
STATUTORY INSTRUMENTS

1989 No. 677 (N.I. 4)

NORTHERN IRELAND

**The Matrimonial and Family Proceedings
(Northern Ireland) Order 1989**

Made - - - - 18th April 1989

Coming into operation in accordance with Article 1

At the Court at Windsor Castle, the 18th day of April 1989

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974⁽¹⁾ and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

(2) Except as provided by paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) The following provisions namely—

- (a) Article 10;
- (b) Article 13;
- (c) Part IV;
- (d) Part V;

- (e) Part VI and Schedule 1;
 - (f) in Schedule 2, paragraphs 1 to 9, 15 and 16(a) and (b); and
 - (g) Schedule 3, except so far as it relates to the principal Order,
- shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽²⁾ shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the principal Order” means the Matrimonial Causes (Northern Ireland) Order 1978⁽³⁾.

PART II

TIME RESTRICTIONS ON PRESENTATION OF PETITIONS FOR DIVORCE OR NULLITY OF MARRIAGE

Bar on petitions for divorce within two years of marriage

3. For Article 5 of the principal Order (which provides that no petition for divorce shall be presented within three years of marriage unless the leave of the court has been obtained) there shall be substituted the following Article—

“Bar on petitions for divorce within two years of marriage

5.—(1) No petition for divorce shall be presented to the court before the expiration of the period of two years from the date of the marriage.

(2) Nothing in this Article shall prohibit the presentation of a petition based on matters which occurred before the expiration of that period.”.

Extension of period for proceedings for decree of nullity in respect of voidable marriage

4.—(1) Article 16 of the principal Order (which imposes restrictions on the institution of proceedings for a decree of nullity in respect of a voidable marriage) shall be amended as follows.

(2) For paragraph (2) there shall be substituted the following paragraph—

“(2) Without prejudice to paragraph (1), the court shall not grant a decree of nullity by virtue of Article 14 on the grounds mentioned in paragraph (c), (d), (e) or (f) of that Article unless—

- (a) it is satisfied that proceedings were instituted within the period of three years from the date of the marriage, or
- (b) leave for the institution of proceedings after the expiration of that period has been granted under paragraph (4).”.

(3) At the end of the Article there shall be added the following paragraphs—

“(4) In the case of proceedings for the grant of a decree of nullity by virtue of Article 14 on the grounds mentioned in paragraph (c), (d), (e) or (f) of that Article, a judge of the court

(2) 1954 c. 33 (N.I.)

(3) 1978 NI 15

may, on an application made to him, grant leave for the institution of proceedings after the expiration of the period of three years from the date of the marriage if—

- (a) he is satisfied that the petitioner has at some time during that period suffered from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986(4); and
- (b) he considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.

(5) An application for leave under paragraph (4) may be made after the expiration of the period of three years from the date of the marriage.”.

PART III

FINANCIAL RELIEF IN MATRIMONIAL PROCEEDINGS

Provisions relating to powers of the High Court and county courts

Interest on lump sums

5. In Article 25 of the principal Order (financial provision orders in connection with divorce proceedings, etc.) after paragraph (6) there shall be added the following paragraph—

“(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.”.

Orders for financial relief after divorce, etc.

6. For Article 27 of the principal Order there shall be substituted the following Articles—

“Matters to which court is to have regard in deciding how to exercise its powers under Articles 25 and 26

27.—(1) It shall be the duty of the court in deciding whether to exercise its powers under Article 25 or 26 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) or 26 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 or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) 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 subparagraphs (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.

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) or 26 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).”.

Orders for financial relief in case of neglect to maintain

7. In Article 29 of the principal Order (financial provision in case of neglect to maintain) for paragraphs (2) and (3) there shall be substituted the following paragraphs—

“(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).”.

Duration of orders for periodical payments and effect of remarriage

8.—(1) In Article 30(1) of the principal Order (duration of continuing financial provision orders in favour of party to a marriage), for the words from the beginning to “the following limits” there shall be substituted the words “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” .

(2) After paragraph (1) of the said Article 30 there shall be inserted the following paragraph—

“(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”.

(3) In paragraph (3) of the said Article 30 (effect of remarriage on financial provision orders), after the word “remarries” there shall be inserted the words “whether at any time before or after the commencement of this Article” .

(4) In Article 31(2) of the principal Order (duration of continuing financial provision orders in favour of children), in sub-paragraph (a), for the words “unless the court thinks it right in the circumstances of the case to specify a later date” there shall be substituted the words “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” .

Variation and discharge of orders for periodical payments

9.—(1) Article 33 of the principal Order (variation and discharge of orders) shall be amended as follows.

(2) In paragraph (1) after the words “subject to the provisions of this Article” there shall be inserted the words “and of Article 30(1A)” .

(3) After paragraph (2) there shall be inserted the following paragraph—

“(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.”.

(4) For paragraph (7) there shall be substituted the following paragraph—

“(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.”.

(5) After paragraph (9) there shall be added the following paragraph—

“(10) Where the court, in exercise of its powers under this Article, 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.”.

Consent orders for financial provision or property adjustment

10. The following cross-heading and Article shall be inserted after Article 35 of the principal Order—

“Consent orders

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 or 29; and

“prescribed” means prescribed by rules of court.”.

Restrictions imposed in divorce proceedings etc., on applications under Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979

11. For paragraph (1) of Article 17 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979⁽⁵⁾ (under which the court on the grant of a decree of divorce, nullity or judicial separation has power, if the parties to the marriage agree, to order that one party shall not on the death of the other party be entitled to apply for an order under Article 4 of that Order) there shall be substituted the following paragraph—

“(1) On the grant of a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter the High Court or a divorce county court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under Article 4.”.

Provisions relating to powers of courts of summary jurisdiction

Orders for financial relief made by courts of summary jurisdiction in matrimonial proceedings

12.—(1) For Article 5 of the Domestic Proceedings (Northern Ireland) Order 1980⁽⁶⁾ there shall be substituted the following Article—

“Matters to which court is to have regard in exercising its powers under Article 4

5.—(1) Where an application is made for an order under Article 4, it shall be the duty of the court, in deciding whether to exercise its powers under that Article and, if so, in what

(5) 1979 NI 8

(6) 1980 NI 5

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 its powers under paragraph (1)(a) or (b) of Article 4, 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 parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
- (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.

