
STATUTORY INSTRUMENTS

1993 No. 1576

The Family Law (Northern Ireland) Order 1993

Miscellaneous

Family proceedings rules

12.—(1) There shall be a committee known as the Northern Ireland Family Proceedings Rules Committee (“the Committee”) which may, with the concurrence of the Lord Chancellor, make rules of court for the purposes of family proceedings.

(2) Schedule 2 shall have effect with respect to the Committee.

(3) Without prejudice to the generality of paragraph (1), rules of court made under this Article—

- (a) may, for the purposes mentioned in paragraph (1), make, in relation to both the High Court and county courts, any provision of a kind which could be made by rules of court as defined by section 21(4) of the Interpretation Act (Northern Ireland) 1954⁽¹⁾ and, in relation to county courts, any provision of a kind which could be made by county court rules (and accordingly in any statutory provision empowering the making of rules of court as so defined, any reference to the Supreme Court or the High Court shall, for the purposes of this Article, include a reference to a county court);
- (b) without prejudice to sub-paragraph (a), may provide that a decree pronounced by an officer of a class designated by the rules shall have the same effect as a decree pronounced by a county court judge;
- (c) may apply, with or without modifications, any rules of court (as so defined) and any county court rules;
- (d) may modify or exclude the application of any such rules or of any provision of the County Courts (Northern Ireland) Order 1980⁽²⁾;
- (e) without prejudice to sub-paragraph (a), may make with respect to proceedings in a county court any provision regarding the Official Solicitor or any solicitor of the Supreme Court which could be made by rules of court with respect to proceedings in the High Court;
- (f) may provide for the enforcement of orders made in a county court as if they were orders of the High Court, and for that purpose apply any statutory provision, with or without modification;
- (g) may provide that the sums payable under Article 13(1) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981⁽³⁾ to a solicitor or counsel acting in a matrimonial cause within the meaning of Article 48 of the Matrimonial Causes (Northern Ireland) Order 1978⁽⁴⁾ which is treated for the purposes of that Article 48 as undefended shall, at his election, be either—
 - (i) such fixed amount specified in the rules as may be applicable under the rules; or

(1) 1954 c. 33 (N.I.)

(2) 1980 NI 3

(3) 1981 NI 8

(4) 1978 NI 15

(ii) an amount ascertained on taxation or assessment of costs as provided by Schedule 2 to the Order of 1981;

and may provide for modifying that Schedule in relation to any proceedings which for the purposes of that Article 48 are at any stage treated as pending in a divorce county court;

(h) which relate to the costs of proceedings, may—

(i) amend or repeal any statutory provision relating to the practice and procedure of the Supreme Court or county courts so far as may be necessary in consequence of provision made by the rules; and

(ii) notwithstanding anything in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981⁽⁵⁾, make different provision according to whether each or any of the parties is entitled to legal aid under Part II of that Order in connection with the proceedings.

(4) Rules of court made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946⁽⁶⁾ shall apply accordingly.

(5) In this Article—

“family business” means business of any description in the High Court assigned to the Family Division and to no other Division by rules of court except business—

(a) in connection with the grant and revocation of probate and letters of administration of estates of deceased persons;

(b) under Part VIII of the Mental Health (Northern Ireland) Order 1986⁽⁷⁾ and the Enduring Powers of Attorney (Northern Ireland) Order 1987⁽⁸⁾;

“family proceedings” means proceedings which are family business and any corresponding proceedings in a county court.

Transfer of certain functions to the Lord Chancellor

13.—(1) The functions which immediately before the transfer date are exercisable by the Secretary of State under the provisions specified in Schedule 3 (which confer miscellaneous functions) are hereby transferred to the Lord Chancellor.

(2) In the provisions specified in Schedule 3 for “Secretary of State” wherever it occurs, there shall be substituted “Lord Chancellor”.

(3) In the construction and for the purposes of any statutory provision, judgment, decree, order, award, deed, contract, regulation, byelaw, certificate or other document passed or made before the transfer date, any reference to, or which is to be construed as a reference to, the Secretary of State shall, so far only as may be necessary for the purposes of this Article, be construed as a reference to the Lord Chancellor.

(4) The transfer of functions by this Article shall not affect any order, regulation, rule, appointment, direction, instruction, approval, requirement or authorisation made or given or other thing done by the Secretary of State before the transfer date, but any such matter shall, if in force immediately before that date, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Lord Chancellor.

⁽⁵⁾ 1981 NI 8

⁽⁶⁾ 1946 c. 36

⁽⁷⁾ 1986 NI 4

⁽⁸⁾ 1987 NI 16

(5) Anything commenced before the transfer date by or under the authority of the Secretary of State may, so far as it relates to any function transferred by this Article, be carried on or completed by or under the authority of the Lord Chancellor.

(6) Where, at the transfer date, any legal proceeding is pending to which the Secretary of State is a party and the proceeding relates to any of the functions transferred by this Article, the Lord Chancellor shall be substituted in the proceeding for the Secretary of State, and the proceeding shall not abate by reason of the substitution.

(7) In this Article “the transfer date” means the date on which this Article comes into operation.

Personal protection orders and exclusion orders

14.—(1) For Article 19 of the Domestic Proceedings (Northern Ireland) Order 1980⁽⁹⁾ there shall be substituted—

“Breach of personal protection order or exclusion order

19.—(1) Any person who contravenes—

- (a) a personal protection order by reason of his molesting the person who applied for the order or a child of the family named in the order; or
- (b) an exclusion order by reason of his entry or attempted entry into the matrimonial home or other premises specified in the order, his damaging the matrimonial home or those premises, his interfering with any goods or services in connection with that home or those premises or his being in any area specified in the order as an area from which he is excluded,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

(2) Paragraphs (3) to (8) of Article 112 of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of orders other than for payment of money) shall apply for the purpose of the enforcement of a personal protection order or an exclusion order as they apply for the purpose of the enforcement of an order mentioned in paragraph (2) of that Article.”

(2) In Article 21(2) of that Order of 1980 (interim personal protection orders and interim exclusion orders) for the words from the beginning to “as aforesaid,” there shall be substituted—

“Where on an application for a personal protection order or exclusion order the court or resident magistrate is satisfied that there is imminent danger of physical injury to the applicant or a child of the family,”

Oral testimony in divorce

15. In Article 3(4) of the Matrimonial Causes (Northern Ireland) Order 1978⁽¹⁰⁾ (oral testimony not required in certain divorce cases) for “in any” there shall be substituted—

- (a) “in any case where the petitioner alleges two years' separation and the respondent consents to a decree being granted; or
- (b) in any case where the petitioner alleges five years' separation; or
- (c) in any other”.

⁽⁹⁾ 1980 NI 5

⁽¹⁰⁾ 1978 NI 15

Minor and consequential amendments and repeals

16.—(1) The statutory provisions set out in Schedule 4 shall have effect subject to the amendments, being minor amendments and amendments consequential on the provisions of this Order, specified in that Schedule.

(2) The statutory provisions specified in Schedule 5 are hereby repealed to the extent specified in column 3 of that Schedule.