
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

The Family Proceedings Rules (Northern Ireland) 1996

Part III

Other family proceedings

Application by spouse for failure to maintain

3.1.—(1) An application under Article 29 of the Order of 1978 by a party to a marriage who alleges that the other party to the marriage—

- (a) has failed to provide reasonable maintenance for the applicant, or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family,

shall be made by originating summons in Form M18. Such summons shall be issued out of—

- (i) the Matrimonial Office in relation to applications to the High Court;
- (ii) a county court office, in relation to applications to a county court.

(2) There shall be filed in support of the summons an affidavit by the applicant which shall state—

- (a) the names of the parties to the marriage, the place and date of the marriage;
- (b) the names of each child and his date of birth, or if it be the case that he is over 18 years of age, and in the case of each minor child over the age of 16 years whether he is, or will be, or if an order for provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation and the person with whom any such child is residing;
- (c) if there have been any previous proceedings in any court in Northern Ireland or elsewhere with reference to the marriage or children of the marriage or between the applicant and respondent with reference to any property of either or both of them, the date and effect of any decree or order, and in the case of proceedings in reference to the marriage if there has been any resumption of cohabitation since the making of the decree or order;
- (d) where the application is for periodical payments or secured periodical payments for a child—

(i) whether the application is

- for a stepchild;
- in addition to child support maintenance already payable under a Child Support Agency assessment;
- to meet expenses arising from a child's disability;
- to meet expenses incurred by a child being educated or trained for work; or
- made on some other specified ground;

- (ii) if the child or the person with care of the child or the absent parent of the child is not habitually resident in the United Kingdom;
 - (e) particulars of the alleged failure to maintain;
 - (f) whether there are or have been any proceedings in the Child Support Agency with reference to the maintenance of each child and if so the details of those proceedings;
 - (g) the means of the applicant and the respondent;
 - (h) the facts upon which it is claimed that the court has jurisdiction to entertain the proceedings.
- (3) If the proper officer or chief clerk, as the case may be, does not consider it practicable to fix a day for the hearing of the application at the time when it is issued he may do so subsequently and in that case he shall forthwith give notice of the day to all parties.
- (4) Within 21 days after the time limited for giving notice of intention to defend, the respondent shall, if he intends to contest the application, file an affidavit in answer setting out the grounds on which he relies (including any allegation which he wishes to make against the applicant), and shall in any case, unless the court otherwise directs, file an affidavit containing full particulars of his property and income and serve a copy of the affidavit on the applicant.
- (5) Where the respondent's affidavit alleges adultery the alleged adulterer shall, unless the court otherwise directs, be made a party cited and be served with a copy of the affidavit, with notice in Form M19, and rule 2.8 shall apply, with the necessary modifications, as if the affidavit were a petition and the party cited were a co-respondent.
- (6) A party cited who wishes to defend all or any of the charges made against him shall within 21 days after the time limited for giving notice of intention to defend, file an affidavit in answer and serve a copy of the affidavit on the respondent.
- (7) If the respondent does not file an affidavit in accordance with paragraph (4), the court may order him to file an affidavit containing full particulars of his property and income and serve a copy of any such affidavit on the applicant.
- (8) Within 14 days after being served with a copy of any affidavit in answer filed by the respondent the applicant may file an affidavit in reply and serve a copy on the respondent and on any party cited. No further affidavit shall be filed without leave.

Transfer to High Court of applications under rule 3.1

3.2.—(1) Where it appears to a divorce county court that the respondent intends to contest an application under the last foregoing rule on the ground that—

- (a) by reason of the applicant's conduct or otherwise the respondent is not liable to maintain the applicant, or
 - (b) no court in Northern Ireland has jurisdiction to entertain the application,
- the court shall order that the application be transferred to the High Court.

Hearing of applications under rule 3.1

3.3.—(1) Without prejudice to the provisions of rule 3.2, rules 2.67 (except paragraphs (5) and (7) thereof) and 2.68 shall apply with the necessary modifications to an application for an order under Article 29 of the Order of 1978 as if the application were an application for ancillary relief.

(2) The application shall be heard by a judge in chambers, and, if the application is to a divorce county court, the hearing shall be fixed to take place at such court as in the opinion of the chief clerk is the most convenient.

(3) On the hearing of the application the judge may make such order as he thinks just or may refer the application (except any application under Article 8 of the Order of 1995), or any application for an order under Article 29(5) of the Order of 1978 to the Master for him to investigate the means of the parties to the marriage.