(3) As regards the exercise of its powers under paragraph (1)(c) or (d) of Article 4, 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 standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
- (f) the matters mentioned in relation to the parties to the marriage in sub-paragraphs (a) and (b) of paragraph (2).

(4) As regards the exercise of its powers under Article 4 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—

- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
- (c) to the liability of any other person to maintain the child.”.

(2) In Article 7(2) of that Order (duration of periodical payments orders in favour of children), in sub-paragraph (a), for the words “unless the court thinks it right in the circumstances of the case to specify a later date” there shall be substituted the words “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”.

(3) In Article 22(11) of that Order (variation and revocation of orders for periodical payments) for the words “including any change” there shall be substituted the words “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”.

Orders for payments which have been agreed by the parties

13. For Article 8 of the Domestic Proceedings (Northern Ireland) Order 1980(7) there shall be substituted the following Article—

“Orders for payments which have been agreed by the parties

8.—(1) Either party to a marriage may apply to the court for an order under this paragraph on the ground that either the party making the application or the other party to the marriage has agreed in writing to make such financial provision as may be specified in the application and, subject to paragraph (4), the court on such an application may, if—

- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.

(2) Where—

- (a) a party to a marriage has applied for an order under Article 4; and
- (b) before the determination of that application, both parties to the marriage request the court to make an order that one party to the marriage shall make the financial provision specified in the request,

the court may, subject to paragraph (4), make such an order if—

- (i) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make the financial provision specified in the request; and
- (ii) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder;

and if an order is made under this paragraph, the application made for an order under Article 4 shall be treated as if it had been withdrawn.

(3) In this Article “financial provision” means the provision mentioned in any one or more of the following sub-paragraphs, that is to say—

- (a) the making of periodical payments by one party to the other,
- (b) the payment of a lump sum by one party to the other,
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this Article to the financial provision specified in an application made under paragraph (1) or a request made under paragraph (2) or specified by the court under paragraph (6) is a reference to the type of provision specified in the application or request

or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(4) Where the financial provision specified in an application under paragraph (1) or a request under paragraph (2) includes or consists of provision in respect of a child of the family, the court shall not make an order under paragraph (1) or (2), as the case may be, unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(5) Where on an application under paragraph (1) or a request under paragraph (2) the court decides—

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application or request, or
- (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then, if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.

(6) Subject to paragraph (8), the provisions of Article 6, shall apply in relation to an order under this Article which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under Article 4(1)(a).

(7) Subject to paragraph (8), the provisions of Article 7 shall apply in relation to an order under this Article for the making of financial provision in respect of a child of the family as they apply in relation to an order under Article 4(1)(c) or (d).

(8) Where the court makes an order under paragraph (2) which contains provision for the making of periodical payments and, by virtue of that paragraph, an application for an order under Article 4 is treated as if it has been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under Article 4 or any later date.

(9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under paragraph (1), the court shall not make an order under that paragraph unless there is produced to the court such evidence as may be prescribed of—

- (a) the consent of the respondent to the making of the order,
- (b) the financial resources of the respondent, and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

(10) The making of an order under paragraph (1) or (2) shall not prevent the making of an order under Article 4 on a subsequent application under Article 3, and, without prejudice

to the power of the court under Article 22(2) to revoke the first-mentioned order, on the making of an order under Article 4 the first-mentioned order shall cease to have effect.

(11) In any of the following provisions of this Order references to an application under this Article shall be construed as including references to a request under paragraph (2), and references to an applicant or respondent, in relation to any such request, shall be construed as references to the applicant or respondent in relation to the pending application under Article 4.”

Variation of consent orders by courts of summary jurisdiction

14. For Article 22(2) of the Domestic Proceedings (Northern Ireland) Order 1980⁽⁸⁾ (under which the court can vary a consent order by ordering the payment of a lump sum if the consent order provided for the payment of a lump sum) there shall be substituted the following paragraph—

“(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.”.

Domestic proceedings in courts of summary jurisdiction to include applications to alter maintenance agreements

15. In Article 88 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁹⁾ (which defines what proceedings are domestic proceedings) after paragraph (c) there shall be inserted the following paragraph—

“(cc) under Article 37 of the Matrimonial Causes (Northern Ireland) Order 1978;”.

PART IV

FINANCIAL RELIEF IN NORTHERN IRELAND AFTER OVERSEAS DIVORCE ETC.

Applications for financial relief

Applications for financial relief after overseas divorce etc.

16.—(1) Where—

- (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in an overseas country, and
- (b) the divorce, annulment or legal separation is entitled to be recognised as valid in Northern Ireland,

either party to the marriage may apply to the court in the manner prescribed by rules of court for an order for financial relief under this Part.

⁽⁸⁾ 1980 NI 5
⁽⁹⁾ 1981 NI 26

(2) If after a marriage has been dissolved or annulled in an overseas country one of the parties to the marriage remarries that party shall not be entitled to make an application in relation to that marriage.

(3) For the avoidance of doubt it is hereby declared that the reference in paragraph (2) to remarriage includes a reference to a marriage which is by law void or voidable.

(4) In this Part, except Articles 23, 27 and 28, “order for financial relief” means an order under Article 21 or 26 of a description referred to in that Article.

Leave of the court required for applications for financial relief

17.—(1) No application for an order for financial relief shall be made under this Part unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.

(2) The court may grant leave under this Article notwithstanding that an order has been made by a court in a country outside Northern Ireland requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.

(3) Leave under this Article may be granted subject to such conditions as the court thinks fit.

Interim orders for maintenance

18.—(1) Where leave is granted under Article 17 for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the family is in immediate need of financial assistance, the court may make an interim order for maintenance, that is to say, an order requiring the other party to the marriage to make to the applicant or to the child such periodical payments, and for such term, being a term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.

(2) If it appears to the court that the court has jurisdiction to entertain the application for an order for financial relief by reason only of sub-paragraph (c) of Article 19(1) the court shall not make an interim order under this Article.

