other grounds on which a marriage celebrated before that time is by law void or voidable) be voidable on the ground—

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- (b) that at the time of the marriage either party to the marriage—
  - (i) was of unsound mind; or
  - (ii) was subject to recurrent attacks of insanity or epilepsy; or
  - (iii) was a person requiring special care within the meaning of the Mental Health Act (Northern Ireland) 1961 ; or
- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.<sup>[F137]</sup> or]

<sup>[F137]</sup>(e) that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage;]

(2) Subject to sub-paragraph (3), in relation to a marriage celebrated before 2nd April 1962 for subheads (ii) and (iii) of sub-paragraph (1)( b) there shall be substituted —

- “(ii) was subject to recurrent fits of insanity or epilepsy; or
- (iii) might have been ascertained, in accordance with the provisions of Part III of the Mental Health Act (Northern Ireland) 1948 , to be a person requiring special care within the meaning of that Act; or” .

(3) In relation to a marriage celebrated before 1st January 1949 sub-paragraph (1)( b)(iii) shall be omitted.

(4) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)( b), ( c) or ( d) unless it is satisfied that—

- (a) the petitioner was at the time of the marriage ignorant of the facts alleged; and
- (b) proceedings were instituted within a year from the date of the marriage; and
- (c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree;

and where the proceedings with respect to the marriage are instituted after the commencement of this Order the application of Article 16(1) in relation to the marriage shall be without prejudice to the preceding provisions of this sub-paragraph.

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

[<sup>F137</sup>(4A) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1) (e) unless it is satisfied that proceedings were instituted within six months from the date of issue of the interim gender recognition certificate.]

(5) Nothing in this paragraph shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

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19. Where a decree of nullity was granted before the commencement of this Order in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it has been dissolved instead of being annulled shall be deemed to be their legitimate child.

*Succession on intestacy in case of judicial separation*

20. Article 20(2) shall not apply in a case where the death occurred before the commencement of this Order but section 15 of the Act of 1939 (which provides that certain property of a wife judicially separated from her husband shall devolve, on her death intestate, as if her husband had then been dead) shall continue to apply in any such case.

### PART III

#### ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ORDER OF ORDERS MADE, ETC., UNDER THE ACT OF 1939, ETC.

*Cesser on remarriage of orders made, etc., under the Act of 1939 or 1951 and recovery of sums mistakenly paid thereafter*

21.—(1) An order made under section 19(1) or (2) of the Act of 1939 (including either of those subsections as applied by section 19(7)) shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Order of the person in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

(2) An order made under section 17(2) or (3), 19(4) (including that subsection as applied by section 19(7)) or 20(2) of the Act of 1939 or section 4 of the Act of 1951 shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Order of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.

22. Article 40 shall apply in relation to an order made under section 17(2) or (3), 19(1), (2) or (4) (including those subsections as applied by section 19(7)) or 20(2) of the Act of 1939 or under section 4 of the Act of 1951 as it applies in relation to a periodical payments or secured periodical payments order in favour of a party to a marriage.

*Variation, etc., of certain orders made, etc., under the Act of 1939, etc.*

23.—(1) Subject to the provisions of this paragraph, Article 33 shall apply, as it applies to the orders mentioned in paragraph (2) thereof, to—

(a) an order made under any of the following provisions of the Act of 1939, that is to say,—

- (i) in section 19, subsections (1), (2), (3) and (4) (including those subsections as applied by subsection (7)), but excluding subsection (4) so far as it applies to an order made in connection with a decree for restitution of conjugal rights);
- (ii) section 20(1), where the order is made in connection with a decree for judicial separation;
- (iii) section 22(1), in so far as it relates to the maintenance of a child, and section 22(3);
- (b) an order made under section 4 of the Act of 1951;
- (c) an order such as is mentioned in section 19(6) of the Act of 1939 made in proceedings for judicial separation or for a divorce a mensa et thoro;
- (d) an order for alimony pending suit made in proceedings for judicial separation.

(2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made as mentioned in sub-paragraph (1) shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part III.

