

1979 No. 89

**SUPREME COURT, NORTHERN IRELAND****MATRIMONIAL CAUSES****The Matrimonial Causes Rules (Northern Ireland) 1979***Made* . . . . . 22nd March 1979*Coming into operation* . . . . . 18th April 1979*To be laid before Parliament.***ARRANGEMENT OF RULES****PRELIMINARY***Rule*

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We, the Matrimonial Causes Rules Committee, in exercise of the powers conferred upon us by Article 54 of the Matrimonial Causes (Northern Ireland) Order 1978(a), hereby, with the concurrence of the Lord Chancellor, make the following Rules:—

(Signed) *Robert Lowry*  
*Maurice W. Gibson*  
*John MacDermott*  
*Robert Babington*  
*J. F. B. Russell*  
*Peter Smith*  
*John A. H. Martin*  
*John R. Comerton*  
*J. O. Greer*  
*C. Nelson M. Rowntree*  
*Thomas S. Townley*

22nd March 1979.

I concur:

*Elwyn-Jones C.*

26th March 1979.

## PRELIMINARY

*Citation and commencement*

1. These Rules may be cited as the Matrimonial Causes Rules (Northern Ireland) 1979 and shall come into operation on 18th April 1979.

*Interpretation*

2.—(1) In these Rules, unless the context otherwise requires—

“the Order” means the Matrimonial Causes (Northern Ireland) Order 1978(a);

“ancillary relief” means—

- (a) an avoidance of disposition order,
- (b) a financial provision order,
- (c) an order for maintenance pending suit,
- (d) a property adjustment order, or
- (e) a variation order;

“avoidance of disposition order” means an order under Article 39(2)(b) or (c) of the Order;

“cause” means a matrimonial cause;

“court” means the Judge or the master;

“Department” means the Department of Health and Social Services;

“the Judge” means the Judge for the time being to whom matrimonial causes and matters are assigned under section 17 of the Judicature (Northern Ireland) Act 1978(b) and any Judge of the High Court exercising jurisdiction in matrimonial causes and matters;

“master” means the master or registrar of the Probate and Matrimonial Office of the Family Division, and includes a circuit registrar when exercising jurisdiction under the Order by virtue of a direction under section 68(4) of the Judicature (Northern Ireland) Act 1978;

“defended cause” means a cause not being an undefended cause;

“financial provision order” means any of the orders mentioned in article 23(1) of the Order except an order under Article 29(6) of that Order;

“financial relief” has the same meaning as in Article 39 of the Order;

“matrimonial proceedings” means any proceedings with respect to which rules may be made under Article 54 of the Order;

“Office” means the Probate and Matrimonial Office;

“person named” includes a person described as “passing under the name of A.B.”;

“sealed copy” means a copy examined in the office against the original, marked as examined by the examining officer and sealed with the seal of the Court.

“Taxing master” means the Master (Taxing Office) or such other person as may be designated or appointed to exercise jurisdiction under section 60(1) of the Judicature (Northern Ireland) Act 1978;

“undefended cause” means—

- (a) a cause in which no answer has been filed or any answer filed has been struck out, or

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(a) 1978 No. 1045 (N.I. 15)

(b) 1978 c. 23 (N.I.)

- (b) a cause which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out, or
- (c) a cause to which rule 19(3) applies and in which no notice has been given under that rule or any notice so given has been withdrawn;
- (d) a cause in which an answer has been filed claiming relief but in which no pleading has been filed opposing the grant of a decree on the petition or answer or any pleading or part of a pleading opposing the grant of such relief has been struck out;

"variation order" means an order under Article 33 of the Order;

"welfare" has the same meaning as in Article 44 of the Order.

(2) Unless the context otherwise requires, a cause shall be treated as pending for the purposes of these Rules notwithstanding that a final decree or order has been made on the petition.

(3) In these Rules a form referred to by number means the form so numbered in Appendix 1 or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

(4) In these Rules any reference to the Rules of the Supreme Court is a reference to the Rules of the Supreme Court for the time being in force;

(5) Unless the context otherwise requires, any reference in these Rules to any rule or statutory provision shall be construed as a reference to that rule or statutory provision as amended, extended or applied by any other rule or statutory provision.

#### *Application of other rules*

3.—(1) Subject to the provisions of these Rules and of any statutory provision, the Rules of the Supreme Court shall apply, with the necessary modifications, to the commencement of and the practice and procedure in matrimonial proceedings.

(2) For the purposes of paragraph (1) any provision of these Rules authorising or requiring anything to be done in matrimonial proceedings shall be treated as if it were a provision of the Rules of the Supreme Court.

#### *Applications for leave to present a petition*

4.—(1) An application under Article 5 of the Order for leave to present a petition for divorce before the expiration of the period of three years from the date of the marriage ("the specified period") shall be made by originating summons in accordance with Form 1.

(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 on an application made *ex parte*) a certificate of the marriage and stating—

- (a) the grounds of the application;
- (b) particulars of the hardship or depravity alleged;
- (c) whether there has been any previous application under this rule;
- (d) whether any, and if so what, attempts at reconciliation have been made;

- (e) particulars of any circumstances which may assist the Court in determining whether there is a reasonable probability of reconciliation between the parties;
- (f) 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 otherwise directed, the summons shall be served on the respondent at least 14 clear days before the return date.

*Proceedings after service of application for leave*

5.—(1) The respondent may be heard without filing an affidavit.

(2) The Judge may in an appropriate case adjourn the proceedings and refer the case to the Department in order that a suitably qualified person may investigate whether there is reasonable probability of a reconciliation between the parties to the marriage during the specified period.

(3) Without prejudice to the right of the petitioner to have the summons re-entered for hearing, if that person after discussion with the parties decides—

- (a) that there is no reasonable probability of such reconciliation he shall so report to the Court; or
- (b) that there is reasonable probability of such reconciliation, he shall continue his conciliation and inform the Court whether or not a reconciliation has been effected.

(4) Subject to the provisions of this rule, 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 of cause before service of petition*

6. 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*

7.—(1) Every cause shall be begun by petition addressed to Her Majesty's High Court of Justice in Northern Ireland.

(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 3, to which shall be attached a copy of any medical report mentioned therein.

*Contents of petition*

8.—(1) Unless otherwise directed, 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, 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 adjudged to be the father of a child in affiliation 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.

### *Signing of petition*

9. 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*

10.—(1) Unless otherwise directed 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.

(2) 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 three 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 as were alleged in a petition for judicial separation presented before the expiration of that period.

(3) The petition shall be presented by filing it in the office together with a notice in Form 4 with Form 5 attached addressed to the respondent and any co-respondent together with any statement and report required by rule 7(2).

### *Conciliation and report on children*

11.—(1) Where—

- (a) a petition for divorce, nullity of marriage or judicial separation has been presented to the Court 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 (restriction on decrees affecting children) applies the master shall inform the Department with a view to a reference to a suitably qualified person (hereinafter called "the conciliator"):
  - (i) to consider the possibility of conciliating the parties to the marriage, and
  - (ii) for a report by the conciliator or other suitably qualified person on the children and the suitability of any arrangements which have been made, or are proposed by either party to be made for their welfare.

(2) Where a reference is made under this rule the conciliator, subject to the approval of the master, may inspect the Court file and after completing his investigation he shall file his report.

(3) This rule shall not prejudice the right of any party to apply for an Order that the petition may proceed and on any such application the Court may make any such order as it deems proper.

#### *Parties*

12.—(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, 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 give notice to the petitioner and to any other party who had entered an appearance 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 appearance has been entered.

(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*

13.—(1) Subject to the provisions of this rule and rules 86 and 91 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 4 with Form 5 attached and with any statement and report required by rule 7(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.

Provided that 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.

(4) 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.

(5) 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.

An application for an order under this paragraph shall, if no appearance has been entered, 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.

(6) 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*

14.—(1) Unless an appearance has been entered by a party who is required to be served with a copy of the petition by rule 13(1) service of a copy of the petition on a party required to be served shall be proved in accordance with the following provisions of this rule.

(2) A petition shall be deemed to be duly served if—

- (a) an acknowledgement of service in Form 5 is signed by the party to be served or by a solicitor on his behalf and is returned to the Office, and
- (b) where the form purports to be signed by the respondent, his signature is proved at the hearing.

(3) Where a copy of a petition has been sent to a party and no acknowledgement of service has been returned to the 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.

(4) Where a copy of a petition has been served on a party personally and no acknowledgement of service has been returned to the Office, service shall be proved by filing an affidavit of service in Form 6 showing the server's means of knowledge of the identity of the party served.

(5) Where a solicitor has accepted service of a petition in accordance with rule 13(6) an affidavit shall be filed showing that the copy petition was delivered or sent to the solicitor and exhibiting a copy of his receipt accepting service of the petition.

(6) Where an acknowledgement of service is returned to the Office, the master shall send a photographic copy thereof to the solicitors for the petitioner or to the petitioner if he sues in person.

#### *Entry of appearance*

15.—(1) If the person desiring to appear is acting in person, he shall leave at or send by post to the Office a memorandum of appearance and 2 copies thereof in accordance with Form 7 containing an address for service within the jurisdiction.

(2) If a solicitor is acting on behalf of the person desiring to appear, he shall leave at or send by post to the Office a memorandum of appearance and two copies thereof in accordance with Form 7 containing an address for service which shall be the place at which he carries on business within the jurisdiction.

(3) On receiving the requisite documents an officer of the Office must in all cases affix to the memorandum of appearance, and 2 copies thereof, an official stamp showing the date on which he received those documents, enter the appearance in the cause book, file the original memorandum and—

(a) if the requisite documents were handed in at the Office, hand back 2 copies of the memorandum, and

(b) if they were sent by post, send 1 copy by post to the petitioner, or as the case may be, his solicitor at the petitioner's address for service and also send by post to the person entering the appearance, or as the case may be, his solicitor at the address for service of the person entering the appearance the other copy of the memorandum.

(4) Where the person entering the appearance enters an appearance by handing in the requisite documents at the Office, he must on the date he enters the appearance send by post to the petitioner, if the petitioner sues in person, but otherwise to the petitioner's solicitor, at the petitioner's address for service, one of the copies of the memorandum of appearance, handed back to him under paragraph (3).

#### *Form of appearance*

16.—(1) An appearance may be general, or may be limited to any claim made in the petition or by subsequent application, or may be under protest, and may be entered at any time notwithstanding that the time for so doing has expired.

(2) An appearance under protest shall state concisely the grounds of protest and the party so appearing shall, before the expiration of the time allowed for filing an answer, apply for directions as to the determination of any question arising by reason of such appearance and in default of such application he shall be deemed to have entered an unconditional appearance. Any such directions may provide for the trial of a preliminary issue, with or without a stay of proceedings, or for determination of the matters in question at the hearing of the cause, and for any interlocutory matters incidental to the application.

#### *Consent to the grant of a decree*

17.—(1) Where, before the hearing of a petition alleging two 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 is alleged, the proceedings on the petition shall be stayed and the matter shall thereupon give notice of the stay to all parties.

## PLEADINGS AND AMENDMENT

*Supplemental petition, pleadings and amendment of petition*

**18.**—(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 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 otherwise directed, 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 entered an appearance, fix the time within which his answer must be filed or amended;

(b) where the order is made after the master's certificate under rule 32 has been given, 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 9 and 12 shall apply to a supplemental or amended petition as they apply to the original petition.

(8) Unless otherwise directed, 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 13 and 14 shall apply to a respondent or co-respondent named in the original petition or in the supplemental or amended petition as it applies in relation to a person required to be served with an original petition.