(3) An interim order under paragraph (1) may be made subject to such conditions as the court thinks fit.

Jurisdiction of the court

19.—(1) Subject to paragraph (2), the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say—

- (a) either of the parties to the marriage was domiciled in Northern Ireland on the date of the application for leave under Article 17 or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (b) either of the parties to the marriage was habitually resident in Northern Ireland throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in Northern Ireland which was at some time during the marriage a matrimonial home of the parties to the marriage.

(2) Where the jurisdiction of the court to entertain proceedings under this Part would fall to be determined by reference to the jurisdictional requirements imposed by virtue of Part I of the Civil Jurisdiction and Judgments Act 1982⁽¹⁰⁾ (implementation of certain European conventions) then—

- (a) satisfaction of the requirements of paragraph (1) shall not obviate the need to satisfy the requirements imposed by virtue of Part I of that Act; and
- (b) satisfaction of the requirements imposed by virtue of Part I of that Act shall obviate the need to satisfy the requirements of paragraph (1);

and the court shall entertain or not entertain the proceedings accordingly.

Duty of the court to consider whether Northern Ireland is appropriate venue for application

20.—(1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in Northern Ireland, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.

(2) The court shall in particular have regard to the following matters—

- (a) the connection which the parties to the marriage have with Northern Ireland;
- (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
- (c) the connection which those parties have with any other country outside Northern Ireland;
- (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside Northern Ireland;
- (e) in a case where an order has been made by a court in a country outside Northern Ireland requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside Northern Ireland and if the applicant has omitted to exercise that right the reason for that omission;
- (g) the availability in Northern Ireland of any property in respect of which an order under this Part in favour of the applicant could be made;
- (h) the extent to which any order made under this Part is likely to be enforceable;
- (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

Orders for financial provision and property adjustment

Orders for financial provision and property adjustment

21. Subject to Article 24, the court on an application by a party to a marriage for an order for financial relief under this Article, may make any one or more of the orders which it could make under Part III of the principal Order if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in Northern Ireland, that is to say—

- (a) any order mentioned in Article 25(1) of the principal Order (financial provision orders);
- (b) any order mentioned in Article 26(1) of that Order (property adjustment orders).

(10) 1982 c. 27

Matters to which the court is to have regard in exercising its powers under Article 21

22.—(1) In deciding whether to exercise its powers under Article 21 and, if so, in what manner the court shall act in accordance with this Article.

(2) 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.

(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in Article 27(2)(a) to (h) of the principal Order and shall be under duties corresponding with those imposed by Article 27A(1) and (2) of the principal Order where it decides to exercise under Article 21 powers corresponding with the powers referred to in those paragraphs.

(4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in Article 27(3)(a) to (e) of the principal Order.

(5) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the court shall also have regard to the matters mentioned in Article 27(4)(a) to (c) of the principal Order.

(6) Where an order has been made by a court outside Northern Ireland for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this Article the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

Consent orders for financial provision or property adjustment

23.—(1) Notwithstanding anything in Article 22, 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 Article 21; and

“prescribed” means prescribed by rules of court.

Restriction of powers of court where jurisdiction depends on matrimonial home in Northern Ireland

24.—(1) Where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in Northern Ireland of a dwelling-house which was a matrimonial home of the parties, the court may make under Article 21 any one or more of the following orders (but no other)—

- (a) an order that either party to the marriage shall pay to the other such lump sum as may be specified in the order;
- (b) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of a child of the family, or to such a child, such lump sum as may be so specified;
- (c) 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 so specified for the benefit of such a child, the interest

of the first-mentioned party in the dwelling-house, or such part of that interest as may be so specified;

- (d) an order that a settlement of the interest of a party to the marriage in the dwelling-house, or such part of that interest as may be so specified, 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;
- (e) 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 so far as that settlement relates to an interest in the dwelling-house;
- (f) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement so far as that interest is an interest in the dwelling-house;
- (g) an order for the sale of the interest of a party to the marriage in the dwelling-house.

(2) Where, in the circumstances mentioned in paragraph (1) the court makes an order for the payment of a lump sum by a party to the marriage, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount, that is to say—

- (a) if the interest of that party in the dwelling-house is sold in pursuance of an order made under paragraph (1)(g), the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof;
- (b) if the interest of that party is not so sold, the amount which in the opinion of the court represents the value of that interest.

(3) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons—

- (a) the reference in paragraph (1)(g) to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
- (b) the reference in paragraph (2)(a) to the amount of the proceeds of a sale ordered under paragraph (1)(g) shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house.

Application to orders under Articles 18 and 21 of certain provisions of Part III of the principal Order

25. The following provisions of Part III of the principal Order (financial relief for parties to marriage and children of family) shall apply in relation to an order made under Article 18 or 21 as they apply in relation to a like order made under that Part of that Order, that is to say—

- (a) Article 25(3) (provisions as to lump sums);
- (b) Article 25(6) (consequential directions by court);
- (c) Article 30(1) and (2) (duration of continuing financial provision orders in favour of party to marriage);
- (d) Article 31 (duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour);
- (e) Article 32 (direction for settlement of instrument for securing payments or effecting property adjustment), except paragraph (b);
- (f) Article 33 (variation, discharge etc. of certain orders for financial relief), except paragraph (2)(e) and paragraph (4);

- (g) Article 34 (payment of certain arrears unenforceable without the leave of the court);
- (h) Article 35 (orders for repayment of sums paid under certain orders);
- (i) Article 40 (orders for repayment of sums paid after cessation of order by reason of remarriage);
- (j) Article 41 (settlements etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor); and
- (k) Article 42 (payments etc. under order made in favour of person suffering from mental disorder).

Orders for transfer of tenancies

Powers of the court in relation to certain tenancies of dwelling-houses

26. Where an application is made by a party to a marriage for an order for financial relief then, if—

- (a) one of the parties to the marriage is entitled, either in his or her own right or jointly with the other party, to occupy a dwelling-house situated in Northern Ireland by virtue of such a tenancy as is mentioned in paragraph 1 of Schedule 1, and
- (b) the dwelling-house has at some time during the marriage been a matrimonial home of the parties to the marriage, the court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in Northern Ireland; and the provisions of paragraphs 5 and 8(1) of that Schedule shall apply in relation to any order made under this Article as they apply in relation to an order made under Part II of that Schedule.

