
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

The Family Proceedings Rules (Northern Ireland) 1996

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.

(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⁽¹⁾, 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.

Signing of petition

2.5. Every petition shall be signed by counsel if settled by him or, if not, by the petitioner’s solicitor in his own name or the name of his firm, or by the petitioner if he sues in person.

Presentation of petition

2.6.—(1) A petition may be presented to the High Court or, other than a petition under Article 21 of the Order of 1978, to any divorce county court.

(2) Unless the court otherwise directs on an application made *ex parte*, a certificate of the marriage to which the cause relates together with the certificates of birth of any child of the family under the age of 18 shall be filed with the petition.

(3) Where there is before the court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings:

Provided that no such leave shall be required where it is proposed, after the expiration of the period of 2 years from the date of the marriage, to present a petition for divorce alleging such of the facts mentioned in Article 3(2) of the Order of 1978 as were alleged in a petition for judicial separation presented before the expiration of that period.

(4) Subject to paragraph (5), the petition shall be presented by filing it in the Matrimonial Office together with a notice in Form M5 with Form M6 attached addressed to the respondent and any co-respondent together with any statement and report required by rule 2.3(2).

(5) The petition and other documents specified in paragraph (4) may be presented at any county court office or at the office of the chief clerk at Enniskillen, for transmission to the Matrimonial Office for filing.

(6) C.C.R. Order 6, rule 10 (which deals with the service of petitions) shall not apply but on the filing of the petition the master shall—

- (a) affix thereto the seal of the Matrimonial Office,

(1) 1971 c. 36 (N.I.)

- (b) enter the cause in the appropriate records, and
- (c) annex to every copy of the petition for service a notice in Form M5 with Form M6 attached and shall also annex to the copy petition for service on a respondent the copy of any statement and report filed pursuant to paragraph (4) of this rule.

Conciliation

2.7.—(1) Where—

- (a) a petition for divorce, nullity of marriage or judicial separation has been presented and service on the respondent of the petition has been effected or dispensed with, and
- (b) there are children of the family to whom Article 44 of the Order of 1978 applies;

the Master shall inform the Department with a view to a reference to a suitably qualified person (hereinafter called “the conciliator”) to consider the possibility of conciliating the parties to the marriage.

(2) Where a reference is made under this rule the conciliator, subject to the approval of the Master, may inspect the court file.

- (3) This rule shall not prejudice the right of any party to lodge a certificate of readiness.

Parties

2.8.—(1) Subject to paragraph (2), where a petition alleges that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed shall be made a co-respondent in the cause unless—

- (a) that person is not named in the petition and, if the adultery is relied on for the purpose of Article 3(2)(a) of the Order of 1978, the petition contains a statement that his or her identity is not known to the petitioner, or
- (b) the court otherwise directs.

(2) Where a petition alleges that the respondent has been guilty of rape upon a person named, then, notwithstanding anything in paragraph (1), that person shall not be made a co-respondent in the cause unless the court so directs.

(3) Where a petition alleges that the respondent has been guilty of improper conduct (other than adultery) with a person named, the court may direct that the person named be made a co-respondent in the cause, and for that purpose the Master may cause notice to be given to the petitioner and to any other party who has given notice of intention to defend of a date and time when the court will consider giving such a direction.

(4) An application for directions under paragraph (1) may be made ex parte if no notice of intention to defend has been given.

(5) Paragraphs (1) and (3) of this rule do not apply where the person named has died before the filing of the petition.

Service of petition

2.9.—(1) Subject to the provisions of this rule and rules 6.4 and 7.3 a sealed copy of every petition shall be served personally or by post on every respondent or co-respondent together with a copy of the notice in Form M5 with Form M6 attached and with any statement and report required by rule 2.3(2).

- (2) Personal service shall in no case be effected by the petitioner himself.

(3) An application for leave to substitute for the modes of service prescribed by paragraph (1) some other mode of service, or to substitute for service notice of the proceedings by advertisement

or otherwise, shall be made ex parte by lodging with the Master an affidavit setting out the grounds on which the application is made.

(4) No order giving leave to substitute notice of the proceedings by advertisement shall be made unless it appears to the Master that there is a reasonable probability that the advertisement will come to the knowledge of the person concerned.

(5) Where leave is given to substitute for service notice of the proceedings by advertisement, the form of the advertisement shall be settled by the Master and copies of the newspapers containing the advertisement shall be filed.

