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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**

**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<sup>(1)</sup>, 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,

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(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.

Preparation for trial

## **Discovery of documents**

**2.24.** A party to a cause may apply for an order for discovery and inspection of documents by an opposite party and R.S.C. Order 24 shall apply with the necessary modifications.

## **Discovery by interrogatories**

**2.25.**—(1) R.S.C. Order 26 (which deals with discovery by interrogatories) shall apply to a cause with the necessary modifications.

(2) A copy of the proposed interrogatories shall be filed when the summons for an order is issued.

## **Medical examination in proceedings for nullity**

**2.26.**—(1) In proceedings for nullity on the grounds of incapacity to consummate the marriage the petitioner may apply to the Master to determine whether medical inspectors should be appointed to examine the parties.

(2) An application under paragraph (1) shall not be made in an undefended cause—

(a) if the husband is the petitioner, or

(b) if the wife is the petitioner and—

(i) it appears from the petition that she was either a widow or divorced at the time of marriage in question, or

(ii) it appears from the petition or otherwise that she has borne a child, or

(iii) a statement by the wife that she is not a virgin is filed,

unless, in any such case, the petitioner is alleging his or her own incapacity.

(3) References in paragraph (1) and (2) to the petitioner shall, where the cause is proceeding only on the respondent's answer or where the allegation of incapacity is made only in the respondent's answer, be construed as references to the respondent.

(4) An application under paragraph (1) by the petitioner shall be made—

- (a) where the respondent has not given notice of intention to defend, after the time limited for giving notice of intention to defend has expired;
- (b) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed;

and any application under paragraph (1) by the respondent shall be made after he has filed an answer.

(5) Where the party required to make an application under paragraph (1) fails to do so within a reasonable time, the other party may, if he is prosecuting or defending the cause, make the application.

(6) In proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the Master for the appointment of medical inspectors to examine the parties.

(7) If the respondent has not given notice of intention to defend, an application by the petitioner under paragraph (1) or (6) may be made ex parte.

(8) If the Master hearing an application under paragraph (1) or (6) considers it expedient to do so, he shall appoint a medical inspector or, if he thinks it necessary, two medical inspectors to examine the parties and report to the court the result of the examination.

(9) At the hearing of any such proceedings as are referred to in paragraph (1) the court may, if it thinks fit, appoint a medical inspector or two medical inspectors to examine any party who has not been examined or to examine further any party who has been examined.

(10) The party on whose application an order under paragraph (8) is made or who has the conduct of proceedings in which an order under paragraph (9) has been made for the examination of the other party, shall serve on the other party notice of the time and place appointed for his or her examination.

### **Conduct of medical examination**

**2.27.—**(1) The examination under rule 2.26 shall, if either party so requires, be held at the residence of one of the medical inspectors appointed or at some other convenient place selected by them and in every other case shall be held at the Matrimonial Office.

(2) Where a medical inspection takes place at a place other than the Matrimonial Office every party presenting himself for examination shall sign, in the presence of the inspector or inspectors, a statement that he is the person referred to as the petitioner or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the inspector or inspectors shall certify on the statement that it was signed in his or their presence by the person who has been examined. Where the medical inspection takes place in the Matrimonial Office the identification shall be conducted before the Master in such manner as he may direct.

(3) Every report made in pursuance of rule 2.26 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

(4) It shall not be necessary in any cause for the inspector or inspectors to attend or give evidence at the trial unless required either by the court of its own motion or by either party to do so after receiving appropriate notice.

(5) Where pursuant to paragraph (4) the evidence of the inspector or inspectors is not given at the trial, his or their report shall be treated as information furnished to the court by a court expert and be given such weight as the court thinks fit.

### **Entry for hearing and certificate of readiness**

**2.28.—**(1) The petitioner or any party who is defending a cause or the respondent in the case of an undefended cause proceeding on the respondent's answer may request the Master to enter the cause for hearing if—

- (a) a copy of the petition (including any supplemental or amended petition) and any subsequent pleading has been duly served on every party requiring to be served and, where that party is a person under disability, any affidavit required by rule 6.4(2) has been filed;
- (b)
  - (i) no notice of intention to defend has been given by any party entitled to defend and the time limited for giving such notice has expired; or
  - (ii) where a notice of intention to defend has been given by any party, the time allowed for filing an answer has expired; or
  - (iii) where an answer has been filed, the time allowed for filing any subsequent pleading has expired;
- (c) in proceedings for nullity, where an order for the examination of the parties has been made on an application under rule 2.26, the notice required by paragraph 10 of that rule has been served and the report of the inspector or inspectors has been filed;
- (d) any other directions of the court have been complied with.