Avoidance of transactions intended to prevent or reduce financial relief

Avoidance of transactions intended to defeat applications for financial relief

27.—(1) For the purposes of this Article “financial relief” means relief under Article 18 or 21 and any reference to defeating a claim by a party to a marriage for financial relief is a reference to preventing financial relief from being granted or reducing the amount of relief which might be granted, or frustrating or impeding the enforcement of any order which might or has been made under either of those provisions at the instance of that party.

(2) Where leave is granted under Article 17 for the making by a party to a marriage of an application for an order for financial relief under Article 21, the court may, on an application by that party—

- (a) if it is satisfied that the other party to the marriage 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.

(3) Where an order for financial relief under Article 18 or 21 has been made by the court at the instance of a party to a marriage, then, on an application made by that party, the court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a reviewable disposition, make an order setting aside the disposition.

(4) Where the court has jurisdiction to entertain the application for an order for financial relief by reason only of sub-paragraph (c) of Article 19(1), it shall not make any order under paragraph (2) or (3) in respect of any property other than the dwelling-house concerned.

(5) Where the court makes an order under paragraph (2)(b) or (3) 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).

(6) Any disposition made by the other party to the marriage (whether before or after the commencement of the application) is a reviewable disposition for the purposes of paragraphs (2)(b) and (3) 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.

(7) Where an application is made under paragraph (2) or (3) 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 (3), that the disposition has had the consequence,

of defeating a claim by the applicant 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.

(8) 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.

(9) The preceding provisions of this Article are without prejudice to any power of the court to grant injunctions under section 91 of the Judicature (Northern Ireland) Act 1978⁽¹¹⁾.

Prevention of transactions intended to defeat prospective applications for financial relief

28.—(1) Where, on an application by a party to a marriage, it appears to the court—

- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in an overseas country; and
- (b) that the applicant intends to apply for leave to make an application for an order for financial relief under Article 21 as soon as he or she has been habitually resident in Northern Ireland for a period of one year; and
- (c) that the other party to the marriage is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property,

the court may make such order as it thinks fit for restraining the other party from taking such action as is mentioned in sub-paragraph (c).

(2) For the purposes of an application under paragraph (1)—

- (a) the reference to defeating a claim for financial relief shall be construed in accordance with paragraph (1) of Article 27 (omitting the reference to any order which has been made); and
- (b) paragraphs (7) and (8) of Article 27 shall apply as they apply for the purposes of an application under that Article.

(11) 1978 c. 23

(3) The preceding provisions of this Article are without prejudice to any power of the court to grant injunctions under section 91 of the Judicature (Northern Ireland) Act 1978⁽¹²⁾.

Financial provision out of estate of deceased party to marriage

Extension of powers under Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979 in respect of former spouses

29.—(1) The Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979⁽¹³⁾ shall have effect with the following amendments, being amendments designed to give to persons whose marriages are dissolved or annulled overseas the same rights to apply for provision under that Order as persons whose marriages are dissolved or annulled under the principal Order.

(2) In Article 2(2) for the definition of “former wife” and “former husband” there shall be substituted the following definition—

““former wife” or “former husband” means a person whose marriage with the deceased was during the lifetime of the deceased either—

- (a) dissolved or annulled by a decree of divorce or a decree of nullity of marriage granted under the law of any part of the United Kingdom or the Channel Islands or under the law of the Isle of Man, or
- (b) dissolved or annulled in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man by a divorce or annulment which is entitled to be recognised as valid by the law of Northern Ireland;”.

(3) After Article 17 (restriction in divorce proceedings etc. of applications under the Order) there shall be inserted the following Article—

“Restriction imposed in proceedings under Matrimonial and Family Proceedings (Northern Ireland) Order 1989 on applications under this Order

17A.—(1) On making an order under Article 21 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (orders for financial provision and property adjustment following overseas divorces, etc.) the High Court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) Where an order under paragraph (1) has been made with respect to a party to a marriage which has been dissolved or annulled, then, on the death of the other party to that marriage, the court shall not entertain an application under Article 4 made by the first-mentioned party.

(3) Where an order under paragraph (1) has been made with respect to a party to a marriage the parties to which have been legally separated, then, if the other party to the marriage dies while the legal separation is in force, the court shall not entertain an application under Article 4 made by the first-mentioned party.”.

Interpretation

Interpretation of Part IV

30. In this Part—

“child of the family” and “rules of court” have the same meanings as in the principal Order;

⁽¹²⁾ 1978 c. 23

⁽¹³⁾ 1979 NI 8

“the court” means the High Court;

“dwelling-house” includes any building or part thereof which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling-house and occupied therewith;

“order for financial relief” has the meaning given by Article 16(4);

“overseas country” means a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man;

“possession” includes receipt of, or the right to receive, rents and profits;

“rent” does not include mortgage interest.

PART V

DECLARATIONS OF STATUS

Declarations as to marital status

31.—(1) Subject to the provisions of this Article, any person may apply to the court for one or more of the following declarations in relation to a marriage specified in the application, that is to say—

- (a) a declaration that the marriage was at its inception a valid marriage;
- (b) a declaration that the marriage subsisted on a date specified in the application;
- (c) a declaration that the marriage did not subsist on a date so specified;
- (d) a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside Northern Ireland in respect of the marriage is entitled to recognition in Northern Ireland;
- (e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in Northern Ireland.

(2) A court shall have jurisdiction to entertain an application under paragraph (1) if (and only if) either of the parties to the marriage to which the application relates—

- (a) is domiciled in Northern Ireland on the date of the application, or
- (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date, or
- (c) died before that date and either—
 - (i) was at death domiciled in Northern Ireland, or
 - (ii) had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.

(3) Where an application under paragraph (1) is made by any person other than a party to the marriage to which the application relates, the court shall refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

Declarations as to legitimacy or legitimation

32.—(1) Any person may apply to the court for a declaration that he is the legitimate child of his parents.