(3) Article 33, as it applies by virtue of sub-paragraph (1), shall have effect as if for paragraphs (4), (5) and (6) there were substituted the following paragraphs—

“(4) The court shall not exercise the powers conferred by this Article in relation to an order made under section 20(1) of the Matrimonial Causes Act (Northern Ireland) 1939 (“the Act of 1939”) in connection with the grant of a decree of judicial separation except on an application made in proceedings—

- (a) for the rescission of that decree, or
- (b) for the dissolution of the marriage in question.

(5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made under section 19(1), (2) or (4) (including those subsections as applied by section 19(7)) or section 22(1) or (3) of the Act of 1939 or section 4 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 (“the Act of 1951”).

(6) In the case of an order made under section 19(1) (including that subsection as applied by section 19(7)) or section 22(3) of the Act of 1939 or under section 4 of the Act of 1951, requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this Article relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.” ;

and in that Article, as it so applies, the reference in paragraph (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in paragraph (6).

(4) In relation to an order made before 13th February 1951 under section 19(1) of the Act of 1939 on or after granting a decree of divorce or nullity of marriage, the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any other order made by reference to that decree, being an order made under section 19(2) of the Act of 1939.

**24.**—(1) Paragraphs (1) and (3) of Article 33 shall apply to an order made under section 17(2) or (3) of the Act of 1939 or under section 19(4) of that Act in its application to proceedings for restitution of conjugal rights, or under section 20(2) or 22(2) of that Act, and to an order for alimony pending suit made in proceedings for restitution of conjugal rights, as they apply to the orders mentioned in paragraph (2) of Article 33.

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

(2) In exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

**25.** Article 45(7) shall apply in relation to an order for the custody or education of a child made under section 22(1) or (2) of the Act of 1939, as it applies in relation to an order made under Article 45.

*Orders made under the Acts of 1939 and 1951 to count as orders under this Order for certain purposes*

**26.** The power of the court under Article 25(1) or (2)(a) or 45(1)(a) to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a previous order or orders in relation to the child under section 22(1) of the Act of 1939.

*Application of provisions of this Order with respect to enforcement of arrears and recovery of excessive payments to certain orders made, etc., under the Acts of 1939 and 1951*

**27.** Article 34 shall apply in relation to the enforcement, by proceedings begun after the commencement of this Order, of the payment of arrears due under an order made under section 17(2), 19, 20(2) or 22 (so far as it relates to the maintenance of a child) of the Act of 1939 or section 4 of the Act of 1951 or an order for alimony pending suit made in proceedings for judicial separation or restitution of conjugal rights as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that Article.

**28.** Article 35 shall apply to an order made or deemed to have been made under any of the provisions of the Act of 1939 mentioned in paragraph 27 as it applies to the orders mentioned in Article 35(2).

*Avoidance under this Order of transactions intended to defeat claims for relief and relief granted under the Acts of 1939 and 1951*

**29.—(1)** Article 39 shall apply in relation to proceedings for relief under section 17(2) or (3), 19(4), 20(2) or 22(2) of the Act of 1939 continuing by virtue of paragraph 4(b) as it applies in relation to proceedings for relief under any of the provisions of this Order specified in Article 39(1).

(2) Without prejudice to sub-paragraph (1), Article 39 shall also apply where an order has been obtained under any of the following provisions of the Act of 1939, that is to say, sections 17, 19, 20, 22(1) (in so far as it relates to the maintenance of a child) and section 22(3) or under section 4 of the Act of 1951 as it applies where an order has been obtained under any of the provisions of this Order specified in Article 39(1).

*Care and supervision of children*

**30.** Articles 46 and 47 shall apply where the court has jurisdiction by virtue of paragraph 4(b) to make an order for the custody of a child under section 22(2) of the Act of 1939 as they apply where the court has jurisdiction to make an order for custody under Part IV of this Order, but as if the reference in Article 46(2) to a financial provision order in favour of the child were a reference to an order for payments for the maintenance and education of the child.

## PART IV

### SAVING FOR INTERPRETATION ACT

**31.** Except where specific provision to the contrary is made in this Order, nothing in this Order shall affect the provisions of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (effect of repeals and of substituting provisions).

*Schedule 4—Amendments*

*Schedule 5—Repeals*

**Changes to legislation:**

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