*Filing of answer to petition*

**19.**—(1) Subject to paragraph (2) and to rules 17, 21 and 44, a respondent or co-respondent who has entered an appearance 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 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 entering an appearance, file an answer to the petition.

(2) An answer may be filed at any time before the master's certificate under rule 32 has been given, 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 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 master notice to that effect when filing his answer.

*Filing of reply and subsequent pleadings*

20.—(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 24.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed on applying for the master's certificate under rule 32 to have denied every material allegation of fact made in the answer.

(3) No pleading subsequent to a reply shall be filed without leave.

*Filing of pleadings after issue of master's certificate*

21. No pleading shall be filed without leave after the master's certificate under rule 32 has been given.

*Contents of answer and subsequent pleadings*

22.—(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(k) of Appendix 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs 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 5(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(j) of Appendix 2 in the case of the petition in so far as it has not been given by the petitioner.

(5) Rule 8(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 8(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  
 issued in the proceedings,

he must make the denial or allegation in his pleading.

(7) Rule 9 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*

23.—(1) Rules 12, 13 and 14 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 19 shall apply, with the necessary modifications, to a party cited as it applies to a co-respondent.

#### *Service of pleadings*

24. A party who files an answer, reply or subsequent pleading shall within 3 days of filing it serve a copy thereof on every opposite party.

#### *Supplemental answer and amendment of pleadings*

25. Rule 18 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.

#### *Filing of pleadings in Long Vacation*

26. Pleadings in matrimonial proceedings may be served or amended during the Long Vacation.

#### *Particulars*

27.—(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.

### PREPARATIONS FOR TRIAL

#### *Discovery of documents*

28. A party to a matrimonial cause may apply for an order for discovery and inspection of documents by an opposite party and the Rules of the Supreme Court relating to discovery and inspection of documents shall apply with the necessary modifications to such a cause.

#### *Discovery by interrogatories*

29.—(1) The Rules of the Supreme Court relating to discovery by interrogatories shall apply to a matrimonial 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*

30.—(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 paragraphs (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 entered an appearance, after the time limited for entering an appearance has expired;

(b) where the respondent has entered an appearance, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed;

and an 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 an application under that paragraph.

(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 entered an appearance, 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*

31.—(1) The examination under rule 30 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 Office.

(2) Where a medical inspection takes place at a place other than the 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 Office the identification shall be conducted before the master in such manner as he may direct.

(3) Every report made in pursuance of rule 30 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.

*Master's Certificate before trial*

32. On the written request of the petitioner or of any party who is defending a cause or of the respondent in the case of an undefended cause proceeding on the respondent's answer, the master shall give his certificate that the pleadings and proceedings are in order if he is satisfied—

- (a) that a copy of the petition (including any supplemental or amended petition) and any subsequent pleading has been duly served on every party required to be served and, where that party is a person under disability, that any affidavit required by rule 86(2) has been filed;
- (b) if no appearance has been entered by any party entitled to appear that the time limited for entering such appearance has expired;
- (c) if an appearance has been entered by any party, that the time allowed him for filing an answer has expired;
- (d) if an answer has been filed, that the time allowed for filing any subsequent pleading has expired;
- (e) in proceedings for nullity, where an order for the examination of the parties has been made on an application under rule 30, that the notice required by paragraph 9 of that rule has been served and that the report of the inspector or inspectors has been filed.
- (f) any other directions of the Court have been complied with.

*Directions as to allegations under article 3(2)(b) of the Order*

33. Where in a defended cause the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, the master may, of his own motion on giving his certificate under rule 32 or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such certificate to file a schedule of the allegations and counter-allegations made in the pleadings or particulars.

*Stay under Schedule 1 to the Order*

34.—(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 (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 shall be made to the Judge.

(3) Where on the application for the master’s certificate under rule 32, it appears to the master from any information given pursuant to paragraph 1(j) of Appendix 2 or rule 22(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 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(j) of Appendix 2.

(4) Any party who applies for the master’s certificate under rule 32 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(j) of Appendix 2 and rule 22(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 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.

## EVIDENCE

*Evidence generally*

35. Subject to the provisions of rules 36 and 37 and of the Civil Evidence Act (Northern Ireland) 1971(c) 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.*

36.—(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 appearance has been entered, or
  - (b) if the petitioner and every party who has entered an appearance consents to the order sought, or
  - (c) if the cause is undefended and the master's certificate under rule 32 has been given

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 proposed 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) Any party may apply for the appointment of an examiner or for a commission or for letters of request to examine a party or witness in any cause and for leave to give the depositions taken on the examination in evidence at the trial or hearing, and the appropriate provisions of the Rules of the Supreme Court shall apply to the examination.

(5) On any application made by originating summons, summons, notice or motion 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 an order has been made, that person does not attend, his affidavit shall not be used as evidence without the leave of the Court.

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

**37.—(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 matrimonial 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 otherwise directed, 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(d) or in any other manner authorised apart from this rule.

*Rules 36 and 37 shall not affect the power of the Judge at the trial to refuse to admit any evidence*

38. Nothing in rules 36 and 37 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 subpoena*

39. A writ of subpoena in any cause or matter to which these Rules apply may issue out of the office.

*Notice of intention to give in evidence statement under section 1 or 2 of the Civil Evidence Act (Northern Ireland) 1971*

40. The Rules of the Supreme Court relating to the admissibility of evidence under section 1 of the Civil Evidence Act (Northern Ireland) 1971 shall apply to a defended cause save that for any reference in that part of those rules to the power of the Court to allow evidence by affidavit there shall be substituted a reference to rule 36 of these rules.

#### TRIAL, ETC.

*Mode and place of trial*

41. Unless otherwise directed, every cause and any issue arising therein shall be heard by a Judge in chambers and adjourned into Court for judgment.

*Setting down for trial*

42.—(1) The petitioner, after the master's certificate has been granted shall set the cause down for trial and shall, within 3 days thereafter, give to each party who has entered an appearance notice of his having done so. If the petitioner fails to set the cause down within fourteen days after the granting of the master's certificate any party defending the cause may set it down for trial and shall, within 3 days thereafter, give to the petitioner and all other parties who have entered an appearance notice of his having done so.

(2) If there have been any further proceedings from the granting of the master's certificate under rule 32 the cause shall not be set down until the certificate has been renewed.

(3) Except with the consent of all parties or by leave of the Judge, no cause shall be tried until after the expiration of ten days from the date of setting down.

(4) In order to set a cause down for trial or hearing the party setting it down must deliver to the cause clerk in the Office one bundle for the use of the Judge consisting of one indexed copy of the following documents—

- (a) the petition,
- (b) the pleadings,

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(d) 1933 c. 4

- (c) affidavits of service
- (d) interlocutory orders,
- (e) the master's certificate under rule 32, and
- (f) the requisite legal aid documents,

bound up in proper chronological order and stamped denoting the fee payable and have endorsed thereon the names and addresses of the solicitors for the parties.

#### *Trial of issue*

43. Where directions are given for the separate trial of any issue and those directions have been complied with, the master shall—

- (a) if the issue arises on an application for ancillary relief or in proceedings for the exercise of any power under Part IV of the Order proceed as if the issue were a question referred to a Judge on an application of ancillary relief and rule 70 shall apply accordingly;
- (b) in any other case, set the issue down for trial.

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

44.—(1) A respondent may, without filing an answer, be heard on—

- (a) any questions of custody of, or access to, any child of the family,
- (b) any question whether any such child should be committed to the care of the Department under Article 46 of the Order,
- (c) any question whether a supervision order should be made as respects any such child under Article 47 of the Order, and
- (d) any question of ancillary relief.

(2) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs, but 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.

(3) A party shall be entitled to be heard on any question pursuant to paragraph (1) or (2) whether or not he has returned to the Office an acknowledgement of service stating his wish to be heard on that question.

(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*

45.—(1) A respondent on whom there is served a statement in accordance with rule 7(2) may file in the 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 master 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 entering an appearance and in any event before the judge makes an order under Article 44 of the Order.

#### *Order as to arrangements for children to be drawn up*

46. Any order made pursuant to Article 44(1) or (4) of the Order shall be drawn up.

*Restoration of matters adjourned etc. at the hearing*

47.—(1) Where at the trial of a cause any application is adjourned by the Judge, it may be restored:—

(a) by notice without a summons, or

(b) by notice given by the master when in his opinion the matter ought to be further considered,

and the notice shall state the place and time for the hearing of the restored application and be served on every party concerned.

(2) Where in proceedings for divorce, nullity of marriage, or judicial separation the Judge has not made an order pursuant to Article 44(1) of the Order, 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.

DECREES AND ORDERS

*Decrees and orders*

48. Every decree, every order made in court and every other order which is required to be drawn up shall be drawn up by the master.

*Application for rescission of decree*

49.—(1) An application by a respondent under Article 12(1) of the Order for the rescission of a decree of divorce shall be made to the Court on motion.

(2) Unless otherwise directed, notice of the motion shall be served on the petitioner not less than 14 days before the day fixed for the hearing of the application.

(3) The applicant shall file an affidavit showing that notice of the motion 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*

50.—(1) An application by the respondent to a petition for divorce for the Court to consider the financial position of the respondent after the divorce shall be made by notice in Form 12.

(2) Where a petitioner is served with a notice in Form 12, then, unless he has already filed an affidavit under rule 63(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 63(3).

(4) The powers of the Court on the hearing of the application may be exercised by the master.

(5) Where the Court has granted a decree nisi on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation and has made no such finding as to any other fact mentioned in Article 3(2) of the Order the master by whom an application under Article 12(2) is to be heard shall fix an appointment for the hearing, and rule 67(3) to (7), shall apply to the application as if it were an application for ancillary relief.

(6) At any time before the hearing 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 the Judge.

(7) A statement of any of the matters mentioned in paragraph 3(a) and (b) of Article 12 of the Order with respect to which the Court is satisfied, or, where the Court has proceeded under paragraph 3(c) of the said Article, a statement that the conditions for which paragraph 4 provides have been fulfilled, shall be entered in the Court minutes.

#### *Copies of decrees and orders*

51.—(1) A copy of every decree shall be sent by the master to every party to the cause.

(2) A sealed or other copy of a decree or order made in open court shall be issued to any person requiring it on payment of the prescribed fee.

#### *Intervention to show cause by the Crown Solicitor*

52.—(1) When the Crown Solicitor desires to show cause against making absolute a decree nisi, he shall enter an appearance in the cause in which the decree has been pronounced, and shall, within 21 days thereafter, file his plea setting forth the grounds upon which he desires to show cause, and shall serve a copy thereof on the party in whose favour the decree has been pronounced and every other party affected by the decree.

(2) 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.

(3) 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.

(4) If any charge contained in the plea is not denied in the answer thereto, the party in whose favour the decree nisi has been pronounced shall apply for the registrar's certificate under rule 32 and shall, within fourteen days after obtaining it, set the intervention down for trial and shall, within 3 days thereafter, give the Crown Solicitor notice of his having done so. If default is made in setting down and giving notice to the Crown Solicitor as aforesaid, the Crown Solicitor may apply forthwith by motion to rescind the decree and dismiss the petition.

(5) If all the charges contained in the plea are denied in the answer thereto, the Crown Solicitor shall apply for the registrar's certificate and shall, within fourteen days after obtaining it, set the intervention down for trial and shall, within 3 days thereafter, give the other parties to the intervention notice of his having done so.

