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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**

*Miscellaneous and supplemental*

**Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage<sup>F1</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>F1</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>F1</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>F2</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>F1</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>F1</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>F3</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 .

**F1** 2004 c. 33

**F2** 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)

**F3** 1981 NI 26

**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Section 40.