

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.

(5) The master or chief clerk, as the case may be, shall send a copy of any answer to the Crown Solicitor on behalf of the Attorney General if he has notified the master or chief clerk that he wishes to intervene in the proceedings.

(6) When all answers to the petition have been filed the petitioner shall lodge in the Matrimonial Office and serve on all respondents to the application a request for directions as to any other persons who should be made respondents to the petition or given notice of the proceedings.

(7) When giving directions in accordance with paragraph (6) the court shall consider whether it is necessary that the Attorney General should argue before it any question relating to the proceedings, and if it does so consider, the Attorney General need not file an answer and the court shall give directions requiring him to serve on all parties to the proceedings a summary of his argument.

(8) Persons given notice of the proceedings pursuant to directions given in accordance with paragraph (6) shall within 21 days after service of the notice upon them be entitled to apply to the registrar to be joined as parties.

(9) The Attorney General may file an answer to the petition within 21 days after directions have been given under paragraph (7) and notice of hearing shall not be given until that period and the period referred to in paragraph (8) have expired.

(10) 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 bespeak a copy of, any document filed in the court which relates to any other matrimonial proceedings referred to in the proceedings.

(11) A declaration made in accordance with Article 31 of the Order of 1989 shall be in Form 26."

Financial relief in Northern Ireland after overseas divorce, etc.

7. After rule 88B (as inserted by rule 6 above) there shall be inserted the following new rules—

“FINANCIAL RELIEF AFTER OVERSEAS DIVORCE

Application for leave to apply for financial relief after overseas divorce

88C.—(1) An application to the High Court for leave to apply for an order for financial relief under Part IV of the Order of 1989 shall be made ex parte by originating summons in Form 27 issued out of the Matrimonial Office and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in Article 20(2) of that Order.

(2) The affidavit in support shall give particulars of the judicial or other proceedings by means of which the marriage to which the application relates was dissolved or annulled or by which the parties to the marriage were legally separated and shall state, so far as is known to the applicant:—

- (a) the names of the parties to the marriage and the date and place of the marriage;
- (b) the occupation and residence of each of the parties to the marriage;
- (c) whether there are any living children of the family and, if so, the number of such children and full names (including surname) of each and his date of birth or, if it be the case, that he is over 18;
- (d) whether either party to the marriage has remarried;
- (e) 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;
- (f) the grounds on which it is alleged that the court has jurisdiction to entertain an application for financial relief under Part IV of the Order of 1989.

(3) The master shall fix a date and time for the hearing of the application by the judge in chambers and give notice thereof to the applicant.

Application for an order for financial relief or an avoidance of transaction order under Part IV of the Order of 1989

88D.—(1) An application to the High Court for an order for financial relief under Part IV of the Order of 1989 shall be made by originating summons in Form 28 issued out of the Matrimonial Office and at the same time the applicant, unless otherwise directed, shall file an affidavit in support of the summons giving full particulars of his property and income.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support, if one has been filed, and a notice of proceedings and acknowledgement of service in Form 30, and rule 15 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form 6 and in paragraph (2) to 14 days were, respectively, references to Form 30 and 31 days.

(3) Rules 64, 66, 67, 69(4), (6) and (7), 74(1) and (2) and 76A shall apply, with the necessary modifications, to an application for an order for financial relief under this rule as they apply to an application for ancillary relief made by notice in Form 13 and the court may order the attendance of any person for the purpose of being examined or cross-examined and the discovery and production of any document.

(4) An application for an interim order for maintenance under Article 18 of the Order of 1989 or an avoidance of transaction order under Article 27 of that Order may be made, unless the court otherwise directs, in the originating summons under paragraph (1) or by summons in accordance with rule 96 and an application for an order under the said Article 27 shall be supported by an affidavit, which may be the affidavit filed under paragraph (1), stating the facts relied on.

(5) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice to defend, file an affidavit

in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(6) In respect of any application for an avoidance of transaction order the court may make such order as it is empowered to make by paragraph (3) and rule 66 shall apply, with the necessary modifications, to an application for an avoidance of transaction order as it applies to an avoidance of disposition order.

(7) Where the originating summons contains an application for an order under Article 26 of the Order of 1989 the applicant shall serve a copy on the landlord of the dwelling-house and he shall be entitled to be heard on the application.

(8) Where, in reliance on Article 26 of the Order of 1989, the court intends to make an order under Part II of Schedule 1 to that Order then, before making the order, the court shall cause notice of its intention to make the order to be given to the landlord of the dwelling-house and shall afford him an opportunity of being heard.

(9) An application for an order for financial relief under Part IV of the Order of 1989 or for an avoidance of transaction order shall be determined by the judge.

Application for an order under Article 28 of the Order of 1989 preventing a transaction

88E.—(1) An application to the High Court under Article 28 of the Order of 1989 for an order preventing a transaction shall be made by originating summons in Form 29 issued out of the Matrimonial Office and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support and a notice of proceedings and acknowledgement of service in Form 30, and rule 15 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form 6 and in paragraph (2) of that rule to 14 days were, respectively, references to Form 30 and 31 days.

(3) If the respondent intends to contest the application he shall within 28 days after the time limited for giving notice to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(4) The application shall be determined by the judge.

(5) Rule 74 (save paragraph (3)) shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.”.