(4) Where an application is referred to the Master under paragraph (3), the proper officer or the chief clerk, as the case may be, shall fix an appointment for the hearing of the application and thereupon the provisions of these Rules relating to ancillary relief shall apply except that where the judge has not made a finding that there has been wilful neglect to maintain—

- (a) the Master shall, after completing his investigation under rule 2.64, report the result thereof in writing to a judge to whom the application shall be adjourned;
- (b) the Master's report shall contain an estimate of the financial relief to which, in his opinion, the applicant would be entitled if the application were granted;
- (c) the Master's report shall be filed and any party shall be entitled to inspect the report and to be supplied with a copy of it on payment of the prescribed fee.

(5) Where a person has been made a party cited, the judge may, if after the close of the evidence on the part of the respondent he is of opinion that there is not sufficient evidence against the party cited, dismiss him from the proceedings.

(6) Subject to the provisions of this rule and of rules 3.1 and 3.2, these Rules shall, so far as applicable, apply with the necessary modifications to an application under Article 29 of the Order of 1978 as if—

- (a) the application were a cause, and
- (b) the originating summons were a petition and the applicant the petitioner.

Application for alteration of maintenance agreement during lifetime of parties

3.4.—(1) An application to the court under Article 37 of the Order of 1978 for the alteration of a maintenance agreement during the lifetime of the parties shall be made by originating summons in accordance with Form M20.

(2) The application may be filed in the Matrimonial Office or a county court office and may be heard and determined by the Master.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and stating—

- (a) the residence of the parties to the agreement at the date of the application and, unless both parties are then resident in Northern Ireland, their domicile at that date;
- (b) the date and place of the marriage between the parties to the agreement and the name and status of the wife before the marriage;
- (c) the full names (including surnames) of any children of the family and of any other children for whom the agreement makes financial arrangements and—
 - (i) the date of birth of each child, now living or, if it be the case, that he is over 18 years of age, and, in the case of each minor over 16 years of age, whether he is or will be, or if an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation and the place where and the person with whom any minor child is residing;
 - (ii) the date of death of any such child who has died since the agreement was made;
- (d) whether there have been any previous proceedings in any court with reference to the agreement or to the marriage or to any child of the family or of the other children for whom the agreement makes financial arrangements or between the applicant and respondent with

reference to any property of either or both of them, and the date and effect of any order made;

- (e) whether there are or have been any proceedings in the Child Support Agency with reference to the maintenance of each child and if so the details of those proceedings;
- (f) the means of the applicant and the other party to the agreement insofar as they are within the applicant's knowledge or belief;
- (g) the nature of the alteration of the agreement sought and the facts alleged by the applicant to justify the alterations.

(4) A copy of the affidavit shall be served on the respondent with the summons.

(5) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, 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.

(6) A respondent who files an affidavit under paragraph (5) shall serve a copy on the applicant.

Application for alteration of maintenance agreement after death of one party

3.5.—(1) An application under Article 38 of the Order of 1978 for the alteration of a maintenance agreement after the death of one of the parties to it shall be made by originating summons in Form M21.

(2) The application may be filed in the Matrimonial Office or a county court office and may be heard and determined by the Master.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and an office copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof.

(4) The affidavit referred to in paragraph (2) shall state—

- (a) whether the deceased died domiciled in Northern Ireland;
- (b) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;
- (c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and—
 - (i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18 years), and the place where the person with whom any such minor child is residing;
 - (ii) the date of death of any such child who has died since the agreement was made;
- (d) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or to any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;
- (e) whether there have been in any court any proceedings by the applicant against the deceased's estate under the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979(1) or any statutory provision repealed by that Order and the date and effect of any order made in such proceedings;
- (f) in the case of an application by the surviving party, the applicant's means;

- (g) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicants, and the information mentioned in sub-paragraph (a), (b) and (c) of rule 3.6(2);
- (h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;
 - (i) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

Further proceedings on an application under rule 3.5

3.6.—(1) The court may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 3.5.

(2) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for entered an appearance, file an affidavit in answer to the application stating—

- (a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout, including the amount of the capital transfer tax and interest thereon;
- (b) the person or classes of person beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained; and
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient.

(3) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (3), the court may order him to do so.