*Intervention to show cause by person other than Crown Solicitor*

53.—(1) When any person other than the Crown Solicitor desires to show cause under Article 11 of the Order against making absolute a decree nisi, he shall enter an appearance in the cause in which the decree has been pronounced and shall, within 7 days thereafter, file an affidavit setting forth the facts upon which he relies and within 3 days of filing such affidavit shall serve a copy thereof on the party in whose favour the decree has been pronounced.

(2) Any party to whom a copy of the affidavit has been served as aforesaid may, within fourteen days thereafter, file an affidavit in answer, and shall, within 3 days after filing the affidavit, serve a copy thereof on the person showing cause, who may within fourteen days file an affidavit in reply and shall, within 3 days after filing the affidavit, serve a copy thereof on each party to whom he served a copy of his original affidavit.

No further affidavits shall be filed without leave.

(3) 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 the time allowed for filing such an affidavit.

(4) If the person showing cause does not apply under paragraph (3) within the time limited the person in whose favour the decree was pronounced may do so.

*Rescission of decree nisi by consent*

54.—(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) The application shall be made by summons which shall be served on the other spouse and any other party against whom costs have been awarded or who is otherwise affected by the decree.

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

*Decree absolute on lodging notice*

55.—(1) Subject to rule 56(1), an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the master a notice in Form 8.

(2) On the lodging of such a notice, the master shall search the Court minutes 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 52 or 53 is pending;
- (e) that the Judge has made an order under Article 44 of the Order;
- (f) where a certificate has been granted under section 12 of the Administration of Justice Act 1969(a) 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 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 such order on the application as he thinks fit or refer the application to the Judge.

#### *Decree absolute on application*

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

- (a) where, within six weeks after a decree nisi has been pronounced, the Crown Solicitor gives to the master 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 ought to be brought to the attention of the Court before the decree nisi is made absolute.

Unless otherwise directed, the summons by which the application is made 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 and the summons by which the application is made shall be served on the other spouse not less than four clear days before the day on which the application is heard.

(3) An order granting an application under this rule shall not take effect until the master has searched the Court minutes and is satisfied as to the matters mentioned in rule 55(2).

#### *Indorsement and certificate of decree absolute*

57.—(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 master shall send to the petitioner and the respondent a certificate in form 9 or 10, whichever is appropriate, authenticated by the seal of the Court.

(3) A certificate in Form 9 or 10 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

ANCILLARY RELIEF

*Application by petitioner or respondent for ancillary relief*

58.—(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 11 or at the trial, or
- (b) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 11.

(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 11.

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

59. Any of the following persons, namely—

- (a) the guardian of any child of the family,
- (b) any person who has the custody or the care and control of a child of the family under an order of the High Court,
- (c) the Department to whom the care of a child of the family has been committed by an order made under Article 46 of the Order,
- (d) any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of a child of the family,
- (e) the guardian ad litem of a child of the family under rule 88, and
- (f) any other person in whose care a child of the family is and who has obtained leave to intervene in the cause for the purpose of applying for ancillary relief in respect of that child,

may apply for an order for ancillary relief as respects that child by notice in Form 11.

*Application in Form 11 or 12*

60. Where an application for ancillary relief is made by notice in Form 11 or an application under rule 50 is made by notice in Form 12 the notice shall be filed and within four 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*

61. 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*

62.—(1) Where an application is made 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 children concerned, direct that the children 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 children 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 children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

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

63.—(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 71, file a notice in Form 13 and within four 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 11 or 13 in respect of an application for ancillary relief, not being an application to which rule 64 or 65 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) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the Court may fix, the applicant shall file an affidavit in reply containing full particulars of his property and income.

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

64.—(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 11 or 13, as the case may be, shall, unless otherwise directed, 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 either in possession or reversion;
- (b) in the case of an application for an order for a variation of settlement—
  - (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 in lien whatsoever on the land or any interest therein.

(4) A copy of Form 11 or 13, 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 an order for 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*

65.—(1) 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.

(2) The respondent to the application may, within 14 days after service of the affidavit, file an affidavit in answer.

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

66.—(1) A person who files an affidavit for use on an application under rule 63, 64 or 65 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 otherwise directed, it shall be indorsed with a notice in Form 14, 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 67(6) within eight days of service of the affidavit on him, inclusive of the day of service.

(2) Rule 44(4) 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*

67.—(1) On or after the filing of a notice in Form 11 or 13 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 11 or 13 (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 68 and 69, investigate the allegation made in support of and in answer to the application, and may take evidence orally and may order the attendance of any person for the purpose of being examined or cross-examined, and may at any stage of the proceedings 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*

**68.**—(1) Subject to rule 69, the master shall, after completing his investigation under rule 67 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*

**69.** The master may at any time refer an application for ancillary relief, or any question arising thereon, to the Judge for his decision.

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

**70.**—(1) Where an application for ancillary relief or any question arising thereon has been referred or adjourned to the Judge, the master 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 otherwise directed, take place in chambers.

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

**71.**—(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 15 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the master and to the applicant within 14 days after service of the notice in Form 15.

(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*

72.—(1) An application under Article 39(2)(a) of the Order 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 69 and 70 shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.

APPLICATIONS RELATING TO CHILDREN

*Custody, care and supervising of children*

73.—(1) Subject to paragraph (2), an application for an order relating to the custody or education of a child, or for an order committing him to the care of the Department under Article 46 of the Order or providing for his supervision under Article 47 of the Order, shall be made to the Judge.

(2) An application by the petitioner or the respondent for—

(a) an order in terms agreed between the parties relating to the custody or education of a child, or

(b) access to a child where the other party consents to give access and the only question for determination is the extent to which access is to be given,

may be made to the master who may make such order on the application as he thinks fit or may refer the application or any question arising thereon to the Judge for his decision.

(3) Without prejudice to the right of any other person entitled to apply for an order as respects a child, a guardian or step-parent of any child of the family and any other person who, by virtue of an order of a court, has the custody or control of such a child or his care or supervision in pursuance of Article 46 or 47 of the Order, may without obtaining leave to intervene in the cause, apply by summons for such an order as is mentioned in paragraph (1).

(4) On any application to the Judge relating to the custody, care and control of, or access, to a child—

(a) neither the applicant nor the respondent shall be entitled to be heard in support of or, as the case may be, in opposition to the application unless he is available at the hearing to give oral evidence or the Judge otherwise directs;

(b) the Judge may refuse to admit any affidavit by any person (other than the applicant or respondent) who is or is proposed to be responsible for the child's care and upbringing or with whom the child is living or is proposed to live unless that person is available at the hearing to give oral evidence;

- (c) a writ of subpoena to compel the attendance of any such person as is mentioned in sub-paragraph (b) may issue in accordance with rule 39;
- (d) no writ of subpoena shall be issued to compel the attendance of any other witness except with the production of such a note.

(5) Where an affidavit filed for use in proceedings relating to a child contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 14 and a copy of the affidavit, or of such part thereof as the Court may direct, indorsed 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 paragraph (7) within eight days of service of the affidavit on him, inclusive of the day of service.

(6) Rule 44(4) shall apply to a person served with an affidavit under paragraph (5) of this rule as it applies to a co-respondent.

(7) The Court 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.

*Further provisions as to orders under Articles 46 and 47 of the Order*

74.—(1) Before an order is made committing a child to the care of the Department under Article 46 of the Order the master shall fix a date, time and place for the hearing of any representations by the Department and shall send notice in Form 16 to the Department not less than 14 days before the date so fixed.

(2) If the Department wishes to represent that, in the event of an order being made under Article 46, the Court should make a financial provision order in favour of the child, the Department shall, within seven days after receipt of the notice, file an affidavit setting out such facts relevant to the property and income of the person against whom the financial provision order is sought as are known to the Department and shall at the same time serve a copy of the affidavit on that person.

(3) A person on whom a copy of the Department's affidavit is served under paragraph (2) may, within four days after service, file an affidavit in answer and, if he does so, he shall at the same time serve a copy of the affidavit on the Department.

(4) An application by the Department or by an officer appointed under Article 47 of the Order for the variation or discharge of an order made under Article 46 or 47 of that Order or for directions as to the exercise of the powers of the Department or officer under the order may, in the case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the Court and the Department or officer shall, if practicable, notify any interested party of the intention to make the application.

(5) In proceedings under Article 46 or 47 the Department may be represented by its director of social services or other officer employed by it for the purposes of their social services functions under the Health and Personal Social Services (Northern Ireland) Order 1972(e).

*Removal of child out of Northern Ireland*

75.—(1) In any cause the petitioner or the respondent may apply at any time for an order prohibiting the removal of any child of the family under 18 years of age out of Northern Ireland without the leave of the Court except on such terms as may be specified in the order.

Unless otherwise directed, an application under this paragraph may be made *ex parte*.

(2) Unless otherwise directed, any order relating to the custody or care and control of a child shall provide for the child not to be removed out of Northern Ireland without the leave of the Court except on such terms as may be specified in the order.

(3) An application for leave to remove a child out of Northern Ireland shall be made to the Judge except in the following cases when it may be made to the master, namely—

- (a) where the application is unopposed, or
- (b) where the application is for the temporary removal of the child unless it is opposed on the ground that the child may not be duly returned.

*Reference to officer of the Department*

76.—(1) The Judge or the master may at any time refer to an officer of the Department for investigation and report any matter arising in matrimonial proceedings which concerns the welfare of a child.

(2) Without prejudice to paragraph (1), any party to an application to which rule 73 applies may, before the application is heard, request the master to call for a report from an officer of the Department on any matter arising on the application, and if the master is satisfied that the other parties to the application consent and that sufficient information is available to enable the officer to carry out the investigation, the master may refer the matter to the officer for investigation and report before the hearing.

- (3) Where a reference is made under this rule—
  - (a) after completing his investigation, the officer shall file his report;
  - (b) the master shall give notice to the officer of the date of hearing of the application or other proceedings.

*Notice of other proceedings relating to children*

77. If, while a cause is pending, proceedings relating to any child of the family are begun in the High Court or County Court, or a Court of summary jurisdiction 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.

OTHER APPLICATIONS

*Application by a spouse for failure to maintain*

78.—(1) An application under Article 29 of the Order 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 accordance with Form 17. Such summons shall be issued out of the Office.



(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 and the name and status of the wife before marriage;
- (b) the full name (including surname) 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 or if it be the case that any such child has been committed to the care of the Department.
- (c) Whether 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 whether there has been any resumption of cohabitation since the making of the decree or order;
- (d) particulars of the alleged failure to maintain;
- (e) the means of the applicant and the respondent;
- (f) the facts upon which it is claimed that the Court has jurisdiction to entertain the proceedings.

(3) After entering an appearance the respondent if he intends to contest the application shall, within 21 days after the expiration of the time limited for entering an appearance, 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 otherwise directed, file an affidavit containing full particulars of his property and income, and serve a copy of the affidavit on the applicant.

(4) Where the respondent's affidavit alleges adultery the alleged adulterer shall, unless otherwise directed, be made a party cited and be served with a copy of the affidavit, with notice in Form 18 and rule 13 shall apply, with the necessary modifications, as if the answer were a petition and the party cited were a co-respondent.

(5) 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 entering an appearance, file an affidavit in answer and serve a copy of the affidavit on the respondent.

(6) If the respondent does not file an affidavit in accordance with paragraph (3), 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.

(7) 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.

(8) When all affidavits have been filed, a time and date shall be fixed for the hearing of the summons before the Judge and the applicant shall unless otherwise directed, file and serve notice thereof on any party who has entered an appearance.

(9) On the hearing of the application the Judge may make such order as he thinks just or may refer the application (except any claim for custody), or any application for an order under Article 29(5) of the Order, to the master for him to investigate the means of the parties to the marriage.

