
STATUTORY INSTRUMENTS

1978 No. 1045

Matrimonial Causes (Northern Ireland) Order 1978

PART II

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

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, Section 12.