STATUTORY RULES OF NORTHERN IRELAND

2002 No. 137

FAMILY PROCEEDINGS
SUPREME COURT
COUNTY COURTS

The Family Proceedings (Amendment) Rules (Northern Ireland) 2002

Made - - - -	*25th March 2002*
To be laid before Parliament	
Coming into operation	*6th May 2002*

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**) hereby with the concurrence of the Lord Chancellor, make the following Rules:—

Citation, commencement and interpretation

1. These Rules may be cited as the Family Proceedings (Amendment) Rules (Northern Ireland) 2002 and shall come into operation on 6th May 2002.

2. In these Rules a reference to a rule, Appendix or Form by number alone is a reference to the rule, Appendix or Form so numbered in the Family Proceedings Rules (Northern Ireland) 1996(**2**).

Saving

3. Nothing in these Rules shall affect any proceedings which are pending immediately before these Rules come into operation and the Rules in operation immediately before that day shall continue to apply to those proceedings.

Definitions

4. In rule 1.3(1)—

(a) after the definition of "the Allocation Order of 1999" insert—

(**1**) S.I.1993/1576 (N.I. 6)
(**2**) S.R. 1996 No. 322 to which relevant amendments were effected by S.R. 1999 No. 88 and S.R. 2000 No. 329

""the Allocation Order of 2002" means the Declarations of Parentage (Allocation of Proceedings) Order (Northern Ireland) 2002(**3**)

(b) after the definition of "consent order", insert—

""Contracting State" means—

(a) one of the original parties to the Council Regulation, that is to say, Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom, and

(b) a party which has subsequently adopted the Council Regulation;

"the Council Regulation" means Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses(**4**).".

Jurisdiction

5. After rule 2.29 insert the following new rule—

"**Stay under the Council Regulation**

2.29A.—(1) An application for an order under Article 11 of the Council Regulation shall be made to the Master who may determine the application or refer the application, or any question arising thereon, to the judge for decision as if the application were an application for ancillary relief.

(2) Where at any time after the presentation of a petition, it appears to the court that, under Articles 9, 10 or 11 of the Council Regulation, the court is required or may be required to stay the proceedings, the court shall stay the proceedings and fix a date for a hearing to determine the questions of jurisdiction or admissibility and whether there should be a stay or other order and shall serve notice of the hearing on the parties to the proceedings.

(3) The court must give reasons for its decision under Articles 9, 10 or 11 of the Council Regulation and, where it makes a finding of fact, state such finding of fact.

(4) An order under Article 9 of the Council Regulation that the court has no jurisdiction over the proceedings or an order under Article 11 of the Council Regulation declining jurisdiction shall be recorded in writing.

(5) The court may, if all parties agree, deal with any question about the jurisdiction of the court without a hearing.".

Pensions

6. In rule 2.73(5) for the words "pursuant to" substitute the words "for the purposes of".

Declarations of parentage

7. After rule 3.23 insert the following new rules—

(**3**) S.R. 2002 No. 119
(**4**) O.J. No. L160, 30.6.2000, p. 19

"**Application under Article 31B of the Order of 1989(5) for a declaration of parentage**

3.24.—(1) An application under Article 31B of the Order of 1989 for a declaration of parentage shall be commenced by petition which, unless otherwise directed, shall state—

(a) the full name and the sex, date and place of birth and residential address of the petitioner (except where the petitioner is the Department);

(b) where the case is not an excepted case within Article 31B(4) of the Order of 1989, either the petitioner's interest in the determination of the application or that Article 28(2) of the Order of 1991(**6**) applies;

(c) if they are known, the full name and the sex, date and place of birth and residential address of each of the following persons (unless that person is the petitioner)—

(i) the person whose parentage is in issue;

(ii) the person whose parenthood is in issue; and

(iii) any person who is acknowledged to be the father or mother of the person whose parentage is in issue;

(d) if the petitioner, the person whose parentage is in issue or the person whose parenthood is in issue, is known by a name other than that which appears in the certificate of his birth, that other name (which shall also be stated in any decree made thereon);

(e) if it is known, the full name of the mother, or alleged mother, of the person whose parentage is in issue, at the date of—

(i) her birth;

(ii) her first marriage;

(iii) the birth of the person whose parentage is in issue; and

(iv) her most recent marriage;

if it was at any of those times different from her full name at the date of the presentation of the petition;

(f) the grounds on which the petitioner relies and all other material facts alleged by him to justify the making of the declaration;