Forms

8. Appendix 1 shall be amended as follows—

- (a) for Form 1 there shall be substituted the new form set out in the Schedule;
- (b) after Form 25 there shall be inserted the new Forms 26 to 30 set out in the Schedule.

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Matrimonial Causes

No. 246

*Brian Hutton
Basil Kelly
J. P. Higgins
D. Kennedy
J. F. B. Russell
Mary Connolly
R. T. Millar*

Dated 19th May 1989.

I concur

Dated 28th June 1989.

Mackay of Clashfern, C.

SCHEDULE

Rule 8

FORMS

FORM 1

Rule 4

ORIGINATING SUMMONS UNDER RULE 4

In the High Court of Justice in Northern Ireland

Family Division⁽¹⁾

In the County Court for the Division of⁽¹⁾

In the Matter of a Proposed Petition by AB for the annulment of his (or her) Marriage with CB.

LET of in the County of attend the Judge in Chambers at on the day of 19 , at o'clock in the noon on the hearing of an application of for an order that the said may be at liberty to file a petition for the annulment of his (or her) marriage with the said solemnized on the day of 19 , notwithstanding that 3 years have passed since the date of the said marriage.

A copy of the affidavit to be used in support of the application is delivered herewith.

If you wish to be heard on the application, you must attend at the time and place above mentioned and if you do not attend, such order will be made and proceedings taken as the Judge may think just and expedient.

Dated this day of 19 .

THIS SUMMONS was taken out by solicitor for the above-named.

Note:

- 1. You must complete the accompanying acknowledgement of service and send it so as to reach the court within fourteen days after you receive this summons.
2. In default of your giving notice of intention to defend the Court will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence.
3. If you intend to instruct a solicitor to act for you, you should at once give him all the documents served on you, so that he may take the necessary steps on your behalf.

(1) Delete if inapplicable.

DECLARATION AS TO MARITAL STATUS UNDER ARTICLE 31 OF THE
MATRIMONIAL AND FAMILY PROCEEDINGS (NORTHERN IRELAND) ORDER
1989

In the High Court of Justice in Northern Ireland

Family Division⁽¹⁾In the County Court for the Division of⁽¹⁾

Upon the petition of AB (the
petitioner) and upon hearing the petitioner and upon hearing CD (the
respondent)

It is declared* that the marriage between
and
was a valid marriage at its inception, namely the day of
19 .

Dated

* or, where a declaration is made under Article 31(1)(b) of the 1989 Order, the following form shall be followed:—

... that the marriage between
and subsisted on the
day of 19 .

* or, where a declaration is made under Article 31(1)(c) of the 1989 Order, the following form shall be followed:—

... that the marriage between
and did not subsist on the
day of 19 .

* or, where a declaration is made under Article 31(1)(d) of the 1989 Order, the following form shall be used:—

... that the divorce [or annulment or legal separation] in respect of
and (parties to the
marriage) obtained on the day of 19 , in
(the country where the divorce, annulment or legal
separation was obtained) is entitled to recognition in Northern Ireland.

* or, where a declaration is made under Article 31(1)(e) of the 1989 Order, the following form shall be used:—

... that the divorce [or annulment or legal separation] in respect of
and (parties to the
marriage) obtained on the day of 19 , in
(the country where the divorce, annulment or legal separation was obtained)
is not entitled to recognition in Northern Ireland.

(¹) Delete if inapplicable.

NOTICE OF PROCEEDINGS AND ACKNOWLEDGEMENT OF SERVICE

In the High Court of Justice in Northern Ireland

Family Division

Between AB Applicant
and CD Respondent

Read carefully this Notice of Proceedings before answering the questions which follow.

NOTICE OF PROCEEDINGS

(1) Or as the case may be. TAKE NOTICE THAT an application [for financial relief] [to prevent a transaction](1) has been presented to this court. A sealed copy of it and a copy of the applicant's affidavit in support are delivered with this notice.

- 1. You must complete and detach the acknowledgement of service and send it so as to reach the Court within 31 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.
- 2. If you wish to dispute the claim made by the applicant you must file in the Court an affidavit in answer within 28 days after the time allowed for sending the acknowledgement of service.
- 3. If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgement to the Court on your behalf. If you do not intend to instruct a solicitor, you should nevertheless give an address for service in the acknowledgement so that any documents affecting your interests which are sent to you will in fact reach you. This should be your place of residence or, if you do not reside in Northern Ireland, the address of a place in Northern Ireland to which documents may be sent to you. Change of address should be notified to the Court.

ACKNOWLEDGEMENT OF SERVICE

In the High Court of Justice in Northern Ireland

Family Division

Between Applicant
and Respondent

- 1. Have you received an originating summons and a copy of the supporting affidavit in respect of the proceedings mentioned above?

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules amend the Matrimonial Causes Rules (Northern Ireland) 1981 in consequence of the coming into operation of the remaining provisions of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 so as to provide:—

- (a) a procedure for the making of an application for leave to petition for nullity on certain grounds after three years of marriage (Rule 3);
- (b) a procedure for the making of an application for a “consent order” for financial relief (Rule 4);
- (c) for the transfer of certain tenancies on divorce (Rule 5);
- (d) a procedure for the making of an application for a declaration as to marital status (Rule 6);
- (e) a procedure for the making of an application to the High Court for financial relief after an overseas divorce (Rule 7).

The rules make other minor consequential amendments.