1981 No. 196

MATRIMONIAL CAUSES

The Matrimonial Causes (Costs) Rules (Northern Ireland) 1981

Made . . . . . *15th June 1981*

Coming into operation . . . *1st September 1981*

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 and the Treasury, make the following Rules:—

Citation and commencement

1.—(1) These Rules may be cited as the Matrimonial Causes (Costs) Rules (Northern Ireland) 1981 and, subject to paragraph (2), shall come into operation on 1st September 1981.

(2) These Rules shall apply to all bills of costs in respect of matrimonial proceedings lodged on or after 1st September 1981 save that for the period of two months thereafter a party entitled to require any costs to be taxed may prepare and lodge a bill in the form required before 1st September 1981 and shall be entitled to have a bill so lodged taxed as if these Rules had not been made.

Interpretation

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

"the Order of 1981" means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**b**);

"ancillary application" means an application for one or more of the following forms of relief:—

(*a*) ancillary relief,

(*b*) an injunction,

(*c*) an order under Article 39(2)(*a*) of the Order restraining any person from attempting to defeat a claim for financial relief or otherwise for protecting the claim, or

(*d*) an order relating to the custody or education of a child or an order committing him to the care of the Department under Article 46 of the Order or providing for his supervision under Article 47 of the Order, except where the order is made at or immediately after the trial of a cause;

"principal rules" means the Matrimonial Causes Rules (Northern Ireland) 1981(**c**);

"the appropriate office" means, in relation to any matrimonial proceedings in the High Court, the Supreme Court taxing office and, in relation to any such proceedings in a divorce county court, the county court office serving that court;

(**a**) S.I. 1978/1045 (N.I. 15)
(**b**) S.I. 1981/228 (N.I. 8)
(**c**) S.R. 1981 No.184

"the matrimonial scale" means the scale of costs set out in the Appendix to these Rules.

(2) These Rules shall be construed as one with the principal rules.

Taxation of costs in divorce county court

3. The costs of any matrimonial proceedings which are for hearing in a divorce county court may be taxed by the taxing master.

Time for beginning proceedings for taxation

4. A party who is entitled to require the costs of any matrimonial proceedings to be taxed must begin proceedings for the taxation of those costs not later than six months after the final decree or order in the proceedings:

Provided that where a notice in Form 13 or 15 has been filed within 6 months after the final decree or order, the proceedings for taxation may be begun at any time within 6 months after the making of any order on the application to which the notice relates.

Procedure for taxation

5.—(1) Where a party (in this rule called "the applicant") is entitled to require taxation of the costs of any matrimonial proceedings, he must, within the time specified in rule 4 of these Rules, lodge in the appropriate office, his bill of costs, together with all necessary vouchers and papers and a copy of the bill for every party who is liable to pay the costs.

(2) The taxing master shall send to every such party a copy of the bill together with a notice requiring him to inform the taxing master within 14 days after receipt of the notice, if he wishes to be heard on the taxation.

(3) If a party to whom notice has been given under paragraph (2) informs the taxing master within the time limited that he wishes to be heard on the taxation, the taxing master shall fix an appointment for the taxation and give not less than 7 days' notice of the appointment to the applicant and that party.

(4) If no party to whom notice has been given under paragraph (2) informs the taxing master within the time limited that he wishes to be heard on the taxation, the taxing master, unless he otherwise directs, shall send to the applicant a notice specifying the amount which the taxing master proposes to allow in respect of the bill and requiring him to inform the taxing master, within 14 days after receipt of the notice, if he wishes to be heard as to the proposed allowance.

(5) If the applicant informs the taxing master within the time limited that he wishes to be heard on the taxation the taxing master shall fix an appointment for the taxation and give 7 days' notice of the appointment to the applicant.

(6) The foregoing provisions of this rule shall apply to the taxation of a bill which is to be paid out of the legal aid fund under the Order of 1981 subject to the modification that, if the bill is not also to be taxed as between party and party, paragraph (2) shall not apply and paragraph (4) shall apply as if the words preceding "the taxing master, unless he otherwise directs", were omitted.