(2) The party making such request shall at the same time lodge in the Matrimonial Office a certificate in Form M8 that the cause is ready for trial and, in the case of a cause for hearing in a divorce county court, the certificate shall state the place of trial requested.

(3) The party lodging the certificate of readiness shall at the same time deliver to the Matrimonial Office a bundle of pleadings for the judge consisting of an indexed copy of the following documents—

- (a) the certificate of readiness;
- (b) the petition;
- (c) any other pleadings;
- (d) notices for particulars and answers thereto;
- (e) affidavit of service;
- (f) interlocutory orders;
- (g) any statement as to arrangements for children under rule 2.3(2);
- (h) any statement under rule 2.29(4);
- (i) 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.

(4) If there are any further proceedings after the lodging of the certificate of readiness, the party lodging the certificate shall deliver to the proper officer or the chief clerk, as the case may be, for the use of the judge a copy of any further document of the kind mentioned in paragraph (3).

### **Stay under Schedule 1 to the Order of 1978**

**2.29.—**(1) An application to the court by the petitioner or respondent in proceedings for divorce for an order under paragraph 8 of Schedule 1 to the Order of 1978 (in this rule referred to as “Schedule 1”) shall be made to the Master, who may determine the application or refer the application, or any question arising thereon, to the judge for his decision as if the application were an application for ancillary relief.

(2) An application for an order under paragraph 9 of Schedule 1 to the Order of 1978 shall be made to the judge.

(3) Where on the lodgment of the certificate of readiness, it appears to the Master from any information given pursuant to paragraph 1(1) of Appendix 2 or rule 2.17(4) or paragraph (4) of this rule that any proceedings which are in respect of the marriage in question or which are capable of

affecting its validity or subsistence are continuing in any country outside Northern Ireland and he considers that the question whether the proceedings on the petition should be stayed under paragraph 9 of Schedule 1 ought to be determined by the court, he shall before proceeding under rule 2.32 fix a date and time for the consideration of that question by the judge and give notice thereof to all parties.

In this paragraph “proceedings continuing in any country outside Northern Ireland” has the same meaning as in paragraph 1(1) of Appendix 2.

(4) Any party who lodges a certificate of readiness in matrimonial proceedings within the meaning of paragraph 2 of Schedule 1 shall, if there has been a change in the information given pursuant to paragraph 1(1) of Appendix 2 and rule 2.17(4), file a statement giving particulars of the change.

(5) An application by a party to the proceedings for an order under paragraph 10 of Schedule 1 to the Order of 1978 may be made to the Master, and he may determine the application or may refer the application, or any question arising thereon, to the judge as if the application were an application for ancillary relief.

Trial etc

### **Mode and place of trial**

**2.30.**—(1) Subject to section 62(4) of the Judicature (Northern Ireland) Act 1978(2), every cause and any issue arising therein shall be tried by a judge without a jury.

(2) A cause pending in a divorce county court may be heard at any county court sitting for any division but, subject to the provisions of rules 2.31 and 2.32, shall be heard at the place of trial requested in the certificate of readiness.

(3) Unless the judge otherwise directs, every cause listed for hearing and any issue arising therein shall be heard by a judge in chambers and adjourned into court for judgment.

### **Setting down for trial**

**2.31.**—(1) A cause shall be deemed to have been set down as soon as the certificate of readiness has been lodged.

(2) Where a cause is set down for hearing in the High Court, the proper officer shall, as soon as practicable, fix the date of the hearing and give notice thereof to every party to the case.

(3) Where a cause is set down for hearing in a divorce county court, the proper officer shall forthwith send the file of the cause and the bundle of pleadings to the chief clerk.

(4) As soon as practicable after the chief clerk has received the file of the cause and the bundle of pleadings in accordance with paragraph (3), he shall fix the date and place of the hearing and give notice thereof to every party to the cause.

(5) Except with the consent of all parties or by leave of the judge, no cause shall be tried before the expiration of 10 days from the date of issue stamped on the notice of hearing.

