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STATUTORY INSTRUMENTS

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**1978 No. 1045**

**Matrimonial Causes (Northern Ireland) Order 1978**

**PART III**

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

*Financial provision and property adjustment orders*

**Financial provision and property adjustment orders**

**23.**—(1) The financial provision orders for the purposes of this Order are the orders for periodical or lump sum provision available (subject to the provisions of this Order) under Article 25 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under Article 29(6) on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say—

- (a) any order for periodical payments in favour of a party to a marriage under Article 25(1) (a) or 29(6)(a) or in favour of a child of the family under Article 25(1)(d), (2) or (4) or 29(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under Article 25(1)(b) or 29(6)(b) or in favour of a child of the family under Article 25(1)(e), (2) or (4) or 29(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under Article 25(1)(c) or 29(6)(c) or in favour of a child of the family under Article 25(1)(f), (2) or (4) or 29(6)(f);

and references in this Order to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Order are the orders dealing with property rights available (subject to the provisions of this Order) under Article 26 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say—

- (a) any order under paragraph (1)(a) of that Article for a transfer of property;
- (b) any order under paragraph (1)(b) of that Article for a settlement of property; and
- (c) any order under paragraph (1)(c) or (d) of that Article for a variation of settlement.

**[<sup>F1</sup>Pension sharing orders**

**23A.**—(1) For the purposes of this Order, a pension sharing order is an order which—

- (a) provides that one party's—
  - (i) shareable rights under a specified pension arrangement, or
  - (ii) shareable state scheme rights,
 be subject to pension sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.
- (2) In paragraph (1)—
  - (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, and
  - (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999, or under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, and
  - (c) “party” means a party to a marriage.]

**F1** 1999 NI 11

**Modifications etc. (not altering text)**

**C1** Art. 23A modified (14.8.2006) by [Divorce etc. \(Pension Protection Fund\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/310\)](#), [reg. 4\(2\)](#)

**[<sup>F2</sup>Pension compensation sharing orders**

**23B.**—(1) For the purposes of this Order, a pension compensation sharing order is an order which—

- (a) provides that one party's shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.
- (2) In paragraph (1)—
  - (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 or under Chapter 1 of Part 3 of the Pensions Act 2008;
  - (b) “party” means a party to a marriage;
  - (c) “specified” means specified in the order.

**F2** Arts. 23B, 23C inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 2](#) (with s. 73); S.R. 2011/108, art. 2(2), [Sch.](#)

**Pension compensation: interpretation**

**23C** In this Part—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 3 of the Pensions (Northern Ireland) Order 2005 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation on divorce etc.) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Great Britain.]

**F2** Arts. 23B, 23C inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 2](#) (with s. 73); S.R. 2011/108, art. 2(2), [Sch.](#)

*Ancillary relief in connection with divorce proceedings, etc.*

### **Maintenance pending suit**

**24.** On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

### **Financial provision orders in connection with divorce proceedings, etc.**

**25.—(1)** On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under sub-paragraph ( *d* ), ( *e* ) or ( *f* ), to the restrictions imposed by Article 31(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

(2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in paragraph (1)( *d* ), ( *e* ) and ( *f* )—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and

- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (3) Without prejudice to the generality of paragraph (1)( *c*) or ( *f*)—
- (a) an order under this Article that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this Article in his or her favour;
- (b) an order under this Article for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this Article in his favour to be met; and
- (c) an order under this Article for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (4) The power of the court under paragraph (1) or (2)( *a*) to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under paragraph (2)( *b*), it may from time to time, subject to the restrictions mentioned in paragraph (1), make a further order in his favour of any of the kinds mentioned in paragraph (1) ( *d*), ( *e*) or ( *f*).
- (5) Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under paragraph (1)( *a*), ( *b*) or ( *c*) on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.
- (6) Where the court makes an order under any provision of paragraph (1), (2) or (4) it may give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the disposal of any property).

[<sup>F3</sup>(7) Where the court

- (a) makes an order under this Article for the payment of a lump sum; and
- (b) directs—
- (i) that payment of that sum or any part of it shall be deferred, or
- (ii) that that sum or any part of it shall be paid by instalments,

the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified until the date when payment of it is due.]

**F3** 1989 NI 4

### **Property adjustment orders in connection with divorce proceedings, etc.**

**26.**—(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage<sup>[F4]</sup>, other than one in the form of a pension arrangement (within the meaning of Article 27D)];
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement<sup>[F4]</sup>, other than one in the form of a pension arrangement (within the meaning of Article 27D)];

subject, however, in the case of an order under sub-paragraph (a) to the restrictions imposed by Article 31(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of 18.

(2) The court may make an order under paragraph (1)(c) notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under this Article on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

(4) Where the court makes an order under any provision of paragraph (1) it may give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

F4 1999 NI 11

**[<sup>F5</sup>Pension sharing orders in connection with divorce proceedings, etc.**

**26A.—**(1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this Article, make one or more pension sharing orders in relation to the marriage.

(2) A pension sharing order under this Article is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension sharing order under this Article may not be made in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(4) A pension sharing order under this Article may not be made in relation to shareable state scheme rights if—

- (a) such rights are the subject of a pension sharing order in relation to the marriage, or
- (b) such rights have been the subject of pension sharing between the parties to the marriage.

