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STATUTORY INSTRUMENTS

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**1978 No. 1045**

**Matrimonial Causes (Northern Ireland) Order 1978**

PART V

MISCELLANEOUS AND SUPPLEMENTAL

**The court**

**48.**—(1) Subject to the following provisions of this Article, any reference in this Order to “the court” (except where the context shows that it is a reference to some particular court) is a reference to—

(a) the High Court; or

[<sup>F1</sup>(b) a county court.]

<sup>F2</sup> .....

<sup>F3</sup>(1A) .....

<sup>F3</sup>(1B) .....

<sup>F4</sup>(2) .....

(3) <sup>F5</sup>... Rules of court—

(a) shall provide for the transfer to the High Court—

(i) of any matrimonial cause pending in a <sup>F6</sup>... county court which ceases to be undefended, and

(ii) of any matrimonial cause so pending, where the transfer appears to the <sup>F6</sup>... county court to be desirable;

(b) may provide for the transfer to the High Court of any matrimonial cause which remains undefended;

(c) may provide for the transfer or retransfer from the High Court to a <sup>F7</sup>... county court of any matrimonial cause which is, or again becomes, undefended;

(d) shall define the circumstances in which any matrimonial cause is to be treated for the purposes of this paragraph as undefended.

(4) The jurisdiction of a <sup>F8</sup>... county court to exercise any power under Part III or IV (except a power under Article 29 or 37 or a power under Article 35, 38 or 40 <sup>F9</sup>...) shall, except to the extent that rules of court otherwise permit and, in particular, without prejudice to paragraphs (5) and (7), be exercisable only in connection with a petition, decree or order pending in or made by such a court.

(5) <sup>F10</sup>... Rules of court may provide for the transfer or retransfer from a <sup>F11</sup>... county court to the High Court, or from the High Court to a <sup>F11</sup>... county court, of any proceedings for the exercise of a power under Part III or IV (except proceedings on an application under Article 35, 38 or 40).

*Status: Point in time view as at 31/10/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, PART V. (See end of Document for details)*

(6) The power conferred by paragraphs (3) and (5) includes power to provide for the removal of proceedings at the direction of the High Court; but nothing in this Article affects any other power of the High Court to remove proceedings to that court from a county court or any power to remit proceedings from that court to a county court.

(7) A court shall have jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of paragraph (5).

(8) Any jurisdiction conferred on a <sup>F12</sup>... county court by virtue of this Order shall be exercisable notwithstanding that by reason of any amount claimed the jurisdiction would not but for this paragraph be exercisable by a county court.

(9) Without prejudice to [<sup>F13</sup> Article 61 of the County Courts (Northern Ireland) Order 1980 ] (cases stated), rules of court shall make provision for an appeal to the Court of Appeal from any decree or order made by [<sup>F14</sup> a judge of] a <sup>F15</sup>... county court in the exercise of the jurisdiction conferred by any provision of this Order (other than Article 34, 35, 38 or 40)[<sup>F16</sup> or of the Children (Northern Ireland) Order 1995], or from the dismissal [<sup>F14</sup> by such a judge] of any petition or application under such a provision (other than as aforesaid), upon a point of law, a question of fact or the admission or rejection of any evidence.

(10) A person dissatisfied with an order made by any county court in the exercise of the jurisdiction conferred by Article 35, 38 or 40 or with the dismissal of any application instituted by him under that Article shall be entitled to appeal from the order or dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts [<sup>F13</sup> (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order shall apply accordingly].

(11) In this Article “matrimonial cause” means any action for divorce, nullity of marriage or judicial separation<sup>F17</sup> . . . .

