
STATUTORY INSTRUMENTS

1978 No. 1045

Matrimonial Causes (Northern Ireland) Order 1978

PART III

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

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,^[F1 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*) [^{F2} 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.

F1 1999 NI 11

F2 1980 NI 5

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage^{F3} 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^{F3}, 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^{F3} 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; ^{F4}

(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^{F3}, 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^{F3} 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^{F5} 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 .

F3 2004 c. 33

F4 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)

F5 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^{F6} a transaction in respect of which an order may be made under Article 312 or 313 of the Insolvency (Northern Ireland) Order 1989].

F6 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^{F7} (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^{F7} 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.

F7 1986 NI 4

[^{F8} 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).]

F8 1999 NI 11

[^{F9} 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.]

F9 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, Cross Heading: Miscellaneous and supplemental.