

1980 No. 563 (N.I. 5)

NORTHERN IRELAND

The Domestic
Proceedings
(Northern Ireland)
Order 1980

Laid before Parliament in draft

Made - - - -

21st April 1980

Coming into operation on days to be appointed under Article 1(2)



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STATUTORY INSTRUMENTS

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At the Court at Windsor Castle, the 21st day of April 1980

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Domestic Proceedings (Northern Ireland) Order 1980.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (b) 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—

“actual custody”, in relation to a child, means the actual possession of his person;

“adopted” means adopted in pursuance of an adoption order made in any part of the United Kingdom, the Isle of Man or any of the Channel Islands or, subject to sections 5 and 6 of the Adoption (Hague Convention) Act (Northern Ireland) 1969 (c), a foreign adoption as defined by section 4 (3) of that Act;

“child”, in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties;

“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 is being boarded out with those parties by the Department or a voluntary organisation, who has been treated by both of those parties as a child of their family;

(a) 1974 c. 28.

(b) 1954 c. 33 (N.I.).

(c) 1969 c. 22 (N.I.).

and for the purposes of Articles 18, 19 and 21 also includes any child who has his home with the parties to the marriage;

“the court”, in any provision except Article 40 and except where any other court is expressly referred to, means the court of summary jurisdiction which by virtue of this Order or of rules has jurisdiction for the purposes of that provision;

“the Department” means the Department of Health and Social Services;

“exclusion order” has the meaning given by Article 18 (2);

“legal custody”, in relation to a child, means so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent, but excluding, except where the person having legal custody is a parent or guardian of the child, any right to effect or arrange for the child’s emigration from the United Kingdom);

“notice” means notice in writing;

“the parental rights and duties” means as respects a particular child (whether legitimate or not) all the rights and duties which by law the mother and father have in relation to a legitimate child and his property, and includes all elements included in such rights and duties, including a right of access;

“personal protection order” has the meaning given by Article 18 (1);

“prescribed” means prescribed by rules;

“the respondent” has the meaning given by Article 3 or, in relation to a personal protection order or an exclusion order, Article 18 (1) (a);

“rules” means magistrates’ courts rules;

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

(3) References in this Order to the person with whom a child has his home are to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has actual custody of the child; and where more persons than one have such custody (either concurrently or alternately), for the purposes of this Order the person with whom the child has his home shall be deemed to be such of those persons as the court may specify.

(4) References in this Order 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, and references to their living apart shall be construed as references to their not living with each other in the same household.

(5) 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.

Powers of court to make orders for financial provision for parties to a marriage and children of the family

Grounds of application for financial provision

3. Either party to a marriage may apply to the court for an order under Article 4 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; or
- (c) has, since the date of the marriage, committed adultery; or
- (d) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (e) has deserted the applicant.

Powers of court to make orders for financial provision

4.—(1) Where on an application for an order under this Article the applicant satisfies the court of any ground mentioned in Article 3, the court may,

subject to the provisions of this Order, 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, and for such term, as may be specified in the order;
- (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
- (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.

(2) Without prejudice to the generality of paragraph (1) (b) or (d), an order under this Article for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.

(3) The amount of any lump sum required to be paid by an order under this Article shall not exceed £500 or such larger amount as the Secretary of State may by order fix for the purposes of this paragraph.

(4) Any order made by the Secretary of State under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 (a), shall apply accordingly.

Matters to which court is to have regard in exercising its powers under Article 4

5.—(1) Where an application is made for an order under Article 4, the court, in deciding whether to exercise its powers under paragraph (1) (a) or (b) of that Article and, if so, in what manner, shall have regard to the following matters, that is to say—

- (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;
- (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 parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
- (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 made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) any other matter which in the circumstances of the case the court may consider relevant, including, so far as it is just to take it into account, the conduct of each of the parties in relation to the marriage.

(2) Where an application is made for an order under Article 4, the court in deciding whether to exercise its powers under paragraph (1) (c) or (d) of that Article and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters, that is to say—

- (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 standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
- (f) the matters mentioned in relation to the parties to the marriage in sub-paragraphs (a) and (b) of paragraph (1).

(3) The court, in deciding whether to exercise its powers under Article 4 (1) (c) or (d) in favour of a child of the family who is not the child of the respondent and, if so, in what manner, shall in addition to the matters mentioned in paragraph (2) have regard (among the circumstances of the case)—

- (a) to whether the respondent had assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
- (c) to the liability of any other person to maintain the child.

Duration of orders for financial provision for a party to a marriage

6.—(1) The term to be specified in any order made under Article 4 (1) (a) shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.

(2) Where an order is made under Article 4 (1) (a) and the marriage of the parties affected by the order 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 the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

(3) A person whose remarriage causes an order made under Article 4 (1) (a) to cease to have effect shall give notice of the remarriage to the court and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

Age limit on making orders for financial provision for children and duration of such orders

7.—(1) Subject to paragraph (3), no order shall be made under Article 4 (1) (c) or (d) in favour of a child who has attained the age of 18.

(2) The term to be specified in an order made under Article 4 (1) (c) 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 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 (a)) unless the court thinks it right in the circumstances of the case to specify 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) The court—

- (a) may make an order under Article 4 (1) (c) or (d) in favour of a child who has attained the age of 18, and
- (b) may include in an order made under Article 4 (1) (c) in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court—

- (i) that the child is, or will be, or if such an order or provision were made 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
- (ii) that there are special circumstances which justify the making of the order or provision.

(4) Any order made under Article 4 (1) (c) 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.

(5) An order made under Article 4 (1) (c) in favour of a child to whom sub-paragraph (i) of paragraph (3) applies shall cease to have effect in the event of the child's ceasing to receive instruction or undergo training as mentioned in that sub-paragraph.

(6) Where an order made under Article 4 (1) (c) ceases to have effect by virtue of an event mentioned in paragraph (5) the person to whom the periodical payments are directed by the order to be made shall give notice of the event to the court; and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

Orders for payments which have been agreed by the parties to a marriage

8.—(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 has agreed in writing to make such financial provision as may be specified in the application and, subject to paragraph (3), the court on such an application may if—

- (a) it is satisfied that the respondent has agreed in writing to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the respondent shall make the financial provision specified in the application.

(2) In this Article "financial provision" means the provision mentioned in any one or more of the following sub-paragraphs, that is to say—

- (a) the making of periodical payments to the applicant,
- (b) the payment of a lump sum to the applicant,
- (c) the making of periodical payments to a child of the family or to the applicant for the benefit of such a child,
- (d) the payment of a lump sum to a child of the family or to the applicant for the benefit of such a child,

and any reference in this Article to the financial provision specified in an application made under paragraph (1) or specified by the court under paragraph (5) is a reference—

- (i) to the type of provision specified in the application or by the court, as the case may be;
- (ii) to the amount so specified as the amount of any payment to be made thereunder; and
- (iii) in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(3) Where the financial provision specified in an application under paragraph (1) includes or consists of provision in respect of a child of the family, the court shall not make an order under that paragraph unless it considers that the provision which the respondent has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(4) Where a party to a marriage has applied for an order under Article 4 then, at any time before the determination of the application, both parties to the marriage may request the court to make an order under this Article; and if an order is made under this Article the application made for an order under Article 4 shall be treated as if it had been withdrawn.

(5) Where on an application under paragraph (1) the court decides—

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application, or
- (b) that any financial provision which the respondent has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then, if the applicant and the respondent agree, the court may order that the respondent shall make that other financial provision.

(6) The provisions of Article 6 shall apply in relation to an order under this Article which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under Article 4 (1) (a).

(7) The provisions of Article 7 shall apply in relation to an order under this Article for the making of financial provision in respect of a child of the family as they apply in relation to an order under Article 4 (1) (c) or (d).

(8) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under paragraph (1), the court shall not make an order under this Article unless there is produced to the court such evidence as may be prescribed of—

- (a) the consent of the respondent to the making of the order, and
- (b) the financial resources of the respondent.

(9) The making of an order under this Article shall not prevent the making of an order under Article 4 on a subsequent application under Article 3; and without prejudice to the power of the court under Article 22 (2) to revoke the first-mentioned order, on the making of an order under Article 4 the first-mentioned order shall cease to have effect.

Powers of court where parties are living apart by agreement

9.—(1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to the court for an order under this Article, and any application made under this paragraph shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.

(2) Where on an application for an order under this Article the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Order, make one or both of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.

(3) The court in the exercise of its powers under this Article—

- (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application;
- (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under Article 3;
- (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under Article 3.

(4) Where on an application under this Article the court considers that the orders which it has the power to make under this Article—

- (a) would not provide reasonable maintenance for the applicant, or
- (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards, reasonable maintenance for that child,

the court shall refuse to make an order under this Article, but the court may treat the application as if it were an application for an order under Article 4.

(5) The provisions of Article 5 shall apply in relation to an application for an order under this Article as they apply in relation to an application for an order under Article 4 subject to the modification that for the reference in Article 5 (1) (c) to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.

(6) The provisions of Article 6 shall apply in relation to an order under this Article which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under Article 4 (1) (a).

(7) The provisions of Article 7 shall apply in relation to an order under this Article for the making of periodical payments in respect of a child of the family as they apply in relation to an order under Article 4 (1) (c).

Powers of court as to the custody etc. of children

Orders for the custody of, or access to, children

10.—(1) Where an application is made by a party to a marriage for an order under Article 4, 8 or 9, then, if there is a child of the family who is under the age of 18, the court shall not dismiss or make a final order on the application until it has decided whether to exercise its powers under this Article and, if so, in what manner.

(2) On an application for an order under Article 4, 8 or 9 the court, whether or not it makes an order under that Article, shall have power to make such order regarding—

(a) the legal custody of any child of the family who is under the age of 18, and

(b) access to any such child by either of the parties to the marriage or any other person who is a parent of that child, as the court thinks fit.

(3) An order shall not be made under paragraph (2) giving the legal custody of a child to a person other than a party to the marriage or a parent of the child.

(4) An order shall not be made under this Article giving the legal custody of a child to more than one person; but where the court makes an order giving the legal custody of a child to any person under this Article, it may order that a party to the marriage in question who is not given the legal custody of the child shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.

(5) An order made under paragraph (2) shall cease to have effect as respects any child when he attains the age of 18.

(6) Where an order is made under paragraph (2) the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order, or any provision thereof, shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.

(7) The court shall not have power to make—

(a) an order under paragraph (2) with respect to a child in respect of whose custody an order made by a court in Northern Ireland is for the time being in force;

(b) an order under paragraph (2) (b) with respect to a child who is already for the purposes of Part VII of the Children and Young Persons Act (Northern Ireland) 1968 (a) in the care of the Department.

