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STATUTORY INSTRUMENTS

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**1978 No. 1045**

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

**PART II**

**DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS**

*Divorce*

**Divorce on breakdown of marriage**

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

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

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

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

(4) The provision of paragraph (3) requiring the court to consider the oral testimony of the petitioner shall not apply<sup>F1</sup> in any particular case where the court for special reasons orders that such testimony be dispensed with.

(5) If the court is satisfied on the evidence of any such fact as is mentioned in paragraph (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to<sup>F2</sup> Articles 4(2) and 7], grant a decree of divorce.

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

[<sup>F3</sup>(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this Article.]

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| <b>F1</b> | prosp. subst. by 1993 NI 6  |
| <b>F2</b> | 1989 NI 4   |
| <b>F3</b> | Art. 3(7) inserted (13.1.2020) by <a href="#">The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514)</a> , regs. 1(2), <b>35(3)</b> (with regs. 6-9) |

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

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

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

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

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

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

(6) For the purposes of Article 3(2)( d) and ( e) and this Article [<sup>F4</sup>the parties to a marriage] shall be treated as living apart unless they are living with each other in the same household, and references in this Article to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

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

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| <b>F4</b> | Words in art. 4(6) substituted (13.1.2020) by <a href="#">The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514)</a> , regs. 1(2), <b>35(4)</b> (with regs. 6-9) |
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### [<sup>F5</sup>Bar on petitions for divorce within two years of marriage

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

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

F5 1989 NI 4

### Divorce not precluded by previous judicial separation

6.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 [<sup>F6</sup> or the Domestic Proceedings (Northern Ireland) Order 1980 ] or any corresponding enactments in force in any part of Great Britain, the Isle of Man or any of the Channel Islands.

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

(3) Where a petition for divorce in such a case follows a decree of judicial separation or (without prejudice to paragraph (4) [<sup>F6</sup> or (5)]) an order containing a provision exempting [<sup>F6</sup> or having the effect of exempting] one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

(4) For the purposes of Article 3(2)( c) the court may treat as included in a period during which the respondent has deserted the petitioner[<sup>F7</sup> either or both of] the following periods—

<sup>F8</sup>(a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home;

[<sup>F7</sup>(b) any period during which there is an order made under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (or any statutory provision repealed by that Order) which—

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

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

<sup>F6</sup>(5) Where—

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

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

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

<b>F6</b>	1980 NI 5
<b>F7</b>	1998 NI 6
<b>F8</b>	1980 NI 5

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

7.—(1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this Article, then—

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

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

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

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

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

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

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

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

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

### **Intervention by Crown Solicitor**

10.—(1) In the case of a petition for divorce—

- (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Crown Solicitor for Northern Ireland ( “the Crown Solicitor”), who shall, under the directions of the Attorney-General, instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;

- (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Crown Solicitor on any matter material to the due decision of the case, and the Crown Solicitor may thereupon take such steps as the Attorney-General considers necessary or expedient.

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

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

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

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

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

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

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

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

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

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

- (a) that the petitioner should not be required to make any financial provision for the respondent, or
  - (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances, or
  - (c) that there are circumstances making it desirable that the decree should be made absolute without delay.
- (4) The court shall not make an order declaring that it is satisfied as mentioned in paragraph (3)(c) unless it has obtained a satisfactory undertaking from the petitioner that he will bring the question of the financial provision for the respondent before the court within a specified time.
- (5) If, following an application under paragraph (2)(a) which has not been withdrawn, the court makes absolute a decree of divorce without having made an order under paragraph (3) the decree shall be voidable at the instance of the respondent or of the court; but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by paragraphs (3) and (4) were not fulfilled.
- (6) If the court refuses to make an order under paragraph (3), it shall, on an application by the petitioner, make an order declaring that it is not satisfied as mentioned in that paragraph.

**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Cross Heading: Divorce.