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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 322**

**The Family Proceedings Rules (Northern Ireland) 1996**

Part II

Matrimonial causes

Ancillary relief

**Application by petitioner or respondent for ancillary relief**

**2.55.**—(1) Any application by a petitioner or by a respondent who files an answer claiming relief, for—

- (a) an order for maintenance pending suit,
- (b) a financial provision order,
- (c) a property adjustment order,

shall be made in the petition or answer, as the case may be.

(2) Notwithstanding anything in paragraph (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently—

- (a) by leave of the court, either by notice in Form M13 or at the trial, or
- (b) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form M13.

(3) An application by a petitioner or respondent for ancillary relief, not being an application which is required to be made in the petition or answer, shall be made by notice in Form M13.

**Application by parent, guardian etc for ancillary relief in respect of children**

**2.56.**—(1) Any of the following persons, namely—

- (a) a parent or guardian of any child of the family;
- (b) any person in whose favour a residence order has been made with respect to a child of the family, and any applicant for such an order;
- (c) any other person who is entitled to apply for a residence order with respect to a child;
- (d) an authority, where an order has been made under Article 50(1)(a) of the Order of 1995 placing a child in its care;
- (e) the Official Solicitor if appointed the guardian ad litem of a child of the family under rule 6.6; and
- (f) a child of the family who has been given leave to intervene in the cause for the purpose of applying for ancillary relief,

may apply for an order for ancillary relief as respects that child by notice in Form M13.

(2) In this rule

— “authority” has the meaning assigned to it by Article 2(1) and (3) of the Order of 1995;

— “residence order” has the meaning assigned to it by Article 8(1) of the Order of 1995.

#### **Application in Form M13 or M14**

**2.57.** Where an application for ancillary relief is made by notice in Form M13 or an application under rule 2.48 is made by notice in Form M14, the notice shall—

- (a) if the cause has been set down for trial in a divorce county court, be filed in the county court office, or
- (b) in any other case be filed in the Matrimonial Office,

and within 7 days after filing the notice the applicant shall serve a copy on the respondent to the application.

#### **Application for ancillary relief after order of court of summary jurisdiction**

**2.58.** Where an application for ancillary relief is made while there is in force an order of a court of summary jurisdiction for maintenance of a spouse or child, the applicant shall file a copy of the order on or before the hearing of the application.

#### **Children to be separately represented on certain applications**

**2.59.—(1)** Where an application is made to the High Court or a divorce county court for an order for a variation of settlement the court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interest of any child concerned, direct that the child be separately represented on the application, either by a solicitor or by a solicitor and counsel, and may appoint the Official Solicitor or other fit person to be guardian ad litem of the child for the purpose of the application.

(2) On any other application for ancillary relief the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (1).

(3) Before a person other than the Official Solicitor is appointed guardian ad litem under this rule there shall be filed a certificate by the solicitor acting for the child that the person proposed as guardian has no interest in the matter adverse to that of the child and that he is a proper person to be such guardian.

#### **General provisions as to evidence, etc, on application for ancillary relief**

**2.60.—(1)** A petitioner or respondent who has applied for ancillary relief in his petition or answer and who intends to proceed with the application before the Master shall, subject to rule 2.70, file a notice in Form M15 and within 7 days after doing so serve a copy on the other spouse.

(2) Where a respondent or a petitioner is served with a notice in Form M13 or M15 in respect of an application for ancillary relief, not being an application to which rule 2.58 applies, then, unless the parties are agreed upon the terms of the proposed order, he shall, within 14 days after 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) Except where the application is for a variation order the applicant shall, within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, file an affidavit in reply containing full particulars of his property and income.

### **Evidence on application for property adjustment or avoidance of disposition order**

**2.61.**—(1) Where an application is made for a property adjustment order, or an avoidance of disposition order, the application shall state briefly the nature of the adjustment proposed or the disposition to be set aside and the notice in Form M13 or M15, as the case may be, shall, unless the court otherwise directs, be supported by an affidavit by the applicant stating the facts relied on in support of the application.

- (2) The affidavit in support shall contain, so far as known to the applicant, full particulars—
- (a) in the case of an application for a transfer or settlement of property—
    - (i) of the property in respect of which the application is made,
    - (ii) of the property to which the party against whom the application is made is entitled in possession or in reversion;
  - (b) in the case of an application for a variation of settlement order—
    - (i) of all settlements, whether ante-nuptial or post-nuptial, made on the spouses, and
    - (ii) of the funds brought into settlement by each spouse;
  - (c) in the case of an application for an avoidance of disposition order—
    - (i) of the property to which the disposition relates,
    - (ii) of the persons in whose favour the disposition is alleged to have been made and, in the case of a disposition alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement.