(2) Any person may apply to the court for one (or for one or, in the alternative, the other) of the following declarations, that is to say—

- (a) a declaration that he has become a legitimated person;

- (b) a declaration that he has not become a legitimated person.
- (3) A court shall have jurisdiction to entertain an application under paragraph (1) or (2) if (and only if) the applicant—
 - (a) is domiciled in Northern Ireland on the date of the application, or
 - (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date.
- (4) In this Article “legitimated person” means a person legitimated or recognised as legitimated—
 - (a) under section 1 or 8 of the Legitimacy Act (Northern Ireland) 1928⁽¹⁴⁾ ; or
 - (b) by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of Northern Ireland and effected under the law of any other country.

Declarations as to adoptions effected overseas

- 33.**—(1) Any person whose status as an adopted child of any person depends on whether he has been adopted by that person by either—
- (a) a foreign adoption as defined by section 4(3) of the Adoption (Hague Convention) Act (Northern Ireland) 1969⁽¹⁵⁾ ; or
 - (b) an adoption recognised by the law of Northern Ireland and effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man;
- may apply to the court for one (or for one or, in the alternative, the other) of the declarations mentioned in paragraph (2).
- (2) The said declarations are—
- (a) a declaration that the applicant is for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987⁽¹⁶⁾ the adopted child of that person;
 - (b) a declaration that the applicant is not for the purposes of that Article the adopted child of that person.
- (3) A court shall have jurisdiction to entertain an application under paragraph (1) if (and only if) the applicant—
- (a) is domiciled in Northern Ireland on the date of the application, or
 - (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

General provisions as to the making and effect of declarations

- 34.**—(1) Where on an application for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.
- (2) Any declaration made under this Part shall be binding on the Crown and all other persons.
- (3) The court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.
- (4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.
- (5) No declaration may be made by any court, whether under this Part or otherwise—

⁽¹⁴⁾ 1928 c. 5 (N.I.)

⁽¹⁵⁾ 1969 c. 22 (N.I.)

⁽¹⁶⁾ 1987 NI 22

- (a) that a marriage was at its inception void;
- (b) that any person is or was illegitimate.
- (6) Nothing in this Part shall affect the powers of any court to grant a decree of nullity of marriage.

Provisions relating to the Attorney-General

35.—(1) On an application for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney-General.

(2) The Attorney-General, whether or not he is sent papers in relation to an application for a declaration under this Part, may—

- (a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient, and
- (b) argue before the court any question in relation to the application which the court considers it necessary to have fully argued.

(3) Where any costs are incurred by the Attorney-General in connection with any application for a declaration under this Part, the court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

Supplementary provisions as to declarations

36.—(1) Any declaration made under this Part, and any application for such a declaration, shall be in the form prescribed by rules of court.

(2) Rules of court may make provision—

- (a) as to the information required to be given by any applicant for a declaration under this Part;
- (b) as to the persons who are to be parties to proceedings on an application under this Part;
- (c) requiring notice of an application under this Part to be served on the Attorney-General.

(3) No proceedings under this Part shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(4) The court hearing an application under this Part may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this paragraph shall be heard in camera unless the court otherwise directs.

(5) In this Article and Article 37(2) “rules of court”—

- (a) in relation to an application or declaration under Article 31, means matrimonial causes rules made under Article 54 of the principal Order;
- (b) in relation to any other application made to, or declaration made by, the High Court, means rules of court within the meaning of section 21(4) of the Interpretation Act (Northern Ireland) 1954⁽¹⁷⁾;
- (c) in relation to any other application made to, or declaration made by, the county court, means county court rules within the meaning of section 21(5) of that Act.

Declarations in respect of polygamous marriages

37.—(1) A court shall not be precluded from making any declaration under this Part involving a determination as to the validity of a marriage by reason only that the marriage in question was entered into under a law which permits polygamy.

(17) 1954 c. 33 (N.I.)

(2) This Article has effect whether or not either party to the marriage in question has for the time being any spouse additional to the other party; and provision may be made by rules of court—

- (a) for requiring notice of proceedings brought by virtue of this Article to be served on any such other spouse; and
- (b) for conferring on any such other spouse the right to be heard in any such proceedings, in such cases as may be prescribed by rules of court.

Repeal of certain statutory provisions relating to declarations

38. The following statutory provisions shall cease to have effect, namely—

- (a) the Legitimacy Declaration Act (Ireland) 1868⁽¹⁸⁾ (declarations as to legitimacy and validity of marriage); and
- (b) section 2 of the Legitimacy Act (Northern Ireland) 1928⁽¹⁹⁾ (declarations as to legitimation).

Abolition of right to petition for jactitation of marriage

39. No person shall after the coming into operation of this Part be entitled to petition the court for jactitation of marriage.

Meaning of “the court” and appeals from county courts

40.—(1) In this Part “the court”—

- (a) in Article 31 and in the other provisions of this Part as they apply for the purposes of that Article means the High Court or a divorce county court within the meaning of the principal Order;
- (b) in the other provisions of this Part means the High Court or the county court.

(2) Without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980⁽²⁰⁾ (cases stated), matrimonial causes rules made under Article 54 of the principal Order shall make provision for an appeal to the Court of Appeal from any declaration made by a divorce county court on an application under Article 31 or from the dismissal of any such application, upon a point of law, a question of fact or the admission or rejection of any evidence.

(3) A person dissatisfied with a declaration made by a county court on an application under Article 32 or 33 or with the dismissal of any such application made by him shall be entitled to appeal from the declaration or dismissal as if the declaration or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 and 62 (cases stated by county court judge and High Court judge, respectively) of that Order shall apply accordingly.

⁽¹⁸⁾ 1868 c. 20
⁽¹⁹⁾ 1928 c. 5 (N.I.)
⁽²⁰⁾ 1980 NI 3

PART VI

TRANSFER OF CERTAIN TENANCIES ON DIVORCE, ETC.

Transfer of certain tenancies on divorce, etc.

41. Schedule 1 shall have effect with respect to the making by a court of orders relating to certain tenancies if—

- (a) a decree of divorce, a decree of nullity of marriage or a decree of judicial separation is granted; or
- (b) an order is made under Article 18(2)(i) of the Domestic Proceedings (Northern Ireland) Order 1980(21), other than such an order made as an interim exclusion order by virtue of Article 21 of that Order.

