
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

The Family Proceedings Rules (Northern Ireland) 1996

Part II

Matrimonial causes

Decrees and orders

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2.46.—(1) Every decree, every order made in open court and every other order which is required to be drawn up shall be drawn up—

- (a) in the case of a decree or order pronounced or made in the High Court, in the Matrimonial Office;
- (b) in the case of a decree or order pronounced or made in a divorce county court, in the county court office;

and shall have affixed thereto the seal of the office in which it is drawn up.

(2) C.C.R. Order 33, rule 4(1) (which deals with the lodgment of a decree) shall not apply to a decree pronounced in a cause pending in a divorce county court.

(3) The chief clerk to whom the file of a cause has been sent under rule 2.31(3) shall, as soon as practicable after the cause has been tried, forward to the Matrimonial Office a copy of the decree or order pronounced or made in the cause.

Application for rescission of decree

2.47.—(1) An application by a respondent under Article 12(1) of the Order of 1978 for the rescission of a decree of divorce shall be made to a judge and shall be heard in open court.

(2) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than 14 days before the day fixed by the proper officer or chief clerk, as the case may be, for the hearing of the application.

(3) The applicant shall file an affidavit showing that the notice of the application has been served.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the petitioner.

Application under Article 12(2) of the Order of 1978

2.48.—(1) An application by the respondent to a petition for divorce for the court to consider his financial position after the divorce shall be made by notice in Form M14.

(2) Where a petitioner is served with a notice in Form M14, then, unless he has already filed an affidavit under rule 2.61(2), he shall, within 14 days after the service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(3) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the respondent shall file an affidavit in reply containing full particulars of his property and income unless already given in an affidavit filed by him under rule 2.61(3).

(4) The powers of the court on the hearing of the application may be exercised by the Master.

(5) The Master by whom an application under Article 12(2) of the Order of 1978 is to be heard shall fix an appointment for the hearing, and rules 2.64(3) to (7); 2.68 and 2.69 shall apply to the application as if it were an application for ancillary relief.

(6) At any time before the hearing of the application is concluded (and without prejudice to any right of appeal), the Master may, and if so requested by either party shall, refer the application or any question arising thereon, to a judge.

(7) A statement of any of the matters mentioned in paragraph (3) of Article 12 of the Order of 1978 with respect to which the court is satisfied, a statement that the conditions for which that paragraph and paragraph (4) provide have been fulfilled, shall be entered in the court records.

Intervention to show cause by the Crown Solicitor

2.49.—(1) If the Crown Solicitor wishes to show cause why a decree nisi should not be made absolute, he shall give notice to that effect to the proper officer or chief clerk, as the case may be, and to the party in whose favour it was pronounced, and, if the cause is pending in a divorce county court, the Master shall thereupon order it to be transferred to the High Court.

(2) Within 21 days after giving notice under paragraph (1) the Crown Solicitor shall file his plea setting out the ground on which he desires to show cause, together with a copy for service on the party in whose favour the decree was pronounced and every other party affected by the decree.

(3) The proper officer shall serve a copy of the plea on each of the persons mentioned in paragraph (2).

(4) Except as hereinafter provided, these Rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition.

(5) If no answer to the plea is filed within the time limited, or if an answer is filed and is struck out or not proceeded with, the Crown Solicitor may apply forthwith by motion to rescind the decree nisi and dismiss the petition.

(6) If an answer is filed denying all the charges in the plea, the Crown Solicitor shall within 14 days thereafter request the proper officer to enter the intervention for hearing but, if no such request is made, the party in whose favour the decree nisi was pronounced may request the proper officer to enter the intervention for hearing or may apply under rule 2.52 to make the decree absolute.

(7) If an answer is filed in which any charge in the plea is not denied, the party in whose favour the decree nisi was pronounced may within 14 days after the answer has been filed request the proper officer to enter the intervention for hearing but, if no such request is made, the Crown Solicitor may apply forthwith by motion to rescind the decree and dismiss the petition.

(8) The Crown Solicitor or the party in whose favour the decree was pronounced, as the case may be shall, when requesting the intervention to be entered for hearing, deliver to the Matrimonial Office a bundle of pleadings for the judge consisting of an indexed copy of the following documents:—

- (a) the decree nisi;
- (b) the Crown Solicitor's plea;
- (c) the answer;
- (d) notices for particulars and answers thereto;
- (e) affidavits, if any;
- (f) the requisite legal aid documents,

fastened together in the order shown and having endorsed thereon the names and addresses of the solicitors of the parties.

(9) After the expiration of 7 days from the date on which the proper officer was requested to enter the intervention for hearing, the intervention shall be deemed to be set down for trial and the proper officer shall—

- (a) give notice to this effect to every party to the intervention, and
- (b) as soon as practicable thereafter fix the date of the hearing and give notice thereof to every party to the intervention.

Intervention to show cause by person other than Crown Solicitor

2.50.—(1) If any person other than the Crown Solicitor wishes to show cause under Article 11 of the Order of 1978 why a decree nisi should not be made absolute, he shall file an affidavit stating the facts on which he relies and a copy shall be served on the party in whose favour the decree was pronounced.