(5) A pension sharing order under this Article may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of Article 27B or 27C which relates to benefits or future benefits to which he is entitled under the pension arrangement.]

F5 1999 NI 11

### **Pension sharing orders: duty to stay**

**26B.**—(1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.

(2) Regulations under this Article shall be subject to [<sup>F6</sup>negative resolution].

**F6** Words in art. 26B(2) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 18 para. 114(2)** (with arts. 28-31)

### **Pension sharing orders: apportionment of charges**

**26C.** If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under Article 38 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (charges in respect of pension sharing costs), or under section 41 of the Welfare Reform and Pensions Act 1999.

### **[<sup>F7</sup>Pension compensation sharing orders in connection with divorce proceedings**

**26D.**—(1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this Article, make a pension compensation sharing order in relation to the marriage.

(2) A pension compensation sharing order under this Article is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension compensation sharing order under this Article may not be made in relation to rights to PPF compensation that—

- (a) are the subject of pension attachment,
- (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
- (c) are the subject of pension compensation attachment, or
- (d) are or have been the subject of pension compensation sharing between the parties to the marriage.

(4) For the purposes of paragraph (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.

(5) The first condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(4), and
- (b) that order, as modified under Article 27E(3), remains in force.

(6) The second condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(7), and
- (b) that order—

- (i) has been complied with, or
- (ii) has not been complied with and, as modified under Article 27E(5), remains in force.

(7) The third condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27C, and

(b) that order remains in force.

(8) For the purposes of paragraph (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties.

(9) For the purposes of paragraph (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Article 27F relating to them.

(10) For the purposes of paragraph (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

**F7** Arts. 26D-26F inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 3](#) (with s. 73) (as amended by [S.I. 2010/976](#), art. 1(2), [Sch. 18 para. 173](#) (with arts. 28-31)); [S.R. 2011/108](#), art. 2(2), [Sch.](#)

#### **Pension compensation sharing orders: duty to stay**

**26E.**—(1) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Department of Justice.

(2) Regulations under this Article shall be subject to negative resolution.

**F7** Arts. 26D-26F inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 3](#) (with s. 73) (as amended by [S.I. 2010/976](#), art. 1(2), [Sch. 18 para. 173](#) (with arts. 28-31)); [S.R. 2011/108](#), art. 2(2), [Sch.](#)

#### **Pension compensation sharing orders: apportionment of charges**

**26F** The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 95 of the Pensions (No. 2) Act (Northern Ireland) 2008 (charges in respect of pension compensation sharing costs), or under section 117 of the Pensions Act 2008.]

**F7** Arts. 26D-26F inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 3](#) (with s. 73) (as amended by [S.I. 2010/976](#), art. 1(2), [Sch. 18 para. 173](#) (with arts. 28-31)); [S.R. 2011/108](#), art. 2(2), [Sch.](#)

#### **[<sup>F8</sup>Matters to which court is to have regard in deciding how to exercise its powers under Articles 25 [<sup>F9</sup>, 26, 26A and 26D]**

**27.**—(1) It shall be the duty of the court in deciding whether to exercise its powers under [<sup>F10</sup>Article 25, or 26 [<sup>F11</sup>, 26A or 26D]] 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 the powers of the court under Article 25(1)(a), (b) or (c) [<sup>F10</sup>, 26 [<sup>F12</sup>, 26A or 26D]] in relation to a party to the marriage, 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 family before the breakdown of the marriage;
  - (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;
  - (h) in the case of proceedings for divorce of nullity of marriage, the value to each of the parties to the marriage of any benefit<sup>F13</sup> . . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
- (3) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 in relation to a child of the family, 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 manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
  - (e) the considerations mentioned in relation to the parties to the marriage in sub#paragraphs (a), (b), (c) and (e) of paragraph (2).
- (4) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard—
- (a) to whether that party assumed any responsibility for the child's maintenance, and , if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
  - (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
  - (c) to the liability of any other person to maintain the child.]

**F8** 1989 NI 4

**F9** Words in art. 27 heading heading substituted (6.4.2011) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, s. 118(1), **Sch. 5 para. 4(2)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F10** 1999 NI 11

**F11** Words in art. 27(1) substituted (6.4.2011) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, s. 118(1), **Sch. 5 para. 4(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F12** Words in art. 27(2) substituted (6.4.2011) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, s. 118(1), **Sch. 5 para. 4(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F13** 1995 NI 22



## Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage

**27A.**—(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under Article 25(1)(a), (b) or (c)<sup>[F14]</sup>, 26<sup>[F15]</sup>, 26A or 26D]] in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under Article 25(1)(a) or (b).

**F14** 1999 NI 11

**F15** Words in art. 27A(1) substituted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 5** (with s. 73); S.R. 2011/108, art. 2(2), Sch.

## <sup>[F16]</sup>Pensions

**27B.**—(1) The matters to which the court is to have regard under Article 27(2) include—

- (a) in the case of sub-paragraph (a), any benefits under a pension<sup>[F17]</sup> arrangement] which a party to the marriage has or is likely to have; and
- (b) in the case of sub-paragraph (h), any benefits under a pension<sup>[F17]</sup> arrangement] which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,

and, accordingly, in relation to benefits under a pension<sup>[F17]</sup> arrangement], Article 27(2)(a) shall have effect as if "in the foreseeable future" were omitted.

