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## STATUTORY INSTRUMENTS

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### 1989 No. 677

#### The Matrimonial and Family Proceedings (Northern Ireland) Order 1989

#### PART V

#### DECLARATIONS OF STATUS

##### Declarations as to marital status

**31.**—(1) Subject to the provisions of this Article, any person may apply to the court for one or more of the following declarations in relation to a marriage specified in the application, that is to say—

- (a) a declaration that the marriage was at its inception a valid marriage;
- (b) a declaration that the marriage subsisted on a date specified in the application;
- (c) a declaration that the marriage did not subsist on a date so specified;
- (d) a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside Northern Ireland in respect of the marriage is entitled to recognition in Northern Ireland;
- (e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in Northern Ireland.

(2) A court shall have jurisdiction to entertain an application under paragraph (1) if (and only if) [<sup>F1</sup>paragraph (2A) applies or] either of the parties to the marriage to which the application relates—

- (a) is domiciled in Northern Ireland on the date of the application, or
- (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date, or
- (c) died before that date and either—
  - (i) was at death domiciled in Northern Ireland, or
  - (ii) had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.

[<sup>F2</sup>(2A) This paragraph applies where—

- (a) the two people concerned are of the same sex and married each other under the law of Northern Ireland, and
- (b) it appears to the court to be in the interests of justice to assume jurisdiction in the case.]

(3) Where an application under paragraph (1) is made by any person other than a party to the marriage to which the application relates, the court shall refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

- F1** Words in art. 31(2) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **37(a)** (with regs. 6-9)
- F2** [Art. 31\(2A\)](#) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **37(b)** (with regs. 6-9)

Art. 31A inserted prosp. by 1993 NI 6

### [<sup>F3</sup>Declarations of parentage

**31B.**—(1) Subject to the provisions of this Article, any person may apply to the High Court, a county court or a court of summary jurisdiction for a declaration as to whether or not a person named in the application is or was the parent of another person so named.

(2) A court shall have jurisdiction to entertain an application under paragraph (1) if, and only if, either of the persons named in it for the purposes of that paragraph—

- (a) is domiciled in Northern Ireland on the date of the application, or
- (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date, or
- (c) died before that date and either—
  - (i) was at death domiciled in Northern Ireland, or
  - (ii) had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.

(3) Except in a case falling within paragraph (4), the court shall refuse to hear an application under paragraph (1) unless it considers that the applicant has a sufficient personal interest in the determination of the application (but this is subject to Article 28 of the Child Support (Northern Ireland) Order 1991).

(4) The excepted cases are where the declaration sought is as to whether or not—

- (a) the applicant is the parent of a named person;
- (b) a named person is the parent of the applicant; or
- (c) a named person is the other parent of a named child of the applicant.

(5) Where an application under paragraph (1) is made and one of the persons named in it for the purposes of that paragraph is a child, the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.

(6) Where a court refuses to hear an application under paragraph (1) it may order that the applicant may not apply again for the same declaration without leave of the court.

(7) Where a declaration is made by a court on an application under paragraph (1), the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration.

(8) In this Article—

“prescribed” means prescribed by rules of court;

“Registrar General” has the same meaning as in the Births and Deaths Registration (Northern Ireland) Order 1976;

“rules of court” has the same meaning as in Article 36(5), but in relation to an application made to, or a declaration made by, a court of summary jurisdiction, means magistrates' courts rules.]

**F3** 2000 c. 4 (NI)

**[<sup>F4</sup>Declaration of parentage, legitimacy or legitimation**

**32.**—(1) Any person may apply to the court for a declaration—  
*Sub#para. (a) rep. by 2000 c. 4 (NI)*

(b) that he is the legitimate child of his parents.

(2) Any person may apply to the court for one (or for one or, in the alternative, the other) of the following declarations, that is to say—

(a) a declaration that he has become a legitimated person;

(b) a declaration that he has not become a legitimated person.

(3) A court shall have jurisdiction to entertain an application under this Article if (and only if) the applicant—

(a) is domiciled in Northern Ireland on the date of the application; or

(b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

(4) Where a declaration is made on an application under paragraph (1), the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration.

(5) In this Article—

“legitimated person” means a person legitimated or recognised as legitimated—

(a) under section 1 or 8 of the Legitimacy Act (Northern Ireland) 1928; or

(b) by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of Northern Ireland and effected under the law of another country;

“prescribed” means prescribed by rules of court;

“Registrar General” has the same meaning as in the Births and Deaths Registration (Northern Ireland) Order 1976;

“rules of court” has the same meaning as that given in Article 36(5).]

**F4** 1995 NI 2

**Declarations as to adoptions effected overseas**

**33.**—(1) Any person whose status as an adopted child of any person depends on whether he has been adopted by that person by either—

[<sup>F5</sup>(a) a Convention adoption as defined by Article 2(2) of the Adoption (Northern Ireland) Order 1987 or an overseas adoption as so defined; or]

(b) an adoption recognised by the law of Northern Ireland and effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man;

may apply to the court for one (or for one or, in the alternative, the other) of the declarations mentioned in paragraph (2).