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| <b>F1</b>  | Art. 48(1)(b) substituted (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), <b>Sch. 1 para. 76(6)(a)</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3)                           |
| <b>F2</b>  | Words in art. 48(1) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 41(2)(b), Sch. 18 Pt. 3; S.I. 2006/1014, <b>art. 2(a)</b> , Sch. 1 paras. 10, 12(a), 29, 30(c) |
| <b>F3</b>  | Art. 48(1A)(1B) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(b), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)           |
| <b>F4</b>  | Art. 48(2) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(b), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)                |
| <b>F5</b>  | Words in art. 48(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(c), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)       |
| <b>F6</b>  | Word in art. 48(3)(a) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(d), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)     |
| <b>F7</b>  | Word in art. 48(3)(c) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(d), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)     |
| <b>F8</b>  | Word in art. 48(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(e), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)        |
| <b>F9</b>  | Words in art. 48(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(e), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)       |
| <b>F10</b> | Words in art. 48(5) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(f), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)       |
| <b>F11</b> | Word in art. 48(5) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(f), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)        |
| <b>F12</b> | Word in art. 48(8) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(g), <b>Sch. 9 Pt. 1</b> (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)        |

- F13** 1980 NI 3
- F14** 1980 NI 5
- F15** Word in art. 48(9) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(6)(h), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F16** 1995 NI 2
- F17** 1989 NI 4

## Jurisdiction of court

49.—(1) Paragraphs (2) to (6) shall have effect with respect to—

- (a) the jurisdiction of the court to entertain—
  - (i) proceedings for divorce, judicial separation or nullity of marriage; and
  - (ii) proceedings for financial provision under Article 29; and

<sup>F18</sup>(b) .....

[<sup>F19</sup>(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in Northern Ireland on the date when the proceedings are begun.]

[<sup>F19</sup>(3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage—
  - (i) is domiciled in Northern Ireland on the date when the proceedings are begun; or
  - (ii) died before that date and either was at death domiciled in Northern Ireland, or had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.]

<sup>F20</sup>(3A) .....

<sup>F21</sup>(4) .....

[<sup>F22</sup>(5) The court shall not entertain an application for financial provision under Article 29 unless it has jurisdiction to do so by virtue of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011.]

(6) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of paragraph (2) or (3) (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under paragraph (2) or (3).

(7) [<sup>F23</sup>Subject to Article 19(1) of the Council Regulation,]Schedule 1 shall have effect as to the cases in which matrimonial proceedings in Northern Ireland are to be, or may be, stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in the Schedule prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule.

[<sup>F19</sup>(8) In this Article and in Schedule 1—

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[<sup>F24</sup>“the Council Regulation” means Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;]

“Contracting State” means

- (a) [<sup>F25</sup>a party to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom, and]
- (b) a party which has subsequently adopted the Council Regulation.]

**F18** Art. 49(1)(b) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6\), ss. 19, 20\(2\), Sch. 2, Sch. 3; S.R. 2009/356, art. 2](#)

**F19** [S.I. 2001/660](#)

**F20** [S.I. 2005/265](#)

**F21** Art. 49(4) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6\), ss. 19, 20\(2\), Sch. 2, Sch. 3; S.R. 2009/356, art. 2](#)

**F22** Art. 49(5) substituted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\), reg. 1\(1\), Sch. 7 para. 18\(4\)](#)

**F23** [S.I. 2005/265](#)

**F24** [S.I. 2005/265](#)

**F25** [S.I. 2005/265](#)

### Matrimonial relief in respect of polygamous marriages

**50.**—(1) A court shall not be precluded from granting matrimonial relief by reason only that [<sup>F26</sup>either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person].

(2) In this Article “matrimonial relief” means—

- (a) any decree under Part II;
- (b) a financial provision order under Article 29;
- (c) an order under Article 37 altering a maintenance agreement;
- (d) an order under any provision of this Order which confers a power exercisable in connection with, or in connection with proceedings for, any such decree or order as is mentioned in sub-paragraphs ( a ) to ( c );

[<sup>F27</sup>(dd) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;]

[<sup>F28</sup>(e) an order under the Domestic Proceedings (Northern Ireland) Order 1980 .]

[<sup>F26</sup>(3) Provision may be made by rules of court—

- (a) for requiring notice of proceedings brought by virtue of this Article to be served on any additional spouse of a party to the marriage in question; and
- (b) for conferring on any such additional spouse the right to be heard in the proceedings,

in such cases as may be specified in the rules.]

**F26** [1995 NI 20](#)

**F27** [1989 NI 4](#)

**F28** [1980 NI 5](#)

**Collusion, etc.**

51.—(1) Without prejudice to any provision of this Order which empowers or requires the court to dismiss a petition for divorce or judicial separation or to dismiss an application for a decree nisi of divorce to be made absolute, nothing in any statutory provision relating to the general jurisdiction of the court or in any rule of law shall be taken as empowering or requiring the court to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree nisi or on the ground of any conduct on the part of the petitioner.