*Para. (2) rep. by 1999 NI 11*

(3) The following provisions apply where, having regard to any benefits under a pension<sup>[F17]</sup> arrangement], the court determines to make an order under Article 25.

(4) To the extent to which the order is made having regard to any benefits under a pension<sup>[F17]</sup> arrangement], the order may require the<sup>[F17]</sup> person responsible for] the pension<sup>[F17]</sup> arrangement] in question, if at any time any payment in respect of any benefits under the<sup>[F17]</sup> arrangement] becomes due to the party with pension rights, to make a payment for the benefit of the other party.

<sup>[F17]</sup>(5) The order must express the amount of any payment required to be made by virtue of paragraph (4) as a percentage of the payment which becomes due to the party with pension rights.]

- (6) Any such payment by the<sup>[F17]</sup> person responsible for the arrangement]
  - (a) shall discharge so much of<sup>[F17]</sup> his] liability to the party with pension rights as corresponds to the amount of the payment; and

(b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.

(7) Where the party with pension rights<sup>F17</sup> has a right of commutation under the arrangement, the order may require him to exercise it to any extent]; and this Article applies to<sup>F17</sup> any payment due in consequence of commutation] in pursuance of the order as it applies to other payments in respect of benefits under the<sup>F17</sup> arrangement].

[  
<sup>F17</sup>(8) The power conferred by paragraph (7) may not be exercised for the purpose of commuting a benefit payable to the party with pension rights to a benefit payable to the other party.

(9) The power conferred by paragraph (4) or (7) may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(10) In paragraph (1), references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.]]

**F16** 1995 NI 22

**F17** 1999 NI 11

**Modifications etc. (not altering text)**

**C2** Art. 27B(6) modified (14.8.2006) by *Divorce etc. (Pension Protection Fund) Regulations (Northern Ireland) 2006 (S.R. 2006/310)*, **reg. 2**

**Pensions: lump sums**

**27C.**—(1) The power of the court under Article 25 to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension<sup>F18</sup> arrangement] include any lump sum payable in respect of his death, power to make any of the following provision by the order.

(2) The court may—

- (a) if the<sup>F18</sup> person responsible for the pension arrangement in question has] power to determine the person to whom the sum, or any part of it, is to be paid, require<sup>F18</sup> him] to pay the whole or part of that sum, when it becomes due, to the other party;
- (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum;
- (c) in any other case, require the<sup>F18</sup> person responsible for the pension arrangement] in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.

(3) Any payment by the<sup>F18</sup> person responsible for the arrangement] under an order made under Article 25 by virtue of this Article shall discharge so much of<sup>F18</sup> his] liability in respect of the party with pension rights as corresponds to the amount of the payment.

<sup>F18</sup>(4) The powers conferred by this Article may not be exercised in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.]

F18 1999 NI 11

**Pensions: supplementary**

**27D.**—<sup>[F19]</sup>(1) Where—

- (a) an order made under Article 25 by virtue of Article 27B or 27C imposes any requirement on the person responsible for a pension arrangement ( “the first arrangement”) and the party with pension rights acquires rights under another pension arrangement ( “the new arrangement”) which are derived (directly or indirectly) from the whole of his rights under the first arrangement, and
- (b) the person responsible for the new arrangement has been given notice in accordance with regulations made by the Lord Chancellor,

the order shall have effect as if it had been made instead in respect of the person responsible for the new arrangement.]

(2) <sup>[F19]</sup>The Lord Chancellor may by regulations]

- (a) in relation to any provision of Article 27B or 27C which authorises the court making an order under Article 25 to require the<sup>[F19]</sup> person responsible for a pension arrangement] to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made;

<sup>[F19]</sup>(aa) make, in relation to payment under a mistaken belief as to the continuation in operation of a provision included by virtue of Article 27B or 27C in an order under Article 25, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due;]

- (b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of Articles 27B and 27C;

<sup>[F19]</sup>(ba) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27B or 27C;]

*Sub#paras. (c), (d) rep. by 1999 NI 11*

<sup>[F19]</sup>(e) make provision about calculation and verification in relation to the valuation of—

- (i) benefits under a pension arrangement, or
- (ii) shareable state scheme rights,

for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.]

<sup>F19</sup> . . .

<sup>[F19]</sup>(2A) Regulations under paragraph (2)(e) may include—

- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person, and
- (b) provision by reference to regulations under Article 27 or 46(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(2B) Regulations under this Article shall be subject to <sup>[F20]</sup>negative resolution].]

<sup>[F19]</sup>(3) In this Article and Articles 27B and 27C—

“occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension arrangement and “the other party” means the other party to the marriage;

“pension arrangement” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“personal pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“prescribed” means prescribed by regulations;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“shareable state scheme rights” has the same meaning as in Article 23A(1); and

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(4) In this Article and Articles 27B and 27C, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement”, the provider of the annuity, and
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.]