PART VII

SUPPLEMENTAL PROVISIONS

Amendments and repeals

42.—(1) The statutory provisions specified in Schedule 2 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions specified in Schedule 3 are hereby repealed to the extent specified in column 3 of that Schedule.

Transitional provisions

43.—(1) Where at the coming into operation of Article 3—

- (a) leave has been granted under Article 5 of the principal Order for the presentation of a petition for divorce or proceedings on an application for leave under that Article are pending, and
- (b) the period of two years from the date of the marriage has not expired,

nothing in Article 3 shall prohibit the presentation of a petition for divorce before the expiration of that period; and in relation to such a case Articles 3(5) and 5 of the principal Order as in force immediately before the coming into operation of Article 3 shall continue to apply.

(2) Where at the coming into operation of Article 3—

- (a) proceedings on an application for leave under Article 5 of the principal Order are pending, and
- (b) the period of two years from the date of the marriage has expired,

the proceedings shall abate but without prejudice to the powers of the court as to costs.

(3) An application for leave under Article 16(4) of the principal Order to institute proceedings after the expiration of the period of three years from the date of the marriage may be made where that period expired before as well as where it expires after the coming into operation of Article 4.

(4) Nothing in this Order shall affect—

- (a) any proceedings under the Legitimacy Declaration Act (Ireland) 1868⁽²²⁾ or section 2 of the Legitimacy Act (Northern Ireland) 1928⁽²³⁾ begun before the date of the coming into operation of Part V;
- (b) any proceedings for jactitation of marriage begun before that date; or
- (c) any proceedings for a declaration begun in the High Court before that date.

G. I. de Deney
Clerk of the Privy Council

⁽²²⁾ 1868 c. 20
⁽²³⁾ 1928 c. 5 (N.I.)

SCHEDULES

SCHEDULE 1

Article 41.

TRANSFER OF CERTAIN TENANCIES ON DIVORCE, ETC.

PART I

General

1. Where one spouse is entitled to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy, then, on granting a decree of divorce, a decree or nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute), the court by which the decree is granted may make an order under Part II.

2.—(1) Where—

- (a) one spouse is entitled to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy; and
- (b) an order under Article 18(2)(i) of the Domestic Proceedings (Northern Ireland) Order 1980⁽²⁴⁾ (other than such an order made as an interim exclusion order by virtue of Article 21 of that Order) excluding that spouse from the dwelling-house is made upon the application of the other spouse,

the High Court or a divorce county court may, on the application of the other spouse within 3 months after the order is made, make an order under Part II.

(2) Where while an order referred to in sub-paragraph (1)(b) is in force an application is made for an order under Part II, the court may make the order applied for notwithstanding that, at the time when it does so, the first mentioned order has ceased to have effect otherwise than by reason of its revocation; and where an order is made under Part II it shall not be affected by an order referred to in sub-paragraph (1)(b) subsequently ceasing to have effect.

PART II

Protected or secure tenancy

3.—(1) Where a spouse is entitled to occupy the dwelling-house by virtue of a protected tenancy or a secure tenancy the court may by order direct that, as from such date as may be specified in the order, there shall, by virtue of the order and without further assurance, be transferred to, and vested in, the other spouse—

- (a) the estate which the spouse so entitled had in the dwelling-house immediately before that date by virtue of the lease or agreement creating the tenancy and any assignment of that

(24) 1980 NI 5

Status: This is the original version (as it was originally made).

lease or agreement, with all rights, privileges and appurtenances attaching to that estate but subject to all covenants, obligations, liabilities and incumbrances to which it is subject; and

- (b) where the spouse so entitled is an assignee of such lease or agreement, the liability of that spouse under any covenant of indemnity by the assignee expressed or implied in the assignment of the lease or agreement to that spouse.

(2) Where an order is made under this paragraph, any liability or obligation to which the spouse so entitled is subject under any covenant having reference to the dwelling-house in the lease, agreement or assignment being a liability or obligation falling due to be discharged or performed on or after the date so specified, shall not be enforceable against that spouse.

(3) Where the spouse so entitled is a successor within the meaning of Chapter II of Part II of the Housing (Northern Ireland) Order 1983⁽²⁵⁾, his or her spouse (or, as the case may be, former spouse) shall be deemed also to be a successor within the meaning of that Chapter.

Statutory tenancy

4.—(1) Where a spouse is entitled to occupy the dwelling-house by virtue of a statutory tenancy, the court may by order direct that, as from such date as may be specified in the order, that spouse shall cease to be entitled to occupy the dwelling-house and that the other spouse shall be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.

(2) The question whether the provisions of paragraphs 1 to 4, or, as the case may be, paragraphs 6 to 9 of Schedule 1 to the Rent (Northern Ireland) Order 1978⁽²⁶⁾ as to the succession by the widow or widower of a deceased tenant, or by a member of the deceased tenant's family, to the statutory tenancy are capable of having effect in the event of the death of the person deemed by an order under this paragraph to be the tenant or sole tenant under the statutory tenancy shall be determined according as those provisions or the corresponding provisions of the Rent Restriction Acts have or have not already had effect in relation to the statutory tenancy.

PART III

Ancillary jurisdiction

5.—(1) Where the court makes an order under Part II, it may by order direct that both spouses shall be jointly and severally liable to discharge or perform any or all of the liabilities and obligations in respect of the dwelling-house (whether arising under the tenancy or otherwise) which have at the date of the order fallen due to be discharged or performed by one only of the spouses or which, but for the direction, would before the date specified as the date on which the order is to take effect fall due to be discharged or performed by one only of them.

(2) Where the court gives a direction under sub-paragraph (1) it may further direct that either spouse shall be liable to indemnify the other in whole or in part against any payment made or expenses incurred by the other in discharging or performing any such liability or obligation.

Date when order is to take effect

6. In the case of a decree or divorce or nullity of marriage, the date specified in an order under Part II as the date on which the order is to take effect shall not be earlier than the date on which the decree is made absolute.