(10) Where an application is referred to the master under paragraph 9 he shall fix an appointment for the hearing on 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 failure to maintain—

- (a) the master shall, after completing his investigation under rule 67, report the result thereof in writing to the 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.

(11) 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.

(12) Subject to the provisions of this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to an application under Article 29 of the Order, 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*

79.—(1) An application under Article 37 of the Order for the alteration of a maintenance agreement shall be made by originating summons in accordance with Form 19.

(2) The application 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 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 names (including surname) 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 child since the date of 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 the children 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) the means of the applicant and the other party to the agreement in so far as they are within the applicant's knowledge or belief;
  - (f) the nature of the alteration(s) of the agreement sought and the facts alleged by the applicant to justify the alterations(s).
- (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 entering an appearance, 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*

**80.**—(1) An application under Article 38 of the Order for the alteration of a maintenance agreement after the death of one of the parties shall be made by originating summons in Form 20 issued out of the Office.

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

- (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), and the place where and 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 (Family Provision) Act (Northern Ireland) 1960 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-paragraphs (a), (b) and (c) of rule 81(3);
- (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 application under rule 80*

81.—(1) The master may at any stage of the proceedings direct that any person be added as a respondent to an application under the last foregoing rule.

(2) The Rules of the Supreme Court which enable the court to make representation orders in certain cases, shall apply to the proceedings as if they were mentioned in the said rule.

(3) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for entering 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 estate duty 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 within the meaning of rule 85.

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

(5) 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.

(6) Every respondent who files an affidavit in answer to the application shall serve a copy of the affidavit on the applicant.

*Application of other rules to proceedings under article 37 or 38 of the Order*

82.—(1) Rules 66, 67(1) and (4) to (7), 68, 69 and 70 shall apply, with the necessary modifications, to an application under Article 37 or 38 of the Order as if it were an application for ancillary relief.

(2) Subject to paragraph (1) and to the provisions of rules 79 to 81, these Rules shall, so far as applicable, apply with the necessary modifications to an application under Article 37 or 38 of the Order (as the case may be) as if the application were a cause, the originating summons a petition, and the applicant the petitioner.

*Proceedings in respect of polygamous marriage*

83.—(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 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) shall state whether or not there is, to the knowledge of the petitioner or applicant, any living spouse of his or hers additional to the respondent or, as the case may be, any living spouse of the respondent additional to the petitioner or applicant (in this rule referred to as an additional spouse); and

(c) if there is any 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) The Court may order that any additional spouse be added as a part 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.

(4) Any order under paragraph (3) 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 acknowledgment 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 making an application for the master's certificate under rule 32, ask for directions as to whether an order should be made under paragraph (3).

(5) Any person to whom notice is given pursuant to an order under paragraph (3) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates.

*Application for declaration affecting matrimonial status*

84.—(1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to a person's matrimonial status, the proceedings shall be begun by petition.

(2) The petition shall state—

(a) the names of the parties and the residential address of each of them at the date of presentation of the petition;

(b) the place and date of any ceremony of marriage to which the application relates;

(c) whether there have been any previous proceedings in any Court in Northern Ireland or elsewhere between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them, and, if so, the nature of the proceedings;

(d) all other material facts alleged by the practitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it;

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

(a) as conferring any jurisdiction to make a declaration in circumstances in which the Court could not otherwise make it, or

(b) as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) Where the proceedings are proceedings for a declaration as to the validity or subsistence of a marriage of the petitioner, paragraph 1(f) of Appendix 2 shall apply to the petition as if it were a petition for divorce.

(5) Subject to this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to the proceedings as if they were a cause.

#### DISABILITY

*Person under disability must sue by next friend, etc.*

85.—(1) In this rule—

“person under disability” means a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(f) is incapable of managing and administering his property and affairs.

(2) A person under disability may begin and prosecute any matrimonial proceedings by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the Court.

(3) No person’s name shall be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor or the documents mentioned in paragraph (7) have been filed.

(4) Where the disability of a person who is entitled to defend any matrimonial proceedings is not solely due to minority, the Official Solicitor shall, if he consents, be guardian ad litem; but at any stages of the proceedings an application may be made (on not less than four days’ notice to the Official Solicitor, if he has consented to act), for the appointment of some other person as guardian; and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (7).

(5) Where a petition, answer, or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no appearance has been entered or answer or affidavit in answer filed, on his behalf, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to the master for directions as to whether a guardian ad litem should be appointed to act for that person in the cause, and on any such application the master may, if he considers it necessary in order to protect the interest of the person served, order that some proper person be appointed his guardian ad litem.

(6) No appearance shall be entered, or answer or affidavit in answer filed, by or on behalf of a person under disability unless the person entering the appearance or filing the answer or affidavit—

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(f) 1961 c. 15 (N.I.)

- (a) is the Official Solicitor or, in a case in which paragraph (4) applies, is the Official Solicitor or has been appointed by the Court to be guardian ad litem; or
  - (b) in any other case, has filed the documents mentioned in paragraph (7).
- (7) The documents referred to in paragraphs (3), (4) and (6) are—
- (a) a written consent to act by the proposed next friend or guardian ad litem;
  - (b) a certificate by the solicitor acting for the person under disability—
    - (i) that he knows or believes that the person to whom the certificate relates is a person under disability stating the grounds of his knowledge or belief, and,
    - (ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian.

*Service on person under disability*

**86.**—(1) Where a document to which rule 13 applies is required to be served on a person under disability within the meaning of the last foregoing rule, it shall be served.

- (a) in the case of a minor who is not otherwise a person under disability, or his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of any other person under disability—
  - (i) on the Official Solicitor if he has consented under rule 85(4) to be the guardian ad litem, or
  - (ii) If the Official Solicitor has not so consented on the person with whom he resides or in whose care he is:

Provided that the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (a) or (b) shall be deemed to be duly served on the person under disability.

(2) Where a document is served in accordance with paragraph (1), it shall be indorsed with a notice in Form 21; and after service has been effected the person at whose instance the document was served shall, unless the Official Solicitor is the guardian ad litem of the person under disability or the Court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

*Petition for nullity on ground of insanity, etc.*

**87.**—(1) Where a petition for nullity has been presented on the ground that at the time of the marriage the respondent was suffering from mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 of such a kind or to such an extent as to be unfitted for marriage, then, whether or not the respondent enters an appearance, the petitioner shall not proceed with the cause without the leave of the master.

(2) The master by whom an application for leave is heard may make it a condition of granting leave that some proper person be appointed to act as guardian ad litem of the respondent.

*Separate representation of children*

88.—(1) Without prejudice to rule 62, if in any matrimonial proceedings it appears to the Court that any child ought to be separately represented, the Court may appoint—

- (a) the Official Solicitor, or
- (b) some other proper person.

Provided, in either case, that he consents) to be the guardian ad litem of the child, with authority to take part in the proceedings on the child's behalf.

(2) An order under paragraph (1) may be made by the Court of its own motion, or on the application of a party to the proceedings or of the proposed guardian, ad litem.

(3) The Court may at any time direct that an application be made by a party for an order under paragraph (1) and may stay the proceedings until the application has been made.

(4) Unless otherwise directed, on making an application for an order under paragraph (1) the applicant shall—

- (a) unless he is the proposed guardian ad litem, file a written consent by the proposed guardian to act as such;
- (b) unless the proposed guardian ad litem is the Official Solicitor, file a certificate by a solicitor that the proposed guardian has no interest in the proceedings adverse to that of the child and that he is a proper person to be guardian.

(5) Unless otherwise directed, a person appointed under this rule or rule 62 to be the guardian ad litem of a child in any matrimonial proceedings shall be treated as a party for the purpose of any provision of these Rules requiring a document to be served on or notice to be given to a party to the proceedings.

PROCEDURE: GENERAL

*Security for costs*

89. A wife who is petitioner or who has entered an appearance may, after the master's certificate that the pleadings are in order has been given under rule 32 or at an earlier stage of a cause with leave, lodge her bill of costs incurred to the date of such certificate for taxation against her husband. The Taxing Master on the taxation of such bill of costs shall if requested by the wife so to do ascertain what is a sufficient sum of money to cover the costs of the wife of and incidental to the trial or hearing of the cause; and the master may, unless the husband shall prove that the wife has sufficient separate estate or show other good cause, order the husband within such time as the master may fix to pay to the wife or into Court the amount of such taxed costs and to pay into Court or secure the sum ascertained as the costs of and incidental to the trial or hearing and may direct a stay of the proceedings until the order is complied with.

*Taxation and payment of costs*

90.—(1) All bills of costs for business in matrimonial causes and matters shall be taxed by the Taxing Master and the provisions of the Rules of the Supreme Court so far as applicable shall apply thereto.

(2) Upon the Taxing Master's Certificate of taxation of costs being signed it may be lodged in the Office by the party obtaining the same and the master may issue an order for payment of the amount allowed within seven days after service of the order or such other time as the master may direct.



(3) An order for payment of costs contained in a decree nisi, if drawn up before the decree is made absolute, shall direct payment into court, and, unless otherwise directed, such costs shall not be paid out of Court until the decree has been made absolute, but a wife who is unsuccessful in a cause and who at the trial has obtained an order for costs may proceed forthwith to obtain payment of the amount allowed on taxation.

(4) Where a party who has been ordered to pay costs into Court fails to do so in accordance with the order, the party in whose favour the order was made may apply to the master to vary the order by directing payment to a person specified in the application and the master may, if satisfied that in the circumstances it is just and equitable to do so, vary the order accordingly, so however that, if the application is made before decree absolute, the order shall be made only upon an undertaking by that person to pay the costs into Court when he receives them.

### *Service out of Northern Ireland*

91.—(1) A petition, notice or other document in a matrimonial cause or matter may be served out of the jurisdiction without leave either in the manner prescribed by these Rules for service within the jurisdiction or in accordance with Order 11 of the Rules of the Supreme Court.

(2) Where a petition or notice of an application for ancillary relief is to be served out of the jurisdiction the time limited for appearance to be endorsed on the petition or contained in the notice shall be fixed having regard to the place or country where or within which the petition or notice is to be served in accordance with the practice adopted under the said Order.

### *Service of documents*

92.—(1) Where a document is required by these rules to be sent to any person, it shall, unless otherwise directed, be sent by post—

- (a) if a solicitor is acting for him, to the solicitor's address;
- (b) if he is acting in person, to the address for service given by him or, if he has not given an address for service, his last known address, but if in the opinion of the master the document would be unlikely to reach him if sent to that address, the master may dispense with sending the document to him.

(2) Unless otherwise directed, service of any document in matrimonial proceedings shall, if no other mode of service is prescribed or ordered, be effected—

- (a) if a solicitor is acting for the person to be served by leaving the document at, or sending it by post to, the solicitor's address;
- (b) if the person to be served is acting in person, by delivering the document to him or by leaving it at, or sending it by post to, the address for service given by him or, if he has not given an address for service, his last known address:

Provided that where, in a case to which sub-paragraph (b) applies, it appears to the master that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in that sub-paragraph, it would be unlikely to reach him, the master may dispense with service of the document.

*Mode of making application*

93. Except where the Rules, or the Rules of the Supreme Court as applied by these Rules, otherwise provide, every application in matrimonial proceedings shall be made to the master and shall be made by Summons.

*No notice of intention to proceed after year's delay*

94. Any provision in the Rules of the Supreme Court, which requires a party to give notice of intention to proceed after a year's delay, shall not apply to any matrimonial proceedings.

*Mode of giving notice*

95. Unless otherwise directed, any notice which is required by these Rules to be given to any person shall be in writing and, if it is to be given by the master, shall be given by post.

