STATUTORY INSTRUMENTS

1980 No. 563

Domestic Proceedings (Northern Ireland) Order 1980

Provisions relating to jurisdiction, procedure and enforcement

Jurisdiction

32.—(1) **[**[F1]Subject to [F2]... section 19 of the Family Law Act 1986**]**[F3]..., a court of summary jurisdiction shall have jurisdiction to hear an application for an order under this Order[F4]....

[F5]**[**[F6](1A)**]** . . . . . .

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

(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.

[F7](6) . . . . . .

F1 1986 c. 55

F2 Words in art. 32(1) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 9(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

F3 Words in art. 32(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 81(3)(a), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

F4 Words in art. 32(1) repealed (31.10.2016) by virtue of Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 81(3)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

F5 Art. 32(1A) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 9(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

F6 Art. 32(1A) inserted (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 19(b)**

F7 Art. 32(6) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 9(c)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

Procedure

33.—[F8](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**[**[F9] Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981**]**.

Para. (2) rep. by 1995 NI 2

(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;[F10]. . .

Sub#para. (c) rep. by 1998 NI 6

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 dismiss 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.

F8 prosp. subst. by 1995 NI 2
F9 1981 NI 26
F10 1998 NI 6

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 [F11]....

(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.

F11 Words in art. 34(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 81(4), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

Time limit for applications

35.—(1) Without prejudice to **[**[F12]paragraph (2), [F13]...**]** 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.

F12 Words in art. 35(1) substituted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), **reg. 8(2)** (with reg. 1(2))

F13 Words in art. 35 omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 8(2)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[F14Extension of time limit: mediation

F15**35A].** . . . . . .

F14 Art. 35A inserted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), **reg. 8(3)** (with reg. 1(2))
F15 Art. 35A omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 8(3)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Enforcement etc. of orders for payment of money

36.—(1) Without prejudice to**[**F16 Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981**]** (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,**[**F17 the said Article 85 shall have effect as if, in paragraph (8)**]** for the words**[**F17 "the person who applied for the order"**]** there were substituted the words " the person to whom the payments under the order fall to be made ".
Para. (2) rep. by 1981 NI 6

(3) **[**F17Subject to Article 85(14) of the Order of 1981,**]** 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.

(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.

F16 1981 NI 26
F17 1993 NI 6

Arts. 37, 38 rep. by 1995 NI 2

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**[**[F18] or request or authorise the collecting officer under paragraph (1) or paragraph (2) respectively of Article 85A of the 1981 order**]**.

(2) Where a child has a right under Article**[**[F19] 22B**]** 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) [F19]. . . where a child is**[**[F19] looked after by an authority (within the meaning of the Children (Northern Ireland) Order 1995), that authority**]** 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**[**[F20]**[**[F18] Article 85(4)**]** of the Magistrates' Courts (Northern Ireland) Order 1981**]**.

F18 1993 NI 6
F19 1995 NI 2
F20 1981 NI 26

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage[[F21] **or formation of civil partnership]**

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**[**[F21], or formation of a civil partnership by,**]** 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**[**[F21] or the formation of that civil partnership**]** 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 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**[**[F21], or formation of a civil partnership by,**]** 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**[**[F21] or the formation of that civil partnership**]** and the act was done before notice of the fact that the person so entitled had remarried**[**[F21] or formed a civil partnership**]** 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**[**[F22] Article 85(2) or (3) of the Magistrates' Courts (Northern Ireland) Order 1981**]**.

F21 2004 c. 33
F22 1981 NI 26

Art. 41 rep. by 1981 NI 26

Changes to legislation:
There are currently no known outstanding effects for the Domestic Proceedings (Northern Ireland) Order 1980, Provisions relating to jurisdiction, procedure and enforcement.