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STATUTORY INSTRUMENTS

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**1980 No. 563**

**Domestic Proceedings (Northern Ireland) Order 1980**

**Powers of court to make orders for financial provision  
for parties to a marriage and children of the family**

**Grounds of application for financial provision**

3. Either party to a marriage may apply to the court for an order under Article 4 on the ground that the other party to the marriage<sup>F1</sup> . . .

- (a) has failed to provide reasonable maintenance for the applicant; or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family; or
- (c) has, since the date of the marriage, committed adultery; or
- (d) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (e) has deserted the applicant.

**F1** 1989 NI 4

**Powers of court to make orders for financial provision**

4.—(1) Where on an application for an order under this Article the applicant satisfies the court of any ground mentioned in Article 3, the court may, subject to the provisions of this Order, make any one or more of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
- (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.

(2) Without prejudice to the generality of paragraph (1)( b) or ( d), an order under this Article for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.

(3 <sup>F2</sup> The amount of any lump sum required to be paid by an order under this Article shall not exceed<sup>F3</sup> £1,000] or such larger amount as the Secretary of State may<sup>F4</sup>, after consultation with the Lord Chief Justice,] by order fix for the purposes of this paragraph.

[<sup>F5</sup>(3A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (3)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(4) <sup>F2</sup> [<sup>F6</sup>Any order made under] paragraph (3) shall be subject to [<sup>F7</sup> negative resolution].

<b>F2</b>	functions transf. by 1993 NI 6
<b>F3</b>	SR 1989/323
<b>F4</b>	Words in art. 4(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 60(2); S.I. 2006/1014, art. 2(a), Sch. 1
<b>F5</b>	Art. 4(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 60(3); S.I. 2006/1014, art. 2(a), Sch. 1
<b>F6</b>	Words in art. 4(4) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 60(4); S.I. 2006/1014, art. 2(a), Sch. 1
<b>F7</b>	Words in art. 4(4) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 120(2) (with arts. 28-31); S.I. 2010/977, art. 1(2)

[<sup>F8</sup>**Matters to which court is to have regard in exercising its powers under Article 4**

5.—(1) Where an application is made for an order under Article 4, it shall be the duty of the court, in deciding whether to exercise its powers under that Article and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(2) As regards the exercise of its powers under paragraph (1)(a) or (b) of Article 4, the court shall in particular have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

(3) As regards the exercise of its powers under paragraph (1)(c) or (d) of Article 4, the court shall in particular have regard to the following matters—

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;

- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
  - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
  - (f) the matters mentioned in relation to the parties to the marriage in sub-paragraphs (a) and (b) of paragraph (2).
- (4) As regards the exercise of its powers under Article 4 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
  - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
  - (c) to the liability of any other person to maintain the child.]

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#### **Duration of orders for financial provision for a party to a marriage**

6.—(1) The term to be specified in any order made under Article 4(1)( a) shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.

(2) Where an order is made under Article 4(1)( a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of<sup>F9</sup>, or formation of a civil partnership by,] the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage<sup>F9</sup> or formation of the civil partnership].

(3) A person whose remarriage causes an order made under Article 4(1)( a) to cease to have effect shall give notice of the remarriage to the court and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

F9 2004 c. 33

#### **Age limit on making orders for financial provision for children and duration of such orders**

7.—(1) Subject to paragraph (3), no order shall be made under Article 4(1)( c) or ( d) in favour of a child who has attained the age of 18.

(2) The term to be specified in an order made under Article 4(1)( c) in favour of a child may begin with the date of the making of an application for the order in question or any later date<sup>F10</sup> or a date ascertained in accordance with paragraphs (7) or (9)] but—

- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of Article 36 of the Education and Libraries (Northern Ireland) Order 1972 )<sup>F11</sup> unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and

(b) shall not in any event, subject to paragraph (3), extend beyond the date of the child's eighteenth birthday.

(3) The court—

(a) may make an order under Article 4(1)( c) or ( d) in favour of a child who has attained the age of 18, and

(b) may include in an order made under Article 4(1)( c) in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court—

(i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(ii) that there are special circumstances which justify the making of the order or provision.

(4) Any order made under Article 4(1)(c) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(5) An order made under Article 4(1)( c) in favour of a child to whom sub-paragraph (i) of paragraph (3) applies shall cease to have effect in the event of the child's ceasing to receive instruction or undergo training as mentioned in that sub-paragraph.

(6) Where an order made under Article 4(1)( c) ceases to have effect by virtue of an event mentioned in paragraph (5) the person to whom the periodical payments are directed by the order to be made shall give notice of the event to the court; and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

[<sup>F10</sup>(7) Where—

(a) a<sup>F12</sup> maintenance assessment ( “the <sup>F12</sup>current assessment”) is in force with respect to a child; and

(b) before the end of the period of 6 months beginning with the date on which the<sup>F12</sup> current assessment was made, an application is made for an order under Article 4(1)(c);

the term to be specified in any such order, or in any interim order under Article 20, made on that application, may be expressed to begin on, or any time thereafter, the earliest permitted date.

(8) For the purposes of paragraph (7), “the earliest permitted date”, is the later of—

(a) the date six months before the application for the order was made; or

(b) the date on which the<sup>F12</sup> current assessment took effect or, where successive<sup>F12</sup> maintenance assessments have been continuously in force with respect to that child, the first of<sup>F12</sup> those assessments took effect.