**F19** 1999 NI 11

**F20** Words in art. 27D(2B) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 18 para. 114\(3\)](#) (with arts. 28-31)

## [<sup>F21</sup>The Pension Protection Fund

**27E.**—(1) The matters to which the court is to have regard under Article 27(2) include—

- (a) in the case of sub-paragraph (a), any PPF compensation to which a party to the marriage is or is likely to be entitled, and
- (b) in the case of sub-paragraph (h), any PPF compensation which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring entitlement to,

and, accordingly, in relation to PPF compensation, Article 27(2)(a) shall have effect as if “in the foreseeable future” were omitted.

(2) Paragraph (3) applies in relation to an order under Article 25 so far as it includes provision made by virtue of Article 27B(4) which—

- (a) imposed requirements on the trustees or managers of an occupational pension scheme for which the Board has assumed responsibility in accordance with Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection) or any provision in force in Great Britain corresponding to that Chapter, and
- (b) was made before the trustees or managers of the scheme received the transfer notice in relation to the scheme.

(3) The order is to have effect from the time when the trustees or managers of the scheme receive the transfer notice—

- (a) as if, except in prescribed descriptions of case—
  - (i) references in the order to the trustees or managers of the scheme were references to the Board, and
  - (ii) references in the order to any pension or lump sum to which the party with pension rights is or may become entitled under the scheme were references to any PPF compensation to which that person is or may become entitled in respect of the pension or lump sum, and
- (b) subject to such other modifications as may be prescribed.

(4) Paragraph (5) applies to an order under Article 25 if—

- (a) it includes provision made by virtue of Article 27B(7) which requires the party with pension rights to exercise his right of commutation under an occupational pension scheme to any extent, and
- (b) before the requirement is complied with the Board has assumed responsibility for the scheme as mentioned in paragraph (2)(a).

(5) From the time the trustees or managers of the scheme receive the transfer notice, the order is to have effect with such modifications as may be prescribed.

(6) Regulations may modify Article 27C as it applies in relation to an occupational pension scheme at any time when there is an assessment period in relation to the scheme.

(7) Where the court makes a pension sharing order in respect of a person's shareable rights under an occupational pension scheme, or an order which includes provision made by virtue of Article 27B(4) or (7) in relation to such a scheme, the Board subsequently assuming responsibility for the scheme as mentioned in paragraph (2)(a) does not affect—

- (a) the powers of the court under Article 33 to vary or discharge the order or to suspend or revive any provision of it, or
- (b) on an appeal, the powers of the appeal court to affirm, reinstate, set aside or vary the order.

(8) Regulations may make such consequential modifications of any provision of, or made by virtue of, this Part as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of this Article.

(9) In this Article—

- “assessment period” means an assessment period within the meaning of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection) (see Articles 116 and 143 of that Order) or an equivalent period under any provision in force in Great Britain corresponding to that Part;
- “the Board” means the Board of the Pension Protection Fund;

“occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“prescribed” means prescribed by regulations;

<sup>F22</sup> ...

“regulations” means regulations made by the Lord Chancellor;

“shareable rights” are rights in relation to which pension sharing is available under Chapter 1 of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or any provision in force in Great Britain corresponding to that Chapter;

“transfer notice” has the same meaning as in Article 144 of the Pensions (Northern Ireland) Order 2005 or any corresponding provision in force in Great Britain.

(10) Regulations under this Article shall be subject to [<sup>F23</sup>negative resolution].]

**F21** 2005 NI 1

**F22** Words in art. 27E(9) repealed (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 6, Sch. 10 Pt. 4](#) (with s. 73); S.R. 2011/108, art. 2(2), Sch.

**F23** Words in art. 27E(10) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\), art. 1\(2\), Sch. 18 para. 114\(4\)](#) (with arts. 28-31)

#### [<sup>F24</sup>Attachment of pension compensation

**27F.**—(1) This Article applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under Article 25.

(2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.

(3) The order must express the amount of any payment required to be made by virtue of paragraph (2) as a percentage of the payment which becomes due to the party with compensation rights.

(4) Any such payment by the Board of the Pension Protection Fund—

- (a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and
- (b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party's liability under the order.

(5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this Article applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.

(6) The power conferred by paragraph (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.

(7) The power conferred by paragraph (2) or (5) may not be exercised in relation to rights to PPF compensation that—

- (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or

- (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

**F24** Arts. 27F, 27G inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 7](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 174](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **Pension compensation: supplementary**

**27G.**—(1) The Department of Justice may by regulations—

- (a) make provision, in relation to any provision of Article 27F which authorises the court making an order under Article 25 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
  - (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of Article 27F in an order under Article 25, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
  - (c) require notices to be given in respect of changes of circumstances relevant to orders under Article 25 which include provision made by virtue of Article 27F;
  - (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27F;
  - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.
- (2) Regulations under paragraph (1)(e) may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
  - (b) provision by reference to regulations under section 90 of the Pensions (No. 2) Act (Northern Ireland) 2008.
- (3) Regulations under this Article shall be subject to negative resolution.
- (4) In this Article and Article 27F—

“the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and “the other party” means the other party to the marriage;

“prescribed” means prescribed by regulations.]