Power of court to provide for supervision of children

11.—(1) Where the court makes an order under Article 10 (2) regarding the legal custody of a child and it appears to the court that there are exceptional circumstances which make it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of the Department.

(a) 1968 c. 34 (N.I.).

(2) Where the court makes an order under this Article for supervision by the Department, Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972 (a) (exercise of functions by Health and Social Services Boards on behalf of the Department) shall apply as if paragraph (1) (a) of that Article included a reference to functions imposed under this Article.

(3) An order made under this Article shall cease to have effect as respects any child when he attains the age of 18.

(4) The court shall not have power to make an order under this Article in respect of any child who is already for the purposes of Part VII of the Children and Young Persons Act (Northern Ireland) 1968 in the care of the Department.

Power of court to commit children to care of Department of Health and Social Services

12.—(1) Where the court has power by virtue of Article 10 (2) to make an order regarding the legal custody of a child and it appears to the court that there are exceptional circumstances which make it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or any other person who is a parent of the child, the court may, if it thinks fit, make an order committing the care of the child to the Department, and thereupon Part VII of the Children and Young Persons Act (Northern Ireland) 1968 (which relates to the treatment of children in the care of the Department) and section 154 (2) of that Act (contributions by person in care who has attained the age of 16 and is in remunerative work) shall, subject to the provisions of this Article, apply in relation to the child as they apply in relation to a child who has been received by the Department into its care under section 103 of that Act.

(2) Before making an order under this Article the court shall—

(a) notify the Department of the court's intention to make such an order, and

(b) hear any representations from the Department, including any representations as to the making of an order under Article 13 (4) for the making of periodical payments,

but the court shall not be required to give any notification to the Department under sub-paragraph (a) if a suitably qualified person acting under arrangements made by the Department has already made to the court under Article 14 (3) a report which contains a recommendation that an order should be made under this Article.

(3) While an order made by virtue of this Article is in force with respect to a child, the child shall continue in the care of the Department, notwithstanding any claim by a parent or other person.

(4) An order made under this Article shall cease to have effect as respects any child when he attains the age of 18.

(5) The court shall not have power to make an order under this Article with respect to a child who has attained the age of 17.

(6) In the application of Part VII of the Children and Young Persons Act (Northern Ireland) 1968 by virtue of this Article section 118 of that Act (which relates to arrangements for the emigration of a child) shall not apply.

(7) The court shall not have power to make an order under this Article with respect to a child who is already for the purposes of the said Part VII in the care of the Department.

(a) S.I. 1972/1265 (N.I. 14).

(8) Where the court makes an order under this Article with respect to a child, the court shall not have power to make an order under Article 10 (2) (b) with respect to that child.

(9) Each parent or guardian of a child for the time being in the care of the Department by virtue of an order made under this Article shall give notice to the Department and to the court of any change of address of that parent or guardian, and any person who without reasonable excuse fails to comply with this paragraph shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

Provision for maintenance for children in case of certain orders under Articles 10 and 12

13.—(1) Where on an application under Article 3 the court, although not satisfied of any ground mentioned in that Article, makes an order under Article 10 (2) giving to the applicant the right to the actual custody of a child of the family, the court shall have the same powers to make an order in respect of that child under Article 4 (1) (c) and (d) as the court would have if it were so satisfied.

(2) Where by an order made under Article 10 (2) the right to the actual custody of a child is given to the respondent, the court may make one or both of the following orders, that is to say—

- (a) an order that the applicant shall make to the respondent for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the applicant shall pay to the respondent for the benefit of the child or to the child such lump sum as may be so specified.

(3) Where by an order made under Article 10 (2) the legal custody of a child is given to a person who is a parent of that child but not a party to the marriage in question, the court may make one or more of the following orders, that is to say—

- (a) an order that a party to the marriage shall make to that parent for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;
- (b) an order that a party to the marriage shall pay to that parent for the benefit of the child or to the child such lump sum as may be so specified.

(4) Where an order under Article 12 (1) commits the care of a child to the Department the court may make a further order requiring a party to the marriage in question to make to the Department or to the child such periodical payments, and for such term, as may be specified in the order.

(5) The court in deciding whether to exercise its powers under paragraph (2), (3) or (4) in relation to any child and, if so, in what manner, shall have regard to all the circumstances of the case including the matters to which the court is required to have regard under Article 5 (2), and, in deciding whether to make an order against a party to the marriage who is not a parent of that child, shall also have regard (among the circumstances of the case)—

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility that party did so knowing that the child was not his own child;

(c) to the liability of any other person to maintain the child.

(6) The provisions of Article 7 (other than paragraph (3) (a)) shall apply in relation to an order under paragraph (2) (a), (3) (a) or (4) as they apply in relation to an order under Article 4 (1) (c).

(7) The provisions of Article 4 (2) and (3) shall apply in relation to an order under paragraph (2) (b) or (3) (b) as they apply in relation to an order under Article 4 (1) (d) and no order shall be made under paragraph (2) (b) or (3) (b) in respect of a child who has attained the age of 18.

(8) Where the court, by virtue of paragraph (6) of Article 10, directs that an order made under paragraph (2) of that Article in respect of a child, or the provision thereof providing for the custody of the child, shall not have effect until the expiration of a specified period or the occurrence of a specified event, an order made in respect of that child under paragraph (2) (a) or (3) (a) shall only require payments to be made from the date on which the order made under Article 10 (2), or that provision thereof, takes effect.

Supplementary provisions with respect to powers of court under Articles 10 to 12

14.—(1) Where an application is made by a party to a marriage for an order under Article 4, 8 or 9 the court, before exercising its powers under Articles 10 to 12 in respect of any child of the family, shall give each party to the marriage and any other person who, as a parent of that child, is present or represented by counsel or solicitor at the hearing, an opportunity of making representations; and any reference in this Article to a party to the proceedings shall include a reference both to a party to the marriage and to any other such person who is present or represented.

(2) Where in the case of such an application there is a child of the family who is not the child of both parties to the marriage, the court shall not exercise its powers under Articles 10 to 12 in relation to that child unless either—

(a) any person who is a parent of that child, though not a party to the marriage, is present or represented by counsel or solicitor at the hearing; or

(b) it is proved to the satisfaction of the court, on oath or by affidavit or in such other manner as may be prescribed, that such steps have been taken as may be prescribed with a view to giving notice to that person of the making of the application and of the time and place appointed for the hearing;

except that notice shall not be required to be given under sub-paragraph (b) to any person as the father of an illegitimate child unless that person has been adjudged by a court to be the father of that child.

(3) Where the court on such an application is of the opinion that it has not sufficient information to decide whether to exercise its powers under Articles 10 to 12 and, if so, in what manner, the court may, at any stage of the proceedings on that application, request the Department to arrange for a suitably qualified person to make to the court a report in writing, with respect to any such matter as the court may specify (being a matter appearing to the court to be relevant to the decision), and the court shall adjourn the hearing for the purpose of receiving such a report.

(4) Any report made in pursuance of paragraph (3) shall be furnished to the court and a copy of the report shall, before the resumed hearing, be given by the court to each party to the proceedings who is present or to his counsel or solicitor.

(5) Where on considering the report the court considers it necessary to do so in order to safeguard the interests of a child, the court may by order make him a party to the proceedings and appoint, subject to rules, a guardian ad litem (who may be a person acting under arrangements made by the Department) of the child for the purposes of the proceedings.

(6) The person by whom the report was made may be called as a witness to give evidence on or with respect to the matters referred to in the report, and, if that person gives such evidence, any party to the proceedings may give or call evidence with respect to any matter referred to either in the report or in the evidence given by that person.

(7) Subject to paragraph (8), the court may take account of—

(a) any statement contained in a report furnished to the court under paragraph (4), and

(b) any evidence given under paragraph (6) by the person by whom the report was made,

so far as that statement or evidence relates to any of the matters specified by the court under paragraph (3), notwithstanding any statutory provision or rule of law relating to the admissibility of evidence.

(8) A report made in pursuance of paragraph (3) shall not include anything said by either of the parties to a marriage in the course of an interview which took place with, or in the presence of, the person making the report with a view to the reconciliation of those parties, unless both parties have consented to its inclusion; and if anything so said is included without the consent of both those parties in any such report then, unless both those parties agree otherwise, that part of the report shall, for the purposes of the giving of evidence under paragraph (6) and for the purposes of paragraph (7), be treated as not forming part of the report.

(9) Where for the purposes of this Article the court adjourns the hearing of any application, then, subject to section 162 (2) of the Magistrates' Courts Act (Northern Ireland) 1964 (a) (which requires adequate notice of the time and place of the resumption of the hearing to be given to the parties where not fixed at the time of adjournment) the court may resume the hearing at the time and place appointed notwithstanding the absence of any or all of the parties.

Disputes between persons holding parental rights and duties jointly

15.—(1) Where two persons who have a parental right or duty jointly by virtue of orders under Article 10 (2) and (4) disagree on any question affecting the child's welfare, either of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it thinks fit.

(2) Where the court makes an order under paragraph (1) with respect to any child, the court may, on an application made by either of the persons who have a parental right or duty jointly, by order vary or revoke that order.

(3) The power of the court under Article 14 (3) to request the Department to arrange for a suitably qualified person to make a report shall apply in relation to the exercise by the court of its powers under this Article as it applies in relation to the exercise by the court of its powers under Articles 10 to 12 and the provisions of Article 14 (4) to (9) shall apply accordingly.

(a) 1964 c. 21 (N.I.).

Access to children by grandparents

16.—(1) The court, on making an order under Article 10 (2) regarding the legal custody of a child or at any time while such an order is in force, shall have power, on an application made by a grandparent of the child, to make such order requiring access to the child to be given to that grandparent as the court thinks fit.

(2) Article 10 (5), (6) and (7) (b) and Article 12 (8) shall apply in relation to an order under this Article as they apply in relation to an order under Article 10 (2) (b).

(3) Where the court has made an order under paragraph (1) requiring access to a child to be given to a grandparent, the court shall have power to vary or revoke that order on an application made—

(a) by that grandparent, or

(b) by either party to the marriage, or

(c) if the child is not a child of both the parties to the marriage, by any person who though not a party to the marriage is a parent of that child.