(7) This rule shall not apply to the taxation of a solicitor's bill to his own client.

Communications addressed to taxing master

6. All communications addressed to the taxing master in pursuance of any provision in these Rules shall be sent to the appropriate office.

Scale of costs

7.—(1) The taxation of the costs of matrimonial proceedings shall be in accordance with the matrimonial scale and the provisions of this rule.

(2) Except where the judge has otherwise directed the taxing master may, at his discretion, allow on taxation of the costs of matrimonial proceedings—

(*a*) costs in relation to items not mentioned in the matrimonial scale; or

(*b*) an amount higher than that prescribed in the matrimonial scale.

(3) Disbursements for which no allowance is made in the matrimonial scale shall be taxed and allowed, or disallowed, according to the principles applicable to the taxation of costs generally, contained in R.S.C. Order 62, rules 27, 31 and 33.

Litigant in person in divorce county court

8.—(1) Where in any matrimonial proceedings in a divorce county court any costs of a litigant in person are ordered to be paid by any other party to the proceedings or in any other way, then, unless the court otherwise orders, those costs shall be assessed by the taxing master without taxation and in determining the sum which would have been allowed if the work and the disbursement to which the costs relate had been done or made by a solicitor on behalf of the litigant in person it shall be assumed that the solicitor would have elected that the costs be fixed under rule 9 of these rules.

(2) The amount allowed in respect of any item shall be such sum as the taxing master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the taxing master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than £2 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor.

(6) An application for an assessment of costs under this rule shall be made within the time provided by rule 4 for beginning proceedings for a taxation and in the manner provided by rule 5(1).

Fixed costs

9.—(1) In this rule—

"assisted person" means a person in respect of whom a certificate is in force under Part 1 of the Order of 1981 entitling him to legal aid in a cause or, as the case may be, an ancillary application from its commencement.

(2) Where in an undefended cause for divorce, nullity of marriage or judicial separation the petitioner is granted a decree with costs, whether as between party and party or not, the costs shall, if his solicitor so elects, be fixed in accordance with the provisions of this rule instead of being taxed.

Provided that where the petitioner is an assisted person for whom counsel has acted, counsel's fees shall not be fixed if counsel elects that the sums payable to him under Article 13(1) of the Order of 1981 shall be taxed.

(3) Where costs are fixed there shall be allowed as between party and party such of the following items as are applicable:—

(*a*) in respect of solicitors' charges—

(i) if counsel was briefed at hearing,	£110,
(ii) if counsel was not briefed at hearing,	£130,
(iii) where an order has been made for substituted service or to dispense with service,	£ 9.50,
(iv) for any statement as to the arrangements for the children filed under rule 7(2) of the principal rules,	£ 2.50;

(*b*) in respect of counsel's fees—

(i) for settling the petition,	£ 12,
or where particulars of unreasonable behaviour are given under Article 3(2)(*b*) of the Order,	£ 15,
(ii) for directing proofs,	£ 10,
(iii) with brief on hearing,	£ 30,
and where counsel travels to attend a court more than 25 miles from the Head Post Office, Belfast, a further sum of	£ 5,
and	
(iv) on consultation	£ 12;

(*c*) in respect of other disbursements, such amounts as would have been allowed if the costs had been taxed, not exceeding in respect of an inquiry agent's fees the sum of £20 or, where oral evidence is necessary, £30 and in respect of their travelling expenses a vouched sum not exceeding £10.

(4) If a petitioner whose costs are to be fixed is an assisted person, then, notwithstanding that the costs have been ordered to be taxed for the purposes of Schedule 2 to the Order of 1981—

(*a*) the sums payable under Article 13(1) of that Order to the solicitor acting for him shall be such of the fixed amounts specified in paragraph 3(*a*) and (*c*) as are applicable, together with a further sum of £8;

(*b*) the sums payable under the said Article 13(1) to counsel acting for the assisted person shall be such of the fixed amounts specified in paragraph 3(*b*) as are applicable.

