STATUTORY RULES OF NORTHERN IRELAND

1999 No. 88

FAMILY PROCEEDINGS
SUPREME COURT
COUNTY COURTS

The Family Proceedings (Amendment) Rules (Northern Ireland) 1999

Made - - - -	*1st March 1999*
To be laid before Parliament	
Coming into operation	*29th March 1999*

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**) and Articles 34(11) and 39(6) of paragraph 13 of Schedule 2 to the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**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 (Amendment) Rules (Northern Ireland) 1999 and shall come into operation on 29th March 1999.

(2) In these Rules, a rule referred to by number means the rule so numbered in the Family Proceedings Rules (Northern Ireland) 1996(**3**) and a reference to Appendix 1 is a reference to Appendix 1 to those Rules.

2. In rule 1.3(1), after the definition of "the Order of 1995" there shall be inserted the following—

""the Order of 1998" means the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**4**); and

"the Allocation Order of 1999" means the Family Homes and Domestic Violence (Allocation of Proceedings) Order (Northern Ireland) 1999(**5**);".

(**1**) S.I.1993/1576 (N.I. 6)
(**2**) S.I. 1998/1071 (N.I. 6)
(**3**) S.R. 1996 No. 322
(**4**) S.I. 1998/1071 (N.I. 6)
(**5**) S.R. 1999 No. 61

Revocation and saving

3.—(1) Subject to paragraph (2), Order 115 of the Rules of the Supreme Court (Northern Ireland) 1980(**6**) and Part II of Order 29 of the County Court Rules (Northern Ireland) 1981(**7**) are hereby revoked.

(2) 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.

Supplemental petition, pleadings and amendment of petition

4. Rule 2.13(3) shall be amended as follows—

(a) the words "and unless the court otherwise directs" shall be inserted after the words "Subject to paragraph 4"; and

(b) in paragraph (b), the words ", unless the court otherwise directs," shall be revoked.

Pensions

5. For rule 2.73 there shall be substituted the following new rule—

"**Pensions**

2.73.—(1) Where an applicant for ancillary relief or the respondent to the application is obliged by rule 2.60 to give full particulars of his property and income, he shall also give full particulars of any benefits under a pension scheme which he has or is likely to have including the most recent valuation furnished by the trustees or managers of the pension scheme pursuant to—

(a) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997(**8**) and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(**9**);

(b) paragraph 2(2) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1987(**10**); or

(c) regulation 4 (provision of valuations after petition).

(2) Where by virtue of rule 2.64(5) the Master has power to order discovery of any document he shall also have power to require either party to request a valuation under regulation 4 from the trustees or managers of any pension scheme under which that party has or is likely to have any benefits.

(3) A petitioner or respondent who has applied for ancillary relief, not including provision made by Article 27B or 27C of the Order of 1978, may at any time amend the application so as to include such provision by way of a notice or amended notice in Form M13 and rule 2.57 shall apply to any such notice.

(4) A petitioner or respondent who has applied for an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme shall, within 4 days after filing the notice in Form M13 or M15 as the

(**6**) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 1989 No. 287 and S.R. 1991 No. 232
(**7**) S.R. 1981 No. 225 to which the most relevant amendment was made by S.R. 1989 No. 211
(**8**) S.R. 1997 No. 98
(**9**) S.R. 1996 No. 619
(**10**) S.R. 1987 No. 288

case may be, serve on those trustees or managers a copy of that notice, together with the following—

(a) an address to which any notice which the trustees or managers may be required to serve is to be sent;

(b) an address to which any payment which the trustees or managers are required to make to the applicant is to be sent; and

(c) where the address in sub-paragraph (b) is that of a bank, a building society or the Department of National Savings sufficient details to enable payment to be made into the account of the applicant.

(5) Trustees or managers of a pension scheme on whom a copy of such a notice is served may, within 14 days after service, require the applicant to provide them with a copy of the affidavit supporting his application.

(6) Trustees or managers of a pension scheme who receive a copy of an affidavit pursuant to paragraph (5) may within 14 days after receipt file an affidavit in answer.

(7) Trustees or managers of a pension scheme who file an affidavit pursuant to paragraph (6) may file therewith a notice to the court requiring an appointment to be fixed, and where such a notice is filed—

(a) the proper officer or chief clerk shall fix an appointment for the hearing or further hearing of the application and shall give not less than 14 days' notice of that appointment to the petitioner, the respondent and the trustees or managers of the pension scheme; and

(b) the trustees or managers of the pension scheme shall be entitled to be represented at any such hearing.

(8) Where the petitioner and the respondent have agreed on the terms of an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme, then unless service has already been effected under paragraph (4), they shall serve on the trustees or managers a draft of the consent order together with the particulars set out in sub-paragraphs (a), (b) and (c) of paragraph (4), and no such order shall be made unless either—

(a) the trustees or managers have not made any objection within 14 days after the service on them of the draft order; or

(b) the court has considered the objection made by the trustees or managers

and for the purpose of considering any such objection the court may make such directions as it sees fit for the trustees or managers to attend before it or to furnish written details of their objection.

(9) In deciding whether to make an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme, the court shall take into account any representations of the trustees or managers as to whether, in all the circumstances of the case, the court ought to make the order, and in particular whether the particulars supplied under paragraph (4) are sufficient to enable the trustees or managers to comply with their obligations under any such order.