**F24** Arts. 27F, 27G inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 5 para. 7](#) (with s. 73) (as amended by S.I. 2010/976, art. 1(2), [Sch. 18 para. 174](#) (with arts. 28-31)); S.R. 2011/108, art. 2(2), [Sch.](#)

### **Commencement of proceedings for ancillary relief, etc.**

**28.**—(1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to paragraph (2), proceedings for maintenance pending suit under Article 24, for a financial provision order under Article 25, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.

- (2) Rules of court may provide, in such cases as may be prescribed by the rules,—

- (a) that applications for any such relief as is mentioned in paragraph (1) shall be made in the petition or answer; and
- (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

*Financial provision in case of neglect to maintain*

**Financial provision orders in case of neglect by party to marriage to maintain other party or child of the family**

**29.**—(1) Either party to a marriage may apply to the court for an order under this Article on the ground that the other party to the marriage ( “the respondent”)—

- (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.

[<sup>F25</sup>(2) Where an application under this Article is made on the ground mentioned in paragraph (1) (a), then, in deciding—

- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
- (b) what order, if any, to make under this Article in favour of the applicant,

it shall be the duty of the court to have regard to all the circumstances of the case (including the matters mentioned in Article 27(2)(a) to (g)), first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(3) Where an application under this Article is made on the ground mentioned in paragraph (1) (b), then, in deciding—

- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
- (b) what order, if any, to make under this Article in favour of the child,

it shall be the duty of the court to have regard to all the circumstances of the case (including the matters specified in paragraph (3A)), first consideration being given to the welfare while a minor of the child.

(3A) The matters referred to in paragraph (3) are—

- (a) where the child of the family to whom the application relates is not the child of the respondent, the matters mentioned in Article 27(3)(a) to (e) and those mentioned in Article 27(4)(a) to (c);
- (b) in any other case, the matters mentioned in Article 27(3)(a) to (e).]

(4) In relation to an application under this Article on the ground mentioned in paragraph (1) ( a),[<sup>F25</sup> Article 27(2)( c)] shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and, in relation to an application under this Article on the ground mentioned in paragraph (1)( b),[<sup>F25</sup> Article 27(2)( c) (as it applies by virtue of Article 27(3) (e))] shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.

(5) Where on an application under this Article it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may



make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this Article the applicant satisfies the court of any ground mentioned in paragraph (1), the court may 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, for such term, as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;

subject, however, in the case of an order under sub-paragraph (d), (e) or (f), to the restrictions imposed by Article 31(1) and (3) on the making of financial provision orders in favour of children who have attained the age of 18.

(7) An application for the variation under Article 33 of a periodical payments order or secured periodical payments order made under this Article in favour of a child may, if the child has attained the age of 16, be made by the child himself.

[<sup>F26</sup>(8) Where a periodical payments order made under this Article in favour of a child ceases to have effect on the date on which the child attains the age of 16, or at any time after that date but before or on the date on which he attains the age of 18, then if, on an application made to the court for an order under this paragraph, it appears to the court that—

- (a) the child is, or will be, or if an order were made under this paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is, will be or would be, also in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this paragraph,

the court shall have power by order to revive the first-mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its powers under Article 33 in relation to any order so revived.]

(9) Without prejudice to the generality of paragraph (6)(c) or (f), an order under this Article for the payment of a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

F26 1995 NI 2

*Additional provisions with respect to financial provision and property adjustment orders*

**Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage<sup>F27</sup> or formation of civil partnership]**

**30.**—(1) [<sup>F28</sup>Subject in the case of an order made on or after the grant of a decree of divorce or nullity of marriage to the provisions of Articles 27A(2) and 33(7), the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits], that is to say—

- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of<sup>F27</sup>, or formation of a civil partnership by,] the party in whose favour the order is made; and
- (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the grant of such a decree, the remarriage of<sup>F27</sup>, or formation of a civil partnership by,] the party in whose favour the order is made.

[<sup>F28</sup>(1A) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the grant of a decree of divorce or nullity of marriage, the court may direct that that party shall not be entitled to apply under Article 33 for the extension of the term specified in the order]

(2) Where a periodical payments or secured payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage, and the marriage in question 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>F27</sup>, or formation of a civil partnership by,] that party, except in relation to any arrears due under it on the date of the remarriage<sup>F27</sup> or formation of the civil partnership].

(3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries<sup>F28</sup> whether at any time before or after the commencement of this Article][<sup>F27</sup> or forms a civil partnership], that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

F27 2004 c. 33

F28 1989 NI 4

**Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour**

**31.**—(1) Subject to paragraph (3), no financial provision order and no order for a transfer of property under Article 26(1)(a) shall be made in favour of a child who has attained the age of 18.

(2) The term to be specified in a periodical payments or secured periodical payments order 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>F29</sup> or a date ascertained in accordance with paragraphs (5) or (7)] 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>F30</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) Paragraph (1), and sub-paragraph ( b) of paragraph (2), shall not apply in the case of a child, if it appears to the court that—

- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions 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
- (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

(4) Any periodical payments order 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, except in relation to any arrears due under the order on the date of the death.