(4) Article 14 shall apply in relation to the exercise by a court of its powers under this Article on an application under paragraph (1) or (3) as it applies in relation to the exercise by the court of its powers under Articles 10 to 12 on an application for an order under Article 4, and any reference to a party to the proceedings in Article 14 (4) or (6) shall include—

(a) in the case of an application under paragraph (1) a reference to the grandparent who has made an application under that paragraph; and

(b) in the case of an application under paragraph (3) a reference to the grandparent who has access to the child under the order for the variation or revocation of which the application is made.

(5) Where an order made under Article 10 (2) (a) in relation to a child ceases to have effect, whether by virtue of an order or direction of the court or by virtue of any provision of this Order, any order made under this Article regarding access to the child by a grandparent shall also cease to have effect.

(6) The court shall have power to make an order under this Article in favour of a grandparent of a child notwithstanding that the child is illegitimate; and for this purpose “grandparent” means a parent of the child’s natural father or mother.

Minor’s welfare to be first consideration

17. In deciding whether or not to exercise, and in exercising, its powers under this Order in relation to the custody or upbringing of a child who is under the age of 18, the court shall regard his welfare as the first and paramount consideration.

Powers of court to make orders for the protection of a party to a marriage or a child of the family

Powers of court to make personal protection orders and exclusion orders

18.—(1) Where on an application made by a party to a marriage the court is satisfied—

(a) that the other party to the marriage (“the respondent”) has used, or threatened to use, violence against the applicant or a child of the family, and

(b) that it is necessary for the protection of the applicant or a child of the family that an order under this paragraph should be made,
the court may make an order (a “personal protection order”) restraining the respondent from molesting the applicant or a child of the family or both.

(2) Where on an application made by a party to a marriage the court is satisfied—

(a) either of the fact mentioned in paragraph (1) (a) or that the respondent has molested the applicant or a child of the family in contravention of a personal protection order; and

(b) that it is necessary for the protection of the applicant or a child of the family that an order under this paragraph should be made,

the court may make an order (an “exclusion order”) for all or any of the following purposes—

(i) giving the applicant, as against the respondent and any person claiming through him, the exclusive use of any premises (whether or not premises in which the parties have been living together) specified in the order as the matrimonial home (“the matrimonial home”);

(ii) excluding the respondent from—

(aa) any area specified in the order in which the matrimonial home is situated;

(bb) any premises so specified (other than the matrimonial home) where the applicant or a child of the family is living;

(cc) any area so specified in which any such premises are situated.

(3) An application for an exclusion order (other than an application made on the second ground mentioned in paragraph (2) (a)) may be made concurrently with an application for a personal protection order, and an application for either such order may be made whether or not an application is made for an order under Article 4.

(4) An exclusion order giving the applicant the exclusive use of the matrimonial home under paragraph (2) (i) shall operate to—

(a) require the respondent forthwith to leave the matrimonial home;

(b) prohibit him from entering it (subject to any temporary provision in the order for enabling him to remove personal effects or other goods of a specified kind);

(c) require him to permit the applicant to enter it (together with any child of whom the applicant has actual custody) and have peaceful use and enjoyment of it and (subject to any exceptions specified in the order) any goods in it;

(d) restrain him from disposing of any estate he has in it (“disposing” for this purpose including any dealing mentioned in paragraphs (a) to (f) of section 45 (3) of the Interpretation Act (Northern Ireland) 1954);

(e) prohibit him from damaging it or interfering with any services in it;

(f) prohibit him from removing any goods from it (subject to any exceptions specified in the order) or from disposing of, damaging or destroying any goods in it;

and shall so operate in relation to any person claiming through the respondent as it operates in relation to the respondent.

(5) Where the premises specified in an exclusion order as the matrimonial home are not the premises in which the parties have been living together (“the former home”), the order may contain such provisions about the use, or the making available for use, by the applicant in the matrimonial home of goods

which are or have been in the former home, or the provision by the respondent of corresponding goods or the payment by him to the applicant of any sum to meet the cost of corresponding goods, as the court thinks fit.

(6) Where the respondent has damaged the matrimonial home or the former home or has removed any goods from, or disposed of, damaged or destroyed any goods or interfered with any services in, the matrimonial home or the former home and the court makes an exclusion order under paragraph (2) (i), the court may make a further order requiring him to repair that damage or return or replace those goods or restore those services or any of them, or, instead of requiring him to do any of those things, require him to pay to the applicant any sum specified in the further order.

(7) An exclusion order excluding the respondent under paragraph (2) (ii) (bb) from any premises other than the matrimonial home shall have the same effect in relation to those premises and any goods and services in them as an exclusion order excluding him from the matrimonial home would have by virtue of paragraph (4) (e) and (f) in relation to that home and any goods and services in it; and paragraph (6) shall apply as if the references in it to the matrimonial home or the former home included references to those premises.

(8) The following provisions apply in relation to both a personal protection order and an exclusion order—

- (a) rules may make provision for the hearing forthwith of the application for the order;
- (b) where on the application for the order the court considers that it is essential that the application should be heard forthwith, the court may hear the application notwithstanding that the proceedings on the application are not separated from the hearing and determination of proceedings which are not domestic proceedings, as required by section 99 (1) of the Magistrates' Courts Act (Northern Ireland) 1964;
- (c) the order may be made subject to such exceptions or conditions (including conditions about the payment of rent, rates, mortgage or hire-purchase payments, or other outgoings affecting the matrimonial home or goods in it) as may be specified in the order;
- (d) the order shall operate to restrain the respondent from inciting, procuring or assisting any other person to do anything prohibited by virtue of the order;
- (e) notice of the making of the order shall be caused by the clerk of the court to be served on the divisional commander of the police division in which the applicant is resident, and, where the order is an exclusion order, in which any premises, or any part of an area, specified in the order are or is situated, or, if those are situated in more than one police division, on each such commander;
- (f) the order may be varied or revoked by the court on an application made by either party to the marriage (and sub-paragraph (e) shall apply to the variation or revocation of an order as it applies to the making of it).

(9) The following provisions apply only in relation to an exclusion order—

- (a) notice of the making of the order shall be served on the respondent in such manner as may be prescribed by rules, and the notice shall bring to the respondent's attention the respects in which the order operates by virtue of paragraphs (4) and (8) (d);
- (b) where the order is made under paragraph (2) (i), Part I of Schedule 1 shall have effect in consequence of it; and Part II of that Schedule shall have effect in consequence of the order operating for the purpose mentioned in paragraph (4) (d);

- (c) without prejudice to Article 21 (5) (limited period of effect of interim order), the order, if not previously revoked, shall, subject to sub-paragraph (d), cease to have effect on whichever of the following dates occurs first, that is to say,—
 - (i) the date, if any, specified for the purpose in the order;
 - (ii) the date of the expiration of the period of six months from the date of the making of the order;
- (d) the order may, before it ceases to have effect, be extended or further extended by order of the court; but no extension shall be for a period exceeding six months;
- (e) without prejudice to sub-paragraph (b) and Schedule 1, except so far as the exercise by the respondent of a right to use and enjoy the matrimonial home is restricted by the order or so far as the exercise of his right to dispose of any estate he has in it is restrained by virtue of the order, the order shall not affect any estate in the matrimonial home of the respondent or any other person (but this provision does not prejudice Article 6 of, and paragraph 2 of Schedule 2 to, the Rent (Northern Ireland) Order 1978 (a) (power of High Court or county court to transfer protected or statutory tenancy)).

Power of arrest for breach of personal protection order or exclusion order

19.—(1) Where—

- (a) the court has made—
 - (i) a personal protection order, or
 - (ii) an exclusion order; and
- (b) a constable has reasonable cause for suspecting a person of being or having been in breach of the order by reason of that person's respectively,—
 - (i) molesting the applicant for the order or a child of the family, or
 - (ii) being in or attempting to enter the matrimonial home or other premises specified in the order or damaging the matrimonial home or those premises or interfering with any services or goods, or being in any area specified in the order as an area from which he is excluded,

the constable may arrest that person without warrant, using such force as is reasonable in the circumstances, and may for that purpose enter, by force if necessary, the matrimonial home or other premises specified in the order.

(2) A person arrested under paragraph (1) who is not released (with or without a recognizance) under section 131 of the Magistrates' Courts Act (Northern Ireland) 1964 shall be brought before the court, but where this cannot be done within a period of 24 hours beginning at the time of his arrest—

- (a) he shall be brought before a justice of the peace within that period; and
- (b) the justice of the peace before whom he is brought may remand him.

(3) Where a person to whom paragraph (2) applies is not brought before the court or a justice of the peace within the period of 24 hours mentioned in that paragraph he shall be released on the expiration of that period, but without prejudice to any power to make a complaint under section 110 (1), as applied by section 114 (3), of the said Act of 1964 in respect of the breach of the order.

(4) In reckoning for the purposes of paragraphs (2) and (3) any period of 24 hours, no account shall be taken of Christmas Day, Good Friday, any Sunday or any day which is a bank holiday by virtue of the Banking and Financial Dealings Act 1971 (b).

(a) S.I. 1978/1050 (N.I. 20). (b) 1971 c. 80.

(5) A justice of the peace who, under paragraph (2) (b), remands a person in custody shall direct that he be brought before the court as soon as practicable and in any case not later than eight days from the date of remand.

(6) In the case of a person arrested under paragraph (1), the court may—

(a) where he has been released from custody on his entering into a recognizance to appear before the court, punish him as if a summons issued under subsection (1) of section 110 of the Magistrates' Courts Act (Northern Ireland) 1964, as applied by section 114 (3) (a) of that Act, had been served on him; or

(b) where he has not been released, punish him as if he had been brought before it in pursuance of a warrant of arrest issued under that subsection as so applied;

or may remand or discharge him.

(7) For the purposes of this Article any reference in section 131 of the said Act of 1964 to an offence includes the breach of a personal protection order or an exclusion order and "complaint" includes a complaint to a constable of such a breach.

Interim orders

Interim maintenance orders and interim custody, etc., orders

20.—(1) Where an application is made for an order under Article 4, 8 or 9—

(a) the court at any time before making a final order on, or dismissing, the application or on refusing to make an order on the application by virtue of Article 29, and

(b) the High Court on ordering the application to be reheard by a court after the refusal of an order under Article 29, and

(c) the county court on an appeal from the order made by the court on the application at any time before making a final order on, or dismissing, the appeal,

shall, subject to the provisions of this Order, have the following powers, that is to say—

(i) power to make an order (an "interim maintenance order") which requires the respondent to make to the applicant or to any child of the family who is under the age of 18, or to the applicant for the benefit of such a child, such periodical payments as the court thinks reasonable;

(ii) power, if the court is of the opinion that there are special circumstances which make it desirable that provision should be made for the legal custody of any child of the family who is under the age of 18, to make an order (an "interim custody order") which makes any such provision with respect to the legal custody of, and access to, the child as the court has power to make under Article 10 (2).