(2) A party on whom a copy of an affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, a copy thereof shall be served on the person showing cause.

(3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, a copy shall be served on each party who was served with a copy of his original affidavit.

(4) No affidavit after an affidavit in reply shall be filed without leave.

(5) Any person who files an affidavit under paragraph (1), (2) or (3) shall at the same time file a copy for service on each person required to be served therewith and the proper officer or chief clerk, as the case may be, shall thereupon serve the copy on that person.

(6) A person showing cause shall apply to the judge for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where no affidavit in answer has been filed, within 14 days after expiry of the time allowed for filing such an affidavit.

(7) If the person showing cause does not apply under paragraph (6) within the time limited, the person in whose favour the decree was pronounced may do so.

(8) The judge may either give directions for the trial of the intervention or, if he is satisfied that there is no question to be tried, dismiss the intervention.

(9) If the judge gives such directions in a cause pending in a divorce county court, he shall thereupon order the cause to be transferred to the High Court.

(10) When directions have been given under paragraph (8) and, if necessary, the cause has been transferred to the High Court, the intervention shall proceed as nearly as may be in the manner prescribed by paragraphs (6) to (9) of rule 2.49, substituting for references to the Crown Solicitor references to the person showing cause, but no plea or answer need be filed unless the judge so directs.

Rescission of decree nisi by consent

2.51.—(1) Where a reconciliation has been effected between the petitioner and the respondent—

- (a) after a decree nisi has been pronounced but before it has been made absolute, or
- (b) after the pronouncement of a decree of judicial separation,

either party may apply for an order rescinding the decree by consent.

(2) Where the cause is pending in a divorce county court, the application shall be made on notice to the other spouse and to any other party against whom costs have been awarded or who is otherwise

affected by the decree, and where the cause is pending in the High Court, a copy of the summons by which the application is made shall be served on every such person.

(3) The application shall be made to the judge and shall be heard in chambers.

Decree absolute on lodging notice

2.52.—(1) Subject to rule 2.53(1), an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the proper officer or chief clerk, as the case may be, notice in Form M10.

(2) On the lodging of such a notice, the proper officer or chief clerk, as the case may be, shall search the court records and if he is satisfied—

- (a) that no appeal against the decree and no application for rescission of the decree is pending;
- (b) that no order has been made by the Court of Appeal extending the time for appealing against the decree or, if any such order has been made, that the time so extended has expired;
- (c) that no application for such an order as is mentioned in sub-paragraph (b) is pending;
- (d) that no intervention under rule 2.49 or 2.50 is pending;
- (e) that the court has complied with Article 44(1) of the Order of 1978 and has not given any direction under Article 44(2);
- (f) where a certificate has been granted under section 12 of the Administration of Justice Act 1969(1) in respect of the decree—
 - (i) that no application for leave to appeal directly to the House of Lords is pending;
 - (ii) that no extension of the time to apply for leave to appeal directly to the House of Lords has been granted or, if any such extension has been granted, that the time so extended has expired; and
 - (iii) that the time for any appeal to the Court of Appeal has expired; and
- (g) that the provisions of Article 12(2) to (4) of the Order of 1978 do not apply or have been complied with,

the Master shall make the decree absolute.

Provided that if the notice is lodged more than 12 months after the decree nisi, the Master may require the applicant to file an affidavit accounting for the delay and may make the decree absolute if he thinks fit or refer the application to the judge.

Decree absolute on application

2.53.—(1) In the following cases an application for a decree nisi to be made absolute shall be made to the judge by summons, that is to say—

- (a) where, within 6 weeks after a decree nisi has been pronounced, the Crown Solicitor gives to the proper officer or chief clerk, as the case may be, and to the party in whose favour the decree was pronounced a notice that he requires more time to decide whether to show cause against the decree being made absolute and the notice has not been withdrawn, or
- (b) where there are other circumstances which in the opinion of the Master ought to be brought to the attention of the court before the decree nisi is made absolute.

Unless the court otherwise directs, the summons shall be served on every party to the cause (other than the applicant) and, in a case to which sub-paragraph (a) applies, on the Crown Solicitor.

(2) An application by a spouse for a decree nisi pronounced against him to be made absolute may be made to the judge or the Master by summons to be served on the other spouse not less than 7 clear days before the day on which the application is to be heard.

(3) An order granting an application under this rule shall not take effect until the proper officer or chief clerk, as the case may be, has searched the court records and is satisfied as to the matters mentioned in rule 2.52(2).

Indorsement and certificate of decree absolute

2.54.—(1) Where a decree nisi is made absolute, the Master shall make an indorsement to that effect on the decree, stating the precise time at which it was made absolute.

(2) On a decree nisi being made absolute, the proper officer or chief clerk, as the case may be, shall—

- (a) send to the petitioner and the respondent a certificate in Form M11 or M12, authenticated by the appropriate seal, and
- (b) if the cause is pending in a divorce county court, notify the Matrimonial Office.

(3) A certificate in Form M11 or M12 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

(4) A central index of decrees absolute shall be kept in the Matrimonial Office and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.