
STATUTORY INSTRUMENTS

1989 No. 677

**The Matrimonial and Family Proceedings
(Northern Ireland) Order 1989**

PART III

FINANCIAL RELIEF IN MATRIMONIAL PROCEEDINGS

Provisions relating to powers of courts of summary jurisdiction

Orders for financial relief made by courts of summary jurisdiction in matrimonial proceedings

12.—(1) For Article 5 of the Domestic Proceedings (Northern Ireland) Order 1980⁽¹⁾ there shall be substituted the following Article—

“Matters to which court is to have regard in exercising its powers under Article 4

5.—(1) Where an application is made for an order under Article 4, it shall be the duty of the court, in deciding whether to exercise its powers under that Article and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(2) As regards the exercise of its powers under paragraph (1)(a) or (b) of Article 4, the court shall in particular have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

(3) As regards the exercise of its powers under paragraph (1)(c) or (d) of Article 4, the court shall in particular have regard to the following matters—

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
- (f) the matters mentioned in relation to the parties to the marriage in sub-paragraphs (a) and (b) of paragraph (2).

(4) As regards the exercise of its powers under Article 4 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—

- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
- (c) to the liability of any other person to maintain the child.”.

(2) In Article 7(2) of that Order (duration of periodical payments orders in favour of children), in sub-paragraph (a), for the words “unless the court thinks it right in the circumstances of the case to specify a later date” there shall be substituted the words “unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date”.

(3) In Article 22(11) of that Order (variation and revocation of orders for periodical payments) for the words “including any change” there shall be substituted the words “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” .

Orders for payments which have been agreed by the parties

13. For Article 8 of the Domestic Proceedings (Northern Ireland) Order 1980(2) there shall be substituted the following Article—

“Orders for payments which have been agreed by the parties

8.—(1) Either party to a marriage may apply to the court for an order under this paragraph on the ground that either the party making the application or the other party to the marriage has agreed in writing to make such financial provision as may be specified in the application and, subject to paragraph (4), the court on such an application may, if—

- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.

(2) Where—

- (a) a party to a marriage has applied for an order under Article 4; and
- (b) before the determination of that application, both parties to the marriage request the court to make an order that one party to the marriage shall make the financial provision specified in the request,

the court may, subject to paragraph (4), make such an order if—

- (i) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make the financial provision specified in the request; and
- (ii) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder;

and if an order is made under this paragraph, the application made for an order under Article 4 shall be treated as if it had been withdrawn.

(3) In this Article “financial provision” means the provision mentioned in any one or more of the following sub-paragraphs, that is to say—

- (a) the making of periodical payments by one party to the other,
- (b) the payment of a lump sum by one party to the other,
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this Article to the financial provision specified in an application made under paragraph (1) or a request made under paragraph (2) or specified by the court under paragraph (6) is a reference to the type of provision specified in the application or request or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(4) Where the financial provision specified in an application under paragraph (1) or a request under paragraph (2) includes or consists of provision in respect of a child of the family, the court shall not make an order under paragraph (1) or (2), as the case may be, unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(5) Where on an application under paragraph (1) or a request under paragraph (2) the court decides—

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application or request, or
- (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and

- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then, if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.

(6) Subject to paragraph (8), the provisions of Article 6, shall apply in relation to an order under this Article which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under Article 4(1)(a).

(7) Subject to paragraph (8), the provisions of Article 7 shall apply in relation to an order under this Article for the making of financial provision in respect of a child of the family as they apply in relation to an order under Article 4(1)(c) or (d).

(8) Where the court makes an order under paragraph (2) which contains provision for the making of periodical payments and, by virtue of that paragraph, an application for an order under Article 4 is treated as if it has been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under Article 4 or any later date.

(9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under paragraph (1), the court shall not make an order under that paragraph unless there is produced to the court such evidence as may be prescribed of—

- (a) the consent of the respondent to the making of the order,
- (b) the financial resources of the respondent, and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

(10) The making of an order under paragraph (1) or (2) shall not prevent the making of an order under Article 4 on a subsequent application under Article 3, and, without prejudice to the power of the court under Article 22(2) to revoke the first-mentioned order, on the making of an order under Article 4 the first-mentioned order shall cease to have effect.

(11) In any of the following provisions of this Order references to an application under this Article shall be construed as including references to a request under paragraph (2), and references to an applicant or respondent, in relation to any such request, shall be construed as references to the applicant or respondent in relation to the pending application under Article 4.”

Variation of consent orders by courts of summary jurisdiction

14. For Article 22(2) of the Domestic Proceedings (Northern Ireland) Order 1980(3) (under which the court can vary a consent order by ordering the payment of a lump sum if the consent order provided for the payment of a lump sum) there shall be substituted the following paragraph—

“(2) Where the court has made an order under Article 8 for the making of periodical payments by a party to a marriage the court shall have power, on an application made under this Article, to vary or revoke that order and also to make an order for the payment of a lump sum by that party either—

- (a) to the other party to the marriage, or
- (b) to a child of the family or to that other party for the benefit of that child.”.

Domestic proceedings in courts of summary jurisdiction to include applications to alter maintenance agreements

15. In Article 88 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁴⁾ (which defines what proceedings are domestic proceedings) after paragraph (c) there shall be inserted the following paragraph—

“(cc) under Article 37 of the Matrimonial Causes (Northern Ireland) Order 1978;”.