### **Order for transfer of cause**

**2.32.**—(1) A divorce county court may order that a cause pending therein be transferred to the High Court, if, having regard to all the circumstances including the difficulty or importance of the cause or of any issue arising therein, the court thinks it desirable that the cause should be heard and determined in the High Court.

(2) The court may, if it appears to it that a cause cannot conveniently be tried at the place of trial requested in accordance with rule 2.28(2), change the place of trial to another place within the same or another county court division.

(3) The power conferred by paragraph (2) may be exercised by the judge or Master of his own motion or on the application of a party, but before acting of his own motion the judge or Master shall give the parties an opportunity of being heard on the question of change, and for that purpose the chief clerk shall give the parties notice of the date and place at which the question will be considered.

### **Trial of issue**

**2.33.** Where directions are given for the separate trial of any issue, the Master shall—

- (a) if the issue arises on an application for ancillary relief or on an application with respect to any child or alleged child of the family, proceed as if the issue were a question referred to a judge on an application for ancillary relief and rule 2.70 shall apply accordingly.
- (b) in any other case, cause the issue to be set down for trial.

### **Lists in the divorce county court**

**2.34.—**(1) The chief clerk for each county court division shall maintain a list of the causes which are for the time being set down for trial in that division.

(2) Causes shall be entered in the said list in the order in which they were set down for trial and for the purpose of this paragraph—

- (a) a cause shall, subject to sub-paragraph (b), be treated as having been set down for trial when the file of the cause is received by the chief clerk from the Matrimonial Office under rule 2.31(3);
- (b) a cause transferred for trial from another county court division shall be treated as having been set down for trial at the end of the day on which it was originally set down for trial.

### **Right to be heard on ancillary questions**

**2.35.—**(1) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs or as to ancillary relief.

(2) A party shall be entitled to be heard on any question pursuant to paragraph (2) whether or not he has returned to the Matrimonial Office an acknowledgement of service stating his wish to be heard on that question.

(3) The court may at any time order any party objecting to a claim for costs to file and serve on the party making the claim a written statement setting out the reasons for his objection.

(4) In proceedings after a decree nisi of divorce or a decree of judicial separation no order the effect of which would be to make a co-respondent or party cited liable for costs which are not directly referable to the decree shall be made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

### **Respondent's statement as to arrangements for children**

**2.36.—**(1) A respondent on whom there is served a statement in accordance with rule 2.3(2) may file in the Matrimonial Office a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the proper officer shall send a copy to the petitioner.

(2) Any such statement of the respondent's views shall, if practicable, be filed within the time limited for giving notice of intention to defend and in any event before the judge considers the arrangements or proposed arrangements for the children under Article 44 of the Order of 1978(3).

### **Procedure for complying with Article 44 of the Order of 1978**

**2.37.**—(1) Where no such application as is referred to in rule 2.38(1) is pending the judge shall consider the matters specified in Article 44(1) of the Order of 1978 in accordance with the provisions of this rule.

(2) Where, on consideration of the relevant evidence, including any further evidence or report provided pursuant to this rule and any statement filed by the respondent under rule 2.36 the judge is satisfied that—

- (a) there are no children of the family to whom Article 44 of the Order of 1978 applies, or
- (b) there are such children but the court need not exercise its powers under the Order of 1995 with respect to any of them or give any directions under Article 44 of the Order of 1978,

the judge shall certify accordingly and, in a case to which sub-paragraph (b) applies, the petitioner and the respondent shall each be sent a copy of the certificate by the Master.

(3) Where the judge is not satisfied as mentioned in paragraph (2) above he may, without prejudice to his powers under the Order of 1995 or Article 44 of the Order of 1978, give one or more of the following directions—

- (a) that the parties, or any of them, shall file further evidence relating to the arrangements for the children (and the direction shall specify the matters to be dealt with in the further evidence);
- (b) that a welfare report on the children, or any of them be prepared;
- (c) that the parties, or any of them, shall attend before him at the date, time and place specified in the direction;

and the parties shall be notified accordingly.

(4) Where the court gives a direction under Article 44(2) of the Order of 1978 notice of the direction shall be given to the parties.

(5) In this rule 'parties' means the petitioner, the respondent and any person who appears to the court to have the care of the child.

### **Applications relating to children of the family**

**2.38.**—(1) Where a cause is pending, an application by a party to the cause or by any other person for an order under Part II or Part III or Part XV of the Order of 1995 in relation to a child of the family shall be made in the cause; and where the applicant is not a party and has obtained such leave as is required under the Order of 1995 to make the application no leave to intervene in the cause shall be necessary.