ENFORCEMENT OF MATRIMONIAL ORDERS

*Application*

96. In this rule and in rules 97 to 123, unless the context otherwise requires—

“matrimonial order” means an order made in matrimonial proceedings for the periodical payment of money;

“judgment creditor” means the person entitled to payments under a matrimonial order;

“judgment debtor” means the person liable to make payments under a matrimonial order.

GARNISHEE PROCEEDINGS

*Attachment of debt due to judgment debtor*

97.—(1) On the application of the judgment creditor where there is an amount remaining unpaid by the judgment debtor under a matrimonial order and any other person within the jurisdiction (hereinafter referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of paragraph (2) and rules 98 to 104 and 106 and of any statutory provision, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy the order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) In this rule “any other person” shall include a firm, any member of which is resident within the jurisdiction and a garnishee order may be made against any firm in the name of the firm; and any appearance by any member then within the jurisdiction pursuant to an order made under this rule shall be a sufficient appearance by the firm.

*Application for order*

**98.** An application for an order under rule 97 must be made ex parte supported by an affidavit—

- (a) identifying the order to be enforced and stating the amount remaining unpaid under it at the time of the application.
- (b) stating that to the best of the information and belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information and the grounds for his belief, and
- (c) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held or, if it be the case, that this information is not known to the deponent.

*Service and effect of order to show cause*

**99.**—(1) An order under rule 97 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served—

- (a) on the garnishee personally, and
- (b) unless the Court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

*No appearance or dispute of liability by garnishee*

**100.**—(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may, subject to rule 103, make an order absolute under rule 97 against the garnishee.

(2) An order absolute under rule 97 against the garnishee may be enforced as if judgment for the amount payable thereunder had been given against the garnishee.

*Dispute of liability by garnishee*

**101.** Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

*Claims of third persons*

**102.**—(1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such matter as is mentioned in rule 101.

*Judgment creditor resident outside scheduled territories*

**103.**—(1) The Court shall not make an order under rule 97 requiring the garnishee to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Treasury have given permission under the Exchange Control Act, 1947(g), for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the said Act of 1947, it may order the garnishee to pay into court the amount due to the judgment creditor and the costs of the garnishee proceedings after deduction of his own costs, if the Court so orders.

*Discharge of garnishee*

**104.** Any payment made by a garnishee in compliance with an order absolute under this part of this Order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

*Money in court*

**105.**—(1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On issuing a summons under this rule the applicant must produce the summons at the office of the Accountant General and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Accountant General.

(3) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing of it.

(4) The Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

*Costs*

**106.** The costs of any application for an order under rule 97 to 105 and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

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(g) 1947 c. 14

## CHARGING ORDERS, STOP ORDERS, ETC.

*Order imposing charge on securities*

**107.**—(1) The Court may for the purpose of enforcing a matrimonial order by order impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies as may be specified in the order a charge for securing payment of the amount due under the matrimonial order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are—

- (a) any government stock, and any stock of any company registered under any general Act of the Parliament of Northern Ireland including any such stock standing in the name of the Accountant General, and
- (b) any dividend of or interest payable on such stock.

(4) In this part of this Order “Government stock” means securities of which the principal and interest, if any, are charged directly or by way of guarantee on the Consolidated Fund of Northern Ireland, or of the United Kingdom, being inscribed or registered in Northern Ireland, and funds or stocks on the National Savings Stock Register maintained by trustee savings banks in Northern Ireland.

*Application for order under r. 107*

**108.** An application for an order under rule 107 must be made *ex parte* supported by an affidavit—

- (a) identifying the order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the order;
- (b) specifying the securities on the judgment debtor’s interest in which it is sought to impose a charge and in whose name they stand;
- (c) stating that to the best of the information and belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent’s information or the grounds for his belief.

*Service of notice of order to show cause*

**109.**—(1) Unless the Court otherwise directs, a copy of the order under rule 107 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such consideration proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served—

- (a) where the order relates to government stock, on the principal office in Belfast of the Bank of Ireland,
- (b) where the order relates to other stock, on the company concerned,
- (c) where the order relates to stock standing in the name of the Accountant General, on the Accountant General.

*Effect of order to show cause*

110.—(1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 107 to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute the Bank of Ireland or, as the case may be, a company shall not permit any transfer of any such stock as is specified in the order, or pay to any person any dividend thereof, or interest payable thereon, except with the authority of the Court.

(3) If after the notice of the making of such order is served on the Bank of Ireland or a company the Bank or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

*Making and effect of charging order absolute*

111.—(1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 107 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

*Discharge, etc. of charging order*

112. The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 107 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such term (if any) as to costs as it thinks just.

*Money in court: charging order*

113.—(1) The Court may for the purpose of enforcing a matrimonial order by order impose on any interest to which the judgment debtor is beneficially entitled in any money in court identified in the order a charge for securing payment of the amount due under the matrimonial order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 108 and 109(1) shall, with the necessary modifications, apply in relation to an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 107 and to such order.

(4) Notice of the making of an order under this rule to show cause, with a copy of that order, must as soon as practicable after the making of the order, be served on the Accountant General.

(5) Rules 110(1), 111(1) and (2) and 112 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 107.

*Jurisdiction of Master, etc. to grant injunction or appoint receiver to enforce charge*

114. The Master shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 107 or 113, and an application for an injunction under this rule may be joined with the application for the order under rule 107 or 113 to which it relates.

*Funds in Court: stop order*

115.—(1) The Court, on the application of the judgment creditor may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with funds in Court or any part thereof, or the income thereon in which the judgment debtor has an interest without notice to the applicant.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the Accountant General but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

*Securities not in court: stop notice*

116.—(1) A judgment creditor claiming to be beneficially entitled to an interest in any securities to which rule 107 applies, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the Office—

- (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises, and
- (b) a notice in Form 22, signed by the deponent to the affidavit, and annexed to it, addressed to the Bank of Ireland, or, as the case may be, the company concerned,

and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the Office on the bank or that company.

(3) There must be indorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 117(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 117 by serving on the Bank of Ireland, or, as the case may be, the company concerned, a notice to that effect, and as from the date of service of such a notice the address request except under the authority of an order of the Court.

*Effect of stop notice*

117.—(1) Where a notice under rule 116 has been served on the Bank of Ireland or a company, then, so long as the notice is in force, the Bank or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Bank of Ireland or a company receive a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 116 relates, the Bank or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the Court.

*Amendment of stop notice*

118. If any securities are incorrectly described in a notice filed under rule 116 the person on whose behalf the notice was filed may file in the Office an amended notice and serve on the Bank of Ireland, or, as the case may be, the company concerned a copy of that notice sealed with the seal of the office, and where he does so the notice under rule 116 shall be deemed to have been served on that Bank or company on the day on which the copy of the amended notice was served on it.

*Withdrawal, etc. of stop notice*

119.—(1) The person on whose behalf a notice under rule 116 was filed may withdraw it by serving a request for its withdrawal on the Bank of Ireland or, as the case may be, the company on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 116 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by summons, and the summons must be served on the person on whose behalf the notice under rule 116 was filed.

RECEIVERS: EQUITABLE EXECUTION

*Appointment of receiver by way of equitable execution*

120.—(1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.



(2) Where on an application for the appointment of a receiver by way of equitable execution it appears to the Court that the judgment creditor is resident outside the scheduled territories, or is acting by order or on behalf of a person so resident, then, unless the permission of the Treasury required by the Exchange Control Act, 1947, has been given unconditionally or on conditions that have been complied with, any order for the appointment of a receiver shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper remuneration.

*Master may appoint receiver, etc.*

121. The master shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

*Application of rules as to appointment of receiver, etc.*

122. An application for the appointment of a receiver by way of equitable execution shall be made by summons.

#### EXAMINATION IN AID OF ENFORCEMENT

123.—(1) Any party entitled to enforce a matrimonial order may issue and serve a summons on the judgment debtor liable under such order requiring him to attend before the Court to be orally examined as to whether any and what debts are owing to the judgment debtor, and whether the judgment debtor has any and what other property or means of satisfying the order.

(2) The summons under paragraph (1) shall be in Form 23 or as near thereto as the circumstances of the case may render necessary and shall be served on the judgment debtor by recorded delivery or personally.

(3) If the judgment debtor shall fail to attend in pursuance of the summons the Court may make an order for the attendance of the judgment debtor or any other person and for the production of any books or documents.

(4) An order for attendance under paragraph (3) shall be served personally on such person or persons and within such time as the Court shall direct.

(5) Upon the examination the Court may make any of the following orders:—

- (a) a conditional order of garnishee,
- (b) a charging order or stop order or any order ancillary thereto,
- (c) an order for the appointment of a receiver by way of equitable execution, under the preceding rules of this Order.

(6) The evidence given on the examination shall be taken down in writing, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the examinee. A copy of the note of such evidence shall, on payment of the appropriate fees be made available to the parties to any such examination, but save as aforesaid no person shall, without leave of the Court, be entitled to examine such note or obtain a copy thereof.

JUDGMENT SUMMONSES

124.—(1) In this rule unless the context otherwise requires—

“the Act” means the Judgments (Enforcement) Act (Northern Ireland) 1969(h);

“order” means an order made in matrimonial proceedings for the periodical payment of money or an order made by the Enforcement of Judgments Office for the payment by instalments of the amount due under an order made in matrimonial proceedings for payment of a lump sum or costs;

“judgment creditor” means a person entitled to enforce an order;

“debtor” means a person liable under an order;

“judgment summons” means a summons under Part VII of the Act.

(2) An application for the issue of a judgment summons shall be made by filing an affidavit verifying the amount due under the order and showing how the amount is arrived at.

(3) A judgment summons shall not be issued without the leave of the Judge if the debtor is in default under an order of committal made on a previous judgment summons in respect of the same order.

(4) Every judgment summons shall be in Form 24 and shall be served on the debtor personally not less than 10 clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the Court.

(5) Where a judgment summons has not been served in due time, it may by leave of the master be re-issued and if necessary, amended from time to time within six months of the date of the original judgment summons.

(6) Any provision of the Rules of the Supreme Court enabling evidence to be given by affidavit shall apply to a judgment summons.

(7) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may for that purpose be issued out of the Office.

(8) Where the debtor appears at the hearing, the travelling expenses paid to him may, if the Judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of committal is made, the Judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

(9) If the Judge makes an order for committal, he may direct its execution to be stayed on terms that the debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original order.

(10) All payments under an order made under section 83(3) of the Act of 1969 or an order of committal shall be made to the judgment creditor unless the judge otherwise directs.

(11) Where an order of committal is stayed on such terms as are mentioned in paragraph 9:—

- (a) all payments thereafter made shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons: and
- (b) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

(12) Where an order of committal has been made but execution of the order is stayed and the debtor subsequently desires to apply for a further stay, he shall attend at or write to the Office and apply for the stay he requires, stating the reasons for his inability to comply with the order, and the master shall fix a day for the hearing of the application by the Judge and serve notice thereof on the judgment creditor and on the debtor by recorded delivery at least three clear days before the day fixed for the hearing.

(13) The judgment creditor shall serve notice by recorded delivery on the debtor of the terms of any order made under this rule whether or not the debtor has attended the hearing.

(14) An order for committal shall be directed to any police officer or other person as the Court may direct for execution.

#### SERVICE OF DECREE AND ORDER

##### *Service of order*

125.—(1) Where an order made in matrimonial proceedings had been drawn up, the master shall, unless otherwise directed, send a copy of the order to every party affected by it.

