STATUTORY RULES OF NORTHERN IRELAND

2005 No. 498

FAMILY PROCEEDINGS

SUPREME COURT

COUNTY COURTS

The Family Proceedings (Civil Partnership: Staying of Proceedings) Rules (Northern Ireland) 2005

Made - - - -	*7th November 2005*
Coming into operation	
To be laid before Parliament	*5th December 2005*

We, the Family Proceedings Rules Committee, in exercise of the powers conferred on us by Article 12 of the Family Law (Northern Ireland) Order 1993(**1**) as extended by section 231 of the Civil Partnership Act 2004(**2**) hereby, with the concurrence of the Lord Chancellor, make the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Family Proceedings (Civil Partnership: Staying of Proceedings) Rules (Northern Ireland) 2005 and shall come into operation on the 5th December 2005.

(2) In these Rules—

(a) "civil partnership proceedings" means proceedings under the Civil Partnership Act 2004 of a kind mentioned in sub-paragraph (b);

(b) the proceedings referred to in sub-paragraph (a) are proceedings so far as they are they are for one or more of the following—

(i) a dissolution order,

(ii) a separation order,

(iii) a nullity order,

(iv) a declaration as to the validity of a civil partnership of the petitioner, or

(v) a declaration as to the subsistence of such a civil partnership;

(**1**) S.I.1993/1576 (N.I.6)
(**2**) 2004 c. 33

(c) "another jurisdiction" means any country other than Northern Ireland;

(d) "related jurisdiction" means England and Wales, Scotland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark);

(e) references to the trial in any proceedings are, where there is more than one trial, references to the first trial in those proceedings, but do not include the separate trial of an issue as to jurisdiction only;

(f) references to proceedings in another jurisdiction are references to proceedings in a court of that jurisdiction and to any proceedings which are instituted before a tribunal, or other authority having power under the law having effect there to determine questions of status;

(g) references to proceedings which are continuing in another jurisdiction are references to proceedings which have been begun and have not been finally disposed of;

(h) references to proceedings before the court which are continuing are references to proceedings which are pending and not stayed; and

(i) proceedings are relevant proceedings if they are in respect of the same civil partnership or are capable of affecting its validity or subsistence.

Duty to furnish particulars of concurrent proceedings in another jurisdiction

2.—(1) Where civil partnership proceedings are pending before the court in respect of a civil partnership and the trial in those proceedings has not begun—

(a) the petitioner, or

(b) a respondent who has included a prayer for relief in his answer, shall furnish to the court such particulars of any relevant proceedings which he knows to be continuing in another jurisdiction as are required by paragraph (2).

(2) The particulars required by paragraph (1) are—

(a) in the case of a petitioner, the particulars required by paragraph 1(*l*) of Appendix 2 to the Family Proceedings Rules (Northern Ireland) 1996(**3**); and

(b) in the case of a respondent, the particulars required by paragraph 1(*l*) of Appendix 2 to the Family Proceedings Rules (Northern Ireland) 1996 in so far as they have not been given by the petitioner.

Obligatory stays of civil partnership proceedings

3.—(1) Where, before the beginning of the trial in any proceedings before the court for a dissolution order which are continuing, it appears to the court on the application of a party to the civil partnership—

(a) that, in respect of the same civil partnership, proceedings for the dissolution or annulment of the civil partnership are continuing in a related jurisdiction;

(b) that the parties to the civil partnership have resided together after its formation;

(c) that the place where they resided together—

(i) on the date when the proceedings before the court were begun, or

(ii) if they did not reside together at that date, where they last resided together before those proceedings were begun,

is in that jurisdiction; and

(**3**) S.R. 1996 No. 322

(d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the court were begun,

the court shall order that the proceedings before it be stayed.

(2) But paragraph (1) does not apply if rule 5(3) applies.

(3) References in paragraph (1) to proceedings before the court are, in the case of proceedings which are not only proceedings for a dissolution order, to the proceedings so far as they are proceedings for a dissolution order.