<sup>F29</sup>(5) Where—

- (a) <sup>F31</sup> maintenance assessment ( “the <sup>F31</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 current assessment was made, an application is made under this Part for a periodical payments or secured periodical payments order in favour of that child;

the term to be specified in any such order made on that application may be expressed to begin on or at any time after the earliest permitted date.

(6) For the purposes of paragraph (5), ( “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>F31</sup> current assessment took effect or, where successive <sup>F31</sup> maintenance assessments have been continuously in force with respect to that child, the first of <sup>F31</sup> those assessments took effect.

(7) Where—

- (a) a <sup>F31</sup> maintenance assessment ceases to have effect<sup>F32</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 a periodical payments or secured periodical payments order in favour of a child with respect to whom that <sup>F31</sup> maintenance assessment was in force immediately before it ceased to have effect<sup>F32</sup> or was cancelled,

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

(8) In paragraph (7) “the relevant date” means—

- (a) where the<sup>F31</sup> maintenance assessment ceased to have effect, the date on which it so ceased;<sup>F32</sup> and
- <sup>F32</sup>(b) where the<sup>F31</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.]

**F29** SR 1993/98

**F30** 1989 NI 4

**F31** prosp. in pt. subst. by 2000 c. 4 (NI)

**F32** prosp. in pt. rep. by 2000 c. 4 (NI)

### **Direction for settlement of instrument for securing payments or effecting property adjustment**

**32.** Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order, or where it gives directions for the disposal of any property,—

- (a) it may direct that the matter be referred to a conveyancing counsel appointed by the court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

*Variation, discharge and enforcement of certain orders, etc.*

### **Variation, discharge, etc., of certain orders for financial relief**

**33.—**(1) Where the court has made an order to which this Article applies, then, subject to the provisions of this Article [<sup>F33</sup>and of Article 30(1A)], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This Article applies to the following orders, that is to say—

- (a) any order for maintenance pending suit and any interim order for maintenance;
  - (b) any periodical payments order;
  - (c) any secured periodical payments order;
  - (d) any order made by virtue of Article 25(3)(c) or 29(9)(b) (provision for payment of a lump sum by instalments);
- [<sup>F34</sup>(dd) any deferred order made by virtue of Article 25(1)(c) (lump sums) which includes provision made by virtue of—
- (i) Article 27B(4), <sup>F35</sup>...
  - (ii) Article 27C, [<sup>F36</sup>or]  
[ Article 27F(2),]
- <sup>F37</sup>(iii)  
(provision in respect of pension rights [<sup>F38</sup>or pension compensation rights]);]

(e) any order for a settlement of property under Article 26(1)(b) or for a variation of settlement under Article 26(1)(c) or (d), being an order made on or after the grant of a decree of judicial separation.

[<sup>F39</sup>(f) a pension sharing order under Article 26A [<sup>F40</sup>, or a pension compensation sharing order under Article 26D,] which is made at a time before the decree has been made absolute.]

[<sup>F33</sup>(2A) Where the court has made an order referred to in paragraph (2)(a), (b) or (c), then, subject to the provisions of this Article, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]

[<sup>F34</sup>(2B) Where the court has made an order referred to in paragraph (2)(dd)(ii), this Article shall cease to apply to the order on the death of either of the parties to the marriage.]

(3) The powers exercisable by the court under this Article in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this Article in relation to an order for a settlement under Article 26(1)(b) or for a variation of settlement under Article 26(1)(c) or (d) except on an application made in proceedings—

- (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
- (b) for the dissolution of the marriage in question.

[<sup>F39</sup>(4A) In relation to an order which falls within sub-paragraph (f) of paragraph (2) (“the paragraph (2) order”)—

- (a) the powers conferred by this Article may be exercised—
  - (i) only on an application made before the paragraph (2) order has or, but for sub# paragraph (b), would have taken effect; and
  - (ii) only if, at the time when the application is made, the decree has not been made absolute; and
- (b) an application made in accordance with sub-paragraph (a) prevents the paragraph (2) order from taking effect before the application has been dealt with.

(4B) No variation of a pension sharing order [<sup>F41</sup>, or a pension compensation sharing order,] shall be made so as to take effect before the decree is made absolute.

(4C) The variation of a pension sharing order [<sup>F42</sup>, or a pension compensation sharing order,] prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.

(4D) Regulations under paragraph (4C) shall be subject to [<sup>F43</sup>negative resolution].]

(5) No property adjustment order [<sup>F39</sup>or pension sharing order][<sup>F44</sup>or pension compensation sharing order] shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under Article 25, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under Article 25 or under Article 29).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application under this Article relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

[<sup>F33</sup>(7) In exercising the powers conferred by this Article the court shall 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, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—

- (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;
- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]

(8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be 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 (6) on the ground that they ought to have taken into account the possibility that the court might permit an application under this Article to be made after that period by the person entitled to payments under the order; 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.

