
STATUTORY INSTRUMENTS

1993 No. 1576

The Family Law (Northern Ireland) Order 1993

Introductory

Title and commencement

1.—(1) This Order may be cited as the Family Law (Northern Ireland) Order 1993.

(2) Subject to paragraph (3), this Order shall come into operation on the expiration of 2 months from the day on which the Order is made.

(3) Articles 5 to 11 and 15 shall come into operation on such day or days as the Head of the Department of Finance and Personnel may by order appoint.

(4) In the application of any amendment made by this Order which has effect in relation to orders made, confirmed or registered by a court, it is immaterial whether the making, confirmation or registration occurred before or after the coming into operation of the amendment.

(5) An order under paragraph (3) may also appoint a day for the coming into operation of any provision of an order made under section 38(2) of the Northern Ireland Constitution Act 1973⁽¹⁾ as necessary or expedient in consequence of this Order which appears to the Head of the Department of Finance and Personnel to be consequential on any provision of this Order brought into operation by the order.

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 “statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Marriage

Abolition of requirement for press notices in respect of marriages in register offices

3. The requirement in section 3 of the Marriage Law (Ireland) Amendment Act 1863⁽³⁾ for notices of certain marriages intended to be contracted in the office of a registrar to be published on 2 consecutive weeks in a newspaper circulating in the district in which such marriage is intended is hereby abolished; and, accordingly, section 41 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870⁽⁴⁾ is hereby repealed.

(1) 1973 c. 36
(2) 1954 c. 33 (N.I.)
(3) 1863 c. 27
(4) 1870 c. 110

Marriage between certain persons related by affinity not to be void

4.—(1) Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984⁽⁵⁾ (prohibited degrees of relationship) shall have effect subject to the following provisions of this Article, being provisions so as to permit—

- (a) the marriage of a man and a woman who is the grandmother of a former spouse of his or is a former spouse of his grandson;
 - (b) the marriage of a woman and a man who is the grandfather of a former spouse of hers or is a former spouse of her grand-daughter; and
 - (c) under certain conditions, the marriage of persons related in certain other degrees of affinity.
- (2) In paragraph (1) after “column of” where it twice occurs there shall be inserted “Part I of”.
- (3) In paragraph (1), in the Table,—
- (a) after “Table” there shall be inserted—

“PART I**Prohibited degrees of relationship;”**

- (b) in the first column the words from “Wife’s mother” to “Daughter’s son’s wife” are hereby repealed;
- (c) in the second column the words from “Husband’s father” to “Daughter’s daughter’s husband” are hereby repealed;
- (d) at the end there shall be added—

“PART II**Degrees of affinity referred to in paragraphs (2A) and (2B)**

Daughter of former wife	Son of former husband
Former wife of father	Former husband of mother
Former wife of father’s father	Former husband of father’s mother
Former wife of mother’s father	Former husband of mother’s mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

PART III**Degrees of affinity referred to in paragraphs (2C) and (2D)**

Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter”.

(4) In paragraph (2)(c) at the beginning there shall be inserted “in Part II,”.

(5) After paragraph (2) there shall be inserted—

“(2A) Subject to paragraph (2B), a marriage solemnized between a man and any of the persons mentioned in the first column of Part II of that Table, or between a woman and any of the persons mentioned in the second column of that Part II, is void.

(2B) Any such marriage as is mentioned in paragraph (2A) is not void by reason only of affinity if both the parties to the marriage have attained the age of 21 at the time of the marriage and the younger party has not at any time before attaining the age of 18 been a child of the family in relation to the other party.

(2C) Subject to paragraph (2D), a marriage solemnized between a man and any of the persons mentioned in the first column of Part III of that Table, or between a woman and any of the persons mentioned in the second column of that Part III, is void.

(2D) Any such marriage as is mentioned in paragraph (2C) is not void by reason only of affinity if both the parties to the marriage have attained the age of 21 at the time of the marriage and the marriage is solemnized—

- (a) in the case of a marriage between a man and the mother of a former wife of his, after the death of both the former wife and the father of the former wife;
- (b) in the case of a marriage between a man and the former wife of his son, after the death of both his son and the mother of his son;
- (c) in the case of a marriage between a woman and the father of a former husband of hers, after the death of both the former husband and the mother of the former husband;
- (d) in the case of a marriage between a woman and a former husband of her daughter, after the death of both her daughter and the father of her daughter.

(2E) In this Article “child of the family”, in relation to any person, means a child who has lived in the same household as that person and been treated by that person as a child of his family.”.

(6) In paragraph (3) for “paragraph (1) applies” there shall be substituted “paragraph (1), (2A) or (2C) applies or a marriage to which paragraph (2B) or (2D) applies”.

(7) Nothing in this Article shall affect any marriage solemnized before this Article comes into operation.