(g) whether there are or have been any other proceedings in any court, tribunal or authority in Northern Ireland or elsewhere relating to the parentage of the person whose parentage is in issue or to the parenthood of the person whose parenthood is in issue, and, if so—

(i) particulars of the proceedings, including the court, tribunal or authority before which they were begun, and their nature, outcome or present state;

(ii) the date they were begun;

(iii) the names of the parties; and

(iv) the date or expected date of any trial in the proceedings;

(h) that either the person whose parentage is in issue or the person whose parenthood is in issue—

(**5**) **S.I. 1989/677 (N.I. 6) Article 31B was inserted by section 66 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)**

(**6**) S.I. 1991/2628 (N.I. 23) Article 28 was substituted by section 66(5) of, and paragraph 6 of Schedule 8 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)

(i) is domiciled in Northern Ireland on the date of the presentation of the petition; or

(ii) has been habitually resident in Northern Ireland throughout the period of one year ending with that date; or

(iii) died before that date and either was at death domiciled in Northern Ireland or had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death; and

(i) the nationality, citizenship or immigration status of the person whose parentage is in issue and of the person whose parenthood is in issue, and the effect which the granting of a declaration of parentage would have upon the status of each of them as regards his nationality, citizenship or right to be in the United Kingdom.

(2) Unless otherwise directed, there shall be annexed to the petition a copy of the birth certificate of the person whose parentage is in issue.

(3) The respondents to the application shall be—

(i) the person whose parentage is in issue; and

(ii) any person who is, or who is alleged to be, the mother or father of the person whose parentage is in issue;

excluding the petitioner.

(4) The prescribed officer for the purposes of Article 31B(7) of the Order of 1989 shall be the chief clerk or proper officer, as the case may be.

Application under Article 32 of the Order of 1989 for a declaration of legitimacy or legitimation

3.25.—(1) Unless otherwise directed, a petition by which proceedings are begun under Article 32 of the Order of 1989 for a declaration of legitimacy or legitimation shall state—

(a) the name of the petitioner and, if the petitioner is known by a name other than that which appears in the certificate of his birth, that other name (which shall be stated in any decree made on the petition);

(b) the date and place of birth of the petitioner;

(c) if it is known, the name of the petitioner's father and the maiden name of the petitioner's mother and, if it is different, her current name, and the residential address of each of them at the time of the presentation of the petition;

(d) the grounds on which the petitioner relies and all other material facts alleged by him to justify the making of the declaration; and

(e) either that the petitioner is domiciled in Northern Ireland on the date of the presentation of the petition or that he has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

(2) Unless otherwise directed, there shall be annexed to the petition a copy of the petitioner's birth certificate.

(3) The petitioner's father and mother, or the survivor of them, shall be respondents to the application.

General provisions relating to applications under Article 31B or 32 of the 1989 Order

3.26. Rules 3.27 to 3.35 shall apply to a petition issued under rule 3.24 or 3.25 as the case may be.

Affidavit in support of petition

3.27.—(1) A petition shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner. Provided that if the petitioner is under the age of 18 the affidavit shall, unless otherwise directed, be made by his next friend.

(2) An affidavit for the purpose of paragraph (1) may contain statements of information and belief and the sources and grounds thereof.

Notice of petition to be given to the Attorney General

3.28.—(1) A copy of the petition and every document accompanying it shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney General at least one month before the petition is filed and it shall not be necessary thereafter to serve these documents on him.

(2) On filing the petition, notice of the petition shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney General who may enter an appearance to the petition within 14 days from such notice.

(3) 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 request a copy of, any document filed or lodged in the court offices which relates to any other matrimonial proceedings referred to in the proceedings.

Service of petition

3.29. A copy of the petition endorsed with a notice to appear in Form M32 shall be served personally or by post on every respondent.

Appearance by respondent

3.30. A respondent may, within 14 days of service of the petition, enter an appearance.

Answer by respondent

3.31.—(1) A respondent who has entered an appearance may, within 14 days thereafter enter an answer to the petition.

(2) The respondent shall within 4 days of filing an answer deliver a copy of it to the petitioner and to the Crown Solicitor and any other party to the proceedings.

Application for directions

3.32.—(1) After the expiration of the time limited for the filing of an answer under rule 3.31(1), the petitioner shall issue and serve on all respondents, and on the Crown Solicitor, an application for directions as to any other persons who should be made respondents to the petition or given notice of the proceedings.

(2) When giving directions in accordance with paragraph (1), the court shall consider whether it is necessary that the Attorney General should argue before it any question relating