
STATUTORY INSTRUMENTS

1978 No. 1045

Matrimonial Causes (Northern Ireland) Order 1978

PART III

**FINANCIAL RELIEF FOR PARTIES TO
MARRIAGE AND CHILDREN OF FAMILY**

Maintenance agreements

Validity of maintenance agreements

36.—(1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—

- (a) that provision shall be void; but
- (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to Articles 37 and 38), be binding on the parties to the agreement.

(2) In this Article and in Article 37—

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Article, between the parties to a marriage, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreements in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

Alteration of agreements by the court, or by a court of summary jurisdiction, during lives of parties

37.—(1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Northern Ireland, then, subject to [^{F1}[^{F2}paragraph] (3)], either party may apply to the court or to a court of summary jurisdiction for an order under this Article.

^{F3}(1A)

(2) If the court to which the application is made is satisfied either—

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then subject to paragraphs (3), (4) and (5), that court may by order make such alterations in the agreement—

- (i) by varying or revoking any financial arrangements contained in it, or
- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in^{F4} Article 27(4)]; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A court of summary jurisdiction shall not entertain an application under paragraph (1) unless both the parties to the agreement are resident in Northern Ireland^{F5} ..., and shall not have power to make any order on such an application except—

- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(4) Where a court decides to alter, by order under this Article, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—

- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of^{F6}, or formation of a civil partnership by,] the party to whom the payments are to be made;
- (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of^{F6}, or formation of a civil partnership by,] that party.

(5) Where a court decides to alter, by order under this Article, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments or, as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of Article 31(2) and (3) as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(6) For the avoidance of doubt it is hereby declared that nothing in this Article or in Article 36 affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other statutory provision (including a provision of this Order) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

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| F1 | Words in art. 37(1) substituted (18.6.2011) by The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484) , reg. 1(1), Sch. 7 para. 18(3)(a) |
| F2 | Word in art. 37(1) substituted (31.12.2020) by The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519) , reg. 1(1), Sch. para. 8(3)(a) (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1) |
| F3 | Art. 37(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. 8(3)(b) (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1) |
| F4 | 1989 NI 4 |
| F5 | Words in art. 37(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9) , s. 106(2), Sch. 1 para. 76(3), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) |
| F6 | 2004 c. 33 |

Alteration of agreements by the High Court, or by a county court, after death of one party

38.—(1) Where a maintenance agreement within the meaning of Article 36 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in Northern Ireland, the surviving party or the personal representatives of the deceased party may, subject to paragraphs (2) and (3), apply to the High Court or a county court for an order under Article 37^{F7}....

(2) An application under this Article shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) A county court shall have jurisdiction by virtue of this Article only where it is shown to the satisfaction of the court that, at the date of the death of the deceased, the property included in his net estate (that is to say, all property of which he had power to dispose by his will, otherwise than by virtue of a special power of appointment, less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any capital transfer tax payable out of his estate on his death) did not exceed [^{F8} £15,000] in value.

(4) If a maintenance agreement is altered by a court on an application made in pursuance of paragraph (1), the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(5) The provisions of this Article shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in paragraph (2) on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this Article to be made by the surviving party after that period; but this paragraph shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this Article.

(6) Article 33(9) shall apply for the purposes of paragraph (2) as it applies for the purposes of paragraph (6) of Article 33.

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| F7 | Words in art. 38(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9) , s. 106(2), Sch. 1 para. 76(4), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) |
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Changes to legislation: There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Cross Heading: Maintenance agreements. (See end of Document for details)

F8 1979 NI 8

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