

## SCHEDULES

### SCHEDULE 3

#### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART III

#### ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ORDER OF ORDERS MADE, ETC., UNDER THE ACT OF 1939, ETC.

*Variation, etc., of certain orders made, etc., under the Act of 1939, etc.*

**23.**—(1) Subject to the provisions of this paragraph, Article 33 shall apply, as it applies to the orders mentioned in paragraph (2) thereof, to—

- (a) an order made under any of the following provisions of the Act of 1939, that is to say,—
  - (i) in section 19, subsections (1), (2), (3) and (4) (including those subsections as applied by subsection (7)), but excluding subsection (4) so far as it applies to an order made in connection with a decree for restitution of conjugal rights);
  - (ii) section 20(1), where the order is made in connection with a decree for judicial separation;
  - (iii) section 22(1), in so far as it relates to the maintenance of a child, and section 22(3);
- (b) an order made under section 4 of the Act of 1951;
- (c) an order such as is mentioned in section 19(6) of the Act of 1939 made in proceedings for judicial separation or for a divorce a mensa et thoro;
- (d) an order for alimony pending suit made in proceedings for judicial separation.

(2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made as mentioned in sub-paragraph (1) shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part III.

(3) Article 33, as it applies by virtue of sub-paragraph (1), shall have effect as if for paragraphs (4), (5) and (6) there were substituted the following paragraphs—

“(4) The court shall not exercise the powers conferred by this Article in relation to an order made under section 20(1) of the Matrimonial Causes Act (Northern Ireland) 1939 (“the Act of 1939”) in connection with the grant of a decree of judicial separation except on an application made in proceedings—

- (a) for the rescission of that decree, or
- (b) for the dissolution of the marriage in question.

(5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made under section 19(1), (2) or (4) (including those subsections as applied by section 19(7)) or section 22(1) or (3) of the Act

**Changes to legislation:** *There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Cross Heading: Variation, etc., of certain orders made, etc., under the Act of 1939, etc.. (See end of Document for details)*

of 1939 or section 4 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 (“the Act of 1951”).

(6) In the case of an order made under section 19(1) (including that subsection as applied by section 19(7)) or section 22(3) of the Act of 1939 or under section 4 of the Act of 1951, requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this Article relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments 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.” ;

and in that Article, as it so applies, the reference in paragraph (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in paragraph (6).

(4) In relation to an order made before 13th February 1951 under section 19(1) of the Act of 1939 on or after granting a decree of divorce or nullity of marriage, the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any other order made by reference to that decree, being an order made under section 19(2) of the Act of 1939.

**24.**—(1) Paragraphs (1) and (3) of Article 33 shall apply to an order made under section 17(2) or (3) of the Act of 1939 or under section 19(4) of that Act in its application to proceedings for restitution of conjugal rights, or under section 20(2) or 22(2) of that Act, and to an order for alimony pending suit made in proceedings for restitution of conjugal rights, as they apply to the orders mentioned in paragraph (2) of Article 33.

(2) In exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including 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.

**25.** Article 45(7) shall apply in relation to an order for the custody or education of a child made under section 22(1) or (2) of the Act of 1939, as it applies in relation to an order made under Article 45.

**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Cross Heading: Variation, etc., of certain orders made, etc., under the Act of 1939, etc..