STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

FAMILY PROCEEDINGS
SUPREME COURT
COUNTY COURTS

The Family Proceedings Rules (Northern Ireland) 1996

Made - - - -	*19th July 1996*
To be laid before Parliament	
Coming into operation	*4th November 1996*

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:—

Part I

Preliminary

Citation and commencement

1.1. These Rules may be cited as the Family Proceedings Rules (Northern Ireland) 1996 and shall come into operation on 4th November 1996.

Revocation and saving

1.2.—(1) Subject to paragraph (2) the rules specified in paragraph (3) are hereby revoked.

(2) Nothing in these rules shall affect any proceedings which are pending (within the meaning of paragraph 1 of Schedule 8 to the Order of 1995) immediately before these rules come into operation and the rules in operation immediately before that day shall continue to apply to those proceedings.

(3) The rules referred to in paragraph (1) are

— the Matrimonial Causes Rules (Northern Ireland) 1981(**2**);

(**1**) S.I.1993/1576 (N.I. 6)
(**2**) S.R. 1981 No. 184

— the Matrimonial Causes (Amendment) Rules (Northern Ireland) 1989(**3**); and

— the Matrimonial Causes (Amendment) Rules (Northern Ireland) 1993(**4**).

Interpretation

1.3.—(1) In these Rules, unless the context otherwise requires—

"the Order of 1978" means the Matrimonial Causes (Northern Ireland) Order 1978(**5**);

"the Order of 1989" means the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(**6**);

"the Order of 1991" means the Child Support (Northern Ireland) Order 1991(**7**);

"the Order of 1995" means the Children (Northern Ireland) Order 1995(**8**);

"ancillary relief" means—

(a) an avoidance of disposition order,

(b) a financial provision order,

(c) an order for maintenance pending suit,

(d) a property adjustment order, or

(e) a variation order;

"avoidance of disposition order" means an order under Article 39(2)(*b*) or (*c*) of the Order of 1978;

"Board" means a Health and Social Services Board;

"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(**9**);

"cause" means a matrimonial cause under the Order of 1978;

"certificate of readiness" means a certificate under rule 2.28;

"chief clerk" means the chief clerk for the county court division in which proceedings are pending;

"child" and "child of the family" have, except in Part IV, the same meanings, respectively assigned to them by Article 2(2) of the Order of 1978;

"consent order" means an order under Article 35A of the Order of 1978;

"county court office" means the office of the chief clerk for the county court division in which proceedings are pending;

"court" means the judge or the Master;

"defended cause" means a cause not being an undefended cause;

"Department" means the Department of Health and Social Services;

"divorce county court" means a county court so designated by the Lord Chancellor pursuant to Article 48(1) of the Order of 1978;

(**3**) S.R. 1989 No. 246
(**4**) S.R. 1993 No. 134
(**5**) S.I. 1978/1045 (N.I. 5)
(**6**) S.I. 1989/677 (N.I. 6)
(**7**) S.I. 1991/2628 (N.I. 23)
(**8**) S.I. 1995/755 (N.I. 2)
(**9**) 1971 c. 80

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

"family proceedings" means any proceedings with respect to which rules may be made under Article 12 of the Family Law (Northern Ireland) Order 1993;

"financial provision order" means any of the orders mentioned in Article 23(1) of the Order of 1978 except an order under Article 29(6) of that Order;

"financial relief" has the same meaning as in Article 39 of the Order of 1978;

"judge" means—

(a) in relation to proceedings in the High Court, a judge of the High Court; and

(b) in relation to proceedings in a county court, a county court judge;

"Master" means—

(a) in relation to proceedings in the High Court, the Master (Probate and Matrimonial) or the Master (Care and Protection) as the case may be; and

(b) in relation to proceedings in a county court, a district judge;

"Matrimonial Office" means the Probate and Matrimonial Office of the Supreme Court of Judicature of Northern Ireland;

"matrimonial proceedings" means subject to rule 2.4 any proceedings under the Order of 1978;

"notice of intention to defend" has the meaning assigned to it by rule 2.11;

"Office of Care and Protection" means the Office of Care and Protection of the Supreme Court of Judicature of Northern Ireland;

"person named" includes a person described as "passing under the name of A.B.";

"proper officer" means the proper officer of the High Court;

"property adjustment order" means an order under Article 26(1) of the Order of 1978;

"sealed copy" means a copy examined against the original, marked as examined by the examining officer and sealed with the appropriate seal;

"taxing master" means—

(a) in relation to proceedings in the High Court, the Master (Taxing Office); and

(b) in relation to proceedings in a county court, a district judge;

"Trust" means a Health and Social Services Trust by whom a function is exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994(**10**);

"undefended cause" means—

(a) in the case of an application under Article 16 of the Order of 1978, a cause in which the respondent has not given notice of intention to defend within the time limited, or