Declarations as to degree of affinity

5.—(1) The Matrimonial and Family Proceedings (Northern Ireland) Order 1989(6) shall have effect subject to the following provisions of this Article.

(2) After Article 31 there shall be inserted—

“Declarations as to degree of affinity

31A.—(1) This Article applies in relation to any marriage mentioned in Article 18(2A) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.

(2) Either of the persons to be married may apply to the court for a declaration that, both those persons having attained the age of 21 and the younger of those persons not having at any time before attaining the age of 18 been a child of the family in relation to the other, there is no impediment of affinity to the solemnization of the marriage.

(3) A court shall have jurisdiction to entertain an application under paragraph (1) if (and only if)—

- (a) either of the parties to the intended marriage—
 - (i) is domiciled in Northern Ireland on the date of the application; or
 - (ii) has been habitually resident in Northern Ireland throughout the period of one year ending with that date; and
- (b) both of the parties to the intended marriage are domiciled in the United Kingdom.

(4) In this Article “child of the family” has the same meaning as in Article 18(2E) of the Order of 1984.”.

(3) In Article 36(5)(a) (rules of court) and Article 40(1)(a) (meaning of court) after “Article 31” there shall be inserted “or 31A”.

Maintenance enforcement

Orders for periodical payment in the High Court and divorce county courts

6.—(1) In Part VIII of the Judgments Enforcement (Northern Ireland) Order 1981(7), at the beginning there shall be inserted—

“Maintenance orders: means of payments

Maintenance orders in the High Court and divorce county courts: means of payment

96A.—(1) Where the High Court or a divorce county court makes a qualifying periodical maintenance order, it may at the same time exercise either of its powers under paragraph (4) in relation to the order, whether of its own motion or on an application made under this paragraph by an interested party.

- (2) For the purposes of this Article, a periodical maintenance order is an order—
 - (a) which requires money to be paid periodically by one person (“the debtor”) to another (“the creditor”); and
 - (b) which is a maintenance order;

and such an order is a “qualifying periodical maintenance order” if, at the time it is made, the debtor is ordinarily resident in Northern Ireland.

(3) Where—

- (a) the High Court or a divorce county court has made a qualifying periodical maintenance order; or
- (b) a qualifying periodical maintenance order is registered in the High Court,

that court may at any later time—

- (i) on an application made under this paragraph by an interested party, or
- (ii) of its own motion, in the course of any proceedings concerning the order,

exercise either of its powers under paragraph (4) in relation to the order.

(4) The powers mentioned in paragraphs (1) and (3) are—

- (a) the power to order that payments required to be made by the debtor to the creditor under the qualifying periodical maintenance order in question shall be so made by

such a method of payment falling within paragraph (5) as the court may specify in the particular case; or

(b) the power to make an attachment of earnings order under Articles 97 to 105 to secure payments under the qualifying periodical maintenance order in question.

(5) The methods of payment mentioned in paragraph (4)(a) are—

(a) payment by standing order; or

(b) payment by any other method which requires the debtor to give his authority for payments of a specific amount to be made from an account of his to an account of the creditor's on specific dates during the period for which the authority is in force and without the need for any further authority from the debtor.

(6) In any case where—

(a) the court proposes to exercise its power under paragraph (4)(a), and

(b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

the court in exercising its power under that sub-paragraph may order that the debtor open such an account.

(7) Where in the exercise of its powers under paragraph (1) or (3), the High Court or a divorce county court has made in relation to a qualifying periodical maintenance order such an order as is mentioned in paragraph (4)(a) (a "means of payment order"), it may at any time later—

(a) on an application made under this paragraph by an interested party, or

(b) of its own motion, in the course of any proceedings concerning the qualifying periodical maintenance order,

revoke, suspend, revive or vary the means of payment order.

(8) In deciding whether to exercise any of its powers under this Article the court in question having (if practicable) given every interested party an opportunity to make representations shall have regard to any representations made by any such party.

(9) Nothing in this Article shall be taken to prejudice—

(a) any power under Articles 97 to 105 which would, apart from this Article, be exercisable by the High Court or a divorce county court; or

(b) any right of any person to make any application under those Articles;

and paragraph (7) is without prejudice to any other power of the High Court or a divorce county court to revoke, suspend, revive or vary an order.

(10) For the purposes of this Article—

"debtor" and "creditor" shall be construed in accordance with paragraph (2);

"interested party" means any of the following, that is to say—

(a) the debtor;

(b) the creditor; and

(c) in a case where the person who applied for the qualifying periodical maintenance order in question is a person other than the creditor, that other person;

"maintenance order" means any order specified in Article 98(a)(i) to (v) and includes any such order which has been rescinded, revoked or discharged, if any arrears are recoverable under it;

“qualifying periodical maintenance order” shall be construed in accordance with paragraph (2), and the references to such an order in paragraphs (3) and (7) are references to any such order, whether made before or after the coming into operation of this Article;

and the reference in paragraph (2) to an order requiring money to be paid periodically by one person to another includes a reference to an order requiring a lump sum to be paid by instalments by one person to another.”.