(2) The power of the court under paragraph (1) (i) to make an interim maintenance order shall, if the person with whom the child has his home is a parent of the child but not a party to the marriage, include power to require the respondent to make periodical payments to that parent for the benefit of the child.

(3) An interim maintenance order may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application for an order under Article 4, 8 or 9; and where such an order made by the county court on an appeal from the court provides for payments to be made from a date earlier than the date of the making of

the order, the interim order may provide that payments made by the respondent under an order made by the court shall, to such extent and in such manner as may be provided by the interim order, be treated as having been paid on account of any payment provided for by the interim order.

(4) Article 10 (6) shall apply in relation to an interim custody order as it applies in relation to an order made under paragraph (2) of that Article.

(5) Subject to paragraph (6), an interim order made under paragraph (1), if not previously revoked, shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the interim order;
- (b) the date of the expiration of the period of 14 weeks from the date of the making of the interim order;
- (c) the date on which the court either makes a final order on, or dismisses, the application for an order under Article 4, 8 or 9, or, where the interim order was made by a county court on an appeal, the date on which that court either makes a final order on, or dismisses, the appeal.

(6) Where an interim order made under paragraph (1) would, but for this paragraph, cease to have effect by virtue of paragraph (5) (a) or (b), the court which made the order or, in the case of an interim order made by the High Court, the court by which the application for an order under Article 4, 8 or 9 is to be reheard, shall have power by order to provide that the interim order shall continue in force for a further period, and any order continued in force under this paragraph, if not previously revoked, shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the order made under this paragraph;
- (b) the date of the expiration of the period of 14 weeks from the date of the making of the order under this paragraph or, if more than one order has been made under this paragraph with respect to the application, from the date of the making of the first of those orders;
- (c) the date on which the court either makes a final order on, or dismisses, the application for an order under Article 4, 8 or 9, or, where the interim order was made by a county court on an appeal, the date on which that court either makes a final order on, or dismisses, the appeal.

(7) Not more than one interim maintenance order and one interim custody order may be made with respect to any application for an order under Article 4, 8 or 9, but without prejudice to the powers of a court under this Article on any further such application.

(8) An interim order made by the High Court under this Article on ordering that an application be reheard by the court shall, for the purpose of its enforcement and for the purposes of Article 22 or 23, be treated as if it were an order of the court and not of the High Court.

Interim personal protection orders and interim exclusion orders

21.—(1) Where an application is made for a personal protection order or an exclusion order—

- (a) the court at any time before making a final order on, or dismissing, the application; and
- (b) the county court on an appeal from the order made by the court on the application, at any time before making a final order on, or dismissing, the appeal,

may make an interim personal protection order or an interim exclusion order, that is to say, a personal protection order or an exclusion order which has a limited period of effect by virtue of paragraph (5).

(2) Where, on considering a complaint for the purposes of an application for a personal protection order or an exclusion order, a justice of the peace—

(a) has reason to believe that there may be imminent danger of physical injury to the applicant or a child of the family; and

(b) is of the opinion that it may be appropriate for an interim personal protection order, or, as the case may be, an interim exclusion order, to be made,

the justice may direct that the application be brought before the court or a resident magistrate forthwith; and if the court or the resident magistrate is satisfied that there is such imminent danger as aforesaid, it or he may make an interim personal protection order or, as the case requires, an interim exclusion order notwithstanding—

(i) that a summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or

(ii) that the summons requires the respondent to appear at some other time or place.

(3) For the purposes of paragraph (2) a resident magistrate shall have the same power as the court to make an interim personal protection order or an interim exclusion order; and for the purposes of this Order (except paragraph (2) and this paragraph) such an order made by a resident magistrate shall be deemed to be an order made by the court.

(4) An interim personal protection order or an interim exclusion order which (in either case) is made under paragraph (2) shall not take effect until either—

(a) the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed by rules; or

(b) if a later date is specified in the order as the date on which the order is to take effect, that later date;

and in the case of an interim exclusion order the notice mentioned in subparagraph (a) shall bring to the respondent's attention the respects in which the order operates by virtue of Article 18 (4) and (8) (d).

(5) Without prejudice to paragraph (6), an interim personal protection order or an interim exclusion order ("the interim order"), if not previously revoked, shall cease to have effect on whichever of the following dates occurs first, that is to say,—

(a) the date, if any, specified for the purpose in the interim order;

(b) the date of the expiration of the period of five weeks from the date of the making of the interim order;

(c) the date on which the court either makes a final order on, or dismisses, the application for a personal protection order or, as the case may be, an exclusion order, or, where the interim order was made by a county court on an appeal, the date on which that court either makes a final order on, or dismisses, the appeal.

(6) The expiry by virtue of paragraph (5) (a) or (b) of the interim order shall not prejudice the making of a further such order.

(7) Without prejudice to the application of any other provision of Article 18, paragraph (8) (except sub-paragraph (a)) of that Article applies to an interim personal protection order and an interim exclusion order, as it applies to any other personal protection order and any other exclusion order, and sub-paragraph (e) (but not sub-paragraphs (a) to (d)) of paragraph (9) of that Article applies to an interim exclusion order as it applies to any other exclusion order; and Schedule 1 shall have effect in relation to an interim exclusion order giving the applicant the exclusive use of the matrimonial home as provided in Part III thereof (and the reference in Article 18 (9) (e) to sub-paragraph (b) and Schedule 1 shall, for the purposes of this Article, be construed accordingly).

Variation, revocation and cessation of orders etc.

Variation, revival and revocation of orders for periodical payments

22.—(1) Where the court has made an order under Article 4 (1) (a) or (c) for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order and also to make an order under Article 4 (1) (b) or (d).

(2) Where the court has made an order under Article 8 for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order so far as it relates to the making of periodical payments and, if that order also provided for the payment of a lump sum by one of the parties to the marriage in question, the court shall also have power on such an application to make an order for the payment of a further lump sum by that party either—

(a) to the other party to the marriage, or

(b) to a child of the family or to that other party for the benefit of that child.

(3) Where the court has made an order under Article 9 for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order.

(4) Where the court has made an order under Article 13 (2) (a), (3) (a) or (4) for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order and also, in the case of an application relating to an order under Article 13 (2) (a) or (3) (a) to make an order under Article 13 (2) (b) or (3) (b) as the case may be.

(5) Where the court has made an interim maintenance order under Article 20, the court, on an application made under this Article, shall have power to vary or revoke that order, except that the court shall not by virtue of this paragraph extend the period for which the order is in force.

(6) The power of the court under this Article to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.

(7) Where the court has power by virtue of this Article to make an order for the payment of a lump sum, the amount of the lump sum shall not exceed the maximum amount that may at that time be required to be paid under Article 4 (3), but the court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the person required to pay the lump sum was required to pay a lump sum by a previous order under this Order.

(8) Where the court has power by virtue of paragraph (2) to make an order for the payment of a lump sum and the respondent has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under Article 4 (3), the court may, notwithstanding anything in paragraph (7), make an order for the payment of a lump sum of that amount.

(9) An order made by virtue of this Article which varies an order for the making of periodical payments may, subject to the provisions of Article 13 (8), provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application under this Article.

(10) Where an order made by the court under this Order for the making of periodical payments to or in respect 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 at any time before he attains the age of 21 an application is made by the child for 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.

(11) In exercising the powers conferred by this Article the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, 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 or, in the case of an application for the variation or revocation of an order made under Article 8 or on an appeal, to which the court would have been required to have regard if that order had been made under Article 4.

(12) An application under this Article for the variation or revocation of an order for periodical payments may be made by the following persons, that is to say—

- (a) in the case of an order under Article 4, 8, 9, 13 (2) (a) or 20, by either party to the marriage in question,
- (b) in the case of an order under Article 13 (3) (a) for the making of periodical payments where the legal custody of a child of the family is given to a person who is a parent of that child but not a party to the marriage in question, by that parent or by the party to the marriage by whom the payments are required to be made, and
- (c) in the case of an order under Article 13 (4) for the making of periodical payments where a child of the family is committed to the care of the Department, by the Department or by the party to the marriage by whom the payments are required to be made,

and an application for the variation of an order made under Article 4 (1) (c), 8, 9 or 13 (2), (3) or (4) for the making of periodical payments to or in respect of a child may, if the child has attained the age of 16, be made by the child himself.

(13) Any reference in this Article to an order made under Article 4, 8, 9 or 13 for the making of periodical payments includes a reference to such an order made under Article 4, 8, 9 or 13 as the case may be, and revived under paragraph (10).

Variation and revocation of orders relating to the custody of, or access to, children

23.—(1) Where on an application under Article 3, 8 or 9 by a party to a marriage the court has made an order in respect of a child of the family under Article 10, 11 or 12, either party to the marriage may apply to the court—

(a) in the case of an order under Article 10, for the variation or revocation of that order,
(b) in the case of an order under Article 11, for the revocation of that order, and
(c) in the case of an order under Article 12, for the revocation of that order, and, on such an application, the court shall have power to make the order for which application is made and also to make such other order with respect to that child under Article 10, 11 or 12 as it thinks fit.

(2) Where on an application made by a party to a marriage, the court has made an order under Article 4, 8 or 9 but has not exercised its powers under Article 10, 11 or 12 with respect to a child of the family, either party to the marriage may, at any time while an order under Article 4, 8 or 9 is in force, apply to the court for an order under Article 10 and, on such an application, the court shall have power to make such order under Article 10, 11 or 12 with respect to that child as the court thinks fit.

(3) Where the court has made an interim custody order under Article 20, the court shall have power, on an application made under this Article by either party to the marriage in question, to vary or revoke that order, except that the court shall not by virtue of this paragraph extend the period for which the order is in force.

(4) On an application for an order under paragraph (1) or (2) the court shall not dismiss the application or make the order for which the application is made until it has decided whether to exercise its other powers under paragraph (1) or (2) and, if so, in what manner.

(5) Article 14 shall apply in relation to the exercise by the court of its powers under this Article on an application under paragraph (1) or (2) as it applies in relation to the exercise by the court of its powers under Articles 10 to 12 on an application under Article 3, 8 or 9.

