STATUTORY INSTRUMENTS

1980 No. 563 (N.I. 5)

Domestic Proceedings (Northern Ireland) Order 1980

- - - - - - *[21st April 1980]*

Modifications etc. (not altering text)

C1 Order: functions of the Lord Chancellor are transferred to the 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)(6), **Sch. 17 para. 34** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Introductory

Title and commencement

1.—(1) This Order may be cited as the Domestic Proceedings (Northern Ireland) Order 1980.

(2) *Commencement*

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 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—

Definition rep. by 1995 NI 2

Definition rep. by 1987 NI 22

"child", in relation to one or both of the parties to a marriage, **[**F1is to be construed in accordance with Article 155(1) of the Children (Northern Ireland) Order 1995**]** ;

"child of the family", in relation to the parties to a marriage, means—

(a) a child of both of those parties; and

(b) any other child, not being a child who is**[**F2 placed with those parties as foster parents by an authority within the meaning of the Children (Northern Ireland) Order 1995**]** or a voluntary organisation, who has been treated by both of those parties as a child of their family;

F3. . .

"the court", in any provision except Article 40 and except where any other court is expressly referred to, means the court of summary jurisdiction which by virtue of this Order or of rules has jurisdiction for the purposes of that provision;

"the Department" means the Department of Health and Social Services;

Definition rep. by 1998 NI 6

"legal custody", in relation to a child, means so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent, but excluding, except where the person having legal custody is a parent or guardian of the child, any right to effect or arrange for the child's emigration from the United Kingdom);

F4[F5"maintenance assessment" means an assessment of maintenance made under the Child Support (Northern Ireland) Order 1991 and includes, except in circumstances prescribed for the purposes of the definition of that expression in Article 2(2) of that Order, an interim maintenance assessment within the meaning of that Order;]

"notice" means notice in writing;

"the parental rights and duties" means as respects a particular child (whether legitimate or not) all the rights and duties which by law the mother and father have in relation to a legitimate child and his property, and includes all elements included in such rights and duties, including a right of access;

Definition rep. by 1998 NI 6

"prescribed" means prescribed by rules;

Definition rep. by 1989 NI 4

"rules" means magistrates' courts rules;

"statutory provision" has the meaning given by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 .

Para. (3) rep. by 1995 NI 2

(4) References in this Order to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household, and references to their living apart shall be construed as references to their not living with each other in the same household.

(5) For the avoidance of doubt it is hereby declared that references in this Order to remarriage include references to a marriage which is by law void or voidable.

F1 Words in art. 2(2) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **138** (with regs. 6-9)
F2 1995 NI 2
F3 1998 NI 6
F4 prosp. in pt. subst. by 2000 c. 4 (NI)
F5 SR 1993/98

Powers of court to make orders for financial provision for parties to a marriage and children of the family

Grounds of application for financial provision

3. Either party to a marriage may apply to the court for an order under Article 4 on the ground that the other party to the marriage[F6]. . .

(a) has failed to provide reasonable maintenance for the applicant; or

(b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family; or

(c) has, since the date of the marriage, committed adultery; or

(d) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or

(e) has deserted the applicant.

F6 1989 NI 4

Powers of court to make orders for financial provision

4.—(1) Where on an application for an order under this Article the applicant satisfies the court of any ground mentioned in Article 3, the court may, subject to the provisions of this Order, make any one or more of the following orders, that is to say—

(a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;

(b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;

(c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;

(d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.

(2) Without prejudice to the generality of paragraph (1)(*b*) or (*d*), an order under this Article for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.

(3 [F7] The amount of any lump sum required to be paid by an order under this Article shall not exceed**[**[F8] £1,000**]** or such larger amount as the Secretary of State may**[**[F9], after consultation with the Lord Chief Justice,**]** by order fix for the purposes of this paragraph.

[[F10](3A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (3)—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

(4 [F7] **[**[F11]Any order made under**]** paragraph (3) shall be subject to**[**[F12] negative resolution**]**.

F7 functions transf. by 1993 NI 6
F8 SR 1989/323
F9 Words in art. 4(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 60(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1
F10 Art. 4(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 60(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1
F11 Words in art. 4(4) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 60(4); S.I. 2006/1014, **art. 2(a)**, Sch. 1
F12 Words in art. 4(4) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 120(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

[F13Matters 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 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.**]**

F13 1989 NI 4

Duration of orders for financial provision for a party to a marriage

6.—(1) The term to be specified in any order made under Article 4(1)(*a*) shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.

(2) Where an order is made under Article 4(1)(*a*) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of**[**F14, or formation of a civil partnership by,**]** the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage**[**F14 or formation of the civil partnership**]**.

(3) A person whose remarriage causes an order made under Article 4(1)(*a*) to cease to have effect shall give notice of the remarriage to the court and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

F14 2004 c. 33

Age limit on making orders for financial provision for children and duration of such orders

7.—(1) Subject to paragraph (3), no order shall be made under Article 4(1)(*c*) or (*d*) in favour of a child who has attained the age of 18.

(2) The term to be specified in an order made under Article 4(1)(*c*) in favour of a child may begin with the date of the making of an application for the order in question or any later date**[**F15 or a date ascertained in accordance with paragraphs (7) or (9)**]** but—

(a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of Article 36 of the Education and Libraries (Northern Ireland) Order 1972)**[**F16 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**]**; and

(b) shall not in any event, subject to paragraph (3), extend beyond the date of the child's eighteenth birthday.

(3) The court—

(a) may make an order under Article 4(1)(*c*) or (*d*) in favour of a child who has attained the age of 18, and

(b) may include in an order made under Article 4(1)(*c*) in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court—

(i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(ii) that there are special circumstances which justify the making of the order or provision.

(4) Any order made under Article 4(1)(c) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(5) An order made under Article 4(1)(*c*) in favour of a child to whom sub-paragraph (i) of paragraph (3) applies shall cease to have effect in the event of the child's ceasing to receive instruction or undergo training as mentioned in that sub-paragraph.