(2) The said declarations are—

(a) a declaration that the applicant is for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987<sup>F6</sup> the adopted child of that person;

- (b) a declaration that the applicant is not for the purposes of that Article the adopted child of that person.
- (3) A court shall have jurisdiction to entertain an application under paragraph (1) if (and only if) the applicant—
  - (a) is domiciled in Northern Ireland on the date of the application, or
  - (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

<b>F5</b>	<a href="#">2001 c. 11 (NI)</a>
<b>F6</b>	<a href="#">1987 NI 22</a>

### General provisions as to the making and effect of declarations

**34.—**(1) Where on an application for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.

(2) Any declaration made under this Part shall be binding on the Crown and all other persons.

(3) The court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.

(4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.

(5) No declaration may be made by any court, whether under this Part or otherwise—

(a) that a marriage was at its inception void;

*Sub#para. (b) rep. by 2000 c. 4 (NI)*

(6) Nothing in this Part shall affect the powers of any court to grant a decree of nullity of marriage.

### Provisions relating to the Attorney-General

**35.—**(1) On an application for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney-General.

(2) The Attorney-General, whether or not he is sent papers in relation to an application for a declaration under this Part, may—

(a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient, and

(b) argue before the court any question in relation to the application which the court considers it necessary to have fully argued.

(3) Where any costs are incurred by the Attorney-General in connection with any application for a declaration under this Part, the court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

### Supplementary provisions as to declarations

**36.—**(1) Any declaration made under this Part, and any application for such a declaration, shall be in the form prescribed by rules of court.

(2) Rules of court may make provision—

(a) as to the information required to be given by any applicant for a declaration under this Part;

- (b) as to the persons who are to be parties to proceedings on an application under this Part;
  - (c) requiring notice of an application under this Part to be served on the Attorney-General<sup>[F7]</sup> and on persons who may be affected by any declaration applied for].
- (3) No proceedings under this Part shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.
- (4) The court hearing an application under this Part may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this paragraph shall be heard in camera unless the court otherwise directs.
- (5) In this Article and Article 37(2) “rules of court”
- (a) in relation to an application or declaration under Article 31<sup>F8</sup>, means<sup>[F9]</sup> family proceedings rules made under Article 12 of the Family Law (Northern Ireland) Order 1993];
  - (b) in relation to any other application made to, or declaration made by, the High Court, means rules of court within the meaning of section 21(4) of the Interpretation Act (Northern Ireland) 1954<sup>F10</sup>;
  - (c) in relation to any other application made to, or declaration made by, the county court, means county court rules within the meaning of section 21(5) of that Act.
- <sup>[F11]</sup>(6) An appeal shall lie to the county court against—
- (a) the making by a court of summary jurisdiction of a declaration under Article 31B,
  - (b) any refusal by a court of summary jurisdiction to make such a declaration, or
  - (c) any order under paragraph (6) of that Article made on such a refusal.]

- F7** 1995 NI 2  
**F8** prosp. insertion by 1993 NI 6  
**F9** 1993 NI 6  
**F10** 1954 c. 33 (NI)  
**F11** 2000 c. 4 (NI)

### **Declarations in respect of polygamous marriages**

**37.**—(1) A court shall not be precluded from making any declaration under this Part involving a determination as to the validity of a marriage by reason only that<sup>[F12]</sup> either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person].

- <sup>[F12]</sup>(2) Provision may be made by rules of court—
- (a) for requiring notice of proceedings brought by virtue of this Article to be served on any additional spouse of a party to the marriage in question; and
  - (b) for conferring on any such additional spouse the right to be heard in the proceedings,
- in such cases as may be specified in the rules.]

- F12** 1995 NI 20

### **Repeal of certain statutory provisions relating to declarations**

- 38.** The following statutory provisions shall cease to have effect, namely—
- (a) the Legitimacy Declaration Act (Ireland) 1868<sup>F13</sup> (declarations as to legitimacy and validity of marriage); and

- (b) section 2 of the Legitimacy Act (Northern Ireland) 1928<sup>F14</sup> (declarations as to legitimation).

**F13** 1868 c. 20

**F14** 1928 c. 5 (NI)

### **Abolition of right to petition for jactitation of marriage**

**39.** No person shall after the coming into operation of this Part be entitled to petition the court for jactitation of marriage.

### **Meaning of “the court” and appeals from county courts**

**40.—**(1) In this Part “the court”

<sup>F15</sup>(a) .....

[<sup>F16</sup>(aa) in Article 31B means the High Court, the county court or a court of summary jurisdiction,]

(b) in the other provisions of this Part means the High Court or the county court.

(2) Without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980<sup>F17</sup> (cases stated), [<sup>F18</sup> family proceedings rules made under Article 12 of the Family Law (Northern Ireland) Order 1993] shall make provision for an appeal to the Court of Appeal from any declaration made by a divorce county court on an application under Article 31 or from the dismissal of any such application, upon a point of law, a question of fact or the admission or rejection of any evidence.

(3) A person dissatisfied with a declaration made by a county court on an application under Article 32 or 33 or with the dismissal of any such application made by him shall be entitled to appeal from the declaration or dismissal as if the declaration or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 and 62 (cases stated by county court judge and High Court judge, respectively) of that Order shall apply accordingly.

**F15** Art. 40(1)(a) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 96, **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F16** 2000 c. 4 (NI)

**F17** 1980 NI 3

**F18** 1993 NI 6

**Changes to legislation:**

There are currently no known outstanding effects for the The Matrimonial and Family Proceedings (Northern Ireland) Order 1989, PART V.