(6) Any reference in Article 13 (2), (3) or (8) to an order made under Article 10 (2) includes a reference to an order made under Article 10 (2) by virtue of this Article and to an order made under Article 10 (2) which is varied under this Article, and any reference in Article 13 (4) to an order made under Article 12 (1) includes a reference to an order made under Article 12 (1) by virtue of this Article, and where by virtue of an order under this Article the right to the actual custody of a child is given to the person who made the original application for an order under Article 3 or 8, the court shall have power to make an order under Article 4 (1) (c) or (d) in respect of that child.

(7) An application under this Article may be made in the following cases by the following persons, in addition to the parties to the marriage, that is to say—

- (a) where a child of the family is not a child of both the parties to the marriage, an application under paragraph (1), (2) or (3) may be made by any person who, though not one of the parties to the marriage, is a parent of that child;
- (b) where by virtue of an order under Article 11 a child of the family is under the supervision of the Department, an application under paragraph (1) (b) may be made by the Department;
- (c) where by virtue of an order under Article 12 a child of the family is in the care of the Department, an application under paragraph (1) (c) may be made by the Department.

Variation of instalments, or remission, of lump sum

24.—(1) Where in the exercise of its powers under section 108 of the Magistrates' Courts Act (Northern Ireland) 1964 (a) the court orders that a lump sum required to be paid under this Order shall be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

(2) On the hearing of a complaint for the enforcement, revocation, suspension or variation of an order under this Order which provides for the payment of a lump sum the court may remit the whole or any part of that sum.

Supplementary provisions with respect to variation and revocation of orders

25.—(1) Provision may be made by rules as to the persons who are to be made respondents on an application for the variation or revocation of an order under Article 16 (3), 22 or 23; and if on an application under Article 22 there are two or more respondents, the powers of the court under section 164 of the Magistrates' Courts Act (Northern Ireland) 1964 shall be deemed to include power, whatever adjudication the court makes on the application, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.

(2) The powers of a court of summary jurisdiction under section 96 of the said Act of 1964 to revoke, suspend, revive, vary or discharge an order for the periodical payment of money shall not apply in relation to an order made under this Order.

Proceedings by or against a person outside Northern Ireland for variation or revocation of orders

26.—(1) It is hereby declared that any jurisdiction conferred on a court of summary jurisdiction by virtue of Article 22 or 23 is exercisable notwithstanding that the proceedings are brought by or against a person residing outside Northern Ireland.

(2) Subject to paragraph (3), a court of summary jurisdiction may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed, proceed on an application made under Article 22 or 23 notwithstanding that the respondent has not been served with the summons; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.

(3) A court of summary jurisdiction shall not exercise its powers under Article 22 so as to increase the amount of any periodical payments required to be made by any person under this Order unless the order under that Article is made at a hearing at which that person appears or the requirements of section 91 (2) of the Magistrates' Courts Act (Northern Ireland) 1964 with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

Effect on certain orders of parties living together

27.—(1) Where—

(a) periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the

(a) 1964 c. 21 (N.I.).

family) by an order made under Article 4, 8 or 13 (2) or by an interim maintenance order made under Article 20 (otherwise than on an application under Article 9), or

- (b) the right to the actual custody of a child is given to one of the parties to a marriage by an order made under Article 10 (2) or by an interim custody order made under Article 20,

the order shall be enforceable notwithstanding that the parties to the marriage are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other; but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

(2) Where any of the following orders is made, that is to say—

- (a) an order under Article 4, 8 or 13 (2) which requires periodical payments to be made to a child of the family,
- (b) an interim maintenance order under Article 20 (otherwise than on an application under Article 9) which requires periodical payments to be made to a child of the family,
- (c) an order under Article 10 (2) which gives legal custody of a child to a person who is a parent of that child but not a party to the marriage in question, or
- (d) an order under Article 11, 12 or 13 (3) or (4),

then, unless the court otherwise directs, the order shall continue to have effect and be enforceable notwithstanding that the parties to the marriage in question are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

(3) Any order made under Article 9, and any interim maintenance order made on an application for an order under that Article, shall cease to have effect if the parties to the marriage resume living with each other.

(4) Where an order ceases to have effect by virtue of paragraph (1) or (3) or by virtue of a direction given under paragraph (2), the court may, on an application made by either party to the marriage, make an order declaring that the first-mentioned order ceased to have effect from such date as the court may specify.

(5) When an order ceases to have effect by virtue of paragraph (1) or (3), the parties to the marriage shall forthwith give notice to the court of that fact.

Reconciliation

Reconciliation

28.—(1) If before the hearing of any evidence in proceedings on an application for an order under Article 4 a statement is made to the court by or on behalf of the parties to the marriage showing a possibility of reconciliation between them, the court shall adjourn the proceedings for such period as it thinks fit.

(2) If at any stage of the proceedings on an application for an order under Article 4 it appears to the court that there is a reasonable possibility of 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 a reconciliation.

(3) Where the court adjourns any proceedings under paragraph (1) or (2), it may request that a suitably qualified person acting under arrangements made by the Department or any other person, willing and able to do so and acceptable to both parties, whom the court may appoint should attempt to effect a reconciliation between the parties to the marriage, and where any such request is made, the person so acting shall report in writing to the court whether the attempt has been successful or not, but shall not include in that report any other information.

(4) The powers conferred by this Article are additional to any other power of the court to adjourn proceedings.

Provisions relating to High Court and county court

Refusal of order in case more suitable for High Court

29. Where on hearing an application for an order under Article 4 a court of summary jurisdiction is of the opinion that any of the matters in question between the parties would be more suitably dealt with by the High Court, the court of summary jurisdiction shall refuse to make any order on the application, and no appeal shall lie from that refusal; but if in any proceedings in the High Court relating to or comprising the same subject matter as that application the High Court so orders, the application shall be reheard and determined by a court of summary jurisdiction acting for the same petty sessions district as the first-mentioned court.

Powers of High Court and divorce county court in relation to certain orders under this Order

30.—(1) Where after the making by a court of summary jurisdiction of an order under this Order proceedings between, and relating to the marriage of, the parties to the proceedings in which that order was made have been commenced in the High Court or a divorce county court, then, except in the case of an order for the payment of a lump sum, the court in which the proceedings or any application made therein are or is pending may, if it thinks fit, direct that the order made by a court of summary jurisdiction shall cease to have effect on such date as may be specified in the direction.

(2) Nothing in this Article shall be taken as prejudicing the effect of any order made by the High Court or a divorce county court so far as it implicitly supersedes or revokes an order or part of an order made by a court of summary jurisdiction.

(3) In this Article “divorce county court” has the same meaning as in the Matrimonial Causes (Northern Ireland) Order 1978 (a).

Appeals

31.—(1) No appeal shall lie to the county court from the making or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke an interim maintenance order or interim custody order under Article 20 or an interim personal protection order or interim exclusion order under Article 21.

(2) Notwithstanding section 118 of the Magistrates’ Courts Act (Northern Ireland) 1964, where an appeal is made to a county court against an order of a court of summary jurisdiction under this Order for the periodical payment of money, or against a personal protection order or exclusion order, or where an application is made for a case to be stated for the opinion of the Court of Appeal

(a) S.I. 1978/1045 (N.I. 15).

upon a point of law arising in connection with any such order, the order may be enforced pending the determination of the appeal or, as the case may be, the decision on the point of law.

(3) Without prejudice to the generality of section 22 of the Interpretation Act (Northern Ireland) 1954 (a) (powers of appellate courts), on an appeal to the county court from an order made by a court of summary jurisdiction under this Order the county court shall have power to make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from an order made by a court of summary jurisdiction on an application for or in respect of an order for the making of periodical payments, the county court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the court of summary jurisdiction.

(4) Without prejudice to the generality of the said section 22 and paragraph (3), where, on an appeal to the county court in respect of an order made by a court of summary jurisdiction requiring any person to make periodical payments, the county court reduces the amount of those payments or discharges the order, the county court shall have power to order the person entitled to payments under the order of the court of summary jurisdiction to pay to the person liable to make payments under that order such sum in respect of payments already made in compliance with the order, in such manner, as the court thinks fit and, if any arrears are due under the order of the court of summary jurisdiction the county court shall have power to remit the payment of those arrears or any part thereof.

(5) Any order of the county court made on an appeal from an order made by a court of summary jurisdiction under this Order shall for the purposes of Articles 16 (3), 22 and 23 be treated as if it were an order of the court of summary jurisdiction from which the appeal was brought and not of the county court.

Provisions relating to jurisdiction, procedure and enforcement

Jurisdiction

32.—(1) Without prejudice to section 87 (3) of the Magistrates' Courts Act (Northern Ireland) 1964, a court of summary jurisdiction shall have jurisdiction to hear an application for an order under this Order if at the date of the making of the application either the applicant or the respondent resides within the county court division which includes the petty sessions district for which the court sits.

(2) In relation to an application for an order under this Order (other than an application in relation to which jurisdiction is exercisable by virtue of Article 26) the jurisdiction conferred by paragraph (1)—

(a) shall be exercisable notwithstanding that the respondent resides in England and Wales or Scotland if the applicant resides in Northern Ireland and, except where the application is for a personal protection order or an exclusion order, if the parties last ordinarily resided together as man and wife in Northern Ireland, and

(b) is hereby declared to be exercisable where the applicant resides in England and Wales or Scotland if the respondent resides in Northern Ireland.

(a) 1954 c. 33(N.I.).

(3) Nothing either in paragraph (2) or in paragraph (1) of Article 26 shall be construed as derogating from any jurisdiction exercisable by any court apart from the provisions of those paragraphs.

(4) It is hereby declared that any jurisdiction conferred on a court of summary jurisdiction by this Order is exercisable notwithstanding that any party to the proceedings is not domiciled in Northern Ireland.

(5) Nothing in this Article empowers a court to make an exclusion order specifying premises that are situated outside Northern Ireland.

Procedure

33.—(1) Any application for an order under this Order, including an application for the variation, revocation or revival of such an order, shall be made by way of complaint under Part IX of the Magistrates' Courts Act (Northern Ireland) 1964.

(2) Where under any provision of this Order a notice is to be given or a report is to be furnished to the court, the notice may be given or the report delivered to the clerk of petty sessions for the petty sessions district for which the court which made the order in connection with which the notice is given, or which requested the report, sat.

(3) Where—

(a) under sub-paragraph (ii) of paragraph (3) of Article 7 it appears to the court that there are special circumstances justifying the making of an order or provision such as is mentioned in that paragraph; or

(b) under Article 11 (1) or 12 (1) it appears to the court that there are exceptional circumstances making it desirable for a child to be under the supervision of an independent person or, as the case may be, making it impracticable or undesirable for a child to be entrusted to either of the parties to the marriage or any other person who is a parent of the child; or

(c) under Article 20 (1) (ii) the court is of the opinion that there are special circumstances which make it desirable for an interim custody order to be made;

the court shall by order specify those circumstances.

