STATUTORY RULES OF NORTHERN IRELAND

2002 No. 158

MAGISTRATES' COURTS

Magistrates' Courts (Declarations of Parentage) Rules (Northern Ireland) 2002

Made - - - -	*19th April 2002*
Coming into operation	*20th May 2002*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Declarations of Parentage) Rules (Northern Ireland) 2002 and shall come into operation on 20th May 2002.

2. These Rules shall apply to proceedings commenced on or after 20th May 2002.

Interpretation

3. In these Rules—

(a) "the Allocation Order" means the Declarations of Parentage (Allocation of Proceedings) Order (Northern Ireland) 2002(**2**);

(b) "business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(**3**);

(c) "document exchange" means any document exchange for the time being approved by the Lord Chancellor;

(d) "family care centre" shall be construed in accordance with Article 3 of the Allocation Order;

(e) "file" means deposit with the clerk of petty sessions;

(**1**) S.I. 1981/1675 (N.I. 26)
(**2**) S.R. 2002 No. 119
(**3**) 1971 c. 80

(f) "first class post" means first-class post which has been pre-paid or in respect of which pre-payment is not required;

(g) "the Order" means the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(**4**);

(h) "parties" means the applicant and respondent; and

(i) any reference to a Form is a reference to the Form in the Schedule to these Rules.

4. The Magistrates' Courts Rules (Northern Ireland) 1984(**5**) shall have effect subject to the provisions of these Rules.

Application for declaration of parentage

5.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for a declaration of parentage under Article 31B of the Order(**6**) shall be made in Form FL1 and shall be supported by a statement which is signed and declared to be true. Provided that if the applicant is under the age of 18, the statement shall, unless otherwise directed, be made by his next friend.

(2) An applicant shall file the documents referred to in paragraph (3) together with sufficient copies for one to be served, not less than 21 days prior to the date fixed for hearing, on each respondent.

(3) The documents to be filed under paragraph (2) are—

(a) any summons issued in consequence of the application, which shall be in Form FL2; and

(b) Form FL1 and the supporting statement; and

(c) where available to the applicant, a certified copy of the entry in the Register of Births relating to the birth of the person whose parentage is in issue.

(4) A statement under paragraph (1) may contain statements of information or belief with the sources and grounds thereof.

(5) At the same time as complying with paragraph (2) the applicant shall give notice of the proceedings in Form FL3 to the Crown Solicitor on behalf of the Attorney General and the Crown Solicitor shall notify the clerk of petty sessions within 14 days of such notice if the Attorney General intends to intervene in the proceedings.

(6) A copy of Form FL3 shall, at least 7 days before the hearing of the application, be filed with the clerk of petty sessions and shall be endorsed with the date upon which and the manner in which service was effected on the Crown Solicitor.

Withdrawal

6.—(1) An application may be withdrawn only with leave of the court.

(2) Subject to paragraph (3), a person seeking leave to withdraw an application shall file and serve on the parties and the Crown Solicitor a written request for leave setting out the reasons for the request.

(3) The request under paragraph (2) may be made orally to the court if the parties are present.

(4) Upon receipt of a written request under paragraph (2), the court shall—

(**4**) S.I. 1989/677 (N.I. 4)
(**5**) S.R. 1984 No. 225
(**6**) S.I. 1989/677 (N.I. 4)
Article 31B was inserted by Section 66 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)

(a) if—

(i) the parties consent in writing, and

(ii) the court thinks fit,

grant the request, in which case the clerk of petty sessions shall notify the parties and the Crown Solicitor of the granting of the request; or

(b) fix a date for the hearing of the request and the clerk of petty sessions shall give at least 7 days' notice to the parties and the Crown Solicitor of the date so fixed.

Acknowledgement of application

7. Within 14 days of service of the summons in Form FL2 the respondent shall file and serve on the parties an acknowledgement of the application in Form FL4.

Intervention by the Attorney General

8. The Attorney General, in deciding whether it is necessary or expedient to intervene in the proceedings may have a search made for and may inspect and obtain a copy of any document filed in the court offices which relates to any other family proceedings referred to in the proceedings.

