

*Status: Point in time view as at 14/03/2012.*

*Changes to legislation: Civil Partnership Act 2004, Cross Heading: Variation of orders for periodical payments: further provisions is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 16

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

##### Modifications etc. (not altering text)

- C1** Sch. 16: functions transferred (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(1), **Sch. 17 para. 21(b)** (with arts. 15(6), 28-31)

### PART 6

#### VARIATION ETC. OF ORDERS

##### *Variation of orders for periodical payments: further provisions*

- 35 (1) The power of the court under paragraphs 30 to 34 to vary an order for the making of periodical payments includes power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under Article 85(3) (a) to (d) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (2) Sub-paragraph (1) is subject to paragraph 37.
- 36 (1) If—
- (a) a court of summary jurisdiction has made an order under this Schedule for the making of periodical payments, and
  - (b) payments under the order are required to be made by any method of payment falling within Article 85(7) of the 1981 Order (standing order, etc.),
- an application may be made under this sub-paragraph to the clerk of petty sessions for the order to be varied as mentioned in sub-paragraph (2).
- (2) Subject to sub-paragraph (4), if an application is made under sub-paragraph (1), the clerk, after—
- (a) serving written notice of the application on the respondent, and
  - (b) allowing the respondent, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations,
- may vary the order to provide that payments under the order are to be made to the collecting officer.
- (3) The clerk may proceed with an application under sub-paragraph (1) even if the respondent has not received written notice of the application.
- (4) If an application has been made under sub-paragraph (1), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (2), refer the

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matter to the court which, subject to paragraph 37, may vary the order by exercising one of its powers under Article 85(3)(a) to (d) of the 1981 Order.

- 37 (1) Before varying the order by exercising one of its powers under Article 85(3)(a) to (d) of the 1981 Order, the court must have regard to any representations made by the parties to the application.
- (2) If the court does not propose to exercise its power under Article 85(3)(c) or (d) of the 1981 Order, the court must, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under Article 85(5)(b).
- 38 (1) Article 85(5) of the 1981 Order (power of court to order that account be opened) applies for the purposes of paragraphs 35 and 36(4) as it applies for the purposes of Article 85.
- (2) None of the powers of the court, or of the clerk of petty sessions, conferred by paragraphs 35 to 37 and sub-paragraph (1) is exercisable in relation to an order under this Schedule for the making of periodical payments which is not a qualifying maintenance order (within the meaning of Article 85 of the 1981 Order).

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