(10) In this rule—

(a) every reference to a regulation by number alone means the regulation so numbered in the Divorce etc (Pensions) Regulations (Northern Ireland) 1996(**11**);

(b) all words and phrases have the same meaning as in Article 27D of the Order of 1978.".

(**11**) S.R. 1996 No. 296 to which the most recent amendments were made by S.R. 1997 No. 275

Family Homes and Domestic Violence (Northern Ireland) Order 1998(12)

6. For rule 3.9 there shall be substituted the following—

"**Transfer of certain tenancies on divorce etc or on separation of cohabitees**

3.9.—(1) The jurisdiction of the court under Article 30 of and Schedule 2 to the Order of 1998 may be exercised by the Master.

(2) An application is made for an order under Part II of Schedule 2 to the Order of 1998 notice of the application shall be served by the applicant on the other cohabitant or spouse and on the landlord (as those terms are defined by paragraph 1 of Schedule 2 to the Order of 1998) and any person so served shall be entitled to be heard on the application.

(3) The applicant shall file a statement of service on Form F4 after he has served notice of application in accordance with paragraph (2).

(4) Any person who is served with a notice of application under paragraph (2) above shall, if he intends to contest the application, within 14 days of service of that notice, file a statement which is signed by him and sworn to be true in answer to the application setting out the grounds on which he relies and shall arrange for a copy of that statement to be served on the applicant personally.

(5) If a statement is not filed under paragraph (4) above, the applicant may apply for directions and the court may give such directions as it thinks fit, including a direction that the respondent shall be debarred from defending the application unless a statement is filed in accordance with paragraph (4) within such time as the court may direct.

(6) Rules 2.64(4) to (7) (investigation by Master of application for ancillary relief) shall apply with the necessary modifications to an application for an order under Part II of Schedule 2 to the Order of 1998 as they apply to an application for ancillary relief.".

7. After rule 3.14 there shall be inserted the following—

"**Applications for an occupation order or a non-molestation order under the Order of 1998**

3.15.—(1) Subject to rules 3.16 and 3.17, on an application for an occupation order or a non-molestation order under the Order of 1998, the applicant shall—

(a) file the documents referred to in paragraph (2) (which documents shall together be called "the application"), together with sufficient copies for one to be served on each respondent—

(i) in relation to an application to the High Court, in the Office of Care and Protection; or

(ii) in relation to an application to a county court in the county court office;

(b) arrange for the copy of the application, together with Form F3 to be served on respondent personally not less than 2 days before the date on which the application will be heard; and

(c) file a statement in Form F4 in the Office of Care and Protection or, as the case may be, the county court office after the application has been served.

(2) The documents to be filed under paragraph 1(a) are—

(a) Form F2; and

(b) a supporting statement which is signed by the applicant and sworn to be true.

(12) **S.I. 1998/1071 (N.I. 6)**

(3) On receipt of the documents referred to in paragraph (1)(a), the proper officer or chief clerk shall—

(a) fix the date for the hearing, allowing sufficient time for the applicant to comply with paragraph 1(b);

(b) endorse the date so fixed on Form F3; and

(c) return forthwith to the applicant the copies of the application, together with Form F3.

(4) The court may abridge the period specified in paragraph (1)(b).

(5) Rule 6.3 shall not apply to an application for an occupation order or a non-molestation order under the Order of 1998.

(6) Rule 2.64(4) to (7) (investigation by Master of an application for ancillary relief) shall apply, with the necessary modifications, to an application for an occupation order under Article 11, 13 or 14 of the Order of 1998 as they apply to an application for ancillary relief.

Application for leave to commence proceedings under the Order of 1998

3.16.—(1) Where the leave of the court is required to bring proceedings under the Order of 1998, the person seeking leave shall file in the Office of Care and Protection a draft of the application (being the documents referred to in rule 3.15(2)) for the making of which leave is sought, together with sufficient copies for one to be served on each respondent.

(2) On considering a request for leave filed under paragraph (1) the court shall—

(a) grant the request, whereupon the proper officer shall inform the person making the request of the decision, or

(b) direct that a date be fixed for the hearing of the request, whereupon the proper officer shall fix such a date and give such notice as the court directs to the person making the request and to such other persons as the court requires to be notified of the date so fixed.

(3) Where notice is required to be given under paragraph (2) it shall, with the necessary modifications, be given in Form F3.

(4) Where leave is granted to bring proceedings under the Order of 1998, the application shall proceed in accordance with rule 3.15 but paragraph (1)(a) of that rule shall not apply.

Ex parte applications under the Order of 1998

3.17.—(1) An application for a non-molestation order or an occupation order under the Order of 1998 may, with the leave of the court, be made ex parte, and in which case—

(a) rule 3.15 shall not apply; and

(b) the evidence in support of the application shall include the reasons why the application is made ex parte.

(2) Where the leave of the court is granted, the application may be made orally and the applicant shall, within 48 hours of the making of the application, or as directed by the court—

(a) file in the Office of Care and Protection or, as the case may be, the county court office, a written copy of the application in Form F2 together with a supporting statement which is signed by the applicant and sworn to be true; and

(b) arrange for a copy of the application in Form F2 together with the supporting statement to be served on the respondent personally.