(25) 1983 NI 15

(26) 1978 NI 20

Remarriage of either spouse

7. If after the grant of a decree dissolving or annulling a marriage either spouse remarries, that spouse shall not be entitled to apply, by reference to the grant of that decree, for an order under Part II.

Rules of court

8.—(1) Rules of court shall be made requiring the court before it makes an order under this Schedule to give the landlord of the dwelling-house to which the order will relate an opportunity of being heard.

(2) Rules of court may provide that an application for an order under this Schedule in the circumstances mentioned in paragraph 1 shall not, without the leave of the court by which the decree of divorce, nullity of marriage or judicial separation was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.

Savings for Articles 3 and 4 of Family Law (Miscellaneous Provisions)(Northern Ireland) Order 1984

9. Where a spouse is entitled to occupy a dwelling-house by virtue of a tenancy, this Schedule shall not affect the operation of Articles 3 and 4 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984(27) in relation to the other spouse's rights of occupation, and the court's power to make orders under this Schedule shall be in addition to the powers conferred by those Articles.

Appeals from divorce county courts

10. Without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980(28) (cases stated), rules of court shall make provision for an appeal to the Court of Appeal from any order made by a divorce county court in the exercise of the jurisdiction conferred by this Schedule, or from the dismissal of any application for such an order, upon a point of law, a question of fact or the admission or rejection of any evidence.

Interpretation

11.—(1) In this Schedule the following words and expressions have the same meaning as in the Rent (Northern Ireland) Order 1978(29), namely—

- (a) dwelling-house;
- (b) the landlord;
- (c) protected tenancy;
- (d) Rent Restriction Acts;
- (e) statutory tenancy.

(2) In this Schedule—

“divorce county court” has the meaning assigned to it by the principal Order;

“secure tenancy” has the meaning assigned to it by Article 25 of the Housing (Northern Ireland) Order 1983(30).

(27) 1984 NI 14

(28) 1980 NI 3

(29) 1978 NI 20

(30) 1983 NI 15

(3) In this Schedule “spouse” includes a party to a void or voidable marriage and the reference in paragraph 7 to remarriage includes a reference to a marriage which is by law void or voidable.

(4) References in this Schedule to a spouse being entitled to occupy a dwelling-house by virtue of a protected, statutory or secure tenancy apply whether that entitlement is in his or her own right, or jointly with the other spouse.

SCHEDULE 2

Article 42(1).

AMENDMENTS

The Maintenance Orders Act 1950 (c. 37)

1. In section 18(2A) after the word “England” there shall be inserted the words “or Northern Ireland”.

The Matrimonial Causes (Reports) Act(Northern Ireland) 1966 (c. 29 (N.I.))

2. In section 1 after subsection (1) there shall be inserted the following subsection—

“(1A) Subsection (1) shall extend to proceedings under Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 subject to the modification that the matters allowed to be published or caused or procured to be published by virtue of paragraph (b) of that subsection shall be particulars of the declaration sought.”.

The Maintenance and Affiliation Orders Act(Northern Ireland) 1966 (c. 35 (N.I.))

3. In section 9 in paragraph (a) after the words “High Court” there shall be inserted the words “or a county court”.

4. In section 10—

(a) in subsection (1) after the words “High Court” there shall be inserted the words “, a county court” ;

(b) in subsection (2) after paragraph (f) there shall be inserted the following paragraph—

“(g) Article 21(a) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;”.

5. In section 11(1) after the words “High Court” there shall be inserted the words “or a county court”.

6. In section 12 after subsection (3) there shall be inserted the following subsection—

“(3A) Any person under an obligation to make payments under an order registered in a court of summary jurisdiction shall give notice of any change of address to the clerk of the court; and any person who without reasonable excuse fails to give such a notice shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

7. In section 13 after subsection (7A) there shall be inserted the following subsection—

“(7B) No application for any variation of a registered order shall be made to any court in respect of an order made under Article 21(a) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.”.

8. In section 15(6) after the words “High Court” in both places where they occur there shall be inserted the words “or county court”.

9. In section 16—

- (a) in subsection (2) for the words “court of summary jurisdiction, be construed as a reference to” there shall be substituted the words “county court or a court of summary jurisdiction, be construed respectively as a reference to county court rules or”;
- (b) in subsection (3) after the words “High Court” there shall be inserted the words “, by a county court”
- (c) in subsection (6) after the words “High Court” there shall be inserted the words “or by a county court”.

The Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.))

10. In section 8(5)—

- (a) in the definition of “matrimonial proceedings” after the words “the High Court” where they first occur there shall be inserted the words “or a divorce county court” ;
- (b) after the word “subsection” there shall be inserted the words ““divorce county court” has the same meaning as in the Matrimonial Causes (Northern Ireland) Order 1978 and”.

The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)

11. In section 29A(3)(c) for the words “Article 5(1)(c)” there shall be substituted the words “Article 5(2) and (3)”.

The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15)

12. In Article 3(5) for the words “Articles 4(2), 5(3) and 7” there shall be substituted the words “Articles 4(2) and 7”.

13. In Article 29(4) for the words “Article 27(1)(c)” there shall be substituted the words “Article 27(2)(c)” and for the words “Article 27(2)(d)” there shall be substituted the words “Article 27 (2) (c) (as it applies by virtue of Article 27(3)(e))”.

14. In Article 37—

- (a) in paragraph (2) for the words “Article 27(3)” there shall be substituted the words “Article 27(4)” ;
- (b) in paragraph (3) after the words “is resident in” there shall be inserted the words “the country court division which includes”.

15. In Article 50(2) after sub-paragraph (d) there shall be inserted the following sub-paragraph—

“(dd) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;”.

16. In Article 54—

- (a) in paragraph (1) for sub-paragraph (aa) there shall be substituted the following sub-paragraph—

“(aa) Part IV, Article 31, and Part VI of, and Schedule 1 to, the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;”;
- (b) in paragraph (1)(b) for the words from “in this Order” to the end there shall be substituted the words “by the provisions mentioned in sub-paragraphs (a) and (aa)”;
- (c) in paragraph (3) after sub-paragraph (g) there shall be added the following sub-paragraph—

“(h) which relate to the costs of proceedings, may—

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- (i) amend or repeal any statutory provision relating to the practice and procedure of the Supreme Court or county courts so far as may be necessary in consequence of provision made by the rules; and
- (ii) notwithstanding anything in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, make different provision according to whether each or any of the parties is entitled to legal aid under Part II of that Order in connection with the proceedings.”.

