
STATUTORY INSTRUMENTS

1978 No. 1045

Matrimonial Causes (Northern Ireland) Order 1978

PART III

**FINANCIAL RELIEF FOR PARTIES TO
MARRIAGE AND CHILDREN OF FAMILY**

Variation, discharge and enforcement of certain orders, etc.

Variation, discharge, etc., of certain orders for financial relief

33.—(1) Where the court has made an order to which this Article applies, then, subject to the provisions of this Article [^{F1}and of Article 30(1A)], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This Article applies to the following orders, that is to say—

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order;
- (c) any secured periodical payments order;
- (d) any order made by virtue of Article 25(3)(c) or 29(9)(b) (provision for payment of a lump sum by instalments);

[^{F2}(dd) any deferred order made by virtue of Article 25(1)(c) (lump sums) which includes provision made by virtue of—

(i) Article 27B(4), ^{F3}...

(ii) Article 27C, [^{F4}or]

[Article 27F(2),]

^{F5}(iii)

(provision in respect of pension rights [^{F6}or pension compensation rights]);]

- (e) any order for a settlement of property under Article 26(1)(b) or for a variation of settlement under Article 26(1)(c) or (d), being an order made on or after the grant of a decree of judicial separation.

[^{F7}(f) a pension sharing order under Article 26A [^{F8}, or a pension compensation sharing order under Article 26D,] which is made at a time before the decree has been made absolute.]

[^{F1}(2A) Where the court has made an order referred to in paragraph (2)(a), (b) or (c), then, subject to the provisions of this Article, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]

[^{F2}(2B) Where the court has made an order referred to in paragraph (2)(dd)(ii), this Article shall cease to apply to the order on the death of either of the parties to the marriage.]

(3) The powers exercisable by the court under this Article in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this Article in relation to an order for a settlement under Article 26(1)(b) or for a variation of settlement under Article 26(1)(c) or (d) except on an application made in proceedings—

- (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
- (b) for the dissolution of the marriage in question.

[^{F7}(4A) In relation to an order which falls within sub-paragraph (f) of paragraph (2) (“the paragraph (2) order”)—

- (a) the powers conferred by this Article may be exercised—
 - (i) only on an application made before the paragraph (2) order has or, but for sub-paragraph (b), would have taken effect; and
 - (ii) only if, at the time when the application is made, the decree has not been made absolute; and
- (b) an application made in accordance with sub-paragraph (a) prevents the paragraph (2) order from taking effect before the application has been dealt with.

(4B) No variation of a pension sharing order [^{F9}, or a pension compensation sharing order,] shall be made so as to take effect before the decree is made absolute.

(4C) The variation of a pension sharing order [^{F10}, or a pension compensation sharing order,] prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.

(4D) Regulations under paragraph (4C) shall be subject to [^{F11}negative resolution].

(5) No property adjustment order [^{F7} or pension sharing order][^{F12} or pension compensation sharing order] shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under Article 25, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under Article 25 or under Article 29).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application under this Article relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

[^{F1}(7) In exercising the powers conferred by this Article the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—

- (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;

(b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]

(8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in paragraph (6) on the ground that they ought to have taken into account the possibility that the court might permit an application under this Article to be made after that period by the person entitled to payments under the order; but this paragraph shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this Article.

(9) In considering for the purposes of paragraph (6) the question when representation was first taken out, a grant limited to part of the estate of the deceased shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

[^{F1}(10) Where the court, in exercise of its powers under this Article, decides to vary or decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to Article 30(1) and (2), the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]

[^{F13}(11) Paragraph (12) applies where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a [^{F14}maintenance assessment][^{F14}maintenance calculation] ([^{F15}“the assessment”][^{F15}“the calculation”]) is made with respect to one or more but not all of the children in whose favour the order is in force; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which [^{F15}the assessment][^{F15}the calculation] was made, for the variation or discharge of the order.

(12) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which [^{F16}the assessment][^{F16}the calculation] took effect or any later date.

(13) Paragraph (14) applies where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991 is affected by a [^{F17}maintenance assessment][^{F17}maintenance calculation];
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the [^{F17}maintenance assessment][^{F17}maintenance calculation] was made, for the spousal order to be varied or discharged.

(14) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.

(15) For the purposes of paragraphs (13) and (14), an order is affected if it ceases to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.

(16) Paragraphs (12) and (14) are without prejudice to any other power of the court to direct that the variation or discharge of an order under this Article shall take effect from a date earlier than that on which the order for variation or discharge was made.]

- F1 1989 NI 4
- F2 1995 NI 22
- F3 Word in art. 33(2)(dd)(i) repealed (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), Sch. 5 para. 8(2)(a), **Sch. 10 Pt. IV** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F4 Word in art. 33(2)(dd)(ii) added (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(b)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F5 Art. 33(2)(dd)(iii) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(c)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F6 Words in art. 33(2)(dd) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(2)(d)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F7 1999 NI 11
- F8 Words in art. 33(2)(f) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(3)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F9 Words in art. 33(4B) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(4)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F10 Words in art. 33(4C) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(5)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F11 Words in art. 33(4D) substituted (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. 18 para. 114(5)** (with arts. 28-31)
- F12 Words in art. 33(5) inserted (6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 5 para. 8(6)** (with s. 73); S.R. 2011/108, art. 2(2), Sch.
- F13 SR 1993/98
- F14 Words in art. 33(11)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(a)**; S.R. 2003/53, art. 3(1), **Sch.**
- F15 Words in art. 33(11)(c)(d) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(b)**; S.R. 2003/53, art. 3(1), **Sch.**
- F16 Words in art. 33(12) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(b)**; S.R. 2003/53, art. 3(1), **Sch.**
- F17 Words in art. 33(13)(a)(c) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 5(a)**; S.R. 2003/53, art. 3(1), **Sch.**

Payment of certain arrears unenforceable without the leave of the court

34.—(1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of the court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.

(2) The court, on an application for the grant of leave under this Article, may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may remit the payment of the arrears or of any part thereof.

Orders for repayment in certain cases of sums paid under certain orders

35.—(1) Where on an application made under this Article in relation to an order to which this Article applies it appears to the court that by reason of—

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) This Article applies to the following orders, that is to say—

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order; and
- (c) any secured periodical payments order.

(3) An application under this Article may be made by the person liable to make payments under an order to which this Article applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this Article may be made in proceedings in the High Court for—

- (a) the variation or discharge of the order to which this Article applies, or
- (b) leave to enforce, or the enforcement of, the payment of arrears under that order;

but when not so made shall be made to a county court, ^{F18}....

(5) The jurisdiction conferred on a county court by this Article shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this paragraph be exercisable by a county court.

(6) An order under this Article for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

F18 Words in art. 35(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(2), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

Changes to legislation:

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Cross Heading: Variation, discharge and enforcement of certain orders, etc..