

SCHEDULES

SCHEDULE 9

AMENDMENTS

The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15)

93. In Article 2(2) (interpretation)—

- (a) in the definition of “child”, for the words from “an illegitimate” to “both parties” substitute “a child whose father and mother were not married to each other at the time of his birth within the meaning of Article 155 of the Children (Northern Ireland) Order 1995”;
- (b) in the definition of “child of the family”, for “has been boarded-out with those parties by or on behalf of the Department of Health and Social Services” substitute “is placed with those parties as foster parents by an authority within the meaning of the Children (Northern Ireland) Order 1995”.

94. In Article 29 (financial provision orders in case of neglect by party to marriage to maintain other party or child of the family), for paragraph (8) substitute the following paragraph—

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

- (a) the child is, or will be, or if an order were made under this paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is, will be or would be, also in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this paragraph,

the court shall have power by order to revive the first-mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its powers under Article 33 in relation to any order so revived.”.

95. For Article 44 (restrictions on decrees for dissolution, annulment or separation affecting children) substitute the following Article—

“Restrictions on decrees for dissolution, annulment or separation affecting children

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

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

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

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

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

(3) This Article applies to—

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

96. In Article 48(9) (provision for appeals to Court of Appeal), after “40)” insert “or of the Children (Northern Ireland) Order 1995”.

97. In Schedule 1 (proceedings in divorce, etc., stayed by reference to proceedings in another jurisdiction), in paragraph 11(1)—

- (a) at the end of the definition of “lump sum” add “or an order made in equivalent circumstances under Schedule 1 to the Children (Northern Ireland) Order 1995 and of a kind mentioned in paragraph 2(2)(c) of that Schedule”;
- (b) in the definition of “relevant order”—
 - (i) at the end of paragraph (b) add “or an order made in equivalent circumstances under Schedule 1 to the Children (Northern Ireland) Order 1995 and of a kind mentioned in paragraph 2(2)(a) or (b) of that Schedule”;
 - (ii) in paragraph (c), after “children)” insert “or an Article 8 order under the Children (Northern Ireland) Order 1995”;
 - (iii) in paragraph (d), for “custody, care or control” substitute “care”.

98. In paragraph 11(3) of that Schedule, for “the custody of a child and the education of a child” substitute “or any provision which could be made by an Article 8 order under the Children (Northern Ireland) Order 1995”.