
STATUTORY INSTRUMENTS

1989 No. 677

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

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(1) (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(2) 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 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

(1) 1979 NI 8

(2) 1980 NI 5

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(3) 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⁽⁴⁾ (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⁽⁵⁾ (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;”.

(4) 1980 NI 5
(5) 1981 NI 26