(6) Where in the opinion of the Master it is impracticable to serve a party in accordance with any of the foregoing paragraphs or it is otherwise necessary or expedient to dispense with service of a copy of a petition on the respondent or on any other person, the Master may make an order dispensing with such service.

(7) An application for an order under paragraph (6) shall, if no notice of intention to defend has been given, be made in the first instance ex parte by lodging an affidavit setting out the grounds of the application, but the Master may, if he thinks fit, require the attendance of the petitioner on the application.

(8) Where the solicitor for the respondent or co-respondent signs a receipt that he accepts service of the petition on behalf of the party, the petition shall be deemed to have been duly served on that party and to have been so served on the date on which the receipt was signed.

Proof of service

2.10.—(1) A petition shall be deemed to be duly served if—

- (a) an acknowledgement of service in Form M6 is signed by the party to be served or by a solicitor on his behalf and is returned to the Matrimonial Office, and
- (b) where the form purports to be signed by the respondent, his signature is proved at the hearing.

(2) Where a copy of a petition has been sent to a party and no acknowledgement of service has been returned to the Matrimonial Office, the Master, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.

(3) Where a copy of a petition has been served on a party personally and no acknowledgement of service has been returned to the Matrimonial Office, service shall be proved by filing an affidavit of service in Form M7 showing the server's means of knowledge of the identify of the party served.

(4) Where a solicitor has accepted service of a petition in accordance with rule 2.9(8), a copy of his receipt accepting service of the petition shall be lodged in the Matrimonial Office.

(5) Where an acknowledgement of service is returned to the Matrimonial Office, the proper officer shall send a photographic copy thereof to the solicitor for the petitioner or to the petitioner if he sues in person.

Notice of intention to defend

2.11.—(1) In these Rules any reference to a notice of intention to defend is a reference to an acknowledgement of service in Form M6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgement relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the Matrimonial Office.

(2) In relation to any person on whom there is served a document requiring or authorising an acknowledgement of service to be returned to the Matrimonial Office references in these Rules to

the time limited for giving notice of intention to defend are references to 14 days after service of the document, inclusive of the day of service, or such other time as may be fixed.

(3) Subject to paragraph (2), a person may give notice of intention to defend notwithstanding that he has already returned to the Matrimonial Office an acknowledgement of service not constituting such a notice.

Consent to the grant of a decree

2.12.—(1) Where, before the hearing of a petition alleging 2 years' separation coupled with the respondent's consent to a decree being granted, the respondent wishes to indicate to the court that he consents to the grant of a decree, he must do so by giving the Master a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgement of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgement is signed—

- (a) in the case of a respondent acting in person, by the respondent, or
- (b) in the case of a respondent represented by a solicitor, by the respondent as well as by the solicitor.

(2) A respondent to a petition which alleges any such fact as is mentioned in paragraph (1) may give notice to the court either that he does not consent to a decree being granted or that he withdraws any consent which he has already given.

Where any such notice is given and none of the other facts mentioned in Article 3(2) of the Order of 1978 is alleged, the proceedings on the petition shall be stayed and the Master shall thereupon give notice of the stay to all parties.

Supplemental petition, pleadings and amendment of petition

2.13.—(1) A supplemental petition may be filed only with leave.

(2) A petition may be amended without leave before it is served but only with leave after it has been served.

(3) Subject to paragraph (4), an application for leave under this rule—

- (a) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made *ex parte* by lodging in the Matrimonial Office the supplemental petition or a copy of the petition as proposed to be amended, together with the appropriate consent, and
- (b) shall, in any other case, be made by summons to be served, unless the court otherwise directs, on every opposite party.

(4) The Master may, if he thinks fit, require an application for leave to be supported by an affidavit.

(5) An order granting leave shall—

- (a) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended,
- (b) where the order is made after the certificate of readiness has been lodged, provide for a stay of the hearing until after the certificate has been renewed.

(6) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition.

(7) Rules 2.5 and 2.8 shall apply to a supplemental or amended petition as they apply to the original petition.

(8) Unless the court otherwise directs, a copy of a supplemental or amended petition, together with a copy of the order (if any) made under this rule shall be served on every respondent and co-respondent named in the original petition or in the supplemental or amended petition.

(9) Rules 2.9 and 2.10 shall apply to a respondent or co-respondent named in the original petition or in the supplemental or amended petition as they apply in relation to a person required to be served with an original petition.