(b) in any other case—

  (i) a cause in which no answer has been filed or any answer filed has been struck out, or

  (ii) a cause which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out, or

  (iii) a cause to which rule 2.14(3) applies and in which no notice has been given under that rule or any notice so given has been withdrawn, or

(**10**) S.I. 1994/429 (N.I. 2)

(iv) a cause in which an answer has been filed claiming relief but in which no pleading has been filed opposing the granting of a decree on the petition or answer or any pleading or part of a pleading opposing the granting of a decree;

"variation order" means an order under Article 33 of the Order of 1978(**11**);

(2) Unless the context otherwise requires, a cause may be treated as pending for the purpose of these Rules notwithstanding that a final decree or order has been pronounced or made on the petition.

(3) In these Rules a form referred to by number means the form so numbered in Appendix 1 or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

(4) In these Rules any reference to an Order and rule is—

(a) if prefixed by the letters "R.S.C.", a reference to that Order and rule in the Rules of the Supreme Court (Northern Ireland) 1980(**12**), and

(b) if prefixed by the letters "C.C.R.", a reference to that Order and rule in the County Court Rules (Northern Ireland) 1981(**13**).

(5) Unless the context otherwise requires, any reference in these Rules to any rule or statutory provision shall be construed as a reference to that rule or statutory provision as amended, extended or applied by any other rule or statutory provision.

(6) In these Rules any reference to a county court shall, in relation to matrimonial proceedings, be construed as a reference to a divorce county court.

Application of other rules

1.4.—(1) Subject to the provisions of these Rules and of any statutory provision, the Rules of the Supreme Court (Northern Ireland) 1980 and the County Court Rules (Northern Ireland) 1981 other than C.C.R. Order 25, rule 20 (which deals with a new hearing and rehearing) shall apply with the necessary modifications to the commencement of family proceedings in, and to the practice and procedure in family proceedings pending in, the High Court and a county court respectively.

(2) For the purpose of paragraph (1) any provision of these Rules authorising or requiring anything to be done in family proceedings shall be treated as if it were, in the case of proceedings pending in the High Court, a provision of the Rules of the Supreme Court (Northern Ireland) 1980 and in the case of proceedings pending in a county court, a provision of the County Court Rules (Northern Ireland) 1981.

Part II

Matrimonial causes

Petition, pleadings and amendment

Application for leave to present a petition for nullity

2.1.—(1) An application under Article 16(4) of the Order of 1978 for leave to institute proceedings for a decree of nullity after the expiration of 3 years from the date of the marriage shall be made to the court in which the applicant wishes to present the petition, by originating summons in Form M1.

(**11**) Article 33 was amended by Article 9 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4))
(**12**) S.R. 1980 No. 346
(**13**) S.R. 1981 No. 225

(2) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the proposed petition and (unless otherwise directed by the court on an application made ex parte) a certificate of the marriage and stating—

(a) the grounds of the application;

(b) whether there has been any previous application under Article 16(4) of the Order of 1978;

(c) the date of birth of each of the parties.

(3) When the summons is issued it shall be made returnable for a fixed date before the judge in chambers.

(4) Unless the court otherwise directs, the summons shall be served on the respondent at least 14 clear days before the return date.

(5) The respondent may be heard without filing an affidavit.

(6) This Part of these Rules shall, so far as applicable, apply with the necessary modifications, to the application as if the originating summons were a petition and the applicant a petitioner.

Discontinuance before service of petition

2.2. Before a petition is served on any person, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

Cause to be begun by petition

2.3.—(1) Every cause other than an application under Article 16(4) of the Order of 1978 shall be begun by petition.

(2) Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the family who is under the age of 16 years or who is over that age and is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, the petition shall be accompanied by a statement signed by the petitioner personally containing the information required by Form M4, to which shall be attached a copy of any medical report mentioned therein.

Contents of petition

2.4.—(1) Unless the court otherwise directs, every petition shall contain the information required by Appendix 2.

(2) A petitioner who, in reliance on section 7 or 8 of the Civil Evidence Act (Northern Ireland) 1971(**14**), intends to adduce evidence that a person—

(a) was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, or

(b) was found guilty of adultery in matrimonial proceedings or was found or adjudged to be the father of a child in relevant proceedings before a court in the United Kingdom,

must include in his petition a statement of his intention with particulars of—

(i) the conviction, finding or adjudication and the date thereof,

(ii) the court or court-martial which made the conviction, finding or adjudication and, in the case of a finding or adjudication the proceedings in which it was made, and

(iii) the issue in the proceedings to which the conviction, finding or adjudication is relevant.

(3) In this rule "matrimonial proceedings" and "relevant proceedings" have the same meaning as in section 8(5) of the Civil Evidence Act (Northern Ireland) 1971.

(**14**) 1971 c. 36 (N.I.)