(2) In Article 99(2)(b) of the Judgments Enforcement (Northern Ireland) Order 1981⁽⁸⁾ (making of attachment of earnings order) for the words from “order” where it first occurs onwards there shall be substituted “order, in accordance with Article 96A(1) or (3).”.

Orders for periodical payment in courts of summary jurisdiction

7.—(1) For Articles 85 and 86 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁹⁾ there shall be substituted—

“Orders for periodical payment: means of payment

85.—(1) In any case where a court of summary jurisdiction orders money to be paid periodically by one person (“the debtor”) to another (“the creditor”), then—

- (a) if the order is a qualifying maintenance order, the court shall at the same time exercise one of its powers under sub-paragraphs (a) to (d) of paragraph (3);
- (b) if the order is not a maintenance order, the court shall at the same time exercise one of its powers under sub-paragraphs (a) and (b) of that paragraph.

(2) For the purposes of this Article a maintenance order is a “qualifying maintenance order” if, at the time it is made, the debtor is ordinarily resident in Northern Ireland.

(3) The powers of the court are—

- (a) the power to order that payments under the order be made directly by the debtor to the creditor;
- (b) the power to order that payments under the order be made to the collecting officer;
- (c) the power to order that payments under the order be made by the debtor to the creditor by such method of payment falling within paragraph (7) as may be specified;
- (d) the power to make an attachment of earnings order under Part IX to secure payments under the order.

(4) The collecting officer shall be the clerk of petty sessions or such other person as may be appointed by the Lord Chancellor as collecting officer of the petty sessions district for which the court of summary jurisdiction making the order acts or the collecting officer of some other petty sessions district.

(5) In any case where—

- (a) the court proposes to exercise its power under sub-paragraph (c) of paragraph (3), and
- (b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

⁽⁸⁾ 1981 NI 6

⁽⁹⁾ 1981 NI 26

the court in exercising its power under that paragraph may order that the debtor open such an account.

(6) In deciding, in the case of a maintenance order, which of the powers under sub-paragraphs (a) to (d) of paragraph (3) it is to exercise, the court having (if practicable) given them an opportunity to make representations shall have regard to any representations made—

- (a) by the debtor,
- (b) by the creditor, and
- (c) if the person who applied for the maintenance order is a person other than the creditor, by that other person.

(7) The methods of payment referred to in paragraph (3)(c) are the following, this is to say—

- (a) payment by standing order; or
- (b) payment by any other method which requires one person to give his authority for payments of a specific amount to be made from an account of his to an account of another's on specific dates during the period for which the authority is in force and without the need for any further authority from him.

(8) Where—

- (a) in the case of an order which is a qualifying maintenance order under—
 - (i) the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924; or
 - (ii) the Domestic Proceedings (Northern Ireland) Order 1980,the court does not propose to exercise its power under sub-paragraph (c) or (d) of paragraph (3); or
- (b) in the case of an order which is not a maintenance order under that Act or that Order, the court does not propose to exercise its powers under sub-paragraph (a) of that paragraph,

the court shall, unless upon representations expressly made in that behalf by the person who applied for the order that it is satisfied that it is undesirable to do so, exercise its power under sub-paragraph (b) of that paragraph.

(9) The Lord Chancellor may by regulations confer on courts of summary jurisdiction, in addition to their powers under sub-paragraphs (a) to (d) of paragraph (3), the power (the "additional power") to order that payments under a qualifying maintenance order be made by the debtor to the creditor or the collecting officer (as the regulations may provide) by such method of payment as may be specified in the regulations.

(10) Any reference in any statutory provision to sub-paragraphs (a) to (d) of paragraph (3) (but not a reference to any specific sub-paragraph of that paragraph) shall be taken to include a reference to the additional power, and the reference in paragraph (11) to the additional power shall be construed accordingly.

(11) Regulations under paragraph (9) may make provision for any statutory provision concerning, or connected with, payments under maintenance orders to apply, with or without modifications, in relation to the additional power.

(12) Regulations under paragraph (9) made by the Lord Chancellor shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(13) Where a court of summary jurisdiction makes an order under paragraph (3)(b) there may be paid to the collecting officer (other than an officer of the Northern Ireland Court Service) by the Lord Chancellor a sum in respect of his remuneration and expenses not

exceeding such percentage of the money actually paid through him as may be fixed by the Lord Chancellor.