Filing of answer to petition

2.14.—(1) Subject to paragraph (2) and to rules 2.12, 2.16 and 2.35, a respondent or co-respondent who has given notice of intention to defend and who—

- (a) wishes to defend the petition or to dispute any of the facts alleged in it,
- (b) being the respondent wishes to make in the proceedings any charge against the petitioner in respect of which the respondent prays for relief, or
- (c) being the respondent to a petition to which Article 7(1) of the Order of 1978 applies, wishes to oppose the grant of a decree on the ground mentioned in that paragraph,

shall within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the petition.

(2) An answer may be filed at any time before the certificate of readiness has been lodged, notwithstanding that the time for filing the answer has expired.

(3) Where in a cause in which relief is sought under Article 14(d) of the Order of 1978 the respondent files an answer containing no more than a simple denial of the facts stated in the petition, he shall, if he intends to rebut the charges in the petition, give the proper officer notice to that effect either when filing his answer or later by leave of the court.

(4) On the filing of an answer to a petition presented to a divorce county court the Master shall order the cause to be transferred to the High Court, unless it is a case to which paragraph (3) applies and the respondent has not given any such a notice as is mentioned in that paragraph.

Filing of reply and subsequent pleadings

2.15.—(1) A petitioner may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 2.19.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed on lodging the certificate of readiness to have denied every material allegation of fact made in the answer.

(3) No pleadings subsequent to a reply shall be filed without leave.

Filing of pleadings after lodgment of certificate of readiness

2.16. No pleadings shall be filed without leave after the certificate of readiness has been lodged.

Contents of answer and subsequent pleadings

2.17.—(1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the petition, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the pleading is filed by the husband or wife, it shall in relation to those facts, contain the information required in the case of a petition by paragraph 1(m) of Appendix 2.

(2) Unless the court otherwise directs, an answer by a husband or wife who disputes any statement required by paragraph 1(f), (g) and (h) of Appendix 2 to be included in the petition shall contain full particulars of the facts relied on.

(3) Paragraph 4(a) of Appendix 2 shall, where appropriate, apply, with the necessary modifications, to a respondent's answer as it applies to a petition.

Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.

(4) Where an answer to any petition contains a prayer for relief, it shall contain the information required by paragraph 1(1) of Appendix 2 in the case of the petition insofar as it has not been given by the petitioner.

(5) Rule 2.4(2) shall apply, with the necessary modifications, to a pleading other than a petition as it applies to a petition.

(6) Where a party's pleading includes such a statement as is mentioned in rule 2.4(2), then if the opposite party—

- (a) denies the conviction, finding or adjudication to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(7) Rule 2.5 shall apply, with the necessary modifications, to a pleading other than a petition as it applies to a petition.

Allegation against third person in pleading

2.18.—(1) Rules 2.8, 2.9 and 2.10 shall apply, with the necessary modifications, to a pleading other than a petition as they apply to a petition, so however that for the references in those rules to a co-respondent there shall be substituted references to a party cited.

(2) Rule 2.14 shall apply, with the necessary modifications, to a party cited as it applies to a co-respondent.

Service of pleadings

2.19. A party who files an answer, reply or subsequent pleading shall within 7 days of filing it serve a copy thereof on every opposite party.

Supplemental answer and amendment of pleadings

2.20. Rule 2.13 shall apply, with the necessary modifications, to the filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as it applies to the filing of a supplemental petition and the amendment of a petition.

Service and amendment of pleadings

2.21. Pleadings in matrimonial proceedings may be served on any day except Sunday, Good Friday and Christmas Day and may be amended on any day on which the appropriate court office is open.

Particulars

2.22.—(1) A party on whom a pleading has been served may by notice request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time the party requiring them may apply for an order that the particulars be given.

(2) A party giving particulars whether in pursuance of an order or otherwise shall at the same time file a copy of them.

Re-transfer of cause to divorce county court

2.23.—(1) Where a cause begun by petition has been transferred to the High Court under rule 2.14(4) and subsequently becomes undefended, the court shall order it to be re-transferred to a divorce county court, unless, (because of the proximity of the probable date of trial or for any other reason) the court thinks it desirable that the cause should be heard and determined in the High Court.

(2) Nothing in paragraph (1) shall require a case to be re-transferred at the time when it becomes undefended if in the opinion of the court the question whether it is desirable to retain it in the High Court cannot conveniently be considered until later.