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STATUTORY INSTRUMENTS

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**1980 No. 563**

**Domestic Proceedings (Northern Ireland) Order 1980**

Variation, revocation and cessation of orders etc.

**Variation, revival and revocation of orders for periodical payments** **N.I.**

**22.**—(1) Where the court has made an order under Article 4(1)( *a*) or ( *c*) for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order and also to make an order under Article 4(1)( *b*) or ( *d*).

[<sup>F1</sup>(2) Where the court has made an order under Article 8 for the making of periodical payments by a party to a marriage the court shall have power, on an application made under this Article, to vary or revoke that order and also to make an order for the payment of a lump sum by that party either—

(a) to the other party to the marriage, or

(b) to a child of the family or to that other party for the benefit of that child.]

(3) Where the court has made an order under Article 9 for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order.

*Para. (4) rep. by 1995 NI 2*

(5) Where the court has made an interim maintenance order under Article 20, the court, on an application made under this Article, shall have power to vary or revoke that order, except that the court shall not by virtue of this paragraph extend the period for which the order is in force.

(6) The power of the court under this Article to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.

(7) Where the court has power by virtue of this Article to make an order for the payment of a lump sum, the amount of the lump sum shall not exceed the maximum amount that may at that time be required to be paid under Article 4(3), but the court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the person required to pay the lump sum was required to pay a lump sum by a previous order under this Order.

(8) Where the court has power by virtue of paragraph (2) to make an order for the payment of a lump sum and the respondent[<sup>F1</sup> or the applicant, as the case may be,] has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under Article 4(3), the court may, notwithstanding anything in paragraph (7), make an order for the payment of a lump sum of that amount.

(9) An order made by virtue of this Article which varies an order for the making of periodical payments may<sup>F2</sup> . . . provide that the payments as so varied shall be made from such date as the court may specify,<sup>F3</sup> except that, subject to paragraphs (9A) and (9B), the date shall not be] earlier than the date of the making of the application under this Article.

[<sup>F3</sup>(9A) Paragraph (9B) applies where—

(a) a relevant order is in force requiring payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;

- (b) a<sup>F4</sup> maintenance assessment ( “<sup>F4</sup>the assessment”) is made with respect to one or more, but not all, of the children in whose favour the order is in force; and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which<sup>F4</sup> the assessment was made, for the variation or revocation of the order.

(9B) Where this paragraph applies the court may, in exercise of its powers under this Article to vary or revoke the relevant order, direct that the variation or revocation shall take effect from the date on which<sup>F4</sup> the assessment took effect or any later date.

(9C) In paragraphs (9A) and (9B) “relevant order” means—

- (a) an order under Article 4(1)(c),
- (b) an order under paragraph (1) of Article 8 making provision of a kind mentioned in sub# paragraph (c) of paragraph (2) of that Article (regardless of whether it makes provision of any other kind mentioned in paragraph (2) of that Article),
- (c) an order under Article 9(2)(b), or
- (d) an order which is an interim maintenance order under which the payments are to be made to a child or to the applicant for the benefit of a child.

(9D) Paragraph (9E) applies where—

- (a) a child order is affected by a<sup>F4</sup> maintenance assessment and, on the date on which the child order became so affected, there was in force a spousal order; and
- (b) an application is made, before the end of the period of 6 months beginning with the date on which the<sup>F4</sup> maintenance assessment was made, for the spousal order to be varied or revoked.

(9E) Where this paragraph applies the court may, in exercise of its powers under this Article to vary or revoke the spousal order, direct that the variation or revocation shall take effect from the date on which the child order became so affected or any later date.

(9F) In paragraphs (9D) and (9E)—

“child order” means an order of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991; and

“spousal order” means—

- (i) an order under Article 4(1)(a),
- (ii) an order under paragraph (1) of Article 8 making provision of a kind mentioned in sub# paragraph (a) of paragraph (8) of that Article (regardless of whether it makes provision of any other kind mentioned in paragraph (2) of that Article),
- (iii) an order under Article 9(2)(a), or
- (iv) an order which is an interim maintenance order under which the payments are to be made to the applicant (otherwise than for the benefit of a child).

(9G) For the purposes of paragraphs (9D) and (9E), an order is affected if it ceased to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.]

*Para. (10) rep. by 1995 NI 2*

(11) In exercising the powers conferred by this Article the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, the court shall have regard to all the circumstances of the case,<sup>F1</sup> 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 or, in the case

of an application for the variation or revocation of an order made under Article 8 or on an appeal, to which the court would have been required to have regard if that order had been made under Article 4.

[<sup>F2</sup>(12) An application under this Article may be made—

- (a) where it is for the variation or revocation of an order under Article 4, 8, 9 or 20 for periodical payments, by either party to the marriage in question; and
- (b) where it is for the variation of an order made under Article 4(1)(c), 8 or 9 for periodical payments to or in respect of a child, also by the child himself, if he has attained the age of 16.]

*Para. (13) rep. by 1995 NI 2*

<b>F1</b>	<a href="#">1989 NI 4</a>
<b>F2</b>	<a href="#">1995 NI 2</a>
<b>F3</b>	SR 1993/98
<b>F4</b>	prosp. in pt. subst. by <a href="#">2000 c. 4 (NI)</a>

#### [<sup>F5</sup>Variation of orders for periodical payments: further provisions **N.I.**

**22A.—**(1) Subject to paragraphs (7) and (8), the power of the court under Article 22 to vary an order for the making of periodical payments shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981 (orders for periodical payment: method of payment).

(2) In any case where—

- (a) a court of summary jurisdiction has made an order under this Order for the making of periodical payments, and
- (b) payments under the order are required to be made by any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.),

an application may be made under this paragraph to the clerk of petty sessions for the order to be varied as mentioned in paragraph (3).