(4) Where under any provision of this Order an order made by any court ceases to have effect on the date on which a court makes a final order on, or dismisses, an application or an appeal, it shall cease to have effect immediately on the completion of the court sitting at which the final order or dismissal is made; and where it ceases to have effect on any other date, it shall cease to have effect immediately on the expiration of the day of that date.

Constitution of courts

34.—(1) Subject to paragraph (2), anything authorised or required by this Order to be done by, to or before a court of summary jurisdiction by, to or before which any other thing was done, or is to be done (including the hearing or disposal of an adjourned application), may be done by, to or before any court of summary jurisdiction acting for the same petty sessions district as that court.

(2) Where in an order adjourning the hearing of an application under Article 3 the court has declared that it is satisfied of any ground mentioned in that Article, then if the court which resumes the hearing of that application does not comprise the same resident magistrate as sat when the hearing began,

the court which resumes the hearing shall before making any order on the application make such inquiry into the facts and circumstances of the case as will enable it to be fully acquainted with those facts and circumstances.

Time limit for applications

35.—(1) Without prejudice to paragraph (2), a court of summary jurisdiction shall have jurisdiction to hear and determine an application for an order under Article 4 where the application was made within a period of one year from the time when the relevant ground mentioned in Article 3 occurred or, where the ground is a continuing one, from the time when the ground ceased to continue.

(2) Where the ground alleged in the application is the commission of an act of adultery by the respondent, the application may be heard if it is made within one year from the date when that act of adultery first became known to the applicant.

(3) The court shall have jurisdiction to hear and determine at any time an application for the variation, suspension, revival or revocation of any order made under this Order.

Enforcement etc. of orders for payment of money

36.—(1) Without prejudice to section 95 of the Magistrates' Courts Act (Northern Ireland) 1964 (power of a court of summary jurisdiction to direct periodical payments to be made through the collecting officer) a court of summary jurisdiction making an order under this Order for the making of a periodical payment by one person to another may direct that it shall be made to some third party on that other person's behalf instead of directly to that other person; and, for the purposes of any order made under this Order, the said section 95 shall have effect as if, in subsection (3) thereof, for the words "the applicant for the order" there were substituted the words "the person to whom the payments under the order fall to be made".

(2) As from the commencement of those respective provisions, an order under Article 4 (1) (b) or (d), 8 (5), 13 (2) (b) or (3) (b) or 22 (2) or (8) for the payment of a lump sum shall be a judgment to which the Judgments (Enforcement) Act (Northern Ireland) 1969 (a) applies; but the operation of section 3 (1) of that Act by virtue of this paragraph shall not prejudice the power to make a complaint under section 110A of the Magistrates' Courts Act (Northern Ireland) 1964 for the enforcement of such an order (but subject to subsection (4) of that section 110A).

(3) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made under this Order shall give notice of any change of address to such person, if any, as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

(4) A person shall not be entitled to enforce through the High Court the payment of any arrears due under an order made by virtue of this Order without the leave of the High Court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.

(5) The High Court on hearing an application for the grant of leave under paragraph (4) 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 High Court thinks proper, or may remit the payment of such arrears or any part thereof.

(a) 1969 c. 30 (N.I.).

(6) An application for the grant of leave under paragraph (4) shall be made in such manner as may be prescribed by rules of court.

Enforcement of orders for custody

37. Where at a time when any person is entitled to the actual custody of a child, or the Department is entitled to the care of a child, by virtue of an order made under this Order another person has the actual custody of the child, a copy of the order may be served on that other person, and thereupon the order may, without prejudice to any other remedy which may be available, be enforced under section 114 (3) of the Magistrates' Courts Act (Northern Ireland) 1964 as if it were an order of a magistrates' court requiring that other person to give up the child to the person entitled by virtue of the order to actual custody or, as the case may be, to the Department.

Restriction on removal of child from Northern Ireland

38.—(1) Where the court makes—

- (a) an order under Article 10 (2) regarding the legal custody of a child, or
- (b) an interim custody order under Article 20 in respect of a child,

the court, on making the order or at any time while the order is in force, may, if a request for an order under this Article is made at the time of the making of the order under Article 10 (2) or Article 20 or if an application for an order under this Article is subsequently made, by order direct that no person shall take the child out of Northern Ireland while the order made under this Article is in force, except with the leave of the court.

(2) The court may by order vary or revoke any order made under this Article.

(3) An application for an order under paragraph (1) or for the variation or revocation of such an order, may be made by either party to the marriage in question and also, in the case of an order made under Article 10 (2) or 20 with respect to a child of the family who is not a child of both the parties to the marriage, by any person who, though not one of the parties to the marriage, is a parent of that child.

Provisions as to payments required to be made to a child etc.

39.—(1) Where periodical payments are required to be made, or a lump sum is required to be paid, to a child under an order made under this Order, any sum required under the order to be paid to the child may be paid to the person with whom the child has his home, and that person—

- (a) may proceed in his own name for the variation, revocation or revival of the order; and
- (b) may proceed in his own name for the recovery of any sum required to be paid under the order (but without prejudice to the power of the collecting officer to proceed under section 95 (6) of the Magistrates' Courts Act (Northern Ireland) 1964 for the recovery of so much of that sum as consists of money payable periodically, where the order requires periodical payments to be made through the collecting officer).

(2) Where a child has a right under Article 22 (10) to apply for the revival of an order which provided for the making of periodical payments to or for the benefit of the child, the person with whom the child has his home may proceed in his own name for the revival of that order.

(3) Where any person by whom periodical payments are required to be paid to a child under an order made under this Order makes an application for the variation or revocation of that order, the person with whom the child has his home may, instead of or as well as the child, appear as respondent.

(4) Nothing in paragraphs (1) and (2) shall affect any right of a child to proceed in his own name for the variation or revival of an order or for the recovery of any sum payable thereunder.

(5) Notwithstanding Article 2 (3), where a child is in the care of the Department, the Department shall be treated for the purposes of this Article as the person with whom the child has his home.

(6) In this Article—

“child” means a person who has not attained the age of 18;

“collecting officer” means the officer mentioned in section 95 (2) or (3) of the Magistrates’ Courts Act (Northern Ireland) 1964.

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage

40.—(1) Where—

(a) an order made under Article 4 (1) (a), 8 or 9 has, by virtue of Article 6 (2), 8 (6) or 9 (6), ceased to have effect by reason of the remarriage of the party in whose favour it was made, and

(b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage in the mistaken belief that the order was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraphs (a) and (b) shall be maintainable by the person so liable or his personal representatives against the person entitled to payments under the order or his personal representatives, but on an application made under this Article the court may exercise the powers conferred on it by paragraph (2).

(2) The court may order the respondent to an application made under this Article 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 by the person liable to make payments under the order made under Article 4 (1) (a), 8 or 9 or his personal representatives and may be made against the person entitled to payments under that order or his personal representatives.

(4) An application under this Article shall be made to a county court, except that such an application may be made in proceedings in the High Court for leave to enforce, or in proceedings in the High Court or a court of summary jurisdiction for the enforcement of, the payment of arrears under an order made under Article 4 (1) (a), 8 or 9; and accordingly references in this Article to the court are references to the High Court or a county court or a court of summary jurisdiction, as the circumstances require.

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

(7) A person dissatisfied with an order made by a county court in the exercise of the jurisdiction conferred by this Article or with the dismissal of any application instituted by him under the provisions of this Article shall be entitled to appeal from the order or from the dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 (a) 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.

(8) The collecting officer of a court of summary jurisdiction to whom any payments under an order made under Article 4 (1) (a), 8 or 9, or under an attachment of earnings order made to secure payments under the first-mentioned order, are required to be made shall not be liable—

(a) for any act done by him in pursuance of the first-mentioned order after the date on which that order or a provision thereof ceased to have effect by reason of the remarriage of the person entitled to payments under it, and

(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 first-mentioned order not ceased to have effect by reason of the remarriage and the act was done before notice of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the first-mentioned order or the personal representatives of either of those persons.

(9) In this Article “collecting officer” means the officer mentioned in section 95 (2) or (3) of the Magistrates’ Courts Act (Northern Ireland) 1964.

Amendments of Magistrates’ Courts Act (Northern Ireland) 1964

41.—(1) The amendments specified in this Article shall be made in the Magistrates’ Courts Act (Northern Ireland) 1964.

(2) In section 95 (6) (recovery by collecting officer of arrears of periodical payments) after “periodically” insert “through the collecting officer”, after “fourteen days” insert “or such longer period (not exceeding two months) as the collecting officer may in any particular case allow”.

(3) In section 110 (recovery of money payable periodically)—

(a) at the beginning of subsection (4) insert “Without prejudice to subsection (5)”, and in paragraph (a) after “the order” insert “and all reasonable charges of the distress”;

(b) for subsection (5) substitute—

“(5) Upon the appearance of a person or proof of service of the summons on him as mentioned in subsection (4), the court or resident magistrate may—

(a) instead of making an order under paragraph (a) of that subsection make an order committing the person to prison until the sum and costs in question are paid; or

(b) as well as making an order under that paragraph make an order committing him to prison in default of sufficient distress until so

(a) S.I. 1980/397 (N.I. 3).

much of the sum and costs as is not defrayed by the distress, and all reasonable charges of the distress, are paid;
and may issue a warrant to enforce the order of commitment.

(5A) Subsections (2) and (3) of section 102 shall have effect for the purposes of the recovery of any sum, costs or charges under this section as they have effect for the recovery of a sum under that section.

(5B) The court or a resident magistrate may make an order of commitment under subsection (5), or issue a warrant of commitment under section 102 (2) as applied by subsection (5A), unless it or he is satisfied that the default is not due to the wilful refusal or culpable neglect of the person who is liable to pay the sum and costs in question and the charges of distress, if any.

(5C) The term for which a person is committed to prison on any occasion by an order made under subsection (5), or a warrant issued under section 102 (2) as applied by subsection (5A), in default of payment of a sum (including any costs and charges) shall not exceed the period mentioned in Schedule 4 in relation to that sum and, in any event, shall not exceed six weeks.

(5D) Where a person is committed to prison under this section for failure to pay a sum due under an order to which this section applies, then, unless the court or resident magistrate who commits him otherwise directs, no arrears shall accrue under the order while he is in custody.”;

(c) subsections (7) and (8) shall cease to have effect.

