1989 No. 246

MATRIMONIAL CAUSES

SUPREME COURT

COUNTY COURTS

The Matrimonial Causes (Amendment) Rules (Northern Ireland) 1989

Made	*28th June 1989*
Coming into operation . .	*1st September 1989*
To be laid before Parliament	

We, the Matrimonial Causes Rules Committee, in exercise of the powers conferred upon us by Article 54 of the Matrimonial Causes (Northern Ireland) Order 1978(**a**), hereby, with the concurrence of the Lord Chancellor, make the following Rules:—

Citation, commencement and transitional

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules (Northern Ireland) 1989 and shall come into operation on 1st September 1989.

(2) Nothing in these Rules shall affect any proceedings commenced before the coming into operation of these Rules.

(3) Without prejudice to paragraph (2), the amendments made by rules 3(1)(*c*) to (5) of these Rules shall not apply in any case to which Articles 3(5) and 5 of the Matrimonial Causes (Northern Ireland) Order 1978 continue to apply by virtue of Article 43(1) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(**b**).

Interpretation

2. In these Rules, a rule, Form or Appendix referred to by number means the Rule, Form or Appendix so numbered in the Matrimonial Causes Rules (Northern Ireland) 1981(**c**).

Amendment of the Matrimonial Causes Rules (Northern Ireland) 1981

3.—(1) In rule 2(1)—

(*a*) before the definition of "ancillary relief", there shall be inserted the following definition—

(**a**) S.I. 1978/1045 (N.I. 15)
(**b**) S.I. 1989/677 (N.I. 4)
(**c**) S.R. 1981 No. 184

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

(*b*) after the definition of "chief clerk", there shall be inserted the following definition—

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

(*c*) in the definition of "undefended cause", in sub-paragraph (*a*) for the words "Article 5" there shall be substituted the words "Article 16".

(2) For rule 4 there shall be substituted the following new rule—

"*Application for leave to present a petition for nullity*

4.—(1) An application under Article 16(4) of the Order 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 1.

(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 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 this rule;

(*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 otherwise directed, 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) These rules shall, so far as is applicable, apply, with the necessary modifications, to the application as if the originating summons were a petition and the applicant a petitioner.".

(3) Rule 5 shall be revoked.

(4) In rule 7(1) for the words "Article 5" there shall be substituted the words "Article 16(4)".

(5) In rule 10(3) for the words "3 years" there shall be substituted the words "2 years".

(6) Rule 97 shall be amended by inserting, after the words "the Order", the words "or Article 40(2) of, or paragraph 10 of Schedule 1 to, the Order of 1989".

(7) Appendix 2 shall be amended as follows—

(*a*) by deleting, in paragraph 1, the words "other than a petition for jactitation of marriage";

(*b*) by deleting paragraph 4.

Consent orders

4. After rule 76 there shall be inserted the following new rule—

"*Consent orders*

76A.—(1) Subject to paragraphs (2) and (3), there shall be lodged with every application for a consent order under any of Articles 25, 26 or 29 of the Order, a draft of the order in the terms sought, endorsed with a statement signed by the respondent to the application signifying his agreement, and a statement of information which may be made in more than one document and shall include:

(*a*) particulars of the duration of the marriage, the age of each party and of any minor or dependant child of the family;

(*b*) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;

(*c*) what arrangements are intended for the accommodation of each of the parties and any minor child of the family;

(*d*) whether either party has remarried or has any present intention to marry or to cohabit with another person;

(*e*) where the terms of the order provide for a transfer of property, a statement confirming that any mortgagee of that property has been served with notice of the application and that no objection to such a transfer has been made by the mortgagee within 14 days from such service; and

(*f*) any other especially significant matters.

(2) Where an application is made for a consent order varying an order for periodical payments, paragraph (1) shall be sufficiently complied with if the statement of information required to be lodged with the application includes only the information in respect of net income mentioned in paragraph (1)(*b*), and an application for a consent order for interim periodical payments pending the determination of an application for ancillary relief may be made in like manner.