(2) If, while a cause is pending, proceedings relating to any child of the family are begun in any other court, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings, or if he is not a party to the cause by the petitioner.

### **Restoration of matters adjourned, etc at the hearing**

**2.39.**—(1) Where at the trial of a cause any application is adjourned by the judge it may be restored by any party or by the Master when in his opinion the matter ought to be further considered,

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(3) S.I.1978/1045 (N.I. 5) as substituted by paragraph 95 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2))

by notice in Form M9 which shall be served on every party concerned and (when served by a party) on the proper officer or chief clerk, as the case may be.

(2) Where in proceedings for divorce, nullity of marriage or judicial separation the judge has made a direction under Article 44(2) of the Order of 1978, paragraph (1) shall, unless the judge otherwise directs, apply as if an application with respect to the arrangements for the care and upbringing of any such child had been adjourned.

## Evidence

### Evidence generally

**2.40.** Subject to the provisions of rules 2.41 and 2.42 and of the Civil Evidence Act (Northern Ireland) 1971(4) and any other statutory provisions, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally.

### Evidence by affidavit, etc

**2.41.**—(1) The court may order—

- (a) that any particular fact to be specified in the order may be proved by affidavit,
- (b) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable,
- (c) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—
  - (i) by statement on oath of information or belief, or
  - (ii) by the production of documents or entries in books, or
  - (iii) by copies of documents or entries in books, or
- (d) that not more than a specified number of expert witnesses may be called.

(2) An application to the Master for an order under paragraph (1) shall—

- (a) if no notice of intention to defend has been given, or
- (b) if the petitioner and every party who has given notice of intention to defend consents to the order sought, or
- (c) if the cause is undefended and the certificate of readiness has been lodged,

be made *ex parte* by filing an affidavit stating the grounds on which the application is made.

(3) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under paragraph (2).

(4) The court may, on the application of any party to a cause begun by petition, make an order for the examination on oath of any person, and R.S.C. Order 38, rule 7, and Order 39, rules 1 to 14, (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

(5) On any interlocutory application made to the court evidence may be given by affidavit unless these Rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and

where, after such attendance has been ordered, such affidavit shall not be used as evidence without the leave of the court.

(6) Medical and other expert evidence or the evidence of an inquiry agent to prove adultery may without leave, and in an undefended cause shall, be given by affidavit, but the court may, of its own motion or on the application of any party at the trial, order the attendance for cross-examination of the person making any such affidavit; and after such attendance has been ordered such affidavit shall not be used in evidence without the leave of the court.

(7) Where the statement of a co-respondent or a person named admitting his or her adultery with the respondent or of a respondent admitting his or her adultery with a person named or a co-respondent has been made in the presence and hearing of the person with whom adultery is admitted, the affidavit must contain an averment that the statement has been so made.

### **Evidence of marriage outside Northern Ireland**

**2.42.**—(1) The celebration of a marriage outside Northern Ireland and its validity under the law of the country where it was celebrated may, in any family proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless the court otherwise directs, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of a marriage in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933(5) or in any other manner authorised apart from this rule.

### **Rules 2.41 and 2.42 not to affect the power of the judge at the trial to refuse to admit any evidence**

**2.43.** Nothing in rule 2.41 or 2.42 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

### **Issue of writ of subpoena or witness summons**

**2.44.**—(1) A writ of subpoena in a cause pending in the High Court shall be issued out of the Matrimonial Office.

(2) A witness summons in a cause pending in a divorce county court shall be issued in any county court office.

### **Hearsay and expert evidence**

**2.45.**—(1) R.S.C. Order 38, rules 5 and 19(1) shall not apply in relation to an undefended cause in the High Court.

(2) R.S.C. Order 38, rule 19 shall have effect in relation to a defended cause in the High Court as if—

- (a) for the words “this Order” in paragraph (3), there were substituted a reference to rule 2.41 of these Rules; and

(b) paragraph (4) were omitted.

(3) Unless in any particular case the court otherwise directs, C.C.R. Order 38, rule 19(1), shall not apply in relation to an undefended cause pending in a divorce county court.

#### Decrees and orders

#### **Decrees and orders**

**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(6) 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.

#### 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.

(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.