(9) In considering for the purposes of paragraph (6) the question when representation was first taken out, a grant limited to part of the estate of the deceased shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

[<sup>F33</sup>(10) Where the court, in exercise of its powers under this Article, decides to vary or decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to Article 30(1) and (2), the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]

[<sup>F45</sup>(11) Paragraph (12) applies where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a [<sup>F46</sup>“maintenance assessment”] [<sup>F46</sup>“maintenance calculation”] ([<sup>F47</sup>“the assessment”][<sup>F47</sup>“the calculation”]) is made with respect to one or more but not all of the children in whose favour the order is in force; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which [<sup>F47</sup>“the assessment”][<sup>F47</sup>“the calculation”] was made, for the variation or discharge of the order.

(12) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which [<sup>F48</sup>“the assessment”][<sup>F48</sup>“the calculation”] took effect or any later date.

(13) Paragraph (14) applies where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991 is affected by a [<sup>F49</sup>“maintenance assessment”][<sup>F49</sup>“maintenance calculation”];
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and

(c) an application is made, before the end of the period of 6 months beginning with the date on which the [<sup>F49</sup>maintenance assessment][<sup>F49</sup>maintenance calculation] was made, for the spousal order to be varied or discharged.

(14) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.

(15) For the purposes of paragraphs (13) and (14), an order is affected if it ceases to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.

(16) Paragraphs (12) and (14) are without prejudice to any other power of the court to direct that the variation or discharge of an order under this Article shall take effect from a date earlier than that on which the order for variation or discharge was made.]

- F33** 1989 NI 4
- F34** 1995 NI 22
- F35** Word in art. 33(2)(dd)(i) repealed (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), Sch. 5 para. 8(2)(a), **Sch. 10 Pt. IV** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F36** Word in art. 33(2)(dd)(ii) added (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(b)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F37** Art. 33(2)(dd)(iii) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(c)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F38** Words in art. 33(2)(dd) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(d)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F39** 1999 NI 11
- F40** Words in art. 33(2)(f) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F41** Words in art. 33(4B) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(4)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F42** Words in art. 33(4C) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(5)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F43** Words in art. 33(4D) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 18 para. 114(5)** (with arts. 28-31)
- F44** Words in art. 33(5) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(6)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F45** SR 1993/98
- F46** Words in art. 33(11)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(a)**; S.R. 2003/53, art. 3(1), **Sch.**
- F47** Words in art. 33(11)(c)(d) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(b)**; S.R. 2003/53, art. 3(1), **Sch.**
- F48** Words in art. 33(12) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(b)**; S.R. 2003/53, art. 3(1), **Sch.**
- F49** Words in art. 33(13)(a)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(a)**; S.R. 2003/53, art. 3(1), **Sch.**

### **Payment of certain arrears unenforceable without the leave of the court**

**34.**—(1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of the court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.

(2) The court, on an application for the grant of leave under this Article, 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 court thinks proper, or may remit the payment of the arrears or of any part thereof.

### **Orders for repayment in certain cases of sums paid under certain orders**

**35.**—(1) Where on an application made under this Article in relation to an order to which this Article applies it appears to the court that by reason of—

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) This Article applies to the following orders, that is to say—

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order; and
- (c) any secured periodical payments order.

(3) An application under this Article may be made by the person liable to make payments under an order to which this Article applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this Article may be made in proceedings in the High Court for—

- (a) the variation or discharge of the order to which this Article applies, or
- (b) leave to enforce, or the enforcement of, the payment of arrears under that order;

but when not so made shall be made to a county court, <sup>F50</sup>....

(5) The jurisdiction conferred on a county court by this Article shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this paragraph be exercisable by a county court.

(6) 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.

<p><b>F50</b> Words in art. 35(4) repealed (31.10.2016) by <a href="#">Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(2), Sch. 9 Pt. 1</a> (with <a href="#">Sch. 8 para. 1</a>); <a href="#">S.R. 2016/387, art. 2(k)(m)</a> (with <a href="#">art. 3</a>)</p>
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## *[<sup>F51</sup>Consent orders*

**F51** 1989 NI 4

### **Consent orders for financial provision or property adjustment**

**35A.**—(1) Notwithstanding anything in the preceding provisions of this Part, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

(2) Paragraph (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.

(3) In this Article—

“consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;

“order for financial relief” means an order under any of Articles 25, 26<sup>[F52]</sup>, 26A] or 29; and

“prescribed” means prescribed by rules of court.]

**F52** 1999 NI 11

## *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 [<sup>F53</sup>[<sup>F54</sup>paragraph] (3)], either party may apply to the court or to a court of summary jurisdiction for an order under this Article.

<sup>F55</sup>(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 [<sup>F56</sup> 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 <sup>F57</sup> ..., 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 [<sup>F58</sup> , 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 [<sup>F58</sup> , 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.

- F53** 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)**
- F54** 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)
- F55** 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)
- F56** 1989 NI 4
- F57** 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)
- F58** 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 <sup>F59</sup>....

(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 [<sup>F60</sup> £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.

- F59** 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)
- F60** 1979 NI 8

### *Miscellaneous and supplemental*

#### **Avoidance of transactions intended to prevent or reduce financial relief**

**39.**—(1) For the purposes of this Article “financial relief” means relief under any of the provisions of Articles 24, 25, 26, [F61 26A,] 29, 33 (except paragraph (6)) and 37, and any reference in this Article to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—

- (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;
- (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in paragraph (1) by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of sub-paragraph ( b) shall be made in the proceedings for the financial relief in question.

