

1989 No. 287

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court (Northern Ireland)
(Amendment No. 3) 1989***Made* 21st July 1989*Coming into operation* 1st September 1989*To be laid before Parliament*

We, the Northern Ireland Supreme Court Rules Committee being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers and all other powers enabling us in that behalf as follows:

Citation, interpretation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1989 and shall come into operation on 1st September 1989.

(2) Nothing in rules 2 or 3 shall affect any proceedings begun before the coming into operation of these rules.

(3) In these rules “the principal rules” means the Rules of the Supreme Court (Northern Ireland 1980(b) and an Order or Form referred to by number means the Order or Form so numbered in those Rules.

Amendment of the principal rules

2.—(1) Order 1 rule 12 shall be amended as follows—

(a) sub-paragraph (ii) of paragraph (b) shall be omitted;

(b) in paragraph (c), for the words “with respect to a person’s matrimonial status”, there shall be substituted the words “under Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989”.

(2) Order 74 shall be amended as follows—

(a) in the heading the words “DECLARATION AS TO MATRIMONIAL STATUS” shall be omitted;

(b) Part III shall be revoked.

(a) 1978 c.23

(b) S.R. 1980 No. 346; to which there are no relevant amendments.

Applications under Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(a)

3.—(1) For Order 98 there shall be substituted the new Order set out in Schedule 1, and for the title of that Order in the Arrangement of Orders there shall be substituted “The Matrimonial and Family Proceedings (Northern Ireland) Order 1989”.

(2) The new forms set out in Schedule 2 shall be substituted for Form 48.

Family Law (Miscellaneous Provisions) (Northern Ireland) 1984(b)

4. The principal rules shall be amended by inserting the new Order 115 set out in Schedule 3.

Dated 29th June 1989.

*Brian Hutton
John MacDermott
Donald Murray
J. P. Higgins
Hugh P. Kennedy
Brian Kerr
Owen Catchpole*

I concur,

Mackay of Clashfern, C.

Dated 21st July 1989.

(a) S.I. 1989/667 (N.I. 4)
(b) S.I. 1984/1984 (N.I. 14)

New Order to be substituted in the Rules of the Supreme Court

ORDER 98

THE MATRIMONIAL AND FAMILY PROCEEDINGS
(NORTHERN IRELAND) ORDER 1989

PART I

PRELIMINARY

Definitions

1. In this Order—

“the Order of 1989” means the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;

“the Judge” means the Judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in matrimonial causes and matters.

PART II

DECLARATIONS AS TO LEGITIMACY OR LEGITIMATION

Heading of Petition

2. An application under Article 32 of the Order of 1989 for a declaration of legitimacy or legitimation shall be commenced by petition which shall be headed:—

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

and shall be addressed to Her Majesty’s High Court of Justice in Northern Ireland.

Contents of Petition

3.—(1) A petition by which proceedings are begun under Article 32 of the Order of 1989 shall state —

- (a) the name of the petitioner, and if the petitioner is known by a name other than that which appears in the certificate of his birth that other name shall be stated in the petition and in any decree made thereon;
- (b) the date and place of birth of the petitioner;
- (c) if it is known, the name of the petitioner’s father and the maiden name of the petitioner’s mother and, if it is different, her current name, and the residential address of each of them at the time of the presentation of the petition;
- (d) the grounds on which the petitioner relies and all other material facts alleged by him to justify the making of the declaration; and
- (e) either that the petitioner is domiciled in Northern Ireland on the date of the presentation of the petition or that he has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

(2) Where the jurisdiction of the court to entertain the petition is based on the petitioner’s habitual residence, the petition shall include a statement of the addresses of the places of residence of the petitioner and the length of residence at each place during the period of one year ending with the date of presentation of the petition.

(3) Unless otherwise directed there shall be annexed to the petition a copy of the petitioner's birth certificate.

(4) The petitioner's father and mother, or the survivor of them, shall be respondents to the application.

PART III

DECLARATIONS AS TO ADOPTIONS EFFECTED OVERSEAS

Heading of Petition

4. An application under Article 33 of the Order of 1989 for a declaration as to an adoption effected overseas shall be commenced by petition which shall be headed:—

“In the High Court of Justice in Northern Ireland
Family Division
Office of Care and Protection”

and shall be addressed to Her Majesty's Court of Justice in Northern Ireland.

Contents of Petition

5.—(1) A petition by which proceedings are begun under Article 33 of the Order of 1989 shall state—

- (a) the name of the petitioner;
- (b) the date and place of birth of the petitioner;
- (c) the names of those persons who are to be respondents pursuant to paragraph (5) and the residential address of each of them at the date of the presentation of the petition;
- (d) the date and place of the adoption order and the court or other tribunal or authority which made it;
- (e) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which the application is made; and
- (f) either that the petitioner is domiciled in Northern Ireland on the date of the presentation of the petition or that he has been habitually resident in Northern Ireland throughout the period of one year ending with that date.

