Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Matrimonial Causes (Northern Ireland) Order 1978. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1978 No. 1045 (N.I. 15)

Matrimonial Causes (Northern Ireland) Order 1978

- - - - - - *[25th July 1978]*

Modifications etc. (not altering text)

C1 Order: transfer of functions (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 17 para. 31** (with arts. 28-31)

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Matrimonial Causes (Northern Ireland) Order 1978.

(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 1987 NI 22

"child", in relation to one or both of the parties of a marriage, includes**[**F1 a child whose father and mother were not married to each other at the time of his birth within the meaning of Article 155 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**[**F1 is 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;

"the court" shall be construed in accordance with Article 48;

Definition rep. by 1995 NI 2

"disposal", in relation to any property, includes creating a charge on the property (including a charge subject to conditions as to the time when it is to become enforceable or otherwise);

"divorce county court" means, where an order made by the Lord Chancellor under Article 48(1) is in force designating a county court sitting for any division as a divorce county court, a county court sitting for that division;

"education" includes training;

[F2F3"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 interm maintenance assessment within the meaning of that Order;**]**

"rules of court" means rules of court made under Article 54;

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

(3) In this Order—

(a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with Article 23;

[F4(aa) references to pension sharing orders shall be construed in accordance with Article 23A; and**]**

(b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with Article 24 and Article 29(5).

(4) 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.

[F5(4A) References in this Order to the formation of a civil partnership by a person include references to a civil partnership which is by law void or voidable.**]**

F1 1995 NI 2
F2 SR 1993/98
F3 prosp. in pt. subst. by 2000 c. 4 (NI)
F4 1999 NI 11
F5 2004 c. 33

PART II

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

Divorce on breakdown of marriage

3.—(1) Subject to Article 5, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—

(a) that, since the date of the marriage, the respondent has committed adultery;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Order referred to as "two years' separation") and the respondent consents to a decree being granted;

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Order referred to as "five years' separation").

(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, and, subject to paragraph (4), the court shall not grant a decree of divorce without considering the oral testimony of the petitioner.

(4) The provision of paragraph (3) requiring the court to consider the oral testimony of the petitioner shall not apply[F6] in any particular case where the court for special reasons orders that such testimony be dispensed with.

(5) If the court is satisfied on the evidence of any such fact as is mentioned in paragraph (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to**[**[F7] Articles 4(2) and 7**]**, grant a decree of divorce.

(6) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six weeks from its grant unless in any particular case the court by order fixes a shorter period.

F6 prosp. subst. by 1993 NI 6
F7 1989 NI 4

Supplemental provisions as to facts raising presumption of breakdown

4.—(1) One party to a marriage shall not be entitled to rely for the purposes of Article 3(2)(*a*) on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.

(2) Where in any proceedings for divorce the petitioner alleges that the respondent has committed adultery and the respondent proves that the adultery was committed with the connivance of the petitioner, the court may dismiss the petition notwithstanding that it is not satisfied (as mentioned in Article 3(5)) that the marriage has not broken down irretrievably.

(3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of Article 3(2)(*b*) whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(4) For the purposes of Article 3(2)(*c*) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(5) In considering for the purposes of Article 3(2) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two

or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(6) For the purposes of Article 3(2)(*d*) and (*e*) and this Article a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this Article 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.

(7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of Article 3(2)(*d*) the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

[F8Bar 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.**]**

F8 1989 NI 4

Divorce not precluded by previous judicial separation

6.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 [F9 or the Domestic Proceedings (Northern Ireland) Order 1980] or any corresponding enactments in force in any part of Great Britain, the Isle of Man or any of the Channel Islands.

(2) On a petition for divorce in such a case as is mentioned in paragraph (1), the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) Where a petition for divorce in such a case follows a decree of judicial separation or (without prejudice to paragraph (4) [F9 or (5)]) an order containing a provision exempting [F9 or having the effect of exempting] one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

(4) For the purposes of Article 3(2)(*c*) the court may treat as included in a period during which the respondent has deserted the petitioner**[**F10 either or both of**]** the following periods—

F11(a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home;

[F10(b) any period during which there is an order made under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (or any statutory provision repealed by that Order) which—

(i) excludes the respondent from a dwelling-house which is, or was at any time, the matrimonial home, or

(ii) prohibits the exercise by the respondent of the right to occupy such a home**]**

F9(5) Where—

(a) a petition for divorce is presented after the date on which the repeal by the Domestic Proceedings (Northern Ireland) Order 1980 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 comes into operation, and

(b) an order made under that Act of 1945 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on or after that date by virtue of paragraph 1 or 2 of Schedule 2 to that Order of 1980,

then, for the purposes of Article 3(2)(*c*), the court may treat a period during which such a provision was included in that order (whether before or after that date) as included in a period during which the respondent has deserted the petitioner.]

F9 1980 NI 5
F10 1998 NI 6
F11 1980 NI 5

Refusal of decree in five year separation cases on grounds of grave hardship to respondent

7.—(1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this Article, then—

(a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in Article 3(2), and

(b) if apart from this Article the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this Article hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

Encouragement of reconciliation of parties to marriage

8.—(1) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

(2) If during any such adjournment the parties resume living with each other in the same household, no account shall be taken of that fact for the purposes of the proceedings.

(3) The power conferred by this Article is additional to any other power of the court to adjourn proceedings.