

## SCHEDULES

### SCHEDULE 16

#### FINANCIAL RELIEF IN COURT OF SUMMARY JURISDICTION ETC.: NORTHERN IRELAND

##### PART 7

##### ARREARS AND REPAYMENTS

*Orders for repayment after cessation of order because of subsequent civil partnership etc.*

- 44 (1) Sub-paragraphs (3) and (4) apply if—
- (a) an order made under paragraph 2(1)(a) or Part 2 or 3 has, under paragraph 26(2), ceased to have effect because of the formation of a subsequent civil partnership or marriage by the party (“R”) in whose favour it was made, and
  - (b) the person liable to make payments under the order (“P”) made payments in accordance with it in respect of a relevant period in the mistaken belief that the order was still subsisting.
- (2) “Relevant period” means a period after the date of the formation of the subsequent civil partnership or marriage.
- (3) No proceedings in respect of a cause of action arising out of the circumstances mentioned in sub-paragraph (1)(a) and (b) is maintainable by P (or P’s personal representatives) against R (or R’s personal representatives).
- (4) But on an application made under this paragraph by P (or P’s personal representatives) against R (or R’s personal representatives) the court—
- (a) may order the respondent to an application made under this paragraph to pay to the applicant a sum equal to the amount of the payments made in respect of the relevant period, or
  - (b) if it appears to the court that it would be unjust to make that order, may—
    - (i) order the respondent to pay to the applicant such lesser sum as it thinks fit, or
    - (ii) dismiss the application.
- (5) An order under this paragraph 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.
- (6) An application under this paragraph—
- (a) may be made in proceedings in the High Court for leave to enforce, or in proceedings in the High Court or a court of summary jurisdiction for the enforcement of, the payment of arrears under an order made under paragraph 2(1)(a) or Part 2 or 3, but
  - (b) if not made in such proceedings, must be made to a county court,

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*Status: This is the original version (as it was originally enacted).*

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and accordingly references in this paragraph to the court are references to the High Court or a county court or a court of summary jurisdiction, as the circumstances require.

- (7) The jurisdiction conferred on a county court by this paragraph is exercisable by a county court even though, because of the amount claimed in an application under this paragraph, the jurisdiction would not but for this sub-paragraph be exercisable by a county court.
- (8) A person dissatisfied with an order made by a county court in the exercise of the jurisdiction conferred by this paragraph or with the dismissal of any application instituted by him under the provisions of this paragraph shall be entitled to appeal from the order or from the dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) and the appeal brought under Part 6 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.
- (9) Subject to sub-paragraph (10), the collecting officer of a court of summary jurisdiction to whom any payments under an order made under paragraph 2(1)(a) or Part 2 or 3, or under an attachment of earnings order made to secure payments under the first-mentioned order, are required to be made is not liable—
- (a) for any act done by him in pursuance of the first-mentioned order after the date on which that order or a provision of it ceased to have effect because of the formation of a subsequent civil partnership or marriage by the person entitled to payments under it, and
  - (b) for any act done by him after that date in accordance with any statutory provision specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with.
- (10) Sub-paragraph (9) applies if (but only if) the act—
- (a) was one which he would have been under a duty to do had the order under paragraph 2(1)(a) or Part 2 or 3 not ceased to have effect, and
  - (b) was done before notice in writing of the formation of the subsequent civil partnership or marriage was given to him by or on behalf of—
    - (i) the person entitled to payments under the order,
    - (ii) the person liable to make payments under it, or
    - (iii) the personal representatives of either of them.
- (11) In this paragraph—
- “collecting officer” means the officer mentioned in Article 85(2) or (3) of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/ 1675 (N.I. 26)), and
- “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33(N.I.)).