The Rent (Northern Ireland) Order 1978 (NI 20)

17.—(1) In Schedule 2 at the end there shall be added the following paragraph—

“Appeal from county court

4. Without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (cases stated), an appeal shall lie to the Court of Appeal from any order made by a county court in the exercise of the jurisdiction conferred by paragraph 1 or 2, or from the dismissal of any application for such an order, upon a point of law, a question of fact or the admission or rejection of any evidence.”.

(2) Subject to rules of court, sub-paragraph (1) applies in relation to orders made and applications dismissed before as well as after the coming into operation of this paragraph.

The Domestic Proceedings (Northern Ireland) Order 1980 (NI 5)

18. In Article 2(2) the definition of “the respondent” shall be omitted.

19. In Article 3 the words “(“the respondent”)” shall be omitted.

20. In Article 9(5) for the words “Article 5(1)(c)” there shall be substituted the words “Article 5(2)(c)”.

21. In Article 13—

(a) in paragraph (2) after the words “Article 10(2)” there shall be inserted the words “on an application for an order under Article 4 or 9”;

(b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where by an order made under Article 10(2) on an application for an order under Article 8 the right to the actual custody of a child is given to the party to the marriage who has agreed to make the financial provision specified in the application, the court may make one or both of the following orders, that is to say—

(a) an order that the other party to the marriage shall make to that party for the benefit of the child or to the child such periodical payments, and for such term, as may be specified in the order;

(b) an order that the other party to the marriage shall pay to that party for the benefit of the child or to the child such lump sum as may be so specified.”;

(c) in paragraph (5) after the words “paragraph (2)” there shall be inserted “(2A)” and for the words “Article 5(2)” there shall be substituted the words “Article 5(3)”;

(d) in paragraph (6) after the words “paragraph (2)(a)” there shall be inserted “(2A)(a)”;

(e) in paragraph (7) after the words “paragraph (2)(b)” in both places where they occur there shall be inserted “(2A)(b)”.

22. In Article 20 after paragraph (3) there shall be inserted the following paragraph—

“(3A) Where an application is made for an order under Article 8 by the party to the marriage who has agreed to make the financial provision specified in the application—

- (a) paragraph (1) shall apply as if the reference in sub-paragraph (i) to the respondent were a reference to the applicant and the references to the applicant were references to the respondent; and
- (b) paragraphs (2) and (3) shall apply accordingly.”.

23. In Article 22(8) after the word “respondent” there shall be inserted the words “or the applicant, as the case may be,”.

24. In Article 31 at the end of paragraph (3) there shall be added the words “or, in a case where there was made to the court of summary jurisdiction an application for an order under Article 4 and a request under Article 8(2) and the term of the periodical payments was or might have been ordered to begin on the date of the making of the application for an order under Article 4, the date of the making of that application”.

25. In Schedule 2 in paragraph 2, after sub-paragraph (b), there shall be inserted the following sub-paragraph—

- “(bb) on an application after the coming into operation of paragraph 25 of Schedule 1 to the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 for the variation, revival or discharge of the order, the court, in exercising its powers under the said section 5 in relation to any provision of the order requiring the payment of money, shall have power to order that payments required to be made for the maintenance of a child of the family shall be made to the child himself;”.

SCHEDULE 3

Article 42(2).

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1868 c. 20.	The Legitimacy Declaration Act (Ireland) 1868.	The whole Act.
1870 c. 110.	The Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870.	In section 7 the words “in respect of jactitation of marriage, and”.
1928 c. 5 (N.I.).	The Legitimacy Act (Northern Ireland) 1928.	Section 2.
1961 c. 5 (N.I.).	The Legitimacy Act (Northern Ireland) 1961.	Section 2(5).
1972 c. 38	The Matrimonial Proceedings (Polygamous Marriages) Act 1972.	Section 3
1978 NI 15.	The Matrimonial Causes (Northern Ireland) Order 1978.	In Article 48(11) the words form “or any application” to the end.
1978 NI 20.	The Rent (Northern Ireland) Order 1978.	Article 6.

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Chapter or Number	Short Title	Extent of Repeal
		Schedule 2.
		In Schedule 8, paragraph 11.
1980 NI 5.	The Domestic Proceedings (Northern Ireland) Order 1980.	In Article 2(2) the definition of the “the respondent”.
		In Article 3 the words “(“the respondent”)”.
		In Schedule 3, paragraphs 19 and 20.
1983 NI 15.	The Housing (Northern Ireland) Order 1983.	Article 43.
1984 NI 14.	The Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.	Article 11.
		Schedule 1.
1986 NI 13.	The Housing (Northern Ireland) Order 1986.	In Schedule 8, paragraph 22.

EXPLANATORY NOTE

(This note is not part of the Order)

Part II of this Order replaces the present restriction on the presentation of a petition for divorce within three years of marriage without the leave of the court with an absolute bar on the presentation of a petition within two years of marriage and provides for the extension of the three year period within which certain petitions for a decree of nullity must be presented in cases where the petitioner suffers from mental disorder.

Part III amends the Matrimonial Causes (Northern Ireland) Order 1978 and the Domestic Proceedings (Northern Ireland) Order 1980 in relation to the powers of courts to make provision for financial relief in matrimonial and certain other family proceedings. In particular Part III revises the matters to which courts must have regard in making such provision.

Part IV confers new powers on the High Court to grant financial relief to a party to a marriage following a divorce, annulment or legal separation granted in an overseas country which is recognised as valid in Northern Ireland.

Part V makes fresh provision as to the powers of courts to make declarations relating to the status of a person and abolishes the right to petition for jactitation of marriage.

Part VI re-enacts Schedule 2 to the Rent (Northern Ireland) Order 1978 (transfer of tenancies on divorce, etc.) with amendments, including a new right of appeal to the Court of Appeal.