(14) The person against whom an order referred to in paragraph (3)(b) has been made shall give notice to the collecting officer of any change of his address; and any person who fails to give such notice without reasonable excuse shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(15) For the purposes of this Article—

“debtor” and “creditor” shall be construed in accordance with paragraph (1);

“maintenance order” means any order specified in Article 98(11) and includes any such order which has been rescinded, revoked or discharged if any arrears are recoverable under it;

and the reference in paragraph (1) to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another.

Orders for periodical payment: proceedings by collecting officer

85A.—(1) Where payments under a relevant UK order are required to be made periodically—

(a) to or through the collecting officer, or

(b) by any method of payment falling within Article 85(7),

and any sums payable under the order are in arrear, the collecting officer of the relevant court shall, if the person for whose benefit the payments are required to be made so requests in writing, and unless it appears to the collecting officer that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums.

(2) Where payments under a relevant UK order are required to be made periodically to or through the collecting officer, the person for whose benefit the payments are required to be made may, at any time during the period in which the payments are required to be so made, give authority in writing to the collecting officer of the relevant court for the collecting officer to proceed as mentioned in paragraph (3).

(3) Where authority under paragraph (2) is given to the collecting officer of the relevant court, the collecting officer shall, unless it appears to him that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of any sums payable to or through him under the order in question which, on or after the date of the giving of the authority, fall into arrear.

(4) In any case where—

(a) authority under paragraph (2) has been given to the collecting officer of a relevant court, and

(b) the person for whose benefit the payments are required to be made gives notice in writing to the collecting officer cancelling the authority,

the authority shall cease to have effect and, accordingly, the collecting officer shall not continue any proceedings already commenced by virtue of the authority.

(5) The person for whose benefit the payments are required to be made shall have the same liability for all the costs properly incurred in or about proceedings taken under paragraph (1) at his request or under paragraph (3) by virtue of his authority (including any costs incurred as a result of any proceedings commenced not being continued) as if the proceedings had been taken by him.

(6) Nothing in paragraph (1) or (3) shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court.

(7) In this Article—

“maintenance order” has the same meaning as it has in Article 85;

“the relevant court”, in relation to an order, means—

- (a) in a case where payments under the order are required to be made to or through the collecting officer, a court of summary jurisdiction acting for the petty sessions district for which the collecting officer to or through whom the payments were required to be made acts; and
- (b) in a case where such payments are required to be made by any method of payment falling within Article 85(7), a court of summary jurisdiction acting for the petty sessions district for which the court of summary jurisdiction which made the order sat; or, if the order is not an order made by a court of summary jurisdiction but is an order registered in such a court under, or in accordance with, any statutory provision, the court of summary jurisdiction in which the order is registered;

“relevant UK order” means—

- (a) an order made by a court of summary jurisdiction, other than an order made under Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972;
- (b) an order made by the High Court or a county court and registered under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 in a court of summary jurisdiction; or
- (c) an order made by the High Court in England and Wales or by the Court of Session in Scotland registered in accordance with section 36 of the Civil Jurisdiction and Judgments Act 1982 in a court of summary jurisdiction; and
- (d) an order made by a county court or a magistrates' court in England and Wales or a sheriff court in Scotland and registered under Part II of the Maintenance Orders Act 1950 in a court of summary jurisdiction;

and any reference to payments required to be made periodically includes, in the case of a maintenance order, a reference to instalments required to be paid in respect of a lump sum payable by instalments.

Maintenance orders: penalty for breach

85B.—(1) In any case where—

- (a) payments under a relevant Northern Ireland maintenance order are required to be made periodically in the manner mentioned in sub-paragraph (a) or (b) of Article 85A(1), and
- (b) the debtor fails, on or after the date of coming into operation of this Article, to comply with the order in so far as the order relates to the manner of payment concerned,

the person for whose benefit the payments are required to be made may make a complaint to a justice of the peace for the county court division which includes the petty sessions district for which the relevant court is acting giving details of the failure to comply.

(2) If the justice of peace is satisfied that the nature of the alleged failure to comply may be such as to justify the relevant court in exercising its power under paragraph (3), he shall issue a summons directed to the debtor requiring him to appear before the relevant court to answer the complaint.

(3) On the hearing of the complaint, the relevant court may order the debtor to pay a sum not exceeding £1000.

(4) Any sum ordered to be paid under paragraph (3) shall for the purposes of this Order be treated as adjudged to be paid by a conviction of a magistrates' court.

(5) In this Article—

“debtor” has the same meaning as it has in Article 85;

“maintenance order” has the same meaning as it has in Article 85;

“the relevant court” has the same meaning as it has in Article 85A;

“relevant Northern Ireland maintenance order” means—

(a) a maintenance order made by a court of summary jurisdiction, other than an order made under Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or

(b) an order made by the High Court or a county court and registered under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 in a court of summary jurisdiction;

and any reference to payments required to be made periodically includes a reference to instalments required to be paid in respect of a lump sum payable by instalments.