(2) Where the party against whom the order is made is acting by a solicitor, a copy may, if the master thinks fit, be sent to that party as if he were acting in person, as well as to his solicitor.

(3) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

(4) This rule is without prejudice to rule 126 (which deals with the service of an order to do or refrain from doing an act) and any other rule or enactment for the purposes of which an order is required to be served in a particular way.

##### *Service of decree or order requiring act to be done*

126. Where a decree or order requires a person to do or refrain from doing an act, a copy of the order shall be served on the person required to do or refrain from doing the act personally or delivered to his solicitor.

#### MISCELLANEOUS

##### *Record of proceedings at trial*

127.—(1) A record of the proceedings at the trial of every cause shall where practicable be made by mechanical means.

(2) A record may be made by mechanical means of any other proceedings before the Judge if directions for making such a record are given by him.

(3) The person who operated the recording machine shall certify that the recording is a complete recording or a continuous part of a complete recording taken at the proceedings to which it relates.

(4) On being so directed a short hand writer or other competent person shall furnish the master with a transcript of the whole or such part as may be directed of the record.

(5) The short hand writer shall certify the transcript to be a correct transcript of the record or such part of the record as may be requested.

(6) Any party, any person who has intervened in a cause or the Crown Solicitor shall be entitled to bespeak a copy of the transcript on payment of the appropriate fee.

*Inspection of documents retained in court*

**128.**—(1) A party to any matrimonial proceedings or his solicitor or the Crown Solicitor or a person appointed under rule 62 or 88 to be the guardian ad litem of a child in any matrimonial proceedings may have a search made for, and may inspect and bespeak a copy of, any document filed or lodge in the Office in those proceedings.

(2) Except as provided by paragraph (1) of this rule no document filed or lodged in the Office other than a decree or order made in open Court, shall be open to inspection by any person without the leave of the master, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

## APPENDIX 1

## FORM 1

## Originating Summons under Rule 4

In the High Court of Justice in Northern Ireland  
Family Division  
Probate and Matrimonial Office.

In the Matter of a Proposed Petition by A.B. for the Dissolution of his (or her)  
Marriage with C.D.

LET \_\_\_\_\_ of \_\_\_\_\_ in the  
County of \_\_\_\_\_ attend the Judge in Chambers at the Royal Courts  
of Justice, Chichester Street, Belfast, on \_\_\_\_\_ day the \_\_\_\_\_ day of  
\_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the noon on the hearing of  
an application of \_\_\_\_\_ for an order that the said  
\_\_\_\_\_ may be at liberty to file a petition for dissolution of  
his (or her) marriage with the said \_\_\_\_\_ solemnized on the  
\_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, notwithstanding that three years  
have not passed since the date of the said marriage.

A copy of the affidavit to be used in support of the application is delivered  
herewith.

If you wish to be heard on the application, you must attend at the time and  
place above-mentioned and if you do not attend, such order will be made and  
proceedings taken as the Judge may think just and expedient.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

THIS SUMMONS was taken out by  
for the above named.

\_\_\_\_\_ solicitor

FORM 2

Rule 7(1)

HEADING OF PETITION

In the High Court of Justice in Northern Ireland

Family Division

Probate and Matrimonial Office

To Her Majesty's High Court of Justice in Northern Ireland.

The Petition of A.B.—

1.

2.

3.

Etc.

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FORM 2A

GENERAL HEADING OF PROCEEDINGS

In the High Court of Justice in Northern Ireland

Family Division

Probate and Matrimonial Office

Between

and

and

Petitioner

Respondent

Co-Respondent

## FORM 3

## STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

[Heading as in Form 2]

The proposed arrangements for the children of the family under 16 and those over 16 but under 18 who are receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation are as follows:— (State in respect of each child)

- (i) residence (state where the child is to live with particulars of the accommodation, what other persons (naming them) live there and who will look after the child; and, if it is proposed that the child should be in the immediate care of a person other than the petitioner, state whether or not that person has agreed to this arrangement).
- (ii) education, etc. (state the school or other educational establishment which the child will attend or, if he is working, his place of employment, the nature of his work and details of any training he will receive).
- (iii) financial provision (state who is at present supporting the child or contributing to his support and the extent thereof and whether it is proposed to make any application to the Court for the financial support of the child and if so what support is to be applied for).
- (iv) access (state any arrangements which have been agreed for access and the extent to which access is to be given).

The said child(ren) is (are) (not) suffering from serious disability or chronic illness or from the effects of such illness (, namely, (state in respect of each child so suffering, the nature of the disability or illness and attach a copy of any up-to-date medical report which is available)).

The said child(ren) is (are) (not) under the care or supervision of an officer, or officer appointed by the Department of Health and Social Services, or other person or organisation (, namely, (give details, and state the date of any order for care or supervision and the circumstances which gave rise to its being made)).

Dated this                      day of                      19 .

Signed  
Petitioner

## FORM 4

## NOTICE OF PROCEEDINGS

[Heading as in Form 2]

TAKE NOTICE that a petition (for divorce)<sup>1</sup> has been presented to the Court. A sealed copy of it (and a copy of the petitioner's proposals regarding the children) (is) (are) delivered with this notice.

1. You must complete and detach the acknowledgement of service and send it so as to reach the Court within 14 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.

2. If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgement to the Court on your behalf. If you do not intend to instruct a solicitor, you should nevertheless give an address for service in the acknowledgement so that any documents affecting your interests which are sent to you will in fact reach you. Change of address should be notified to the Court.

NOTES ON QUESTIONS IN FORM 5

3. If you answer Yes to Question (4 or 6)<sup>2</sup> you must within 14 days after receiving this notice inclusive of the day of receipt enter an appearance in the cause by leaving at or sending by post to the Probate and Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, two copies of a memorandum of appearance duly completed and which may be obtained at Her Majesty's Stationery Office, Chichester Street, Belfast, and within 35 days after you receive this notice, inclusive of the day of receipt, file in the Office an answer to the petition,<sup>1</sup> and deliver a copy to every other party to the proceedings.

4. <sup>2</sup>Before you answer Yes to Question 5 you should understand that—

- (a) if the petitioner satisfies the Court that the petitioner and you have lived apart for two years immediately before the presentation of the petition and that you consent to a decree, the Court will grant one unless it considers that the marriage has not broken down irretrievably;
- (b) a decree absolute of divorce will end your marriage so that—
  - (i) any right you may have to a pension which depends on the marriage continuing will be affected;
  - (ii) you will not be able to claim a State widow's pension when the petitioner dies;
- (c) once the Court grants a decree absolute of divorce or a decree of judicial separation, you will lose your right to inherit from the petitioner if he or she dies without having made a will;
- (d) a decree may have other consequences in your case depending on your particular circumstances and if you are in any doubt about these you would be well advised to consult a solicitor.

5. <sup>2</sup>If after consenting you wish to withdraw your consent you must immediately inform the Court and give notice to the petitioner.

6. <sup>2</sup>The petitioner relies in support of the petition on the fact that the parties to the marriage have lived apart for at least five years. Article 12 of the Matrimonial Causes (Northern Ireland) Order 1978 provides that if in such a case the respondent applies to the Court for it to consider the respondent's financial position after the divorce, a decree nisi based on five years' separation only cannot be made absolute unless the Court is satisfied that the petitioner has made or will make proper financial provision for the respondent, or else that the petitioner should not be required to make any financial provision for the respondent. The petition will tell you whether the petitioner proposes to make any financial provision for you. It is important that you should consider this information carefully before answering Question 7 in the acknowledgement.

7. <sup>2</sup>If you answer Yes to Question 7 you must, before the decree is made absolute, make application to the Court by filing and serving on the petitioner a notice in Form 12.

8. <sup>2</sup>(a) If you do not wish to defend the case but object to the claim for costs, you should answer Yes to Question 8 in the acknowledgement. You must state the grounds on which you object. An objection cannot be entertained unless grounds are given which, if established, would form a valid reason for not paying the costs. If such grounds are given, you will be notified of a date on which you must attend before the Judge if you wish to pursue your objection.

(b) If you do not object to the claim for costs but simply wish to be heard on the amount to be allowed, you should answer No to Question 8.

(c) If you are ordered to pay costs, the amount will, unless agreed between the petitioner and yourself, be fixed by the Court, or will be taxed by the Taxing Master of the Supreme Court after lodgment of the petitioner's bill of costs. In the latter event, you will be sent a copy of the bill and will have the right to be heard about the amount before it is finally settled.

9. <sup>2</sup>If you wish to do so, you may send to the Court a statement setting out your views on the proposals regarding the children. If you send a statement it will



be placed before the Judge dealing with the arrangements for the children and a copy of your statement will be sent to the petitioner. Any such statement ought, if practicable, to reach the Court within the time for returning the acknowledgement of service.

10. <sup>2</sup>(a) If you object to the petitioner's claim for custody of the children, answer Yes to Question 9 in the acknowledgement.

(b) If you wish to apply on your own account for custody of or access to the children, answer Yes to (a) or (b) of Question 10.

(c) If you answer Yes to Question 9 or 10 you will be notified of the date of the hearing of the petition when you should attend the Court.

It will be open to you to apply for access to the children later even if you do not do so now. You may also apply later for good reason, for the variation of an order made by the Court as to their custody.

11. <sup>2</sup>If you wish to contest the petitioner's financial or property claim, you will have an opportunity of doing so when you receive a notice stating that the petitioner intends to proceed with the claim. You will then be required to file an affidavit giving particulars of your property and income and be notified of the date when the claim is to be heard.

12. If you wish to make some financial or property claim on your own account, you will have to make a separate application. If you are in doubt as to the consequences of divorce on your financial position, you should obtain legal advice from a solicitor.

Dated this

day of

19

Registrar.

To

<sup>1</sup> Or as the case may be

<sup>2</sup> Delete if inapplicable

FORM 5

ACKNOWLEDGEMENT OF SERVICE

If you intend to instruct a solicitor to act for you, give him this form immediately.

[Heading as in Form 2]

Read carefully the Notice of Proceedings before answering the following questions.

1. Have you received the originating summons (and copy of the supporting affidavit) (or the petition for (divorce)<sup>2</sup>) delivered with this form?

2. On what date and at what address did you receive it?

3. Are you the person named as the Respondent in the application (or as in the petition)<sup>2</sup>?

4. Do you intend to defend the case?

5. <sup>3</sup>(In the case of a petition alleging two years' separation coupled with the respondent's consent to a decree being granted) Do you consent to a decree being granted?

6. <sup>3</sup>(In the case of a petition asking for divorce alleging five years' separation) Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage?

7. <sup>3</sup>In the event of a decree nisi being granted on the basis of two years' separation coupled with the respondent's consent, or five years' separation, do you intend to apply to the Court for it to consider your financial position as it will be after the divorce?

8. <sup>3</sup>Even if you do not intend to defend the case, do you object to paying the costs of the proceedings?

9. <sup>3</sup>Even if you do not intend to defend the case, do you object to the claim in the petition for custody of the children?

10. <sup>3</sup>Do you wish to make any application on your own account for—

(a) custody of the children?

(b) access to the children?

11. <sup>3</sup>(In the case of proceedings relating to a polygamous marriage) If you have any wife (or husband) in addition to the petitioner (or applicant) who is not mentioned in the petition (or originating summons), what is the name and address of each such wife (or husband) and the date and place of your marriage to her (or him)?

Dated this                      day of                      19

(If a solicitor is instructed, he will sign below on your behalf (but if the answer to Question 5 is Yes, you must also sign here)

Signed

Address for service (Unless you intend to instruct a solicitor, give your place of residence, or if you do not reside in Northern Ireland, the address of a place to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Court).