(3) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the affidavit in support shall, in addition to containing any particulars required by paragraph (2)—

- (a) state if known to the applicant, whether the title to the land is registered or unregistered and, if registered, the Land Registry folio number,
- (b) give particulars, so far as known to the applicant, of any mortgage, charge or lien whatsoever on the land or on any interest therein.

(4) A copy of Form M13 or M15, as the case may be, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application, that is to say—

- (a) in the case of an application for a variation of settlement order, the trustees of the settlement and the settlor if living,
- (b) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made,
- (c) in the case of an application to which paragraph 3 refers, any mortgagee or chargee or person who claims a lien on the property of whose interest particulars are given pursuant to that paragraph,

and such other persons, if any, as the Master may direct.

(5) Any person served with notice of an application to which this rule applies may, within 14 days after service, file an affidavit in answer.

### **Evidence on application for variation order**

**2.62.** An application for a variation order shall be supported by an affidavit by the applicant setting out full particulars of his property and income and the grounds on which the application is made.

### **Service of affidavit in answer or reply**

**2.63.**—(1) a person who files an affidavit for use on an application under rule 2.60, 2.61 or 2.62 shall at the same time serve a copy on the opposite party and, where the affidavit contains an allegation of adultery or of improper conduct with a named person, then, unless the court otherwise directs, it shall be indorsed with a notice in Form M16, and a copy of the affidavit or of such part thereof as the court may direct, indorsed as aforesaid, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 2.64(6) within 7 days after service of the affidavit on him.

(2) Rule 2.35(3) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent.

### **Investigation by Master of application for ancillary relief**

**2.64.**—(1) On or after the filing of a notice in Form M13 or M15 an appointment shall be fixed for the hearing of the application by the Master.

(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.

(3) Notice of the appointment, unless given in Form M13 or M15 (as the case may be) shall be given to every party to the application.

(4) Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the Master for directions.

(5) At the hearing of an application for ancillary relief the Master shall, subject to rules 2.65 and 2.66, investigate the allegation made in support of and in answer to the application, and may take evidence orally and may at any stage of the proceedings, whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined, and order the discovery and production of any document or require further affidavits.

(6) The Master may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

(7) Where any party to such an application intends on the day appointed for the hearing to apply only for directions, he shall file and serve on every other party a notice to that effect.

### **Order on application for ancillary relief**

**2.65.**—(1) Subject to rule 2.66, the Master shall, after completing his investigation under rule 2.64, make such order as he thinks just.

(2) Pending the final determination of the application, the Master may make an interim order upon such terms as he thinks just.

### **Reference of application to judge**

**2.66.** The Master may at any time refer an application for ancillary relief, or any question arising thereon, to the judge for his decision.

### **Transfer of application for ancillary relief: general provisions**

**2.67.**—(1) If a county court considers that an application for ancillary relief pending in that court gives rise to a contested issue of conduct of a nature which is likely materially to affect the question whether any, or what, order should be made therein and that for that reason the application should be transferred to the High Court, the court shall, subject to paragraph (5), make an order for transfer accordingly and, where an application is transferred to the High Court under this paragraph, it shall be heard by a judge.

(2) Where an application for ancillary relief is pending in a county court and the parties to the proceedings consent to the making of an order for the transfer of the application to the High Court, an application for that purpose may be made to the Master who shall, subject to paragraph (5), either order the transfer or refer the application to the judge for his decision.

(3) Without prejudice to paragraph (1) and (2), the court in which an application for ancillary relief is pending may, if it is a county court, order the transfer of the application to the High Court or, if it is the High Court, order the transfer of the application to a county court, where the transfer appears to the court to be desirable.

(4) The judge before hearing and the Master before investigating under rule 2.64 an application for ancillary relief pending in a county court shall consider whether the case is one in which the court should exercise any of its powers under paragraph (1) or (3).

(5) In considering whether an application should be transferred from a county court to the High Court or from the High Court to a county court, the court shall have regard to all relevant considerations, including the nature and value of the property involved and the relief sought.

(6) Where a decree nisi has been pronounced in the cause, the court shall, before making an order for the transfer of the application to the High Court, consider whether it would be more convenient to transfer the cause to the High Court under rule 2.32.

(7) Where an application for ancillary relief is pending in a county court, the court may order that the application be transferred to another county court.

(8) An order under paragraph (1), (3) or (7) may be made by the court of its own motion or on the application of a party, but before making an order of its own motion the court shall give the parties an opportunity of being heard, and for that purpose shall cause notice to be given to the parties of the date, time and place at which the question will be considered.