Revocation, variation, etc., of orders for periodical payment

86.—(1) Without prejudice to the provisions of any enactment specified in Article 98(11) and subject to Article 25(2) of the Domestic Proceedings (Northern Ireland) Order 1980, where a court of summary jurisdiction has made an order for money to be paid periodically by one person to another, the court may, by order on complaint, revoke, revive, discharge or vary the order.

(2) The power under paragraph (1) to vary an order shall include power to suspend the operation of any provision of the order temporarily and to revive the operation of any provision so suspended.

(3) Where the order mentioned in paragraph (1) is a maintenance order, the power under that paragraph to vary the order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3).

(4) In any case where—

(a) a court of summary jurisdiction has made a maintenance order, and

(b) payments under the order are required to be made by any method of payment falling within Article 85(7),

an interested party may apply in writing to the clerk of petty sessions for the order to be varied as mentioned in paragraph (5).

(5) Subject to paragraph (8), where an application has been made under paragraph (4), the clerk, after serving written notice of the application on any other interested party and allowing that party, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the collecting officer.

(6) The clerk may proceed with an application under paragraph (4) notwithstanding that any such interested party as is referred to in paragraph (5) has not received written notice of the application.

(7) In paragraphs (4) to (6) “interested party”, in relation to a maintenance order, means—

(a) the debtor;

(b) the creditor; and

(c) if the person who applied for the maintenance order is a person other than the creditor, that other person.

(8) Where an application has been made under paragraph (4), the clerk may, if he considers it inappropriate to exercise his power under paragraph (5), refer the matter to the court which may vary the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3).

(9) Paragraphs (5), (6) and (8) of Article 85 shall apply for the purposes of paragraphs (3) and (8) as they apply for the purposes of that Article.

(10) None of the powers of the court, or of the clerk of petty sessions, conferred by paragraphs (3) to (9) shall be exercisable in relation to a maintenance order which is not a qualifying maintenance order (within the meaning of Article 85).

(11) For the purposes of this Article—

“creditor” and “debtor” have the same meaning as they have in Article 85;

“maintenance order” has the same meaning as it has in Article 85; and

the reference in paragraph (1) to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another.”.

(2) In Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁰⁾ (enforcement of sums adjudged to be paid), after paragraph (8A) there shall be inserted—

“(8B) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4) for the enforcement of an order to which this Article applies, the court or resident magistrate may vary the order by exercising one of the powers under sub-paragraphs (a) to (d) of Article 85(3).

(8C) Paragraphs (5), (6) and (8) of Article 85 shall apply for the purposes of paragraph (8) as they apply for the purposes of that Article.

(8D) Paragraphs (8B) and (8C) shall not have effect in relation to an order which is not a qualifying maintenance order (within the meaning of Article 85).”.

Variation of orders for periodical payment made under the Domestic Proceedings (Northern Ireland) Order 1980

8. After Article 22 of the Domestic Proceedings (Northern Ireland) Order 1980⁽¹¹⁾ there shall be inserted—

“Variation of orders for periodical payments: further provisions

22A.—(1) Subject to paragraphs (7) and (8), the power of the court under Article 22 to vary an order for the making of periodical payments shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981 (orders for periodical payment: method of payment).

(2) In any case where—

(a) a court of summary jurisdiction has made an order under this Order for the making of periodical payments, and

⁽¹⁰⁾ 1981 NI 26

⁽¹¹⁾ 1980 NI 5

- (b) payments under the order are required to be made by any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.),

an application may be made under this paragraph to the clerk of petty sessions for the order to be varied as mentioned in paragraph (3).

(3) Subject to paragraph (5), where an application is made under paragraph (2), the clerk, after serving written notice of the application on the respondent and allowing the respondent, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the collecting officer.

(4) The clerk may proceed with an application under paragraph (2) notwithstanding that the respondent has not received written notice of the application.

(5) Where an application has been made under paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under paragraph (3), refer the matter to the court which, subject to paragraphs (7) and (8), may vary the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981.

(6) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to order that account be opened) shall apply for the purposes of paragraphs (1) and (5) as it applies for the purposes of that Article.

(7) Before varying the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under sub-paragraph (c) or (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under sub-paragraph (b) of that paragraph.

(9) Paragraph (12) of Article 22 shall have effect for the purposes of applications under paragraph (2) as it has effect for the purposes of applications under that Article.

(10) None of the powers of the court, or of the clerk of petty sessions, conferred by this Article shall be exercisable in relation to an order under this Order for the making of periodical payments which is not a qualifying maintenance order (within the meaning of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981).”.