(I am (We are) acting for the Respondent (or the above-named )  
in this matter.

Signed

Address for service:

<sup>2</sup> Or as the case may be.

<sup>3</sup> Delete if inapplicable.

FORM 6

AFFIDAVIT OF SERVICE

[Heading as in Form 2]

I, \_\_\_\_\_ of \_\_\_\_\_ make  
 Oath and say:

(1) Petition or notice or originating summons.

1. That a sealed copy of the<sup>(1)</sup> \_\_\_\_\_ bearing  
 date the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ filed in this Court  
 was duly served by me on the said \_\_\_\_\_  
 at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
 by delivery to the said \_\_\_\_\_ personally a  
 sealed copy thereof [together with copies of the notices in Forms 4  
 and 5] (Means of Knowledge of identity of the person served must be  
 inserted here.)

Sworn, etc.

FORM 7

[Heading as in Form 2]

MEMORANDUM OF APPEARANCE

(1) If such is the case.

(2) Or as the case may be.

(3) An address for service must be within Northern Ireland.

Enter an appearance [in person]<sup>(1)</sup> for \_\_\_\_\_  
 the respondent<sup>(2)</sup> in this cause [generally]  
 [limited to the claim made in the petition for \_\_\_\_\_ ]  
 [limited to the claim for \_\_\_\_\_ ]  
 made by notice dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ ]

Signed \_\_\_\_\_  
 of \_\_\_\_\_  
 Whose address for service is<sup>(3)</sup>.

FORM 8

NOTICE OF APPLICATION FOR DECREE NISI TO BE MADE ABSOLUTE

[Heading as in Form 2]

TAKE NOTICE THAT the petitioner (or respondent) applies for the decree nisi pronounced in his (her) favour on the day of 19 to be made absolute.

Dated this day of 19 .

Signed

(Solicitor for the) Petitioner (or Respondent)

FORM 9

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (DIVORCE)

[Heading as in Form 2]

Referring to the decree made in this cause on the day of 19, whereby it was decreed that the marriage solemnized on the day of 19 at between the petitioner and the respondent be dissolved unless sufficient cause be shown to the Court within from the making thereof why the said decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said decree was on the day of 19, made final and absolute and that the said marriage was thereby dissolved.

(Seal)

Dated this day of 19 .

## FORM 10

## CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (NULLITY)

[Heading as in Form 2]

(Seal)

Referring to the decree made in this cause on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, whereby it was ordered that the marriage in fact solemnized on the day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ between \_\_\_\_\_ the petitioner and \_\_\_\_\_ the respondent (in the case of a void marriage be pronounced and declared to have been by law void and the said petitioner be pronounced to have been and (in the case of a voidable marriage be annulled) unless sufficient cause be shown to the court within \_\_\_\_\_ from the making thereof why the said decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said decree was on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, made final and absolute (in the case of a void marriage and that the said marriage was by law void and that the said petitioner was and is free from all bond of marriage with the said respondent) (in the case of a voidable marriage and that the said petitioner was from that date and is free from all bond of marriage with the said respondent).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

## FORM 11

## NOTICE OF APPLICATION FOR ANCILLARY RELIEF

[Heading as in Form 2]

TAKE NOTICE THAT the petitioner (or respondent) intends to apply to the Court for (here set out the ancillary relief claimed, stating the terms of any agreements as to the order which the Court is to be asked to make and, in the case of an application for a property adjustment order or an avoidance of disposition order, stating briefly the nature of the adjustment proposed or the disposition to be set aside).

Notice will be given to you of the place and time fixed for the hearing of the application (or The application will be heard by the master in chambers at \_\_\_\_\_ on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock).

(Unless the parties are agreed upon the terms of the proposed order, add in the case of an application for an order for maintenance pending suit or a financial provision order:

TAKE NOTICE ALSO that you must file in the Probate and Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, within 14 days after you receive this notice, an affidavit giving full particulars of your property and income. You must at the same time send a copy of your affidavit to the (solicitor for) the applicant.

If you wish to allege that the petitioner has property or income, you should say so in your affidavit).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Signed

(Solicitor for the) Respondent  
(or Petitioner)

FORM 12

NOTICE OF APPLICATION UNDER RULE 50

[Heading as in Form 2]

TAKE NOTICE that the respondent applies to the Court under article 12(2) of the Matrimonial Causes (Northern Ireland) Order 1978 for the Court to consider the financial position of the respondent after the divorce.

The application will be heard on a date to be fixed (or if, in the case of an application made after a decree nisi, a date has been fixed by the master in chambers at \_\_\_\_\_ on \_\_\_\_\_ day, the day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock).

(Unless the petitioner has already filed an affidavit in connection with an application for ancillary relief under rule 63(2).

TAKE NOTICE ALSO that you must within 14 days after you receive this notice, file an affidavit giving full particulars of your property and income. You must at the same time send a copy of your affidavit to the (solicitor for the) respondent.

If you wish to allege that the respondent has property or income, you should say so in your affidavit.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Signed \_\_\_\_\_

(Solicitor for the) Respondent

FORM 13

NOTICE OF INTENTION TO PROCEED WITH APPLICATION FOR ANCILLARY RELIEF MADE IN PETITION OR ANSWER

[Heading as in Form 2]

The petitioner (or respondent) having applied in his (her) petition (or answer) for (here set out the ancillary relief claimed and intended to be proceeded with, stating the terms of any agreement as to the order which the court is to be asked to make).

(Add where applicable TAKE NOTICE THAT the application will be heard by the master in chambers at \_\_\_\_\_ on \_\_\_\_\_ day, the day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock).

(TAKE NOTICE (ALSO)) That (continue as in third paragraph of Form 13.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Signed \_\_\_\_\_

(Solicitor for the) Petitioner (or Respondent)

## FORM 14

## NOTICE OF ALLEGATION IN PROCEEDINGS FOR ANCILLARY RELIEF

[Heading as in Form 2]

TAKE NOTICE that this affidavit has been filed in proceedings for (state nature of application and that if you wish to be heard on any matter affecting you in the proceedings you may intervene by applying to the Court, within eight days after you receive this notice, inclusive of the day of receipt, for directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Dated this                      day of    19                      .

Issued by  
(Solicitor for the) Petitioner (or Respondent).

## FORM 15

## NOTICE OF REQUEST FOR PERIODICAL PAYMENTS ORDER AT SAME RATE AS ORDER FOR MAINTENANCE PENDING SUIT

[Heading as in Form 2]

To    of  
The petitioner (or respondent) having on the                      day of  
19                      , obtained an order for payment by you of maintenance pending suit at the  
rate of

AND the petitioner (or respondent) having applied in his (her) petition) (or answer) for a periodical payments order for himself (or herself).

TAKE NOTICE that the petitioner (or respondent) has requested the Court to make a periodical payments order for himself (or herself) providing for payments by you at the same rate as those mentioned above.

AND TAKE NOTICE that if you object to the making of such a periodical payments order, you must give notice to that effect to the master and the petitioner (or respondent) within 14 days after service of this notice on you, and if you do not do so, the master may make such a periodical payments order without further notice to you.

Dated this                      day of    19                      .

Master

FORM 16

NOTICE OF APPOINTMENT TO HEAR REPRESENTATIONS BEFORE CHILD IS COMMITTED TO CARE OF DEPARTMENT OF HEALTH AND SOCIAL SERVICES

[Heading as in Form 2]

To

TAKE NOTICE that if you wish to make representation before an order is made committing to the care of the Department of Health and Social Services you should attend before at on the day of 19 , and that if you do not attend at the time and place mentioned, such order will be made and proceedings taken as the Judge thinks fit.

Note: Where the Department to whose care a child is committed wish to ask for a financial provision order in favour of the child the Department must, within 14 days after receiving this notice, file an affidavit as to the property and income of the party against whom the order is sought and must at the same time send him a copy of the affidavit. Within four days after receiving the Department's affidavit the party against whom the order is sought may file an affidavit in reply and, if he does so, he must send a copy of his affidavit to the Department.

Dated this day of 19

Master



## FORM 17

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
FAMILY DIVISION

## PROBATE AND MATRIMONIAL OFFICE

In the Matter of an Application by A.B. under article 29 of the  
Matrimonial Causes (Northern Ireland) Order 1978

A.B.

Applicant

C.B.

Respondent

(1) Name,  
address and  
description  
of  
respondent.

LET the respondent C.D.<sup>(1)</sup> within 14 days after service of this Summons on him inclusive of the day of such service enter an Appearance, either in person or by his Solicitor at the Probate and Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, to this Summons, which is issued upon the application of A.B.<sup>(2)</sup> who claims that the said C.D., being the lawful husband of the applicant:

(2) Name,  
and  
address of  
applicant.

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

and applies that the said C.D. be ordered (here set out the relief claimed).

The applicant further applies that the costs of this application be provided for.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

This summons was taken out by

Solicitors for the Applicant.

(3) Name,  
address and  
description  
of  
respondent.

To C.D.<sup>(3)</sup>

TAKE NOTICE THAT—

A copy of the affidavit to be used in support of the application is delivered herewith.

In default of your entering an Appearance the Court will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence.

In the event of your entering an Appearance you are required within 28 days after the time limited for Appearance to file in the Probate and Matrimonial Office at the address above-mentioned an affidavit in answer to the application setting out the grounds on which you intend to contest the application and setting forth in a schedule to the affidavit full particulars of your property and income. You must at the same time send a copy of your affidavit (with the schedule) to the Solicitor for the Applicant.

If you enter an Appearance you must at the same time furnish an address for service within the jurisdiction.

FORM 18.

[Heading as in Form 2]

To

(1) State name and address of wife.

(2) State name, address and description of husband.

(3) Or as the case may be.

(4) State name and address of petitioner or solicitor.

TAKE NOTICE that in proceedings by A.B.<sup>(1)</sup> in the High Court of Justice in Northern Ireland under article 29 of the Matrimonial Causes (Northern Ireland) Order 1978 it has been alleged by C.D.<sup>(2)</sup> husband of the said A.B., that you have committed adultery within the said A.B. AND FURTHER TAKE NOTICE that you are at liberty with 14 <sup>(3)</sup> days after service of this notice on you to enter an Appearance in the proceedings either in person or by your Solicitor at the Probate and Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, and to intervene in the proceedings and defend all or any of the charges set forth in the copy affidavit served on you with this notice.

This notice is issued by<sup>(4)</sup>

Dated the            day of            19            Master.

*Note:* An appearance may be entered by leaving at or sending by post to the Probate and Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, 3 copies of a memorandum of appearance which may be obtained at Her Majesty's Stationery Office, Chichester Street, Belfast.



FORM 20

ORIGINATING SUMMONS FOR ALTERATION OF MAINTENANCE AGREEMENT  
AFTER DEATH OF ONE OF THE PARTIES

In the High Court of Justice in Northern Ireland  
Family Division  
Probate and Matrimonial Office

In the Matter of an Application under Article 38 of the  
Matrimonial Causes (Northern Ireland) Order 1978

Between Applicant(s)  
and Respondent(s)

LET of within 14 days  
of the service of this summons on him inclusive of the day of such service enter  
an appearance, either in person or by his solicitor, at the Probate and Matrimonial  
Office, Royal Courts of Justice, Chichester Street, Belfast, to this summons on an  
application by that the agreement made on the  
day of 19 between (the applicant and)  
who died on the day of 19, (and the Respond-  
ent) should be altered as shown in the affidavit accompanying this summons so  
as to make different (or contain) financial arrangements.

