
STATUTORY INSTRUMENTS

1998 No. 1071

**The Family Homes and Domestic
Violence (Northern Ireland) Order 1998**

Jurisdiction and procedure, etc.

Jurisdiction of courts and procedure

34.—(1) In this Order “the court” means the High Court, a county court or a court of summary jurisdiction.

(2) Paragraph (1) is subject to the provision made by or under the following provisions of this Article, to Article 38 and to any express provision as to the jurisdiction of any court made by any other provision of this Order.

(3) The Lord Chancellor may by order specify proceedings under this Order which may only be commenced in—

- (a) a specified level of court,
- (b) a court which falls within a specified class of court, or
- (c) a particular court determined in accordance with, or specified in, the order.

(4) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Order may only be commenced in—

- (a) a specified level of court,
- (b) a court which falls within a specified class of court, or
- (c) a particular court determined in accordance with, or specified in, the order.

(5) The Lord Chancellor may by order provide that in specified circumstances the whole or any specified part of any specified proceedings under this Order is to be transferred to—

- (a) a specified level of court,
- (b) a court which falls within a specified class of court, or
- (c) a particular court determined in accordance with, or specified in, the order.

(6) An order under paragraph (5) may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.

(7) An order under paragraph (5) may make such provision as the Lord Chancellor thinks appropriate for excluding specified proceedings from the operation of any statutory provision which would otherwise govern the transfer of those proceedings or any part of them.

(8) For the purposes of paragraphs (3), (4) and (5), there are three levels of court—

- (a) the High Court;
- (b) a county court; and
- (c) a court of summary jurisdiction.

(9) Except to the extent that the Lord Chancellor by order otherwise provides, the jurisdiction of any specified county court under this Order shall be exercisable throughout Northern Ireland (and accordingly Article 3(3)(b) of the County Courts (Northern Ireland) Order 1980 (jurisdiction exercisable throughout county court division) shall not apply).

(10) In this Article “specified” means specified by an order under this Article and a class of court so specified may be described by reference to a description of proceedings and may include different levels of court.

(11) Article 165 of the Children (Northern Ireland) Order 1995 (provision which may be made by rules of court) shall apply for the purpose of giving effect to this Order as it applies for the purpose of giving effect to that Order, except that in the application of that Article by virtue of this paragraph “relevant proceedings” means any application made, or proceedings brought, under this Order and any part of such proceedings.

Provision for third parties to act on behalf of victims of domestic violence

35.—(1) Rules of court may provide for a prescribed person, or any person in a prescribed category, (“a representative”) to act on behalf of another in relation to any family proceedings.

(2) Rules made under this Article may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.

(3) Rules made under this Article may prescribe—

- (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and
- (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Order when a representative is acting on behalf of another.

(4) Any rules made under this Article may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.

(5) Any such rules may be replaced by further rules made under this Article.

Provision for separate representation for children

36.—(1) The Lord Chancellor may by regulations provide for the separate representation of children in proceedings which relate to any matter in respect of which a question has arisen, or may arise, under this Order.

(2) The regulations may provide for such representation only in specified circumstances.

Contempt proceedings

37. The powers of the court in relation to contempt of court arising out of a person’s failure to comply with an order under this Order may be exercised by the relevant judicial authority.

Courts of summary jurisdiction

38.—(1) A court of summary jurisdiction shall not be competent to entertain any application, or make any order, involving any disputed question as to a party’s entitlement to occupy any property by virtue of a beneficial estate or a contract or by virtue of any statutory provision giving him the right to remain in occupation, unless it is unnecessary to determine the question in order to deal with the application or make the order.

(2) A court of summary jurisdiction may decline jurisdiction in any proceedings under this Order if it considers that the case can more conveniently be dealt with by another court.

(3) The powers of a court of summary jurisdiction under Article 112(2) of the Magistrates' Courts (Northern Ireland) Order 1981 to suspend or rescind orders shall not apply in relation to any order made under this Order.

(4) A juvenile court (that is to say, a court of summary jurisdiction constituted in accordance with Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968) sitting for the purpose of exercising any jurisdiction conferred by or under this Order may be known as a family proceedings court.

Appeals

39.—(1) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the High Court against—

- (a) the making by a county court of any order under this Order; or
- (b) any refusal by a county court to make such an order,

as if the decision had been made in the exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

(2) An appeal shall not lie to the High Court under paragraph (1)—

- (a) on an appeal from a court of summary jurisdiction; or
- (b) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 in the same proceedings.

(3) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the county court against—

- (a) the making by a court of summary jurisdiction of any order under this Order; or
- (b) any refusal by a court of summary jurisdiction to make such an order.

(4) If the court of summary jurisdiction referred to in paragraph (3) is a family proceedings court—

- (a) the county court to which the appeal under that paragraph lies shall be such county court as may be specified by order made by the Lord Chancellor for the purposes of this paragraph; and
- (b) section 178 of the Children and Young Persons Act (Northern Ireland) 1968 shall not apply where such a county court deals with such an appeal;

and except to the extent that the Lord Chancellor by order otherwise provides, the jurisdiction of any such specified county court under this Order shall be exercisable throughout Northern Ireland (and accordingly Article 3(3)(b) of the County Courts (Northern Ireland) Order 1980 (jurisdiction exercisable throughout county court division) shall not apply.

(5) Where a court of summary jurisdiction has power, in relation to any proceedings under this Order, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal shall lie against any exercise of that power by that court of summary jurisdiction.

(6) Without prejudice to 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 order made by a county court under this Order, or from the dismissal of any application for such an order, upon a point of law, a question of fact or the admission or rejection of any evidence, where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 in the same proceedings.

(7) In paragraphs (8) to (10) “appellate court” means the High Court or the county court, as the case may be.

(8) On an appeal under this Article, the appellate court may make such orders as may be necessary to give effect to its determination of the appeal.

(9) Where an order is made under paragraph (8), the appellate court may also make such incidental or consequential orders as appear to it to be just.

(10) Any order of the appellate court made on an appeal under this Article (other than one directing that an application be re-heard by the county court or a court of summary jurisdiction) shall, for the purposes—

- (a) of the enforcement of the order, and
- (b) of any power to vary, revive or discharge orders,

be treated as if it were an order of the court from which the appeal was brought and not an order of the appellate court.

(11) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under Article 34(5).

(12) Except to the extent provided for in any order made under paragraph (11), no appeal may be made against any decision of a kind mentioned in that paragraph.

Orders and regulations

40.—(1) Orders and regulations made under this Order by the Lord Chancellor shall be subject to annulment in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(2) Orders made under this Order by the Lord Chancellor or the Secretary of State may make such incidental, supplemental, consequential and transitional provision as he considers expedient.

(3) Orders made under this Article by the Department of Finance and Personnel and regulations made under this Order by the Department of the Environment shall be subject to negative resolution.

(4) Orders made under this Order by the Department of Finance and Personnel and regulations made under this Order by the Department of the Environment may make such incidental, supplemental, consequential and transitional provision as it considers expedient.

Amendments, saving and transitional provisions, and repeals

41.—(1) The statutory provisions specified in Schedule 3 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) Schedule 4 (which contains saving and transitional provisions) shall have effect.

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