(2) Where the jurisdiction of the court to entertain the petition is based on the petitioner's habitual residence, the petition shall include a statement of the addresses of the places of residence of the petitioner and the length of residence at each place during the period of one year ending with the date of presentation of the petition.

(3) There shall be annexed to the petition a copy of the petitioner's birth certificate (if it is available, this certificate should be the one made after the adoption referred to in the petition) and, unless otherwise directed, a certified copy of the adoption order effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man.

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

- (5) The following persons shall, if alive, be respondents to the application—
- (a) those whom the petitioner claims are his adoptive parents for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987(a); or
 - (b) those whom the petitioner claims are not his adoptive parents for the purposes of that Article.

(a) S.I. 1987/2203 (N.I. 22)

PART IV

GENERAL PROVISIONS AS TO PROCEEDINGS UNDER PART II AND III

Interpretation

6. In this Part “Master” means—

- (a) where the proceedings are brought under Article 32 (Declarations as to legitimacy or legitimation) of the Order of 1989, the Master (Probate and Matrimonial);
- (b) where the proceedings are brought under Article 33 (Declarations as to adoptions effected overseas) of the Order of 1989, the Master (Care and Protection),

and “the Office” means the Probate and Matrimonial Office or the Office of Care and Protection accordingly.

Affidavit in support of Petition

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

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

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

Notice of the Petition to be given to the Attorney General

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

(2) On filing the petition notice of filing shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney General who may enter an appearance to the petition within 14 days from such notice.

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

Service of Petition

9. The petitioner shall serve personally or by post every respondent, other than the Attorney General, with a copy of the petition indorsed with a notice to appear in accordance with Form 48 in Appendix A.

Appearance by Respondent

10. A respondent may enter an appearance within the time limited by the notice indorsed on the petition.

Answer by Respondent

11.—(1) A respondent who has entered an appearance may within 14 days thereafter file an answer to the petition.

(2) The respondent shall within 4 days of filing an answer deliver a copy of it to the petition and to the Crown Solicitor and any other party to the proceedings.

Application for Directions

12.—(1) After the expiration of the time limited for the filing of an answer under rule 11(1), the petitioner shall issue and serve on all respondents, and on the Crown Solicitor, an application for directions as to any other persons who should be made respondents to the petition or given notice of the proceedings.

(2) When giving directions in accordance with paragraph (1) the court shall consider whether it is necessary that the Attorney General should argue before it any question relating to the proceedings, and, if it does so consider, the Attorney General need not file an answer and the court shall give directions requiring him to serve on all parties to the proceedings a summary of his argument.

Answer by Attorney General

13. Subject to paragraph (2) of rule 12, the Attorney General shall file an answer to the petition within 21 days after directions have been given under that rule and shall deliver a copy thereof to the petitioner and any other party to the proceedings.

Joining of Parties

14. Persons given notice of proceedings pursuant to directions given in accordance with rule 12 shall within 21 days after service of the notice upon them be entitled to apply to the Master to be joined as parties, and the cause shall not be set down for hearing until that period and the period referred to in rule 13 have expired.

Consolidation of suits

15. Where it appears that more than one petition has been filed on behalf of petitioners claiming to be children of the same father and mother, the Attorney General may, on giving notice to the petitioner in each suit which it is sought to consolidate, apply at any time after he has entered an appearance for an order that the suits be consolidated.

Setting down for hearing

16.—(1) The petitioner shall request the Master to enter the cause for hearing by lodging in the Office a certificate of readiness in Form 48A.

(2) At the same time as lodging the certificate of readiness the petitioner shall deliver to the Office one bundle for the use of the Judge consisting of one indexed copy of the following documents:—

- (a) the certificate of readiness,
- (b) the petition,
- (c) any other pleadings,
- (d) affidavit of service,
- (e) interlocutory orders,
- (f) the requisite legal aid documents,

fastened together in the order shown and having endorsed thereon the names and addresses of the solicitors for the parties.

(3) Within 4 days of lodging the certificate of readiness the petitioner shall give notice of having done so to the Crown Solicitor on behalf of the Attorney General and to each party in the cause who has entered an appearance.

(4) The Master shall, subject to paragraph (5), fix a date for the hearing and give notice thereof to every party in the cause.

(5) Save with the consent of all parties or by leave of the Judge no cause shall be placed in the list for hearing until after the expiration of 10 days from the date on which the certificate of readiness was lodged.

Mode of making applications

17. Unless this Order otherwise provides, every application under this Order shall be made by summons.

Form of Declaration

18.—(1) A declaration made in accordance with Article 32 of the Order of 1989 shall be in Form 48B in Appendix A.

(2) A declaration made in accordance with Article 33 of the Order of 1989 shall be in Form 48C in Appendix A.