Dated the day of 19

This summons was issued by  
solicitors for the above named A.B.

Take Notice—

The Notice appended to this summons where the respondent is the personal  
representative of the deceased should follow the Notice in Form 17 but the words  
“in a schedule to the affidavit full particulars of your property and income” in  
the penultimate paragraph should be deleted and the following words should be  
inserted—

“full particulars of the value of the deceased’s estate for probate, after providing  
for the discharge of the funeral, testamentary and administrative expenses, debts  
and liabilities (including the amount of the estate duty and interest thereon), the  
persons or classes of persons beneficially interested in the estate (together with the  
names and addresses, of all living beneficiaries) and the value of their interests  
so far as ascertained, stating whether any beneficiary is an infant or person of  
unsound mind.”

Where the respondent is not a personal representative of the deceased the  
following notice shall be appended to the summons:

“Take Notice that you may within 28 days after service of the summons on  
you file in the Probate and Matrimonial Office an affidavit in answer to the  
application and serve a copy on the applicant.”

## FORM 21

NOTICE TO BE INDORSED ON DOCUMENT SERVED IN ACCORDANCE  
WITH RULE 86

To \_\_\_\_\_ of \_\_\_\_\_

TAKE NOTICE that the contents or purport of this document are to be communicated to the respondent (or as the case may be), the said if he is over 16 (add, if the person to be served is by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 incapable of managing and administering his property and affairs; unless you are satisfied (after consultation with the responsible medical officer within the meaning of the Mental Health Act (Northern Ireland) 1961, or if the said \_\_\_\_\_ is not liable to be detained or subject to guardianship under that Act, his medical attendant\* that communication will be determined to his mental condition),

\*Delete these words if the document is served on the responsible medical officer or medical attendant.

## FORM 22

## AFFIDAVIT AND NOTICE UNDER RULE 116

[Heading as in Form 2]

I, A.B. [or C.D. the solicitor of A.B.] of \_\_\_\_\_ make oath and say that according to the best of my knowledge, information and belief I am [or the said A.B. is] beneficially entitled under the above mentioned settlement [or as may be] to an interest in the securities specified in the notice hereto annexed.

Sworn, etc.

This affidavit is filed on behalf of A.B. whose address is \_\_\_\_\_

Notice to be annexed to the affidavit

To the Governor and Company  
of the Bank of Ireland  
[or as may be]

Take notice that the securities comprised in and subject to the trusts of the settlement [or as may be] referred to in the affidavit to which this notice is annexed consist of the following, namely [specify the stock, shares, etc., stating the names in which it stands].

This notice is intended to stop the transfer of the said securities and not the payment of any dividend thereof or interest thereon [or and also the payment of any dividend thereof or interest thereon].

(Signed) A.B. [or C.D. if affidavit sworn by him].

FORM 23

SUMMONS UNDER RULE 123

[Heading as in Form 2]

Whereas the plaintiff obtained an order against the above-named defendant on the day of 19, for the sum of £ and there is now due and payable under the said order the sum of £

You are therefore hereby SUMMONED to appear personally before the Master in Room at the Royal Courts of Justice, Chichester Street, Belfast, on day, the day of 19, at o'clock in the noon to be examined as to whether any and what debts are owing to you, and whether you have any and what other property or means of satisfying the above mentioned order.

Dated this day of 19

To:

Master

FORM 24

(Seal)

JUDGMENT SUMMONS

[Heading as in Form 2]

WHEREAS the above-named (hereinafter called "the judgment creditor") obtained an order in this Court on the day of 19, against (hereinafter called "the debtor") for [state nature of order].

AND WHEREAS default has been made in payment of the sum of £ payable under the said order and the judgment creditor has required the judgment summons to be issued against you, the said debtor.

YOU ARE HEREBY SUMMONED to appear personally before one of the Judges sitting in this Division at the Royal Courts of Justice, Chichester Street, Belfast, on the day of 19, at o'clock, to be examined on oath touching the means you have had since the date of the said order to pay the said sum in payment of which you have made default and also to show cause why you should not be committed to prison for such default.

[AND TAKE NOTICE THAT the judgment creditor intends to apply to the Court at the hearing of this judgment summons for leave to enforce arrears which became due more than twelve months before the date of this summons.]

Dated this day of 19 £

Amount due and unpaid in respect of order and costs	.. .. .	..
Costs of this summons	.. .. .	..
Travelling expenses to be paid to the debtor	.. .. .	..
Sum on payment of which this summons will be discharged	.. .. .	..

Note: If payment is made too late to prevent the judgment creditor's attendance on the day of the hearing, you may be liable for further costs

[The Judgment Creditor's solicitor is ]

## APPENDIX 2

## CONTENTS OF PETITION

(Unless otherwise directed under rule 9.)

1. Every petition other than a petition for jactitation of marriage or under rule 84 shall state:—

- (a) the names of the parties to the marriage and the date and place of the marriage;
- (b) the last address at which the parties to the marriage have lived together as husband and wife;
- (c) where it is alleged that the court has jurisdiction based on domicile—
  - (i) the country in which the petitioner is domiciled, and
  - (ii) if that country is not Northern Ireland, the country in which the respondent is domiciled;
- (d) where it is alleged that the court has jurisdiction based on habitual residence—
  - (i) the country in which the petitioner has been habitually resident throughout the period of one year ending with the date of the presentation of the petition, or
  - (ii) if the petitioner has not been habitually resident in Northern Ireland the country in which the respondent has been habitually resident during that period,
 with details in either case, including the addresses of the places of residence and the length of residence at each place;
- (e) the occupation and residence of the petitioner and the respondent;
- (f) whether there are any living children of the family and, if so—
  - (i) the number of such children and the full names (including surname) of each and his date of birth or (if it be the case) that he is over 18 years of age; and
  - (ii) in the case of each minor child over the age of 16, whether he is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation;
- (g) whether (to the knowledge of the petitioner in the case of a husband's petition) any other living child has been born to the wife during the marriage and, if so, the full names (including surname) of the child and his date of birth, or, if it be the case, that he is over 18 years of age;
- (h) if it be the case, that there is a question whether a living child is a child of the family;
- (i) whether or not there are or have been any other proceedings in any court in Northern Ireland or elsewhere with reference to the marriage or to any children of the family or between the petitioner and the respondent with reference to any property of either or both of them, and, if so—
  - (i) the nature of the proceedings,
  - (ii) the date and effect of any decree or order, and
  - (iii) in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order;
- (j) whether there are any proceedings continuing in any country outside Northern Ireland which relate to the marriage or are capable of affecting its validity of subsistence and, if so—
  - (i) particulars of the proceedings, including the court in or tribunal or authority before which they were begun,
  - (ii) the date when they were begun,
  - (iii) the names of the parties,

- (iv) the date or expected date of any trial in the proceedings, and
- (v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Order and such proceedings shall include any which are not instituted in a court of law in that country, 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 been begun and have not been finally disposed of;
- (k) whether any, and if so what, agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent or, as the case may be, the petitioner or any child of the family;
- (l) in the case of a petition for divorce under paragraph 3(2)(e) of the Order whether the petitioner proposes if a decree nisi is granted to make any financial provision for the respondent giving details of any proposal not mentioned under paragraph (k);
- (m) in the case of a petition for divorce, that the marriage has broken down irretrievably;
- (n) the fact alleged by the petitioner for the purposes of article 3(2) of the Order or, where the petition is not for divorce or judicial separation, the ground on which relief is sought, together in any case with brief particulars of the individual facts relied on but not the evidence by which they are to be proved;
- (o) any further or other information required by such of the following paragraphs and by rule 83 as may be applicable.

2. A petition for a decree of nullity under article 14(e) or (f) of the Order shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

3. A petition for a decree of presumption of death and dissolution of marriage shall state:—

- (a) the last place at which the parties to the marriage cohabited;
- (b) the circumstances in which the parties ceased to cohabit;
- (c) the date when and the place where the respondent was last seen or heard of; and
- (d) the steps which have been taken to trace the respondent.

4. A petition for jactitation of marriage shall state:—

- (a) the residence and domicile of the petitioner and the respondent at the date of the institution of the cause;
- (b) the dates, times and places of the alleged boastings and assertions;
- (c) that the alleged boastings and assertions are false and that the petitioner has not acquiesced therein.

5. Every petition shall conclude with—

- (a) a prayer setting out particulars of the relief claimed, including any claim for custody of a child of the family and any application for a declaration under article 45(3) of the Order, any claim for costs and any application for ancillary relief which it is intended to claim;
- (b) the names and addresses of the persons who are to be served with the petition, indicating if any of them is a person under disability;
- (c) the petitioner's address for service, which, if the petitioner sues by a solicitor, shall be the solicitor's name or firm and address, or, if the petitioner sues in person, shall be his place of residence as given under paragraph 1(e) above or, if no place of residence in Northern Ireland is given, the address of a place to which documents for him may be delivered or sent.



## EXPLANATORY NOTE

*(This note is not part of the rules, but is intended to indicate their  
their general purport.)*

These rules replace, with a few exceptions, all previous rules relating to matrimonial causes and make provision for the procedure on the coming into force of the Matrimonial Causes (Northern Ireland) Order 1978.

While reproducing much of the former procedure the rules make many important changes. The main alterations are as follows:—

1. Leave to present a petition for divorce before the expiration of three years from the date of the marriage must be made by originating summons (rule 4).
2. Where a petition has not been served on any person the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed (rule 6).
3. An affidavit verifying the petition is no longer required.
4. A petition is no longer required to be signed by the petitioner, unless he sues in person (rule 9).
5. Birth certificates of children under the age of 18 must be filed with the petition unless otherwise directed (rule 10(1)).
6. A petitioner may by leave of the Court file another petition where there is before the Court a petition by him which has not been disposed of by final order (rule 10(2)).
7. Where there are children under the age of 16 or a minor child over that age who is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, or any other child of the family to whom the Court directs that Article 44 of the Matrimonial Causes (Northern Ireland) Order 1978 shall apply the proceedings shall be referred to the Department of Health and Social Services after the service of the petition with a view to conciliation of the parties (rule 11).
8. A woman with whom a husband is alleged to have committed adultery will be made a Co-Respondent and no longer treated as a person entitled to intervene (rule 12).
9. Except in the case of a person under disability, service of a petition on a party to the proceedings may be by post (rule 13).
10. In nullity proceedings on the grounds of incapacity an application to appoint medical inspectors is no longer obligatory (rule 30(1)).
11. The celebration of a marriage outside Northern Ireland may in proceedings in which the validity of the marriage is not disputed be proved by the evidence of a party and the production of a marriage certificate (rule 37).
12. A decree of judicial separation may be rescinded with the consent of the parties (rule 54(1)).
13. Save where there are circumstances which ought to be brought to the attention of the Judge, decrees absolute will no longer be pronounced in Court but made absolute in the Office (rule 55).

14. An application by a petitioner or respondent for ancillary relief must be made in the petition or answer (rule 58(1)) but may be made later by leave of the Court (rule 58(2)).
15. Comprehensive provision is made for committing the care of a child to the Department of Health and Social Services or placing the child under the supervision of a probation officer or the Department (rule 73 and 74).
16. Provision is made for the alteration of maintenance agreements during the parties lifetime (rule 79) and after the death of one party (rule 80).
17. The provisions of the former Order 43 of the Rules of the Supreme Court for the enforcement of orders for the periodical payment of money are contained in rules 96 to 123.
18. Judgment Summonses for the enforcement of an Order in matrimonial proceedings for the payment of money now issue from the Office (rule 124).