Interest on, and remission of, arrears and supplementary provision for payment by instalments

9.—(1) After Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981(12) there shall be inserted—

“Interest on arrears

86A.—(1) The Lord Chancellor may by order provide that a court of summary jurisdiction, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a Northern Ireland maintenance order, may order that interest of an amount calculated at the prescribed rate be paid on so much of the sum due under the order as the court may determine.

(2) In paragraph (1) “the prescribed rate” means such rate of interest as the Lord Chancellor may by order prescribe.

(3) An order under this Article may make provision for the manner in which and the periods by reference to which interest is to be calculated.

(4) Where, by virtue of paragraph (1), a court of summary jurisdiction orders the payment of interest on any sum due under a maintenance order—

- (a) then if it orders that the whole or any part of the interest be paid by instalments that order shall be regarded as an instalments order for the purposes of Article 87 and that Article shall accordingly apply in relation to it; and
- (b) the whole of the interest shall be enforceable as a sum adjudged to be paid by the maintenance order.

(5) In this Article—

“Northern Ireland maintenance order” means—

- (a) a qualifying maintenance order made by a court of summary jurisdiction, other than an order made by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
- (b) an order made by the High Court or a county court and registered under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 in a court of summary jurisdiction;

“qualifying maintenance order” has the same meaning as it has in Article 85.

(6) An order under this Article made by the Lord Chancellor shall be made with the concurrence of the Treasury and shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”

(2) For Article 87 of the Magistrates' Courts (Northern Ireland) Order 1981(13) there shall be substituted—

“Remission of arrears and manner in which arrears to be paid

87.—(1) On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a maintenance order made by a court of summary jurisdiction, a court of summary jurisdiction may remit the whole or any part of the sum due under the order.

(2) If, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a maintenance order made by a court of summary jurisdiction, a court of summary jurisdiction orders that the whole or any part of the sum due under the order be paid by instalments (an “instalments order”), then—

- (a) if the maintenance order is a Northern Ireland maintenance order, the court shall at the same time exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3) in relation to the instalments order;
- (b) if the maintenance order is a non-Northern Ireland maintenance order, the court shall at the same time exercise one of its powers under paragraph (3) in relation to the instalments order.

(3) The powers of the court referred to in paragraph (2)(b) are—

- (a) the power to order that payments under the order be made directly to the collecting officer;

- (b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) as may be specified;
 - (c) the power to make an attachment of earnings order under Part IX to secure payments under the order.
- (4) The court may in the course of any proceedings concerning an instalments order or the maintenance order made by a court of summary jurisdiction to which it relates vary the instalments order by exercising—
- (a) in respect of a Northern Ireland maintenance order, one of the powers referred to in paragraph (2)(a);
 - (b) in respect of a non-Northern Ireland maintenance order, one of its powers under paragraph (3).
- (5) In respect of a Northern Ireland maintenance order, paragraphs (5), (6) and (8) of Article 85 shall apply for the purposes of paragraphs (2)(a) and (4)(a) as they apply for the purposes of that Article.
- (6) In respect of a non-Northern Ireland maintenance order—
- (a) paragraph (5) of Article 85 shall apply for the purposes of paragraphs (2)(b) and (4)(b) as they apply for the purposes of that Article but as if for sub-paragraph (a) there were substituted—
 - “(a) the court proposes to exercise its power under sub-paragraph (b) of Article 87(3);”;
 - and
 - (b) in deciding which of the powers under paragraph (3) it is to exercise the court shall have regard to any representations made by the debtor (within the meaning of Article 85).
- (7) In this Article—
- “maintenance order” has the same meaning as it has in Article 85;
 - “Northern Ireland maintenance order” has the same meaning as it has in Article 86A;
 - “non-Northern Ireland maintenance order” means—
 - (a) a maintenance order registered in, or confirmed by, a court of summary jurisdiction—
 - (i) under the Maintenance Orders (Facilities for Enforcement) Act 1920;
 - (ii) under Part II of the Maintenance Orders Act 1950;
 - (iii) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972;
 - or
 - (iv) under Part I of the Civil Jurisdiction and Judgments Act 1982;
 - (b) an order made by the High Court in England and Wales or by the Court of Session in Scotland and registered in accordance with section 36 of the Civil Jurisdiction and Judgments Act 1982 in a court of summary jurisdiction; or
 - (c) a maintenance order made by a magistrates' court by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972.”
- (3) In Article 97 of the Magistrates' Courts (Northern Ireland) Order 1981(14) (power to order payment by instalments)—
- (a) at the beginning there shall be inserted “(1)”;
 - (b) at the end there shall be added—

“(2) An order under this Article that a lump sum required to be paid under a maintenance order shall be paid by instalments (a “maintenance instalments order”) shall be treated for the purposes of Articles 85, 85B and 86 as a maintenance order.