(4) Section 109 shall cease to have effect, and in place of that section the following section shall be inserted after section 110—

“Enforce-
ment of
orders for
payment of
money other
than
periodical
payments.

110A.—(1) Where a court of summary jurisdiction in proceedings upon complaint otherwise than on conviction has ordered the payment of a sum of money (not being a sum to which section 110 applies) and a person defaults in paying that sum within the time specified in the order or (if no time is so specified) forthwith, subsections (1) to (5C) of section 110 shall apply as if in subsection (1) the word “periodical” were omitted and in paragraph (a) of that subsection for the words “payments are” there were substituted the words “payment is”.

(2) The commitment to prison of a person under section 110 (5), or under section 102 (2) as applied by section 110 (5A), for the purposes of this section shall not operate to discharge him from liability to pay the sum in respect of which the order of commitment was made or the warrant of commitment was issued; but where a person has been imprisoned under an order of commitment made for the purposes of this section in respect of his failure to pay any sum, then, notwithstanding anything in this Act, no such order shall thereafter be made in respect of that sum or any part of it.

(3) Where a sum such as is mentioned in subsection (1) has been ordered by the court to be paid by instalments and default is made in the payment of any one instalment, this section shall apply as if the default had been made in the payment of all the instalments then unpaid.

(4) Where proceedings have been taken in the Enforcement of Judgments Office for the payment of a lump sum ordered to be

paid under Article 4 (1) (b) or (d), 8 (5), 13 (2) (b) or (3) (b) or 22 (2) or (8) of the Domestic Proceedings (Northern Ireland) Order 1980, no order shall be made under this section to enforce such payment.”.

(5) The following subsections shall be substituted for section 114 (3)—

“(3) Where a person fails to comply with an order such as is mentioned in subsection (2) and the enactment under which the order was made prescribes no punishment for such failure,—

(a) section 110 (1) to (3) shall apply as if in subsection (1) for the words from the beginning to “the making of such order” there were substituted the words “Where an order is made by a magistrates’ court requiring any person to do or abstain from doing anything other than the payment of money and that person defaults in complying with the order by either failing to do, within the time specified in the order or (if no time is so specified) forthwith, the thing he is required to do or, as the case may be, doing the thing he is required to abstain from doing”, for the words from “after the expiration of fourteen days” to “from that date” there were substituted the words “before the expiration of one year from the date of such default” and, in paragraph (a) of that subsection, for the words “such payments are to be made” there were substituted the words “that thing is required to be done or not done”; and

(b) upon the appearance of a person summoned before a court of summary jurisdiction under subsection (1) of section 110 as applied by paragraph (a) or on proof that the summons was duly served on him, the court or, where a person is brought before a resident magistrate pursuant to a warrant issued under that subsection as so applied, the resident magistrate—

(i) may order that person to pay a sum not exceeding £50 for every day during which he has failed to comply with the order or a sum not exceeding £1,000; or

(ii) may commit him to prison for a period not exceeding two months or until he either complies with the order or satisfies a court of summary jurisdiction that he intends to comply with it (and the court may issue a warrant to enforce the order of commitment);

but a person who is ordered to pay a sum for every day during which he has failed to comply with the order or who is committed to prison until he complies or satisfactorily indicates his intention to comply with the order shall not by virtue of this section be ordered to pay more than £1,000 or be committed for more than two months in all for doing or abstaining from doing the same thing contrary to the order (without prejudice to the operation of this section in relation to any subsequent failure to comply with the order).

(3A) In relation to an order made by a resident magistrate or justice of the peace sitting out of petty sessions, the references in paragraphs (a) and (b) of section 110 (1) to the same petty sessions district as the court which made the order acted for shall for the purposes of subsection (3) be construed as references to the petty sessions district in which the order was made.”.

(6) After section 114 insert the following section—

“Review of
commitment
under
section 114.

114A.—(1) A person imprisoned under a warrant of commitment issued under section 114 who is not detained otherwise than under that section may make an application in the prescribed manner requesting that the warrant be cancelled and stating the grounds of the application.

(2) An application under subsection (1) shall be made to a resident magistrate who shall, after considering the statements contained in the application,—

(a) if he is of opinion that the application should be further considered, refer it to the court; or

(b) if he is not of that opinion, refuse the application.

(3) When an application is referred to the court under subsection (2), the clerk of the court shall serve on the person in charge of the place in which the applicant is detained and the person in whose favour the order which is being enforced under section 114 was made notice of the time and place appointed for the consideration of the application by the court and shall also serve on the second-mentioned person a copy of the application.

(4) On considering an application referred to it under subsection (2) (a), the court may—

(a) refuse the application; or

(b) if the applicant satisfies the court that he has complied with the order in question or intends to comply with it, order that the warrant shall cease to have effect when the person in charge of the place in which the applicant is detained is served by the clerk of the court with a copy of the order.

(5) Where the court makes an order under subsection (4) (b) it may—

(a) fix a term of imprisonment in respect of any continued or future failure to comply with the order in relation to which the warrant was issued, being a term not exceeding so much of the term of the previous warrant as remained to be served at the date of the order; and

(b) postpone the issue of the warrant for the commitment of the applicant for that term until such time and on such conditions, if any, as the court thinks just.

(6) Where under subsection (3) notice of the time and place appointed for the consideration of the application by the court is served by post on the person in whose favour the order which is being enforced under section 114 was made,—

(a) the notice shall be deemed to have been served on him notwithstanding that it is returned as undelivered or is for any other reason not received by that person; and

(b) if that person does not appear at that time and place, the court may proceed with the consideration of the application in his absence.

(7) In this section “the court” means a court of summary jurisdiction sitting for the same petty sessions district as the court which issued the warrant of commitment or for any other petty sessions district in the same county court division.

(8) This section does not prejudice section 44 of the Judicature (Northern Ireland) Act 1978 (a) (appeal to Court of Appeal from order or decision of a magistrates’ court under section 114).”.

(7) In section 143 (appeals)—

(a) in subsection (1) after “Subject to subsection (2)” insert “and to Articles 29 and 31 (1) of the Domestic Proceedings (Northern Ireland) Order 1980”;

- (b) in subsection (2) for “subsection (4), (5) or (7) of section 110” substitute “section 110 (4) or (5)”.

General

Saving and transitional provisions, amendments and repeals

42.—(1) The saving and transitional provisions contained in Schedule 2 shall have effect.

- (2) Subject to the provisions contained in Schedule 2—
(a) the statutory provisions specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule, and
(b) the statutory provisions specified in Schedule 4 are hereby repealed to the extent specified in the third column of that Schedule.

H. E. Leigh,

Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Articles 18 (9) (b) (e), 21 (7).

PROVISIONS CONSEQUENTIAL ON EXCLUSION
ORDER UNDER ARTICLE 18 (2) (i)

PART I

GENERAL CONSEQUENTIAL PROVISIONS

1. Where, by reason only of an exclusion order under Article 18 (2) (i), the respondent is not residing in the matrimonial home during any period, he is not thereby prevented from being—

- (a) for the purposes of any statutory provision (including the Rates (Northern Ireland) Order 1977 (a) and the Rent (Northern Ireland) Order 1978 (b)) in occupation of it during that period;
(b) for the purposes of the Statute of Limitations (Northern Ireland) 1958 (c) in possession of it during that period.

2. Where by virtue of such an order the applicant is using the matrimonial home to the exclusion of the respondent, any payment or tender made or other thing done by the applicant in or towards satisfaction of any liability (in respect of rent, rates, mortgage or hire-purchase payments or otherwise) or obligation of the respondent affecting the matrimonial home or any goods in it or in the former home (as defined by Article 18 (5)) shall be as good as if made or done by the respondent.

3. Paragraph 2 does not prejudice any claim the applicant may have against the respondent by reason of any payment made or thing done as mentioned in that paragraph.

PART II

PROVISIONS CONSEQUENTIAL ON ORDER OPERATING TO RESTRAIN
DISPOSITIONS

1. An exclusion order under Article 18 (2) (i) (“the order”) to the extent that by virtue of Article 18 (4) (d) it operates to restrain the respondent 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 (d) (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 the exclusion order, any disposition of the land in contravention of the order.

(a) S.I. 1977/2157 (N.I. 28).
(c) 1958 c. 10 (N.I.).

(b) S.I. 1978/1050 (N.I. 20).
(d) 1970 c. 18 (N.I.).

2. Without prejudice to paragraph 3 or 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 1 shall cease to have effect on the date, if any, specified in the order as the date on which it is to cease to have effect, or if no date is so specified on the date of the expiration of the period of six months from the date of the making of the order, unless the registration is renewed or further renewed before that date in consequence of the extension or further extension of the order, in which event it shall cease to have effect on the date specified in the order of extension or last extension, or if no date is so specified on the expiration of the period of six months from the date of the extension or last extension.

3. The registration of a statutory charge such as is mentioned in paragraph 1 shall cease to have effect upon the revocation of the order.

4. When the registration has ceased to have effect the Registrar of Titles may cancel it.

5. An application for the renewal of the registration of a charge may be made in the same manner as the application for the original registration.

PART III

APPLICATION OF PARTS I AND II TO INTERIM ORDER

Any reference in this Schedule to an exclusion order under Article 18 (2) (i) includes a reference to such an order made as an interim exclusion order by virtue of Article 21, and in the application of Part II to an interim exclusion order for the words in paragraph 2 following the words "shall cease to have effect", where they first occur, there shall be substituted the words "when the order ceases to have effect" and paragraph 5 shall be omitted.

Article 42 (1).

SCHEDULE 2

SAVING AND TRANSITIONAL PROVISIONS

1. This Order (including the repeals and amendments made by it) shall not have effect in relation to any application made under any statutory provision repealed or amended by this Order if that application is pending at the time when the provision of this Order which repeals or amends that statutory provision comes into operation.

2. Any order made or other thing done under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 (a) which is in force immediately before the coming into operation of the repeal of that Act made by this Order shall not be affected by that repeal, and the provisions of that Act shall, notwithstanding that repeal, continue to apply in relation to such an order, and to an order made under that Act by virtue of paragraph 1, subject to the following modifications—

- (a) on an application for the discharge of the order the court shall not be bound under the proviso to section 5 (1) of that Act to discharge the order by reason of an act of adultery committed by the person on whose application the order was made;
- (b) on an application for the variation, revival or discharge of the order, the court, in exercising its powers under the said section 5 in relation to a provision of the order requiring the payment of money, shall have regard to any change in any of the matters to which the court would have been required to have regard when making that order if the order had been made on an application for an order under Article 4 of this Order;
- (c) where the order contains a provision for the legal custody of a child, the court shall have power, on a complaint made by a grandparent of the child, to vary that order under the said section 5 by the addition to the order of a provision requiring access to the child to be given to that grandparent;

(a) 1945 c. 14 (N.I.).