(4) A respondent who is not a personal representative of the deceased may, within 14 days after the time limited for entering an appearance, file an affidavit in answer to the application.

Application of other rules to proceedings under Article 37 or 38 of the Order of 1978

3.7.—(1) Rules 2.63; 2.64(1) and (4) to (7), 2.65, 2.66 and 2.69 shall apply, with the necessary modifications, to an application under Article 37 or 38 of the Order of 1978 as if it were an application for ancillary relief.

(2) Subject to paragraph (1) and to the provisions of rule 3.4, these Rules shall, so far as applicable, apply with the necessary modifications to an application under Article 37 or 38 of the Order of 1978 as if the application were a cause, the originating summons a petition, and the applicant the petitioner.

Proceedings in respect of polygamous marriage

3.8.—(1) The provisions of this rule shall have effect where a petition or originating summons asks for matrimonial relief within the meaning of Article 50(2) of the Order of 1978 in respect of a marriage entered into under a law which permits polygamy (in this rule referred to as a polygamous marriage).

(2) The petition or originating summons—

- (a) shall state that the marriage in question is polygamous;
- (b) in respect of the additional spouse, shall give his or her full name and address and the date and place of his or her marriage to the petitioner or applicant or, as the case may be, to the respondent or state, so far as may be applicable, that such information is unknown to the petitioner or applicant.

(3) In this rule “additional spouse” means any living spouse of the petitioner or applicant additional to the respondent or as the case may be any living spouse of the respondent additional to the petitioner or applicant.

(4) Without prejudice to its powers under R.S.C. Order 15 (which deals with causes of action, counterclaims and parties) or C.C.R. Order 9 (which deals with amendments), the court may order that any additional spouse be added as a party to the proceedings or be given notice of the proceedings or of any application in the proceedings for any such order as is mentioned in Article 50(2)(d) of the Order of 1978.

(5) Any order under paragraph (4) may be made at any stage of the proceedings and either on the application of any party or by the court of its own motion and, where an additional spouse is mentioned in a petition or an acknowledgement of service of a petition, the petitioner shall, on making any application in the proceedings or, if no previous application has been made in the proceedings, on lodging the certificate of readiness, ask for directions as to whether an order should be made under paragraph (3).

(6) Any person to whom notice is given pursuant to an order under paragraph (4) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates.

Transfer of certain tenancies on divorce

3.9.—(1) The jurisdiction of the court under Article 41 of, and Schedule 1 to, the Order of 1989 may be exercised by the Master.

(2) Where an application is made for an order under Part II of the said Schedule 1 notice of the application shall be served by the applicant on—

- (a) the spouse entitled to occupy the dwelling house to which the application relates; and
- (b) the landlord of the dwelling house,

and any person so served shall be entitled to be heard on the application.

(3) Where the court intends to make an order under the said Schedule 1 then, before making the order, the court shall cause notice of its intention to make the order to be given to the landlord and shall afford him an opportunity of being heard.

Application for declaration as to marital status

3.10.—(1) Unless otherwise directed, a petition by which proceedings are begun under Article 31 of the Order of 1989 for a declaration as to marital status shall state—

- (a) the names of the parties to the marriage to which the application relates and the residential address of each of them at the date of the presentation of the petition;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) the grounds on which the application is made and all other material facts alleged by the petitioner to justify the making of the declaration;
- (d) whether there have been or are continuing any proceedings in any court, tribunal or authority in Northern Ireland or elsewhere between the parties which relate to, or are capable of affecting the validity or subsistence of the marriage, divorce, annulment or legal separation to which the application relates, or which relate to the matrimonial status of either of the parties, and if so—
 - (i) the nature, and either the outcome or present state of those proceedings,
 - (ii) the court, tribunal or authority before which they were begun,
 - (iii) the date when they were begun,

- (iv) the names of the parties to them,
- (v) the date or expected date of the trial,
- (vi) any other facts relevant to the question whether the petition should be stayed under Schedule 1 of the Order,

and such proceedings shall include any which are constituted otherwise than in a court of law in any country outside Northern Ireland, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have begun and have not been finally disposed of;

- (e) where it is alleged that the court has jurisdiction based on domicile, which of the parties to the marriage to which the application relates is domiciled in Northern Ireland on the date of the presentation of the petition, or died before that date and was at death domiciled in Northern Ireland;
- (f) where it is alleged that the court has jurisdiction based on habitual residence, which of the parties to the marriage to which the application relates has been habitually resident in Northern Ireland, on the date of the presentation of the petition, or died before that date and had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death;
- (g) where the petitioner was not a party to the marriage to which the application relates, particulars of his interest in the determination of the application.