### **Transfer for purpose of expedition**

**2.68.** Without prejudice to the last foregoing rule, a judge or Master may, on the application of a party or of his own motion, order that an application for ancillary relief pending in the High Court or a divorce county court shall be transferred to a divorce county court or the High Court if he is of opinion that the transfer is desirable for the purpose of expediting the hearing of the application.

### **Arrangements for hearing of application etc by judge**

**2.69.**—(1) Where an application for ancillary relief or any question arising thereon has been referred or adjourned to the judge, the proper officer or chief clerk, as the case may be, shall fix a date and time for the hearing of the application or the consideration of the question and give notice thereof to all parties.

(2) The hearing or consideration shall, unless the judge otherwise directs, take place in chambers.

(3) Where the application is proceeding in a divorce county court, the hearing or consideration may be transferred to such county court as, in the opinion of the Master, is the most convenient.

### **Request for periodical payments order at same rate as order for maintenance pending suit**

**2.70.**—(1) Where at or after the date of a decree nisi of divorce or nullity of marriage an order for maintenance pending suit is in force, the party in whose favour the order was made may, if he has made an application for an order for periodical payments for himself in his petition or answer, as the case may be, request the Master in writing to make such an order (in this rule referred to as a “corresponding order”) providing for payments at the same rate as those provided for by the order for maintenance pending suit.

(2) Where such a request is made, the applicant shall serve on the other spouse a notice in Form M17 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the proper officer or chief clerk, as the case may be, and to the applicant, within 14 days after service of the notice in Form M17.

(3) If the other spouse does not give notice of objection within the time aforesaid the Master may make a corresponding order without further notice to that spouse and without requiring the attendance of the applicant or his solicitor.

### **Application for order under Article 39(2)(a) of the Order of 1978**

**2.71.**—(1) An application under Article 39(2)(a) of the Order of 1978 for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim may be made to the Master.

(2) Rules 2.66 and 2.69 shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.

### **Consent orders**

**2.72.**—(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 of 1978, 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.

## **Pensions**

**2.73.**—(1) Where an applicant for ancillary relief or the respondent to the application is obliged by rule 2.60 to give full particulars of his property and income, he shall also give full particulars of any benefits under a pension scheme which he has or is likely to have including the most recent valuation (if any) of the benefits under the scheme.

(2) Where by virtue of rule 2.64(5) the Master has power to order discovery of any document he shall also have power to require either party to request a valuation of benefits which he has or is likely to have under any pension scheme from the trustees or managers of the scheme.

(3) A petitioner or respondent who has applied for ancillary relief, not including provision made by Article 27B or 27C of the Order of 1978 may at any time amend the application so as to include such provision by way of a notice or amended notice in Form M13 and rule 2.57 shall apply to any such notice.

(4) A petitioner or respondent who has applied for an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme shall, within 4 days after filing the notice in Form M13 or M15 as the case may be, serve on those trustees or managers a copy of that notice, together with the following—

- (a) an address to which any notice the trustees or managers may be required to serve is to be sent;
- (b) an address to which any payment which the trustees or managers are required to make to the applicant is to be sent; and
- (c) where the address in sub-paragraph (b) is that of a bank, a building society or the Department of National Savings sufficient details to enable payment to be made into the account of the applicant.

(5) Where the petitioner and the respondent have agreed on the terms of an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme they shall with 4 days after notifying the court of their agreement serve on the trustees or managers a copy of the agreed terms together with the particulars set out in paragraph (4) (a), (b) and (c).

(6) Trustees or managers of a pension scheme on whom a copy of such a notice is served may, within 14 days after service, require the applicant to provide them with a copy of the affidavit supporting his application.

(7) Trustees or managers of a pension scheme who receive a copy of an affidavit as required pursuant to paragraph (5) may within 14 days after receipt file an affidavit in answer.

(8) Trustees or managers of a pension scheme who file an affidavit pursuant to paragraph (6) may file therewith a notice requiring an appointment to be fixed; and where such a notice is filed—

- (a) the proper officer or chief clerk shall fix an appointment for the hearing or further hearing of the application and shall give not less than 14 days' notice of that appointment to the petitioner, the respondent and the trustees or managers of the pension scheme; and
- (b) the trustees or managers of the pension scheme shall be entitled to be represented at any such hearing.

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(9) In deciding whether to make an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme, the court shall take into account any representations of the trustees or managers as to whether, in all the circumstances of the case, the court ought to make the order, and in particular whether the particulars supplied under paragraph (4) are sufficient to enable the trustees or managers to comply with their obligations under any such order.

(10) Expressions used in this rule have the same meaning as in Article 27D of the Order of 1978.