9. The clerk of petty sessions shall send a copy of the application and every document accompanying it and of any answer to the Crown Solicitor if he has notified the court that the Attorney General wishes to intervene in the proceedings.

Directions

10.—(1) After the expiration of the time limited for the filing of an acknowledgement of the application, the court may issue directions for the conduct of the proceedings, including directions as to any other persons who should be made respondents to the application or given notice of the proceedings.

(2) When giving directions in accordance with paragraph (1) the court shall consider whether it is desirable that the Attorney General should argue before it any question relating to the proceedings, and, if it does so consider and the Attorney General agrees to argue that question,—

(i) the clerk of petty sessions shall send a copy of the application and every document accompanying it and of any acknowledgement to the Attorney General;

(ii) the Attorney General shall not file an answer, but shall file, and serve on all parties to the proceedings, a summary of his argument.

(3) Any person given notice of proceedings pursuant to directions given in accordance with paragraph (1), shall within 21 days after service of the notice upon him, be entitled to file a request in Form FL5 that he be joined as a party.

(4) The Attorney General may file an answer to the application within 21 days after directions have been given in accordance with paragraph (1) and no directions for the hearing shall be given until that period and the period referred to in paragraph (3) have expired.

Parties

11. On considering a request under rule 10(3), the court shall—

(a) grant the application without a hearing or representations, whereupon the clerk of petty sessions shall given written notification of that decision to the parties, the person making the request and the Crown Solicitor; or

(b) order that a date be fixed for consideration of the request, whereupon the clerk of petty sessions shall give notice in writing of the date so fixed to the parties, the person making the request and the Crown Solicitor.

Transfer of proceedings

12. Where the court receives a request in writing from a party that the proceedings be transferred to a family care centre or High Court in accordance with the Allocation Order it shall issue an order in Form FL6 or certificate in Form FL7, as the case may be.

13. A copy of the order issued under rule 12 shall be sent by the clerk of petty sessions to—

(a) the parties;

(b) the Crown Solicitor; and

(c) the chief clerk of the family care centre or the Master (Probate and Matrimonial), as the case may be.

Declaration of parentage

14. A declaration made in accordance with Article 31B of the Order shall be in Form FL8 and shall be served on the parties to the proceedings and, where appropriate, the Crown Solicitor.

15. Within 21 days of a declaration being made, the clerk of petty sessions, who shall be the prescribed officer for the purposes of Article 31B of the Order, shall send a copy of the declaration and the application in Form FL1 to the Registrar General.

Service

16.—(1) Rules 11 and 13 of the Magistrates' Courts Rules (Northern Ireland) 1984 shall apply to service of a summons under these Rules.

(2) Service of any other document under these Rules may be effected—

(a) if the person to be served is not known by the person serving to be acting by solicitor—

(i) by delivering it to him personally; or

(ii) by delivering it at, or by sending it by first-class post to, his residence or his last known residence; or

(b) if the person to be served is known by the person serving to be acting by solicitor—

(i) by delivering the document at, or sending it by first-class post to, the solicitor's address for service; or

(ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange; or

(iii) by sending a legible copy of the document by facsimile transmission to the solicitor's office.

(3) A document shall, unless the contrary is proved, be deemed to have been served—

(a) in the case of service by first-class post, on the second business day after posting; and

(b) in the case of service in accordance with paragraph 2(b)(*ii*), on the second business day after the day on which it is left at the document exchange.

(4) Where a child is a party to any proceedings under Article 31B of the Order and is required by these Rules to serve a document, service shall be effected by—

(a) the solicitor acting for the child; or

(b) where there is no such solicitor, the clerk of petty sessions.

(5) Service of any document on a child shall, subject to any direction of the court, be effected by service—

(a) on the solicitor acting for the child; or

(b) where there is no such solicitor, on the child, with leave of the court.

(6) Where the court refuses leave under paragraph (5)(b), a direction shall be given under paragraph (7).

(7) Where these Rules require a document to be served, the court may direct that—

(a) the requirement shall not apply; or

(b) the time specified by the Rules for complying with the requirement be abridged to such an extent as may be specified in the direction; or

(c) service shall be effected in such manner as may be specified in the direction.

Dated 19th April 2002 *Irvine of Lairg,* C.