Discretionary stays of civil partnership proceedings

4.—(1) Paragraph (2) applies where, before the beginning of the trial in any civil partnership proceedings before the court which are continuing, it appears to the court—

(a) that any relevant proceedings are continuing in another jurisdiction, and

(b) that the balance of fairness (including convenience) as between the parties to the civil partnership is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken—

(i) in the proceedings before the court, or

(ii) in those proceedings so far as they consist of a particular kind of civil partnership proceedings.

(2) The court may, if it thinks fit, order that—

(a) the proceedings before it, or

(b) those proceedings so far as they consist of a particular kind of civil partnership proceedings,

be stayed.

(3) In considering the balance of fairness and convenience for the purposes of paragraph (1)(b), the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(4) In the case of any proceedings so far as they are proceedings for a dissolution order, the court shall not exercise the power conferred on it by paragraph (2) when an application under rule 3 is pending in respect of the proceedings.

(5) Where, after the beginning of the trial in any civil partnership proceedings which are continuing before the court, the court makes an order under paragraph (6), paragraphs (1) and (2) of this rule have effect in relation to those proceedings, and to the other proceedings by reference to which that order is made, as if the words "before the beginning of the trial" in paragraph (1) were omitted.

(6) The order referred to in paragraph (5) is an order declaring that the court is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by rule 2.

(7) No action lies in respect of the failure of a person to comply with rule 2.

Discharge of orders

5.—(1) A party to proceedings which are stayed by an order made under rule 3 or 4 may apply to discharge that order.

(2) On such an application the court may discharge the order if it appears that the proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

(3) If the court discharges an order staying any proceedings under rule 3 the court shall not again stay those proceedings in pursuance of that rule.

Supplementary

6.—(1) Subject to rule 9, rules 7 and 8 apply where proceedings for a dissolution, separation or nullity order are stayed by reference to proceedings in a related jurisdiction for the dissolution or annulment of a civil partnership, or the legal separation of civil partners.

(2) In this rule and in rules 7 to 9—

(a) "lump sum order" means—

(i) an order made under paragraph 1 of Schedule 15 to the Civil Partnership Act 2004 of a kind mentioned in paragraph 2(1)(f) of that Schedule (lump sum order for children), or

(ii) an order made under Schedule 1 to the Children (Northern Ireland) Order 1995(**4**) of a kind mentioned in paragraph 2(2)(c) of that Schedule (lump sum order for children), if made in equivalent circumstances to an order of the kind mentioned in head (i);

(b) "the other proceedings", in relation to any stayed proceedings, means the proceedings in the other jurisdiction by reference to which the stay was imposed;

(c) "relevant order" means—

(i) an order under Part 7 of Schedule 15 to the Civil Partnership Act 2004 (maintenance pending outcome of dissolution, nullity or separation proceedings),

(ii) an order made under paragraph 1 of Schedule 15 to the Civil Partnership Act 2004 of a kind mentioned in paragraph 2(1)(d) or (e) of that Schedule (periodical and secured periodical payments for children),

(iii) an order made under Schedule 1 to the Children (Northern Ireland) Order 1995 of a kind mentioned in paragraph 2 (2)(a) or (b) of that Schedule (periodical and secured periodical payments for children), if made in equivalent circumstances to an order of a kind mentioned in head (ii),

(iv) an order under Article 8 of the Children (Northern Ireland) Order 1995 (Residence, contact and other orders with respect to children), or

(v) except for the purposes of rule 8, any order restraining a person from removing a child out of Northern Ireland or out of the care of another person; and

(d) "stayed" means stayed in pursuance of these Rules.

(3) Nothing in rules 7 to 9 affects any power of the court—

(a) to vary or discharge a relevant order which remains in force,

(b) to enforce a relevant order in relation to any period when it is or was in force, or

(c) to make a relevant order or a lump sum order in connection with proceedings which were, but are no longer, stayed.

7.—(1) Where proceedings to which this rule applies are stayed then—

(**4**) S.I. 1995/755 (N.I.2)