(3) Paragraphs (6) and (8) of Article 85 (including those paragraphs as they apply for the purposes of Article 86) shall have effect in relation to a maintenance instalments order—

- (a) as if in paragraph (6), sub-paragraph (c) and the word “and” immediately preceding it were omitted; and
- (b) as if in paragraph (8)—
 - (i) the reference to the qualifying maintenance order were a reference to the maintenance order in respect of which the maintenance instalments order in question is made;
 - (ii) for the words “the person who applied for the maintenance order” there were substituted “the debtor”.

(4) Article 86 shall have effect in relation to a maintenance instalments order as if in paragraph (7) sub-paragraph (c) and the word “and” immediately preceding it were omitted.”.

Amendment of orders transferred under s. 102 of the Social Security Administration (Northern Ireland) Act 1992

10.—(1) In section 102 of the Social Security Administration (Northern Ireland) Act 1992(15) (recovery of expenditure on income support: additional amounts and transfer of orders), after subsection (4) (transfer of right to receive payments under the order to the dependent parent) there shall be inserted—

“(4A) In any case where—

- (a) notice is given to a court of summary jurisdiction under subsection (3) above,
- (b) payments under the order are required to be made by any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.), and
- (c) the clerk of petty sessions decides that payment by that method is no longer possible,

the clerk shall amend the order to provide that payments under the order shall be made by the liable parent to the collecting officer.”.

(2) After subsection (7) of that section (transfer back of right to receive payments under the order to the Department) there shall be inserted—

“(7A) Subject to subsections (7B) and (7C) below, in any case where—

- (a) notice is given to a court of summary jurisdiction under subsection (7) above, and
- (b) the method of payment under the order which subsists immediately before the day on which the transfer under subsection (7) above takes effect differs from the method of payment which subsisted immediately before the day on which the transfer under subsection (3) above (or, if there has been more than one such transfer, the last such transfer) took effect,

the clerk of petty sessions shall amend the order by reinstating the method of payment under the order which subsisted immediately before the day on which the transfer under subsection (3) above (or, as the case may be, the last such transfer) took effect.

(7B) The clerk shall not amend the order under subsection (7A) above if the Department gives notice in writing to him, on or before the day on which the notice under subsection (7) above is given, that the method of payment under the order which subsists immediately before the day on which the transfer under subsection (7) above takes effect is to continue.

(7C) In any case where—

- (a) notice is given to a court of summary jurisdiction under subsection (7) above,
- (b) the method of payment under the order which subsisted immediately before the day on which the transfer under subsection (3) above (or, if there has been more than one such transfer, the last such transfer) took effect was any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.), and
- (c) the clerk of petty sessions decides that payment by that method is no longer possible,

the clerk shall amend the order to provide that payments under the order shall be made by the liable parent to the collecting officer.”.

Amendments relating to registered or confirmed maintenance orders

11. The statutory provisions set out in Schedule 1 shall have effect subject to the amendments, being amendments to apply some of the preceding provisions of this Order with modifications to maintenance orders registered in or confirmed by courts of summary jurisdiction or registered in the High Court, specified in that Schedule.

Miscellaneous

Family proceedings rules

12.—(1) There shall be a committee known as the Northern Ireland Family Proceedings Rules Committee (“the Committee”) which may, with the concurrence of the Lord Chancellor, make rules of court for the purposes of family proceedings.

(2) Schedule 2 shall have effect with respect to the Committee.

(3) Without prejudice to the generality of paragraph (1), rules of court made under this Article—

- (a) may, for the purposes mentioned in paragraph (1), make, in relation to both the High Court and county courts, any provision of a kind which could be made by rules of court as defined by section 21(4) of the Interpretation Act (Northern Ireland) 1954⁽¹⁶⁾ and, in relation to county courts, any provision of a kind which could be made by county court rules (and accordingly in any statutory provision empowering the making of rules of court as so defined, any reference to the Supreme Court or the High Court shall, for the purposes of this Article, include a reference to a county court);
- (b) without prejudice to sub-paragraph (a), may provide that a decree pronounced by an officer of a class designated by the rules shall have the same effect as a decree pronounced by a county court judge;
- (c) may apply, with or without modifications, any rules of court (as so defined) and any county court rules;

⁽¹⁶⁾ 1954 c. 33 (N.I.)