(5) A petitioner's solicitor who elects to have his costs fixed under paragraph (2) shall give notice to that effect to the taxing master, within the time specified in rule 4 of these Rules, stating the sums which he claims should be allowed, and he shall at the same time lodge all necessary papers and vouchers including counsel's initialled brief or fee docket.

(6) Where an ancillary application is granted or refused with costs, whether as between party and party or not, in the circumstances mentioned in any of the following items, then the costs shall, if the applicant's solicitor elects, be fixed at the sum mentioned in that item instead of being taxed:—

(*a*) in respect of solicitors' charges—

(i) where a consent order for ancillary relief has been made, £11;
(ii) where any other consent order has been made and no affidavit has been filed by either party, £11;
(iii) where an order has been made after a hearing at which the respondent has not appeared, £16.50;
(iv) where an order has been made after a hearing at which the respondent has appeared, £27.50, or, if counsel is allowed, £24.50;

(*b*) in respect of counsel's fees where counsel is allowed—

(i) in the circumstances mentioned in item (*a*) (ii) or (iii), £11;
(ii) in the circumstances mentioned in item (*a*) (iv), £20, with brief and, in addition, £6 for any consultation;

(*c*) in respect of other disbursements—
(i) such of the items mentioned in paragraph (3)(*c*) as are appropriate;
(ii) such amount as the taxing master considers to be reasonable for conveying or transferring property pursuant to the order made on the application.

(7)—

(*a*) The proviso to paragraph (2), paragraph (4) (except the words "together with a further sum of £8") and paragraph (5) shall apply, with the necessary modifications, in relation to the costs mentioned in paragraph (6) as they apply in relation to the costs mentioned in paragraph (2).

(*b*) Where a party is an assisted person, sub-paragraph (*a*) shall apply whether costs have been awarded or not.

(8) Except as provided in paragraph (6), nothing in this rule shall apply to the costs of an ancillary application and accordingly the costs of any such application may be taxed notwithstanding anything done under paragraph (2).

(9) In addition to the amount of costs allowed under the foregoing paragraphs in respect of the supply of goods or services on which value added tax is chargeable there may be allowed as a disbursement a sum equivalent to value added tax at the appropriate rate on that amount.

Payment of costs

10.—(1) Where in any matrimonial proceedings, the costs payable by a party are required to be taxed, they shall be payable within 7 days after the order for payment is made by the registrar pursuant to the taxing master's certificate of the result of the taxation or within such further time as may be specified in the order.

(2) Where costs are to be assessed under rule 8 of these Rules, or are fixed under rule 9 of these Rules, instead of being taxed, paragraph (1) of this rule shall have effect as if for the reference to the taxing master's certificate of the result of the taxation there were substituted a reference to the taxing master's certificate of the amount of assessed or fixed costs allowed.

Personal liability of solicitor for costs

11. Paragraphs (1) to (6) of R.S.C. Order 62, rule 8 (which deals with the personal liability of a solicitor for costs), shall apply to proceedings in a divorce county court as they apply to proceedings in the High Court, subject to the modification that "the Court" shall have the same meaning as in the County Court Rules (Northern Ireland) 1976.

Modified application of the Rules of the Supreme Court

12.—(1) R.S.C. Order 62 rules 20(3), 21, 22 and 23 shall not apply to the taxation of costs of matrimonial proceedings.

(2) The scale of costs contained in Appendix 2 to R.S.C. Order 62 shall not apply to the taxation of costs of matrimonial proceedings.

Modified application of the county court rules

13. For the purpose of C.C.R. Order 45, rule 6, a witness or party who has attended the hearing of an ancillary application, or a party who has attended for medical examination under rule 30 of the principal rules, shall be treated as having attended the hearing of an action or matter.

Proceedings in a divorce county court

14. Paragraphs 1(1), 2(1), 3 and 4 of Schedule 2 to the Order of 1981 shall apply to matrimonial proceedings in a divorce county court as if such proceedings had been taken in the High Court.