(2) Where the proceedings are for a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside Northern Ireland in respect of the marriage either is or is not entitled to recognition in Northern Ireland, the petition shall in addition state the date and place of the divorce, annulment or legal separation.

(3) There shall be annexed to the petition a copy of the certificate of any marriage to which the application relates, or, as the case may be, a certified copy of any decree of divorce, annulment or order for legal separation to which the application relates.

(4) Where a document produced by virtue of paragraph (3) is not in English it shall, unless the court otherwise directs, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(5) The parties to the marriage in respect of which a declaration is sought shall be petitioner and respondent respectively to the application, unless a third party is applying for a declaration, in which case he shall be the petitioner and the parties shall be respondents to the application.

Procedure to be followed in relation to application under rule 3.10

3.11.—(1) The petition referred to in rule 3.10 shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner:

Provided that if the petitioner is under the age of 18, the affidavit shall, unless the court otherwise directs, be made by his next friend.

(2) Where the jurisdiction of the court to entertain a petition is based on habitual residence the petition shall include a statement of the addresses of the places of residence of the person so resident and the length of residence at each place either during the period of one year ending with the date of the presentation of the petition or, if that person is dead, throughout the period of one year ending with the date of death.

(3) An affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds thereof.

(4) A copy of the petition and every document accompanying it shall be sent by the petitioner to the Crown Solicitor on behalf of the Attorney General at least one month before the petition is filed and it shall not be necessary thereafter to serve these documents upon him.

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

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

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

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

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

(10) The Attorney General in deciding whether it is necessary or expedient to intervene in the proceedings, may have a search made for, and may inspect and bespeak a copy of, any document filed in the court which relates to any other matrimonial proceedings referred to in the proceedings.

(11) A declaration made in accordance with Article 31 of the Order of 1989 shall be in Form M26.

Application for leave to apply for financial relief after overseas divorce

3.12.—(1) An application to the High Court for leave to apply for an order for financial relief under Part IV of the Order of 1989 shall be made *ex parte* by originating summons in Form M27 issued out of the Matrimonial Office and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in Article 20(2) of that Order.

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

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

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

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

3.13.—(1) An application to the High Court for an order for financial relief under Part IV of the Order of 1989 shall be made by originating summons in Form M28 issued out of the Matrimonial Office and at the same time the applicant, unless otherwise directed, shall file an affidavit in support of the summons giving full particulars of his property and income.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support, if one has been filed, and a notice of proceedings and acknowledgement of service in Form M30, and rule 2.10 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form M6 and in paragraph (2) to 14 days were, respectively, references to Form M30 and 31 days.

(3) Rules 2.59, 2.61, 2.62, 2.64(4), (6) and (7), 2.72(1) and (2) shall apply, with the necessary modifications, to an application for an order for financial relief under this rule as they apply to an application for ancillary relief made by notice in Form M13 and the court may order the attendance of any person for the purpose of being examined or cross-examined and the discovery and production of any document.

(4) An application for an interim order for maintenance under Article 18 of the Order of 1989 or an avoidance of transaction order under Article 27 of that Order may be made, unless the court otherwise directs, in the originating summons under paragraph (1) or by summons in accordance with rule 7.5 and an application for an order under the said Article 27 shall be supported by an affidavit, which may be the affidavit filed under paragraph (1), stating the facts relied on.

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

(6) In respect of any application for an avoidance of transaction order the court may make such order as it is empowered to make by paragraph (3) and rule 2.61 shall apply, with the necessary modifications, to an application for an avoidance of transaction order as it applies to an avoidance of disposition order.

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

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

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

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

3.14.—(1) An application to the High Court under Article 28 of the Order of 1989 for an order preventing a transaction shall be made by originating summons in Form M29 issued out of the Matrimonial Office and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support and a notice of proceedings and acknowledgement of service in Form M30, and rule 2.11 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form M6 and in paragraph (2) of that rule to 14 days were, respectively, references to Form M30 and 31 days.

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

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

(5) Rule 2.68 (except paragraph (3)) shall apply, with the necessary modifications, to the applications as if it were an application for ancillary relief.