(9) Where—

(a) a<sup>F12</sup> maintenance assessment ceases to have effect<sup>F13</sup> or is cancelled by or under any provision of the Child Support (Northern Ireland) Order 1991; and

(b) before the end of the period of 6 months beginning with the relevant date, an application is made for an order under Article 4(1)(c) in relation to a child with respect to whom that<sup>F12</sup> maintenance assessment was in force immediately before it ceased to have effect<sup>F13</sup> or was cancelled,

the term to be specified in any such order, or in any interim order under Article 20, made on that application, may begin with the relevant date or any later date.

- (10) In paragraph (9) “the relevant date” means—
- (a) where the<sup>F12</sup> maintenance assessment has ceased to have effect, the date on which it so ceased;
  - <sup>F13</sup>(b) where the<sup>F12</sup> maintenance assessment was cancelled, the later of—
    - (i) the date on which the person who cancelled it did so, or
    - (ii) the date from which the cancellation first had effect.]

**F10** SR 1993/98

**F11** 1989 NI 4

**F12** prosp. in pt. subst. by 2000 c. 4 (NI)

**F13** prosp. in pt. rep. by 2000 c. 4 (NI)

### [<sup>F14</sup>Orders for payments which have been agreed by the parties

**8.—(1)** Either party to a marriage may apply to the court for an order under this paragraph on the ground that either the party making the application or the other party to the marriage has agreed in writing to make such financial provision as may be specified in the application and, subject to paragraph (4), the court on such an application may, if—

- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.

(2) Where—

- (a) a party to a marriage has applied for an order under Article 4; and
- (b) before the determination of that application, both parties to the marriage request the court to make an order that one party to the marriage shall make the financial provision specified in the request,

the court may, subject to paragraph (4), make such an order if—

- (i) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make the financial provision specified in the request; and
- (ii) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder;

and if an order is made under this paragraph, the application made for an order under Article 4 shall be treated as if it had been withdrawn.

(3) In this Article “financial provision” means the provision mentioned in any one or more of the following sub-paragraphs, that is to say—

- (a) the making of periodical payments by one party to the other,
- (b) the payment of a lump sum by one party to the other,
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this Article to the financial provision specified in an application made under paragraph (1) or a request made under paragraph (2) or specified by the court under paragraph (6) is a reference to the type of provision specified in the application or request or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(4) Where the financial provision specified in an application under paragraph (1) or a request under paragraph (2) includes or consists of provision in respect of a child of the family, the court shall not make an order under paragraph (1) or (2), as the case may be, unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(5) Where on an application under paragraph (1) or a request under paragraph (2) the court decides—

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application or request, or
- (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then, if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.

(6) Subject to paragraph (8), the provisions of Article 6, shall apply in relation to an order under this Article which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under Article 4(1)(a).

(7) Subject to paragraph (8), the provisions of Article 7 shall apply in relation to an order under this Article for the making of financial provision in respect of a child of the family as they apply in relation to an order under Article 4(1)(c) or (d).

(8) Where the court makes an order under paragraph (2) which contains provision for the making of periodical payments and, by virtue of that paragraph, an application for an order under Article 4 is treated as if it has been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under Article 4 or any later date.

(9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under paragraph (1), the court shall not make an order under that paragraph unless there is produced to the court such evidence as may be prescribed of—

- (a) the consent of the respondent to the making of the order,
- (b) the financial resources of the respondent, and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

(10) The making of an order under paragraph (1) or (2) shall not prevent the making of an order under Article 4 on a subsequent application under Article 3, and, without prejudice to the power of

the court under Article 22(2) to revoke the first-mentioned order, on the making of an order under Article 4 the first-mentioned order shall cease to have effect.

(11) In any of the following provisions of this Order references to an application under this Article shall be construed as including references to a request under paragraph (2), and references to an applicant or respondent, in relation to any such request, shall be construed as references to the applicant or respondent in relation to the pending application under Article 4.]

F14 1989 NI 4

### **Powers of court where parties are living apart by agreement**

9.—(1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to the court for an order under this Article, and any application made under this paragraph shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.

(2) Where on an application for an order under this Article the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Order, make one or both of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.

(3) The court in the exercise of its powers under this Article—

- (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application;
- (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under Article 3;
- (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under Article 3.

(4) Where on an application under this Article the court considers that the orders which it has the power to make under this Article—

- (a) would not provide reasonable maintenance for the applicant, or
- (b) if the applicant relates to a child of the family, would not provide, or make a proper contribution towards, reasonable maintenance for that child,

the court shall refuse to make an order under this Article, but the court may treat the application as if it were an application for an order under Article 4.

(5) The provisions of Article 5 shall apply in relation to an application for an order under this Article as they apply in relation to an application for an order under Article 4 subject to the modification that for the reference in<sup>[F15]</sup> Article 5(2)(c)] to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.

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**Changes to legislation:** *There are currently no known outstanding effects for the Domestic Proceedings (Northern Ireland) Order 1980, Powers of court to make orders for financial provision for parties to a marriage and children of the family. (See end of Document for details)*

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(6) The provisions of Article 6 shall apply in relation to an order under this Article which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under Article 4(1)( a).

(7) The provisions of Article 7 shall apply in relation to an order under this Article for the making of periodical payments in respect of a child of the family as they apply in relation to an order under Article 4(1)( c).

**F15** 1989 NI 4



**Changes to legislation:**

There are currently no known outstanding effects for the Domestic Proceedings (Northern Ireland) Order 1980, Powers of court to make orders for financial provision for parties to a marriage and children of the family.