New forms to be substituted in Appendix A

No. 48

FORM OF NOTICE TO APPEAR IN PETITION FOR DECLARATION AS TO LEGITIMACY OR
LEGITIMATION [OR AS TO ADOPTION EFFECTED OVERSEAS]

(O.98 r.9)

To _____ of _____

Take notice that you the said _____ are a respondent to this petition and further take notice that you are at liberty within 14 days after service hereof upon you inclusive of the day of service to enter an appearance either in person or by your solicitor at the Probate and Matrimonial Office [or the Office of Care and Protection], Royal Courts of Justice, Belfast, should you think fit so to do and thereafter to make answer to the said petition and further take notice that in default of your so doing the Court will proceed to hear the said petition and pronounce judgment in the cause, your absence notwithstanding.

This petition is filed and this notice to appear is issued by _____

Dated the _____ day of _____ 19 _____

Master.

Note:— Any person entering an appearance must at the same time furnish an address for service within the jurisdiction.

No. 48A

CERTIFICATE OF READINESS

(O.98 r.16(1))

To the Master

Sir,

I/We request that you enter this cause for hearing.

I/We certify on the part of the petitioner that—

- (1) there are no pending interlocutory proceedings;
- (2) the petitioner does not intend to commence any (further) interlocutory proceedings before trial;
- (3) so far as concerns the petitioner, the cause is ready for trial.

(Signed)

Solicitor for petitioner.

* or, where there has been a legitimisation (whether or not by virtue of the subsequent marriage of the petitioner's parents) which is recognised by the law of Northern Ireland and effected under the law of any other country, the following form shall be followed:—

. . . that, because _____, the father of _____, the said petitioner, was [or was not] domiciled in _____, at the date of his marriage with _____, then _____, and that the requirements of _____ (country of domicile) law as to the legitimisation of a person, born out of wedlock, by the subsequent marriage of the parents of such a person had [or had not] been complied with, then by virtue of the law of Northern Ireland, that the said _____ and _____ (formerly _____), were [or were not] lawfully married at _____ on the _____ day of _____ 19____, and that the said _____ petitioner, born at _____ on the _____ day of _____ 19____, is [or is not] the lawful child of his parents, the said _____ and _____ and that, by the said marriage, the said _____ (petitioner) was [or was not] legitimated for the purpose of the law of Northern Ireland as from the date of the said marriage.

No. 48C

DECLARATION AS TO AND ADOPTION EFFECTED OVERSEAS ARTICLE 33 OF THE
MATRIMONIAL AND FAMILY PROCEEDINGS (NORTHERN IRELAND) ORDER 1989
(O.98 r.18(2))

In the High Court of Justice in Northern Ireland

Family Division

Office of Care and Protection

Upon the petition of (the petitioner)

and upon hearing the petitioner

and upon hearing (the respondent)

It is declared* that, because the said _____, the petitioner was [or was not] adopted for the purposes of Section 4(3) of the Adoption (Hague Convention) Act (Northern Ireland) 1969 on the _____ day of _____ 19____, in _____ (country where the adoption took place or did not take place) by _____ (the actual or alleged adoptive parent), then for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987 the said _____, the petitioner, is [or is not] the adopted child of the said _____ (the actual or alleged adoptive parent).

Dated

* or, where the adoption is or is not recognised by the law of Northern Ireland and was or was not effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man, the following form shall be followed:—

. . . that, because the said _____ the petitioner was [or was not] adopted for the purposes of being recognised under the law of Northern Ireland on the day of _____ 19____, in _____ (country where the adoption took place or did not take place) by _____ (the actual or alleged adoptive parent), then for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987 the said _____, the petitioner, is [or is not] the adopted child of the said _____ (the actual or alleged adoptive parent).

New Order to be inserted in the Rules of the Supreme Court

ORDER 115

APPLICATIONS UNDER PART II (MATRIMONIAL HOMES)
OF THE FAMILY LAW (MISCELLANEOUS PROVISIONS)
(NORTHERN IRELAND) ORDER 1984*Interpretation*

1. In this Order "the Order" means the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984(a).

Assignment to Family Division

2. Proceedings in the High Court under Part II of the Order shall be assigned to the Family Division.

Applications to be made by originating summons

3.—(1) An application under Part II of the Order shall be made by originating summons issued out of the Probate and Matrimonial Office and Order 7 shall apply accordingly, except that references in that Order to "plaintiff" and "defendant" shall be read as references to "applicant" and "respondent" respectively.

(2) Where in an application under the said Part II for an order terminating the respondent's rights of occupation it appears to the Court, on the ex parte application of the applicant, that the respondent is not in occupation of the dwelling house to which the application relates and his whereabouts cannot after reasonable inquiries be ascertained, the Court may dispense with service of the summons on the respondent.

(a) S.I. 1984/1984 (N.I. 14)

EXPLANATORY NOTE

(This note is not part of the rules.)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980:

- (a) to provide for applications for declarations as to legitimacy or legitimation, and for declarations as to adoptions effected overseas, for purposes of Articles 32 and 33 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;
- (b) to insert a new Order 115 providing for applications under Part II (Matrimonial Homes) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.