(3) An order made by the court under paragraph (2)( a), to the extent that it restrains the other party to the proceedings for financial relief from making a disposition of any land in Northern Ireland which is specified in the order,—

- (a) shall create on the land a statutory charge within the meaning of section 87 of the Land Registration Act (Northern Ireland) 1970 (matters registrable in the Statutory Charges Register); and
- (b) subject to section 88 of that Act (statutory charge to be void against purchaser in certain circumstances), shall render liable to be set aside by the court, at the instance of the applicant for financial relief, any disposition of the land in contravention of the order.

(4) Neither paragraph (3)( b) nor section 88(1) of the said Act of 1970 shall prejudice any power of the court to set aside a disposition under paragraph (2)( b) or ( c).

(5) Without prejudice to any provision of section 91 of the said Act of 1970 (cancellation and modification of statutory charges), the registration of a statutory charge such as is mentioned in paragraph (3)(a) [<sup>F62</sup> shall be effective until—

- (a) the expiration of the period of one year from the date of its registration or of the last renewal of its registration, unless the registration is renewed or further renewed before the expiration of that period; or
- (b) the court orders that it is to cease to have effect;

and when the registration ceases to have effect the Registrar of Titles may cancel it.]

(6) An application for the renewal, under paragraph (5)(a), of the registration of a charge may be made in the same manner as the application for the original registration.

(7) Where the court makes an order under paragraph (2)(b) or (c) or (3)(b) setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(8) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of paragraph (2)(b) and (c) unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(9) Where an application is made under this Article with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

- (a) in a case falling within paragraph (2)(a) or (b), that the disposition or other dealing would (apart from this Article) have the consequence, or
- (b) in a case falling within paragraph (2)(c), that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(10) In this Article “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(11) This Article does not apply to a disposition made more than three years before the commencement of this Article.

F61 1999 NI 11

F62 1980 NI 5

#### **Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage<sup>F63</sup> or formation of civil partnership]**

**40.—**(1) Where—

- (a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as “a payments order”) has ceased to have effect by reason of the remarriage of<sup>F63</sup>, or formation of a civil partnership by,] that party, and

- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage<sup>F63</sup> or formation of the civil partnership] in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraphs (a) and (b) against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this Article.

(2) On an application under this Article the court may order the respondent 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 in proceedings in the High Court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to a county court;<sup>F64</sup> ....

(4) The jurisdiction conferred on a county court by this Article shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this paragraph be exercisable by a county court.

(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 collecting officer of a court of summary jurisdiction to whom any payments under a payments order, or under an attachment of earnings order made to secure payments under a payments order, are required to be made shall not be liable—

- (a) for any act done by him in pursuance of the payments order after the date on which the order ceased to have effect by reason of the remarriage of<sup>F63</sup>, or formation of a civil partnership by,] the person entitled to payments under it; or
- (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 payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried<sup>F63</sup> or formed a civil partnership] was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

(7) In this Article “collecting officer” means the officer mentioned in<sup>F65</sup> Article 85(2) of the Magistrates' Courts (Northern Ireland) Order 1981] or section 15(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 .

**F63** 2004 c. 33

**F64** Words in art. 40(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(5), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F65** 1981 NI 26

### **Settlement, etc., made in compliance with a property adjustment order may be avoided on bankruptcy of settlor**

**41.** The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being<sup>F66</sup> a transaction in respect of which an order may be made under Article 312 or 313 of the Insolvency (Northern Ireland) Order 1989].

**F66** 1989 NI 19

### **Payments, etc., under order made in favour of person suffering from mental disorder**

**42.** Where the court makes an order under this Part requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health<sup>F67</sup> (Northern Ireland) Order 1986], of managing and administering his or her property and affairs then, subject to any order, direction or authority made or given in relation to that person under<sup>F67</sup> Part VIII of the Mental Health (Northern Ireland) Order 1986], the court may order the payments to be made, or, as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

**F67** 1986 NI 4

### **<sup>F68</sup> Appeals relating to pension sharing orders which have taken effect**

**42A.—**(1) Paragraphs (2) and (3) apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

(2) If the pension sharing order relates to a person's rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.

(3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Department of Health and Social Services has acted to its detriment in reliance on the taking effect of the order.

(4) In determining for the purposes of paragraph (2) or (3) whether a person or the Department has acted to his or its detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.

(5) Where paragraph (2) or (3) applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit, for the purpose of putting the parties in the position it considers appropriate.

(6) Article 26B only applies to a pension sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.

(7) In paragraph (2), the reference to the person responsible for the pension arrangement is to be read in accordance with Article 27D(4).]

**F68** 1999 NI 11

[<sup>F69</sup> **Appeals relating to pension compensation sharing orders which have taken effect**

**42B.**—(1) This Article applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.

(2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—

- (a) may not set aside or vary the order;
- (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(3) In determining for the purposes of paragraph (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court's opinion is insignificant.

(4) Article 26E (duty to stay) only applies to a pension compensation sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.]

**F69** Art. 42B inserted (6.4.2011) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(1), [Sch. 5 para. 9](#) (with s. 73); S.R. 2011/108, art. 2(2), Sch.



**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, PART III.