(2) Collusion shall not be a bar to the granting of a decree of nullity.

(3) <sup>F29</sup> .....

**F29** Art. 51(3) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6\), ss. 19, 20\(2\), Sch. 2, Sch. 3; S.R. 2009/356, art. 2](#)

**Evidence**

52.—(1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

**Parties to proceedings under this Order**

53.—(1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.

(2) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of paragraph (1) where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.

(3) Where in pursuance of paragraph (1) a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.

(4) Rules of court may make provision, in cases not falling within paragraph (1), with respect to the joinder as parties to proceedings under this Order of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined.

(5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

*Art. 54 rep. by 1993 NI 6*

**Extension of section 17 of married Women's Property Act 1882**

55. In section 17 of the Married Women's Property Act 1882 (power of judge of High Court or county court to decide questions between husband and wife as to property) and in section 3 of the

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Law Reform (Husband and Wife) Act (Northern Ireland) 1964 (which extends that section), any reference to a husband or a wife shall include a reference to—

- (a) either of the parties to a void marriage, whether or not it has been annulled;
- (b) either of the parties to a voidable marriage which has been annulled; and
- (c) either of the parties to a marriage which has been dissolved;

[<sup>F30</sup>but, subject to Article 55A, an application] under that section 17 (or that section as so extended) by a party to a marriage which has been dissolved or annulled shall not be made more than three years after the date of the dissolution or annulment and such an application by a party to a void marriage which has not been annulled shall not be made more than three years after the parties ceased to live with each other in the same household.

**F30** Words in art. 55 substituted (18.4.2011) by The Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1(1), 7(2) (with reg. 1(2))

[<sup>F31</sup>**Extension of time limit: mediation**

**55A.**—(1) Paragraph (2) applies where—

- (a) there is mediation in relation to a relevant cross border dispute giving rise to a claim under section 17 of the Married Woman’s Property Act 1882; and
- (b) the period of 3 years referred to in Article 55 (“the limitation period”) would, apart from this Article, expire—
  - (i) in the period of 8 weeks after the date on which the mediation ends;
  - (ii) on the date on which the mediation ends; or
  - (iii) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.

(2) Where this paragraph applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party notifies all of the other parties of that party’s withdrawal,
- (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
- (e) a period of 14 days expires after the date on which the mediator’s tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.

(4) In this Article—

“the Directive” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

**F31** Art. 55A inserted (18.4.2011) by The Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), regs. 1(1), **7(3)** (with reg. 1(2))

*Art. 56 rep. with saving by 1980 NI 5*

### **Abolition of right to claim damages for adultery**

**57.** After the commencement of this Article no person shall be entitled to petition the court for, or include in a petition a claim for, damages from any other person on the ground of adultery with the wife of the first-mentioned person.

### **Abolition of actions for enticement and harbouring of a spouse**

**58.** No person shall be liable in tort—

- (a) to any other person on the ground only of his having induced the wife or husband of that other person to leave or remain apart from the other spouse;
- (b) to any other person for harbouring the wife of that other person,

except in the case of a cause of action accruing before the commencement of this Article if an action in respect thereof has been begun before that commencement.

### **Abolition of right to claim restitution of conjugal rights**

**59.** After the commencement of this Article no person shall be entitled to petition the court for restitution of conjugal rights.

### **Abolition of wife's agency of necessity**

**60.** Any rule of law or equity conferring on a wife authority, as agent of necessity of her husband, to pledge his credit or borrow money on his credit is hereby abrogated.

*Art. 61 rep. by 1984 NI 14*

### **Transitional provisions and savings**

**62.** Schedule 3 shall have effect for the purpose of—

- (a) the transition to the provisions of this Order from the law in force before the commencement of this Order;
- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Order; and
- (c) the assimilation in certain respects to orders under this Order of orders made, or deemed to have been made, under the Matrimonial Causes Act (Northern Ireland) 1939 or the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 .

*Art.63(a), with Schedules 3, 4, effects amendments; para.(b), with Schedules 3, 5, effects repeals*

**Status:**

Point in time view as at 31/10/2016.

**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, PART V.