- (d) may modify or exclude the application of any such rules or of any provision of the County Courts (Northern Ireland) Order 1980(17);
 - (e) without prejudice to sub-paragraph (a), may make with respect to proceedings in a county court any provision regarding the Official Solicitor or any solicitor of the Supreme Court which could be made by rules of court with respect to proceedings in the High Court;
 - (f) may provide for the enforcement of orders made in a county court as if they were orders of the High Court, and for that purpose apply any statutory provision, with or without modification;
 - (g) may provide that the sums payable under Article 13(1) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(18) to a solicitor or counsel acting in a matrimonial cause within the meaning of Article 48 of the Matrimonial Causes (Northern Ireland) Order 1978(19) which is treated for the purposes of that Article 48 as undefended shall, at his election, be either—
 - (i) such fixed amount specified in the rules as may be applicable under the rules; or
 - (ii) an amount ascertained on taxation or assessment of costs as provided by Schedule 2 to the Order of 1981;and may provide for modifying that Schedule in relation to any proceedings which for the purposes of that Article 48 are at any stage treated as pending in a divorce county court;
 - (h) which relate to the costs of proceedings, may—
 - (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(20), 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.
- (4) Rules of court made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946(21) shall apply accordingly.
- (5) In this Article—
- “family business” means business of any description in the High Court assigned to the Family Division and to no other Division by rules of court except business—
- (a) in connection with the grant and revocation of probate and letters of administration of estates of deceased persons;
 - (b) under Part VIII of the Mental Health (Northern Ireland) Order 1986(22) and the Enduring Powers of Attorney (Northern Ireland) Order 1987(23);
- “family proceedings” means proceedings which are family business and any corresponding proceedings in a county court.

(17) 1980 NI 3
(18) 1981 NI 8
(19) 1978 NI 15
(20) 1981 NI 8
(21) 1946 c. 36
(22) 1986 NI 4
(23) 1987 NI 16

Transfer of certain functions to the Lord Chancellor

13.—(1) The functions which immediately before the transfer date are exercisable by the Secretary of State under the provisions specified in Schedule 3 (which confer miscellaneous functions) are hereby transferred to the Lord Chancellor.

(2) In the provisions specified in Schedule 3 for “Secretary of State” wherever it occurs, there shall be substituted “Lord Chancellor”.

(3) In the construction and for the purposes of any statutory provision, judgment, decree, order, award, deed, contract, regulation, byelaw, certificate or other document passed or made before the transfer date, any reference to, or which is to be construed as a reference to, the Secretary of State shall, so far only as may be necessary for the purposes of this Article, be construed as a reference to the Lord Chancellor.

(4) The transfer of functions by this Article shall not affect any order, regulation, rule, appointment, direction, instruction, approval, requirement or authorisation made or given or other thing done by the Secretary of State before the transfer date, but any such matter shall, if in force immediately before that date, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Lord Chancellor.

(5) Anything commenced before the transfer date by or under the authority of the Secretary of State may, so far as it relates to any function transferred by this Article, be carried on or completed by or under the authority of the Lord Chancellor.

(6) Where, at the transfer date, any legal proceeding is pending to which the Secretary of State is a party and the proceeding relates to any of the functions transferred by this Article, the Lord Chancellor shall be substituted in the proceeding for the Secretary of State, and the proceeding shall not abate by reason of the substitution.

(7) In this Article “the transfer date” means the date on which this Article comes into operation.

Personal protection orders and exclusion orders

14.—(1) For Article 19 of the Domestic Proceedings (Northern Ireland) Order 1980⁽²⁴⁾ there shall be substituted—

“Breach of personal protection order or exclusion order

19.—(1) Any person who contravenes—

- (a) a personal protection order by reason of his molesting the person who applied for the order or a child of the family named in the order; or
- (b) an exclusion order by reason of his entry or attempted entry into the matrimonial home or other premises specified in the order, his damaging the matrimonial home or those premises, his interfering with any goods or services in connection with that home or those premises or his being in any area specified in the order as an area from which he is excluded,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

(2) Paragraphs (3) to (8) of Article 112 of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of orders other than for payment of money) shall apply for the purpose of the enforcement of a personal protection order or an exclusion order as they apply for the purpose of the enforcement of an order mentioned in paragraph (2) of that Article.”

(24) 1980 NI 5

(2) In Article 21(2) of that Order of 1980 (interim personal protection orders and interim exclusion orders) for the words from the beginning to “as aforesaid,” there shall be substituted—

“Where on an application for a personal protection order or exclusion order the court or resident magistrate is satisfied that there is imminent danger of physical injury to the applicant or a child of the family,”.

Oral testimony in divorce

15. In Article 3(4) of the Matrimonial Causes (Northern Ireland) Order 1978⁽²⁵⁾ (oral testimony not required in certain divorce cases) for “in any” there shall be substituted—

- (a) “in any case where the petitioner alleges two years' separation and the respondent consents to a decree being granted; or
- (b) in any case where the petitioner alleges five years' separation; or
- (c) in any other”.

Minor and consequential amendments and repeals

16.—(1) The statutory provisions set out in Schedule 4 shall have effect subject to the amendments, being minor amendments and amendments consequential on the provisions of this Order, specified in that Schedule.

(2) The statutory provisions specified in Schedule 5 are hereby repealed to the extent specified in column 3 of that Schedule.

N. H. Nicholls
Clerk of the Privy Council