(3) Where the parties attend the hearing of an application for financial relief the court may dispense with the filing of a draft of the order and a statement of information in accordance with paragraph (1) and give directions for:

(*a*) the order to be drawn; and

(*b*) the information which would otherwise be required to be given,

in such manner as it sees fit.".

Transfer of certain tenancies on divorce

5.—(1) After Rule 87 there shall be inserted the following new rule—

"*Transfer of certain tenancies on divorce*

87A.—(1) The jurisdiction of the court under Article 41 of, and Schedule 1 to, the Order of 1989 may be exercised by the registrar.

(2) Where an application is made for an order under Part II of the said Schedule 1 notice of the application shall be served by the applicant on—

(*a*) the spouse entitled to occupy the dwelling-house to which the application relates; and

(*b*) the landlord of the dwelling-house,

and any person so served shall be entitled to be heard on the application.

(3) Where the court intends to make an order under the said Schedule 1 then, before making the order, the court shall cause notice of its intention to make the order to be given to the landlord and shall afford him an opportunity of being heard.''.

Application for declaration as to marital status

6. After Rule 88 there shall be inserted the following new rules—

''*Application for declaration as to marital status*

88A.—(1) Unless otherwise directed, a petition by which proceedings are begun under Article 31 of the Order of 1989 for a declaration as to marital status shall state—

(*a*) the names of the parties to the marriage to which the application relates and the residential address of each of them at the date of the presentation of the petition;

(*b*) the place and date of any ceremony of marriage to which the application relates;

(*c*) the grounds on which the application is made and all other material facts alleged by the petitioner to justify the making of the declaration;

(*d*) whether there have been or are continuing any proceedings in any court, tribunal or authority in Northern Ireland or elsewhere between the parties which relate to, or are capable of affecting the validity or subsistence of the marriage, divorce, annulment or legal separation to which the application relates, or which relate to the matrimonial status of either of the parties, and if so—

(i) the nature, and either the outcome or present state of those proceedings,

(ii) the court, tribunal or authority before which they were begun,

(iii) the date when they were begun,

(iv) the names of the parties to them,

(v) the date or expected date of the trial,

(vi) any other facts relevant to the question whether the petition should be stayed under Schedule 1 of the Order,

and such proceedings shall include any which are instituted otherwise than in a court of law in any country outside Northern Ireland, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have begun and have not been finally disposed of;

(*e*) where it is alleged that the court has jurisdiction based on domicile, which of the parties to the marriage to which the application relates is domiciled in Northern Ireland on the date of

the presentation of the petition, or died before that date and was at death domiciled in Northern Ireland;

(*f*) where it is alleged that the court has jurisdiction based on habitual residence, which of the parties to the marriage to which the application relates has been habitually resident in Northern Ireland, on the date of the presentation of the petition, or died before that date and had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death;

(*g*) where the petitioner was not a party to the marriage to which the application relates, particulars of his interest in the determination of the application.

(2) Where the proceedings are for a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside Northern Ireland in respect of the marriage either is or is not entitled to recognition in Northern Ireland, the petition shall in addition state the date and place of the divorce, annulment or legal separation.

(3) There shall be annexed to the petition a copy of the certificate of any marriage to which the application relates, or, as the case may be, a certified copy of any decree of divorce, annulment or order for legal separation to which the application relates.

(4) Where a document produced by virtue of paragraph (3) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(5) The parties to the marriage in respect of which a declaration is sought shall be petitioner and respondent respectively to the application, unless a third party is applying for a declaration, in which case he shall be the petitioner and the parties shall be respondents to the application.

Procedure to be followed in relation to application under rule 88A

88B.—(1) The petition referred to in rule 88A 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) Where the jurisdiction of the court to entertain a petition is based on habitual residence the petition shall include a statement of the addresses of the places of residence of the person so resident and the length of residence at each place either during the period of one year ending with the date of the presentation of the petition or, if that person is dead, throughout the period of one year ending with the date of death.

(3) An affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds thereof.

(4) A copy of the petition and every document accompanying it shall be sent 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 upon him.