(3) Subject to paragraph (5), where an application is made under paragraph (2), the clerk, after serving written notice of the application on the respondent and allowing the respondent, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the collecting officer.

(4) The clerk may proceed with an application under paragraph (2) notwithstanding that the respondent has not received written notice of the application.

(5) Where an application has been made under paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under paragraph (3), refer the matter to the court which, subject to paragraphs (7) and (8), may vary the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981.

(6) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to order that account be opened) shall apply for the purposes of paragraphs (1) and (5) as it applies for the purposes of that Article.

(7) Before varying the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under sub-paragraph (c) or (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under sub-paragraph (b) of that paragraph.

(9) Paragraph (12) of Article 22 shall have effect for the purposes of applications under paragraph (2) as it has effect for the purposes of applications under that Article.

(10) None of the powers of the court, or of the clerk of petty sessions, conferred by this Article shall be exercisable in relation to an order under this Order for the making of periodical payments which is not a qualifying maintenance order (within the meaning of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981).]

F5 1993 NI 6

#### [<sup>F6</sup>Revival of orders for periodical payments **N.I.**

**22B.**—(1) Where an order made by the court under this Order for the making of periodical payments to or in respect of a child (other than an interim maintenance order) ceases to have effect—

- (a) on the date on which the child attains the age of 16, or
- (b) at any time after that date but before or on the date on which he attains the age of 18,

the child may apply to the court for an order for its revival.

(2) If on such an application it appears to the court that—

- (a) the child is, 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 while 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 order from such date as the court may specify, not being earlier than the date of the making of the application.

(3) Any order revived under this Article may be varied or revoked under Article 22 in the same way as it could have been varied or revoked had it continued in being.]

F6 1995 NI 2

*Art. 23 rep. by 1995 NI 2*

#### Variation of instalments, or remission of lump sum **N.I.**

**24.**—(1) Where in the exercise of its powers under [<sup>F7</sup> Article 97 of the Magistrates' Courts (Northern Ireland) Order 1981] the court orders that a lump sum required to be paid under this Order shall be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

(2) On the hearing of a complaint for the enforcement, revocation, suspension or variation of an order under this Order which provides for the payment of a lump sum the court may remit the whole or any part of that sum.

F7 1981 NI 26

### Supplementary provisions with respect to variation and revocation of orders **N.I.**

25.—<sup>F8</sup>(1) Provision may be made by rules as to the persons who are to be made respondents on an application for the variation or revocation of an order under Article<sup>F9</sup> 22]; and if on an application under<sup>F9</sup> that Article] there are two or more respondents, the powers of the court under<sup>F10</sup> Article 163 of the Magistrates' Courts (Northern Ireland) Order 1981] shall be deemed to include power, whatever adjudication the court makes on the application, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.

(2) The powers of a court of summary jurisdiction under<sup>F10</sup> Article 86 of the said Order of 1981] to revoke, suspend, revive, vary or discharge an order for the periodical payment of money<sup>F11</sup> and the power of the clerk of petty sessions to vary such an order] shall not apply in relation to an order made under this Order.

F8 prosp. rep. by 1995 NI 2  
F9 1995 NI 2  
F10 1981 NI 26  
F11 1993 NI 6

### Proceedings by or against a person outside Northern Ireland for variation or revocation of orders **N.I.**

<sup>F12</sup>26.—(1) It is hereby declared that any jurisdiction conferred on a court of summary jurisdiction by virtue of Article 22 or 23 is exercisable notwithstanding that the proceedings are brought by or against a person residing outside Northern Ireland.

(2) Subject to paragraph (3), a court of summary jurisdiction may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed, proceed on an application made under Article 22 or 23 notwithstanding that the respondent has not been served with the summons; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.

(3) A court of summary jurisdiction shall not exercise its powers under Article 22 so as to increase the amount of any periodical payments required to be made by any person under this Order unless the order under that Article is made at a hearing at which that person appears or the requirements of<sup>F13</sup> Article 81(2) of the Magistrates' Courts (Northern Ireland) Order 1981] with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

F12 prosp. rep. by 1995 NI 2  
F13 1981 NI 26

### Effect on certain orders of parties living together **N.I.**

27.—(1) Where—

- (a) periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the family) by an order made under Article 4<sup>F14</sup> or 8] or by an interim maintenance order made under Article 20 (otherwise than on an application under Article 9),<sup>F14</sup> . . .

*Sub#para. (b) rep. by 1995 NI 2*

the order shall be enforceable notwithstanding that the parties to the marriage are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other; but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

(2) Where any of the following orders is made, that is to say—

(a) an order under Article 4<sup>F14</sup> or 8] which requires periodical payments to be made to a child of the family,<sup>F14</sup> or]

(b) an interim maintenance order under Article 20 (otherwise than on an application under Article 9) which requires periodical payments to be made to a child of the family,

*Sub#paras. (c), (d) rep. by 1995 NI 2*

then, unless the court otherwise directs, the order shall continue to have effect and be enforceable notwithstanding that the parties to the marriage in question are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

(3) Any order made under Article 9, and any interim maintenance order made on an application for an order under that Article, shall cease to have effect if the parties to the marriage resume living with each other.

(4) Where an order ceases to have effect by virtue of paragraph (1) or (3) or by virtue of a direction given under paragraph (2), the court may, on an application made by either party to the marriage, make an order declaring that the first-mentioned order ceased to have effect from such date as the court may specify.

(5) When an order ceases to have effect by virtue of paragraph (1) or (3), the parties to the marriage shall forthwith give notice to the court of that fact.

**F14** 1995 NI 2

**Changes to legislation:**

There are currently no known outstanding effects for the Domestic Proceedings (Northern Ireland) Order 1980, Variation, revocation and cessation of orders etc..