STATUTORY INSTRUMENTS

1989 No. 677 (N.I. 4)

The Matrimonial and Family Proceedings (Northern Ireland) Order 1989

Made 18th April 1989

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Modifications etc. (not altering text)

C1 Order: functions transferred from Lord Chancellor to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 40** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

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[F1].

F1 fully exercised by SR 1989/322

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] 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[F3].

F2 1954 c. 33 (NI)
F3 1978 NI 15

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 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[F4]; 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.” .

F4 1986 NI 4

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) t 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 sub-paragraphs (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" .