(d) where the court, by virtue of sub-paragraph (c), varies the order by the addition of a provision requiring access to a child to be given to a grandparent, the court shall have power to vary or revoke that provision on an application made—

- (i) by that grandparent, or
- (ii) by either party to the marriage in question, or
- (iii) where the child is not a child of both the parties to the marriage, by any person who though not a party to the marriage is a parent of the child, or
- (iv) where under the order a child is for the time being committed to the legal custody of some person other than one of the parents or a party to the marriage, by the person to whose legal custody the child is committed by the order.

3. Without prejudice to paragraph 2, the amendment or repeal by this Order of any statutory provision shall not affect the operation of that provision in relation to any order made or having effect as if made under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 (including an order made under that Act by virtue of paragraph 1) or in relation to any decision of a court of summary jurisdiction made on an application for such an order or for the variation, suspension, revival or discharge of such an order.

4. Notwithstanding the repeal by this Order of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 or the repeal, or supersession by any amendment made, by this Order of any provision referring to that Act, after the coming into operation of that repeal or amendment applications may continue to be made under section 1 or 2 of that Act for orders under paragraph (b) of section 3 (1) (custody of children under 16 and right of access) and for consequential orders under paragraphs (d) (maintenance of children) and (e) (costs) of that subsection, and any power exercisable by a court in consequence of such an application may be exercised and any such repealed or superseded provision shall continue to have effect in that connection; and paragraph 2 shall apply to any order made by virtue of this paragraph as it applies to an order which is in force immediately before the coming into operation of the repeal of that Act of 1945, except that the duties and powers mentioned in sub-paragraphs (b) and (c) shall respectively be binding and exercisable on the making as well as on the variation of the order, and the introductory words of sub-paragraph (d) shall be construed accordingly.

5. Neither paragraph (4) nor paragraph (5) of Article 41 shall affect the punishment for any default which occurred before the commencement of that paragraph, except that for such a default to which section 114 (3) of the Magistrates' Courts Act (Northern Ireland) 1964 applies a person shall not, after that commencement, be imprisoned for a term exceeding two months.

6. A provision of Schedule 3 which relates to the punishment by way of fine which may be imposed for any offence shall not affect the punishment which may be imposed for an offence which is committed before the date on which that provision comes into operation.

SCHEDULE 3

Article 42 (2) (a).

AMENDMENTS

Magistrates' Courts Act (Northern Ireland) 1964 (c. 21)

1. In section 88 (1) after "section 110 (1)" insert "and to Article 35 of the Domestic Proceedings (Northern Ireland) Order 1980".

2. In section 95—

(a) in subsection (3) for "a maintenance order under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945" substitute "an order for the periodical payment of money under the Domestic Proceedings (Northern Ireland) Order 1980";

(b) in subsection (9) for the words from "a fine" onwards substitute "a fine not exceeding £50".

3. In section 96 (1) after "110 (9)" insert "and subject to Article 25 (2) of the Domestic Proceedings (Northern Ireland) Order 1980".

4. In section 98 for paragraph (c) substitute—

“(c) under the Domestic Proceedings (Northern Ireland) Order 1980;”

5. In section 110 (9) for paragraph (c) substitute—

“(c) orders for the periodical payment of money under the Domestic Proceedings (Northern Ireland) Order 1980;”.

Legal Aid and Advice Act (Northern Ireland) 1965 (c. 8)

6. In Schedule 1, Part I, paragraph 3 (a), for “the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945” substitute “the Domestic Proceedings (Northern Ireland) Order 1980”.

Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (c. 35)

7. In section 10 (2) for paragraph (c) substitute—

“(c) the Domestic Proceedings (Northern Ireland) Order 1980;”.

8. In section 12 (1) for “and without prejudice to section 5A of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945” substitute “and without prejudice to Article 36 (4) of the Domestic Proceedings (Northern Ireland) Order 1980”.

Children and Young Persons Act (Northern Ireland) 1968 (c. 34)

9. In section 111 (4) for “ten pounds” substitute “£50”.

10. In section 146 (4) for “ten pounds” substitute “£50”.

11. In section 157 (5) for “ten pounds” substitute “£50”.

Land Registration Act (Northern Ireland) 1970 (c. 18)

12. At the end of Schedule 11 insert—

“36. An order under Article 18 (2) (i) of the Domestic Proceedings (Northern Ireland) Order 1980, or such an order made as an interim exclusion order by virtue of Article 21 of that Order, to the extent that by virtue of paragraph 1 (b) of Part II of Schedule 1 to that Order, or by virtue of that provision as applied by Part III of that Schedule, it renders liable to be set aside at the instance of the applicant for the order a disposition of any land in Northern Ireland which is specified in the order.”.

Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15))

13. In Article 6—

(a) in paragraph (1) after “the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945” insert “or the Domestic Proceedings (Northern Ireland) Order 1980”;

(b) in paragraph (3) after “paragraph (4)” insert “or (5)” and after “exempting” insert “or having the effect of exempting”;

(c) in paragraph (4) for sub-paragraphs (a) and (b) substitute—

“(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;

(b) any period during which there is in force an order made by a court of summary jurisdiction under Article 18 (2) (i) of the Domestic Proceedings (Northern Ireland) Order 1980, or such an order made as an interim exclusion order by virtue of Article 21 of that Order which gives the petitioner the exclusive use of the matrimonial home.”;

(d) after paragraph (4) insert—

“(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.”.

14. In Article 39 (5) for the words from “shall be cancelled” onwards substitute—
“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.”.

15. In Article 46—

(a) in paragraph (1) after “care of the Department)” insert “and section 154 (2) of that Act (contributions by person in care who has attained the age of 16 and is in remunerative work)”;

(b) in paragraph (6) for “£10” substitute “£50”.

16. In Article 48 (9) after “from any decree or order made by” insert “a judge of”, and after “from the dismissal” insert “by such a judge”.

17. In Article 50 (2) for paragraph (e) substitute—

“(e) an order under the Domestic Proceedings (Northern Ireland) Order 1980;”.

18. In Article 54 (1) (a) (iii) for “the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945” substitute “the Domestic Proceedings (Northern Ireland) Order 1980”.

Rent (Northern Ireland) Order 1978 (S.I. 1978/1050 (N.I. 20))

19. In Article 6 (b) for “section 3 (1) (a) of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945” substitute “Article 18 (2) (i) of the Domestic Proceedings (Northern Ireland) Order 1980 other than such an order made as an interim exclusion order by virtue of Article 21 of that Order”.

20. In Schedule 2, in sub-paragraph (1) (b) of paragraph 2, for the words from “section 3 (1) (a)” onwards substitute “Article 18 (2) (i) of the Domestic Proceedings (Northern Ireland) Order 1980 (other than such an order made as an interim exclusion order by virtue of Article 21 of that Order) excluding the first-mentioned spouse from the dwelling-house is made upon the application of the other spouse,” and at the end of that paragraph insert—

“(8) Where while an order under Article 18 (2) (i) of the Domestic Proceedings (Northern Ireland) Order 1980 other than such an order made as an interim exclusion order by virtue of Article 21 of that Order is in force an application is made for an order under this paragraph, the court may make the order applied for notwithstanding that, at the time when it does so, the first-mentioned order has ceased to have effect otherwise than by reason of its revocation; and where an order is made under this paragraph it shall not be affected by an order under the said Order of 1980 subsequently ceasing to have effect.”.

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1945 c. 14.	Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945.	The whole Act.
1946 c. 5.	Summary Jurisdiction (Miscellaneous Provisions) Act (Northern Ireland) 1946.	Section 3.
1958 c. 9.	Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1958.	Sections 29, 32 (2) and (3) and 39.
1964 c. 21.	Magistrates' Courts Act (Northern Ireland) 1964.	In section 88, subsection (3) and in subsection (4) the words "(including an order under the said Act of 1945)". Section 95 (4). Section 96 (4). Section 97 (2). Section 109. Section 110 (7) and (8). In section 111 the words from "and, accordingly," onwards.
1966 c. 35.	Maintenance and Affiliation Orders Act (Northern Ireland) 1966.	Section 2. In section 3, in subsection (1) the words "and 2" and subsection (2) (c) and the word "or" immediately preceding it. Sections 6, 7 (5), 8, 17, 18, 19 and 22. In section 10 (2) the words "Notwithstanding anything in section 6 (1)". In section 23 the definitions of "the Act of 1945" and "maintenance order". In the Schedule, paragraph 3.
1967 c. 29.	Increase of Fines Act (Northern Ireland) 1967.	In Part I of the Schedule the entries relating to the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 and the Magistrates' Courts Act (Northern Ireland) 1964.
1969 c. 28.	Age of Majority Act (Northern Ireland) 1969.	In Part I of Schedule 1 the entry relating to the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945.

Chapter or Number	Short Title	Extent of Repeal
1969 c. 30.	Judgments (Enforcement) Act (Northern Ireland) 1969.	In Schedule 4, Part II, the amendment of section 109 of the Magistrates' Courts Act (Northern Ireland) 1964.
1970 c. 16.	Maintenance and Affiliation Orders Act (Northern Ireland) 1970.	Section 2. In Part I of the Schedule the entry relating to the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945.
S.I. 1978/1045 (N.I. 15).	Matrimonial Causes (Northern Ireland) Order 1978.	Article 20 (3). Article 56. In Schedule 4, paragraphs 1 to 4 and 12.
S.I. 1979/296 (N.I. 3).	Judgments Enforcement and Debts Recovery (Northern Ireland) Order 1979.	In Part II of Schedule 4 the entry relating to the Magistrates' Courts Act (Northern Ireland) 1964.
S.I. 1980/397 (N.I. 3)	County Courts (Northern Ireland) Order 1980.	In Article 10 (3) sub-paragraph (c) and the word "or" immediately preceding it.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes fresh provision for matrimonial proceedings in courts of summary jurisdiction in Northern Ireland and empowers the making of orders to protect members of a family from domestic violence. It also amends provisions of the Magistrates' Courts Act (Northern Ireland) 1964 about the enforcement of orders made in civil proceedings.

STATUTORY INSTRUMENTS

1980 No. 563 (N.I. 5)

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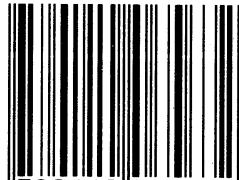
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